



In re Estate of Kipkoske Arap Maswai (Deceased) (Succession Cause 323 'B' of 2015) [2024] KEHC 929 (KLR) (1 February 2024) (Ruling)

Neutral citation: [2024] KEHC 929 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 323 'B' OF 2015
JK SERGON, J
FEBRUARY 1, 2024**

BETWEEN

WILLIAMSON CHERUIYOT NGENO APPLICANT

AND

JOSEPH KIPNGETICH KOSKEI 1ST RESPONDENT

ESTHER CHEPKEMOI 2ND RESPONDENT

RULING

1. The application coming up for determination is a chamber summons dated 20th December, 2023 seeking the following orders;
 - (i) Spent
 - (ii) That pending the hearing of this application a temporary injunction be issued restraining the Respondents either by themselves, labourers, relatives and/or sons from intermeddling with the estate land namely Kericho/Kapsaos/881 and in particular the share of the applicant measuring 1.79 acres apportioned to him via confirmed grant dated 18th July, 2017 and/or destroying the fences of the said portion, building structures therein, cultivating, grazing the domestic animals thereon and/or dealing in anyway the said portion of the applicants, comprised under the estate land known as Kericho/Kapsaos/881
 - (iii) That pending the process of transmission of shares of the estate land of all the beneficiaries and the acquisition of title by the bona fide beneficiaries if the aforesaid estate namely Kericho/Kapsaos/881 as per certificate of confirmation of grant issued by the court on 18th July, 2017. The respondents be restrained from intermeddling of the estate land either themselves or through their daughters, son, relatives, workers and/or agents from



cultivating, grazing their domestic animals, building structures thereon and/or interfering with the rightful share of the applicant herein measuring 1.79 acres comprised in the said estate land.

(iv) That the costs of this application be provided for

2. The application is supported by grounds on the face of it and the supporting affidavit of Williamson Cheruiyot Ngeno the applicant herein.
3. The applicant stated that he was apportioned a share of the estate land namely Kericho/Kapsaos/881 measuring 1.79 acres as evidenced by the certificate of confirmation of grant issued by this honourable court on 18th July, 2017.
4. The applicant stated that the 1st respondent is the administrator of the estate of the deceased herein and further that the 2nd respondent respondent with the aid of the 1st respondent intermeddled with the said portion of land by destroying the fence, building structures thereon, ploughing the said land and grazing domestic animals and further that as a result of the said interference of his rightful portion he has suffered irreparable loss and damage.
5. The applicant faulted the 1st respondent for the failure to sign transmission forms and process title deeds, hence making him destitute and as a result filed an application to compel the 1st respondent to process the said transmission forms and/or in the alternative the Honourable Court's Deputy Registrar signs the same.
6. The applicant stated that if the orders being sought are not granted he will continue to suffer loss and the respondent will continue to waste the said portion of land.
7. The chamber summons was fixed for inter partes hearing on 24th January, 2024, the hearing notice and the instant application were served upon the respondents by a licensed court server who filed an affidavit of service dated 19th January, 2024. The respondents have not filed any response to the chamber summons herein.
8. The matter came up for inter partes hearing on 24th January, 2024, Mr. Koskey Learned Counsel for the applicant maintained that he was seeking for prayer 3 and 4 of the chamber summons dated 20th December, 2023. The respondents were not in attendance.
9. In the circumstances this court will have to determine the chamber summons *ex parte*. I have considered the chamber summons and the sole issue for determination is whether the applicant is entitled to restraining orders against the respondents from further interfering with the rightful share of the applicant herein measuring 1.79 acres comprised in the said estate land.
10. I have carefully studied the file, the applicant herein being a liability to the estate of the deceased was apportioned a share of the estate land namely Kericho/Kapsaos/881 measuring 1.79 acres alongside the beneficiaries of the estate which fact is supported by the certificate of confirmation of grant issued by this honourable court on 18th July, 2017 and is therefore is entitled to enjoy peaceful possession of the said portion of the estate land without unwarranted interference by the respondents pending processing of the transmission forms and titles of the estate property.
11. Consequently, the chamber summons dated 20th December, 2023 is allowed giving rise to issuance of the following orders;
 - (i) That pending the transmission of shares and processing of title deeds of the estate land of Kericho/Kapsaos/881 as per certificate of confirmation of grant issued by this court on 18th



July, 2017, the respondents are hereby restrained from interfering with the rightful share of the applicant herein measuring 1.79 acres comprised in the said estate land.

(ii) That the costs of this application be borne by the respondents.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 1ST DAY OF FEBRUARY 2024.

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J.K. SERGON

JUDGE

In the Presence of:

C/Assistant – Rutoh

Koskey for the Applicant

No Appearance for the Respondents

