



In re Estate of the Late Moses Kiprono Keino (Deceased) (Succession Cause 144 of 1999) [2024] KEHC 4684 (KLR) (17 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4684 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 144 OF 1999
HM NYAGA, J
APRIL 17, 2024**

IN THE MATTER OF THE ESTATE OF THE LATE MOSES KIPRONO KEINO(DECEASED)

BETWEEN

KIKWAI DANIEL KIPRONO PETITIONER

AND

ISABELLA ANNE SHIACHI RESPONDENT

RULING

1. On 25th December, 2003 this court issued a Certificate of Confirmation of Grant to the petitioner Daniel Kikwai Kiprono and Etta Keino in their capacity as the son and the 1st widow of the deceased respectively. The distribution of the estate as per the attached Schedule.
2. On 1st July, 2008, Etta Keino filed Summons for Revocation of Grant dated 22nd June, 2008, seeking for the suspension of the grant that was issued to them on 25th February, 2003, restraining orders against her co-administrator Daniel Kikwai (Respondent) either by himself, his agents or servants from howsoever intermeddling, dealing, disposing, transferring, wasting or interfering with the deceased estate and for revocation and or annulment of the aforesaid grant.
3. The summons was premised on ground that the proceedings to obtain grant was defective as there was no full disclosure of the dependants and properties of the deceased; the grant was confirmed after an alleged meeting that occurred without her knowledge and participation; the grant violated the award by a Kericho Court which found Susan Kiprono was not a wife of the deceased; that she and the respondent had not diligently administered the estate and or distributed the assets and settled the liabilities five years down the line; that Catherine Chebet whom substantive shares of the estate were made had since died thereby throwing to disarray the entire questions of distribution; no proper accounts had been made following the sale of 550 acres of land to African Highlands Ltd as prescribed



- by the confirmed grant and that no payment of cash had been made or had any existence of cash been brought to her attention by the Respondent.
4. The court, upon considering the above summons, suspended the grant, issued the restraining orders sought and revoked the grant in issue on 21st July, 2008.
 5. Subsequently on 18th January, 2019, Susan Tagiptui Kiprono, Isabella Anne Shiecheru Kiprono and Caroline Wanjiku Kiprono filed summons seeking to be appointed as Joint administrators of the estate herein and the court issued a rectified grant of letters of administration to them on 18th June, 2019.
 6. On 16th February, 2013 the advocate for the 2nd administrator apprised this court that a vast majority of the estate had been distributed and the only property pending distribution was the Industrial property, at Nakuru.
 7. On 15th March, 2023 the advocates for the Administrators and for the former Administrator one David Kikwai recorded the following consent:-
 - i. The Administrators of the firm of Kimatta & Co. Advocates (now deceased) to submit to the court the details of the sale of the 550 acres of Sorget Farm/LR 8346/Londiani and the payment schedule, pursuant to the orders made by the court.
 - ii. Daniel Kikwai to purchase the 12 acres of Sorget Farm LR 8346/Londiani at the market price to be agreed between the parties failing which the land to be sold and the proceeds shared as per the earlier court order.
 - iii. For the factory at Industrial Area Nakuru, the same to be sold as agreed. Any of the parties are at liberty to purchase the same and pay out the other beneficiaries.
 - iv. The Purchase Price to be based on the valuation report by Applecross surveyor dated 16.1.2023.
 8. Pursuant to the aforesaid order, J.W.Gatu Magana Advocate, an administratrix of the firm of Kimatta & Co Advocates swore an affidavit dated 15th May, 2023. She deponed that she had searched through all the records and files left behind at the said firm of Kimatta & Co. and had not found any records relating to payment of 550 acres of Sorget Farm LR 8346/Londiani, but she only found a sale agreement and a letter to the Purchaser's Advocates calling for payment of the purchase price to be paid directly to Kenya Commercial Bank. She contended that it beats comprehension why the late Mr. Kimatta's client did not raise the issue of accounts with him during his lifetime from the transaction date in 2004 till his demise in 2020 yet he remained as their advocate throughout, and that if the clients have any claim with their late advocate, then they should file a specific and particularized claim or action against his estate to enable the estate respond substantively to the same.
 9. The said Daniel Kikwai Kiprono swore an affidavit dated 14th November, 2023 wherein he deposed that the deceased charged the property LR No. 8346 Londiani to Kenya Commercial Bank in order to secure a loan to buy materials to run the workshop, and that the loan was not redeemed and he negotiated with the bank to sell part of the property to recover their debt. That the firm of Kimatta & Co. Advocates was the Vendor's advocate and any proceeds from the sale were being channelled through his office.
 10. He further averred that the proceeds were to be deposited to the bank to cater for the debt and on 1st April, 2024, Kimatta wrote a letter directing the purchaser's advocate (Kaplan & Stratton) to deposit the funds to KCB as per the earlier agreement and the balance to his office.



11. He asserted that he never received any money from the said sale and his numerous attempts to have Kimatta & Co. Advocates give a detailed account of how the balance of Ksh.12, 850,000/= was utilized never materialized.
12. He further deponed that they had agreed through court-annexed mediation that the administrators research on the current price of the 12 acres in Sorget Farm Londiani so that he can purchase or otherwise, but they have not availed the same.
13. He averred that he has managed the estate to the best of his ability and every beneficiary has gotten their share of the estate as per the certificate of confirmation of grant other than the 33% of KIE Block E3 and the 12 acres of Sorget farm in Londiani. That the 33% of KIE Block E3 should be hived from the property as agreed upon in the confirmation of the grant and be subdivided accordingly.
14. He requests that the court to grant them permission to access their share at KIE Block E3 which is being denied by the administrators.
15. He asserted that the assets which were sold to Dorothy Kiprono on tender by Kenya Industrial Estates Ltd should be made available for her use as they are no longer part of the estate of the deceased.
16. The 1st and 3rd administrators Susan Kiprono & Caroline Wanjiku Kiprono swore a joint affidavit on 22nd December, 2023.
17. They averred that the mother to Daniel kikwai had applied for his removal as an administrator as he was mismanaging the estate and that they also complained about the mismanagement of the estate through the affidavit of 2nd Administrator, Isabella Ann Schechero, dated 4th October, 2001.
18. They contended that they were never involved or consulted on how the funds from the sale of LR 8346 Sorget Farm were received or disbursed, and up to date they are in the dark as to what was paid and to which debtor.
19. They averred that their lawyer, Mr. Kimatta, informed them that the loan owed to Kenya Commercial Bank and Kenya Industrial Estate had been paid, and the balance of funds after payment of loans was supposed to be distributed to them and Isabella Ann Schechero.
20. They averred that the assertion by Daniel Kikwai Rono that he made attempts to follow up on the Ksh.12,850,000/= balance with Mr. Kimatta to no avail is incorrect as he was the administrator and yet he never complained to any court that Kimatta Advocate had refused to release the said amount.
21. They stated that Daniel Kikwai Rono has not released 12 acres of LR 8346 Sorget Farm to them and he has been leasing the same and benefitting from the proceeds. They also stated that they have established that an acre of Land at Sorget goes for Ksh.1, 500,000/= per acre.
22. They further asserted that Daniel Kikwai Rono's contention that he should get 67% of the proceeds of the sale of KIE Block E3 is unconscionable given that he has never addressed the demands they made in their affidavits dated 16th January, 2014 and 16th September, 2013, and they urged this court to find that Daniel Kikwai Rono is not entitled to the same and to amend the grant.
23. They disputed that one Dorothy Kiprono paid the loan for some machines as all liabilities were to be met by the proceeds of sale of LR KIE Block E 3.
24. They prayed that Daneil Kikwai Rono do account for the balance of the sale of 550 acres of land and the 12 acres at Sorget Farm which he utilizes to their disadvantage.



25. The 2nd Administrator, Isabella Ann Schechero, swore an affidavit on 16th January, 2024. She largely associated herself with the averments of her co administrators. In addition she averred that the petitioner Daniel Kikwai had sold a substantial number of valuable machinery items from the estate of the deceased without the beneficiaries' consents and while he was not an administrator, and that Dorothy Kiprono whom the petitioner alleges that machineries were sold to her in order to discharge the factory's debts is his sibling.
26. She equally prayed that Daniel be directed to account for the estate's funds and to transfer to them their shares in the Nakuru Aluminium Works Factory land and the parcel of land in Londiani measuring 12 acres.

Determination

27. Section 83 of the *Law of Succession Act* specifies and lists the duties that a personal representative can perform as follows:
 - (a) to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;
 - (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
 - (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
 - (d) to ascertain and pay, out of the estate of the deceased, all his debts;
 - (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
 - (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
 - (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
 - (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”
28. It is also true that a personal representative is in a fiduciary position in regard to the estate of a deceased person. As a trustee she/he is expected to all times act in the best interest of the estate and to render a just and accurate account of all his dealings with the estate's property.
29. The co-administrators herein have accused Daniel Kikwai Rono, the former administrator, for leasing 12 acres of LR 8346 Sorget Farm and solely benefitting from the proceeds thereof. They have urged this court to direct him to render accounts of all the monies he has received from this property. These averments have not been rebutted by him.



30. Therefore, I hereby order David Kikwai Rono to render accounts with respect to this property in accordance with the duties of a personal representative as per Section 83 of the *Law of Succession Act* within 45 days from the date hereof.
31. The co-administrators have also asked to court to direct Daniel Kikwai Rono to account for the balance of the sale of 550 acres of LR 8346 Sorget farm. On his part he has stated that proceeds from the sale was being channelled through the office of the late Kimatta Advocate and that he never received any money from the said sale. He failed to annex any documentary proof of his failed attempts to have the said advocate give a detailed account of how the balance in issue was utilized. I have also noted the averments by the Administratrix of the firm of Kimatta in this regard.
32. Section 47 of the *Law of Succession Act* provides that the High Court shall have jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decrees and make such orders therein as may be expedient.
33. Rule 73 of the *Probate and Administration Rules* provides;

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
34. There is need for clarity and or certainty of where the proceeds of the sale of the said 550 acres went to. I have perused the attached sale agreement. The same was between the former administrators of the estate (i.e. Daniel Kiprono and Etta Keino) and James Finlay (Kenya) Limited for a purchase of 223 Hectares of LR NO. 8346/5 at Ksh. 36,850,000/= . Kaplan & Stratton Advocates were the Purchaser’s advocate as per the sale agreement and the administratrix of the firm of Kimatta has indicated that the purchase price was to be directly deposited in the KCB account in which the deceased is said to have had an outstanding loan. There is need to shed light on where the proceeds of sale were channelled to. The bank should confirm to this court whether any monies relating to the deceased’s loan account was deposited in their account.
35. By dint of the above provisions of the law and in the interest of justice, summons shall issue to The Kenya Commercial Bank to provide a statement of account of the deceased for the period between 1/1/2003 and 31/12/2006. The estate will meet the costs of the extraction of the same.
36. The other issue is with regard to 12 acres of Sorget Farm LR 8346/Londiani which was to be purchased by Daniel Kikwai. There is no cogent evidence on the market price of the said property. I get the feeling that the uncertainty surrounding this property only works in favour of the former administrator, who is accused of leasing the same to 3rd parties. To avoid back and forth on the same, I will direct that the property be transmitted to the rightful beneficiaries in their respective shares forthwith. If no survey has been done, then the current administrators should commission one to carve out the said 12 acres. Should Daniel Kikwai Rono wish to purchase the same he ought to deal with the beneficiaries directly thereafter.
37. As regards the factory at Industrial Area, Nakuru the orders on the sale still remain in force. As I stated earlier, the parties are at liberty to help realise the sale. Once a buyer is found then the court will sanction the sale. The distribution of the proceeds will be subject to the other pending issues herein.
38. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 17TH DAY OF APRIL, 2024.

H. M. NYAGA,



JUDGE.

_In the presence of;

Mr. Maina for N. Njoroge for Susan and Caroline

Mr. Kisilah for Isabella

No appearance for Daniel

(Ms Maina now present)

Court Assistant Philip

