



REPUBLIC OF KENYA



**In re Estate of Kiptarus Arap Nugu (Deceased) (Succession Cause E019 of 2021) [2024] KEHC 5788 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5788 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
SUCCESSION CAUSE E019 OF 2021**

**JR KARANJA, J**

**MAY 16, 2024**

**N THE MATTER OF THE ESTATE OF KIPTARUS ARAP NUGU:.....(DECEASED)**

**BETWEEN**

**SULUNY KIPRUTO ..... PETITIONER**

**AND**

**SULUNY KIPSEREM ..... RESPONDENT**

**RULING**

1. The subject Grant of Letters of Administration Intestate dated 22<sup>nd</sup> March 2023, was issued to the Petitioners Kipruto Suluny and Kipserem Suluny in respect of the Estate of the late Kiptarus Arap Nugu (Deceased)

As per the petition for the grant, the Petitioners were listed as the beneficiaries of the estate together with John Kibusio Kirwa, Phillip Kipkurgat Tarus, Moses Kipsang Murei, Rael Sitienei, David Kimutai and Meshack Kiplimo.

The actual Applicants were the first Petitioner and Rael Sitienei although the grant was issued to the first and second Petitioners and not Rael Sitienei.

The sole Estate property was a parcel of land described as No. Nandi/Kokwet/140, measuring approximately 116 acres.

2. It is notable that Rael Sitienei was substituted as the second Petitioner with Kipserem Suluny pursuant to an application to that effect dated 8<sup>th</sup> February 2022 which was allowed by the court on 19<sup>th</sup> July 2022.

On 30<sup>th</sup> September 2022, the Petitioners applied for confirmation of the grant vide the summons for confirmation of grant dated the same day.



Ironically, the second Petitioner filed an affidavit of protest dated 4<sup>th</sup> May 2023, against confirmation. As it were, the second Petitioner filed a protest to his own cause in which he indicates that he does not agree with the mode of distribution set out in the summons for confirmation by his Co-Petitioner (First Petitioner). He thus implied that the first Petitioner unilaterally and without consultation from some or all of the beneficiaries was attempting to impose his own mode of distribution upon the other beneficiaries.

3. The Second Petitioner contends that the proposed mode of distribution by his brother – cum Co-Petitioner is unfair and unjust and instead, the entire parcel of land (Estate property) should be subdivided between the two houses of the deceased. His suggestion is that each house should be allocated fifty eight (58) acres each excluding persons being considered liabilities of the estate having purchased parts of the Estate from the deceased and the Estate itself.

Paragraph 9 of the First Petitioner's affidavit in support of the summons for confirmation of grant which was not attested to by the Second Petitioner sets out the proposed mode of distribution which takes into account liabilities of the estate being parts of the Estate property to be hived off to the specified individuals including the AIC Church Teldet. There is no explanation as to how the liabilities arise, but the Second Petitioner/ Protestor implied that the parts of the Estate to be hived off were purchased from the deceased and the Estate by the specified individual.

4. None of the Petitioners makes it clear on exactly what informed their respective mode of distribution. Whereas the First Petitioner indicates in his affidavit that his proposal was in accordance with the resolution of the deceased and both houses arrived at in a family meeting held on 18<sup>th</sup> January 1989, the Second Petitioner indicates that no such meeting occurred and if it did then the question of subdividing the property did not arise.

From all the foregoing factors deducible from all the affidavits of both Petitioners and the court record as well as the rival submissions of the parties, this court may opine that the Petitioners together with the rest of the beneficiaries are yet to arrive at a consensus on the mode of distribution of the estate. This therefore renders the application for confirmation of the grant rather pre-mature. Also, the sale agreements exhibited herein indicate that the transactions occurred in 1993 and 2005 long after the death of the deceased thereby implying that the deceased did not alienate part of his property by way of sale to any of the alleged purchasers.

It also implies that the sale transactions were perpetrated by the Petitioners and/or some of the beneficiaries prior to the issuance of the grant and/or certificate of confirmation of grant. These actions were unlawful. They amounted to intermeddling with the Estate property by the Petitioners and/or beneficiaries prior to issuance of the necessary grant of letters of administration intestate and its confirmation thereby creating liabilities upon the Estate which were non-existent at the time of the deceased's death on 22<sup>nd</sup> June, 1989 at the ripe age of eighty six (86) years.

5. In the circumstances, the Estate cannot be held liable for any damage or loss that may have been caused to the purchasers of part of the Estate from person who did not have proprietary interest in the Estate. The purchasers remedy therefore lies in a Civil Claim for damages from the vendors beneficiaries. It is instructive to note that the application or petition for grant of letters of administration intestate clearly indicated that the estate had Nil liability. Therefore, the purported liabilities of the Estate are in the real sense personal liabilities of the Petitioners and/or beneficiaries completely independent of the Estate.
6. In sum, neither the summons for confirmation of grant by the first Petitioner nor the affidavit of protest by the Second Petitioner can be upheld by this court. Both are hereby dismissed.



The parties are directed to deliberate and arrive at a mutual consensus on the mode of distribution of the entire Estate property after which they may take out fresh summons for confirmation of grant and in any event within the next four (4) months from this date hereof.

Ordered accordingly.

**DELIVERED AND DATED THIS 16TH DAY OF MAY, 2024**

**J. R. KARANJAH,**

**JUDGE**

