



**In re Estate of Jonah Kipsang Ngeno (Deceased) (Succession Cause  
053 of 2021) [2024] KEHC 5731 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5731 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 053 OF 2021**

**JK SERGON, J**

**MAY 9, 2024**

**BETWEEN**

**GILBERT KIPRONO SANG ..... 1<sup>ST</sup> APPLICANT**  
**RICHARD KIPKEMOI SANG ..... 2<sup>ND</sup> APPLICANT**  
**KENNETH KIPROTICH SANG ..... 3<sup>RD</sup> APPLICANT**  
**ROBERT KIBET SANG ..... 4<sup>TH</sup> APPLICANT**  
**NANCY CHEPKEMOI MARITIM ..... 5<sup>TH</sup> APPLICANT**

**AND**

**ERICK KIPYEGON SANG ..... 1<sup>ST</sup> RESPONDENT**  
**CHEROTICH VIVILINE NGENO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The subject matter of this ruling is the motion dated 29<sup>th</sup> February, 2024 taken out by the applicants. In the aforesaid motion, the applicants sought for inter alia an order for review and setting aside of the orders issued by this Court on 20<sup>th</sup> December, 2023 and for an order allowing them to respond to the application dated 19<sup>th</sup> December, 2023.
2. The Applicants filed an Affidavit and a further Affidavit sworn by Richard Kipkemoi Sang in support of the aforesaid motion.
3. The Respondents filed the Replying Affidavit sworn by Erick Kipyegon Sang to oppose the application. The parties made oral submissions over the Application.
4. I have considered the grounds stated on the face of the motion plus the facts deponed in the rival Affidavits. I have further taken into account the oral submissions presented before this Court.



5. It is the submission of the applicants that on 20 December, 2023, this court granted ex parte orders based on the Application dated 20<sup>th</sup> December, 2023 without giving them an opportunity to respond or heard over the Application. The applicants pointed out that the orders affected them hence they should have been given a chance to be heard.
6. They also argued that the Application was not served upon them. For the above reasons, the applicants urged this Court to review and set aside the orders and give them an opportunity to be heard over the Application dated 19<sup>th</sup> December, 2023.
7. The Respondents opposed the application arguing that the instant application is intended to delay and or frustrate the finalization of the Administration of the Estate of Jonah Kipsang Ng'eno, deceased. They averred that upon the grant being confirmed, the other beneficiaries initiated steps to have the certificate of confirmation of grant implemented but they were rebuffed by the 1<sup>st</sup> and 2<sup>nd</sup> applicants herein who remained unco-operative and reluctant to facilitate the final distribution of the estate.
8. The Respondent further stated that the beneficiaries held various family meetings to organize for the finalization of the implementation of the certificate of confirmation of grant, which meetings the applicants failed to attend despite being notified.
9. It is also pointed out that the monies meant for settlement of legal and statutory fees as well as facilitation of survey were held in the deceased's bank account and could not be withdrawn without the consent of the 1<sup>st</sup> and 2<sup>nd</sup> Applicants, which consent was unreasonably withheld thus prompting them to approach the Court.
10. The Respondent further argued that this court issued ex parte orders in exercise of its inherent power upon considering the application and in a bid to effect a final distribution of the Estate. The Respondent also argued that the Applicants have not demonstrated their failure to respond to the application was prejudicial to them. It is the Respondent's submission that the applicants should have appealed against the ex parte orders instead of filing application for review.
11. In response to the Respondents' submissions, the Applicants averred that they were entitled to be heard in a situation where the orders sought affected them.
12. The Application before this court is an application for review. By dint of rule 63 (1) of the *Probate and Administration Rules*, such Applications are premised on Order 45 of the *Civil Procedure rules*. The Provisions of Order 45 Rule (1) of the *Civil Procedure Rules* provides as follows:-
  - 1 (1) Any person considering himself aggrieved
    - a. By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
    - b. By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay
13. It is not in dispute that on 20<sup>th</sup> December, 2023, the Application dated 19<sup>th</sup> December, 2023 was placed before this Court under a Certificate of Urgency.



14. This Court proceeded to allow the Application *ex parte* stating that the same is *ex parte* in nature since it was meant to have the Certificate of Confirmation of grant to be implemented. The Applicants have pointed out that there is an error apparent on record in that the Court overlooked the fact that the Applicants were not served with the application and yet the orders sought therein would eventually affect them. They also averred that the Court erred when it failed to give them a chance to respond to the application.
15. The Respondents are of the submission that the applicants should have appealed instead of preferring an application for review. There is no doubt that there is an apparent mistake which is glaring on the face of record. The Court inadvertently failed to take note of the fact that the application dated 19<sup>th</sup> December, 2023 was not served upon the Applicant. The Court assumed that the Application was *ex parte* in nature.
16. It is clear in my mind that in view of the apparent error, the Applicants were entitled to take out the instant Application for review. One of the orders sought was an order directing the Deputy Registrar of this court to sign the mutation and transfer forms in place of the applicants. This will obviously take away the rights of the applicants. In other words, the Applicants would be aggrieved hence they are entitled to file a review Application.
17. Having considered the material placed before this Court plus the rival oral submissions, I am convinced that the Applicants' motion dated 29<sup>th</sup> February, 2024 has merit. The same is allowed. Consequently, orders issued *ex parte* on 20<sup>th</sup> December, 2023 are set aside with. Since this is a family dispute, a fair order on costs is to direct that each party should bear their own costs.

#### **Further Directions**

- i. The Application dated 19<sup>th</sup> December, 2023 is reinstated and the same to be disposed of by Written Submissions.
- ii. The Applicants herein are given 7 days to file and serve their responses.
- iii. The Respondents (Applicants in the Application dated 19/12/2023) are given 7 days from the date of service by the Applicants of their responses to file and serve written submissions.
- iv. The Applicants (Respondents in the application dated 19/12/2023) to have 7 days from the date of service of the written submissions to file and serve their written submissions in response.
- v. Ruling on the aforesaid Application to be delivered on 19<sup>th</sup> June, 2024.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 9<sup>TH</sup> DAY OF MAY, 2024.**

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**J.K. SERGON**

**JUDGE**

**In the Presence of:-**

**Kiplagat for 2<sup>nd</sup> Respondent**

**Kirui holding brief for Motanya for applicant**

**Mrs. Uмба holding brief for Kisinga for 1<sup>st</sup> Respondent**

**Njoroge for 3<sup>rd</sup> Respondent.**

