



**In re Estate of Jonah Kipsang Ngeno (Deceased) (Succession Cause  
053 of 2021) [2024] KEHC 7251 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7251 (KLR)

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

**JK SERGON, J**

**JUNE 20, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE JONAH KIPSANG NGENO (DECEASED)**

**BETWEEN**

**ERICK KIPYEGON SANG ..... 1<sup>ST</sup> APPLICANT**

**VIVILINE CHEROTICH NGENO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**GILBERT KIPRONO SANG ..... 1<sup>ST</sup> RESPONDENT**

**RICHARD KIPKEMOI SANG ..... 2<sup>ND</sup> RESPONDENT**

**KENNETH KIPROTICH SANG ..... 3<sup>RD</sup> RESPONDENT**

**ROBERT KIBET SANG ..... 4<sup>TH</sup> RESPONDENT**

**NANCY CHEPKEMBOI MARITIM ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. This court had on a previous occasion issued *ex parte* orders in respect to the application hereunder, the parties affected by the said orders moved this court vide a notice of motion dated 29th February, 2024 pursuant to which this Court set aside the orders issued ex parte and reinstated the application dated 19th December, 2023 and directed that the same be canvassed by written submissions within strict timelines vide a ruling delivered on 9th May, 2024.
2. Therefore the application coming up for determination is a chamber summons dated 19th December, 2023 seeking the following orders;
  - (i) That an order do issue the district surveyor Kericho and the district surveyor Nakuru to visit, survey and cause subdivision of the properties known as LR No Kericho/Kipkelion Block 4/123, LR No Kericho/Chepsir 13, LR No Kericho/Molo South/Ikumbi Block No 6/19, LR



No Kericho/Chepsir/52, LR No Kericho Municipality Block 1/265 and Chepsir Cooperative Society Plot, respectively, in line with the terms of the certificate of confirmation of grant dated 12th October, 2023.

- (ii) That the court do issue an order directing the OCS Chepseon Police Station and the OCS Kuresoi Police Station to provide security and/or otherwise ensure maintenance of law and order during the survey and subdivision exercise to be carried on LR No Kericho/Kipkelion block 4/123, LR No Kericho/Chepsir 13, LR No Kericho/Molo South/Ikumbi Block No 6/19, LR No Kericho/Chepsir/52, LR No Kericho Municipality Block 1/265 and Chepsir Cooperative Society Plot so as to effect final distribution of the estate of the deceased.
  - (iii) That an order do issue directing the Deputy Registrar of this Honourable Court to execute mutation and transfer forms for the purpose of effecting final distribution of the estate in compliance with the certificate of confirmation of grant dated 12th October, 2023.
  - (iv) That production of the original title in respect to LR No Kericho/Kipkelion Block 4/123, LR No Kericho/Chepsir 13, LR No Kericho/Molo South/Ikumbi Block No 6/19, LR No Kericho/Chepsir/52, LR No Kericho Municipality Block 1/265 and Chepsir Cooperative Society Plot is hereby dispensed with during the registration of the dispositions made under the certificate of confirmation of grant dated 12th October, 2023.
  - (v) That an order/leave be granted to the applicant, Viviline Cherotich Ngeno, to execute, transfer, release and/or withdrawal of funds to cater for the survey and legal fees from accounts held at Kenya Highlands Sacco Society account number 633XXXXXXXXXX and ABSA Bank account number 2042XXXXXXXX.
  - (vi) Any necessary direction do issue.
3. The application is supported by grounds on the face of it and the supporting affidavit of Viviline Cherotich Ngeno the 2nd administrator/applicant herein on behalf of her co-applicant.
  4. The 2nd administrator/applicant avers that she was issued with a grant of letters of administration intestate in respect of the estate of the deceased alongside the other administrators on 11th March, 2022 and that the said grant was confirmed on 12th October, 2023. The 2nd administrator/applicant further avers that soon after they began to take steps to have the certificate of confirmation of grant implemented, however, they faced resistance more so from the 3rd and 4th administrators of the estate of the deceased.
  5. The 2nd administrator/applicant was therefore urging this court to issue an order directing the land registrars in Kericho and Nakuru, to survey and subdivide all parcels of land comprising the estate of the deceased and an order allowing her to withdraw funds in accounts held by the deceased to facilitate clearance of statutory and legal fees and all other costs of administration of the deceased's estate. The 2nd administrator/applicant reiterated that the orders sought were in line with the certificate of confirmation of grant dated 12th October, 2023.
  6. The respondents herein responded to the instant application vide grounds of opposition dated 14th May, 2024 supported with by a replying affidavit sworn by Richard Kipkemoi Sang the 4th administrator/ 2nd respondent on behalf of the other respondents, seeking dismissal of the application on various grounds some of which are as follows;
    - (i) That the application seeks reliefs of executing the judgment dated 12th October, 2023 procured in a manner which limited their right to be heard.



- (ii) That the prayers sought in the application had been overtaken by events and that the application was premature in nature, since there was an application dated 31st January, 2024 substantially related, pending hearing and determination.
  - (iii) That the application is intended to subvert and defeat the cause of justice to the detriment of the respondents and to benefit the applicants.
  - (iv) That the law firm on record on behalf of the applicants have conflict of interest as the said firm belonged to the deceased herein.
  - (v) That the applicants evicted the respondents from their farms and destroyed properties they owned purporting execution of court orders.
7. The court directed the parties to file written submissions which I have considered.
  8. The respondents filed submissions and reiterated that there was a pending application dated 31st January, 2024 seeking review of the judgment delivered by this Court on 12th October, 2023.
  9. The respondents reiterated that the judgment dated 12th October, 2023 was procured in a manner that violated the provisions of the law in force. The grant in question was confirmed yet the respondents were not heard on the affidavit of protest against confirmation of grant dated 26th June, 2023. The applicants were seeking orders for execution of the said judgment.
  10. The applicant filed written submissions where she contended that the grounds of opposition and the replying affidavit filed by the respondents dated 14th May, 2024 in response to the instant application were aimed to re-litigate matters which this Court has already pronounced a definitive judgment and that in any event the respondents had not preferred any appeal. The applicant maintained that this Court was functus officio with respect to the contents of the judgment dated 12th October, 2023.
  11. The applicant further reiterated that the orders sought by the applicants had been partially executed as evidenced by survey plans drawn in accordance with the certificate of confirmation of grant and further that creation of access road in line with the said survey plan necessitated the removal of trees and crops that obstructed designated pathways, to ensure that each beneficiary would have access to their allocated land. The applicant reiterated that the said survey was undertaken in pursuit of this Court order.
  12. The applicant reiterated that the orders sought were essential for completion of the distribution of the deceased's estate and that the respondents conduct served to delay the distribution of the estate of the deceased to the detriment of the beneficiaries.
  13. The respondents filed supplementary submissions in which they faulted the applicant for having filed their submissions past the timelines set out in the court ruling delivered on 9th May, 2024. The respondents contended that the applicants' submissions were silent on the part of a conflict of interest on the legal representation by the deceased's law firm and that the applicants were seeking to have an undisclosed amount of funds from the deceased's account with the intent to pay legal fees to the said law firm.
  14. I considered the pleadings and submissions by the parties herein and the sole issue for determination is whether to direct the land surveyors in Kericho and Nakuru to facilitate the survey and subdivision of the properties constituting the estate of the deceased in line with the terms of the judgment of this court and subsequent certificate of confirmation of grant dated 12th October, 2023. The answer is in the affirmative. This court delivered a judgment dated 12th October, 2023 and subsequently issued a certificate of confirmation of grant, in respect of the estate of the deceased and the same is



yet to be successfully challenged vide a review or an appeal. The applicant submitted that following the judgment delivered by this Court, there was partial compliance with court orders and survey plans were drawn in accordance with the certificate of confirmation of grant and that the said survey plans necessitated the removal of trees and crops that obstructed designated pathways, to ensure that each beneficiary would have access to their allocated land. In *Republic v Principal Secretary, Ministry of Defence Ex-Parte George Kariuki Waitbaka* [2018] eKLR the court observed that; “It must however be remembered that Court orders are not made in vain and are meant to be complied with. If for any reason a party has difficulty in complying with court orders the honourable thing to do is to come back to court and explain the difficulties faced by the need to comply with the order. Once a Court order is made in a suit the same is valid unless set aside on review or on appeal.”

15. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] 1 KLR 828, Ibrahim, J (as he then was) stated:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.”

16. Consequently, the application dated 19th December, 2023 is allowed, giving rise to the following orders;

- (i) An order is issued directing the district surveyor Kericho and the district surveyor Nakuru to visit, survey and cause subdivision of the properties known as LR No Kericho/Kipkelion Block 4/123, LR No Kericho/Chepsir 13, LR No Kericho/Molo South/Ikumbi Block No 6/19, LR No Kericho/Chepsir/52, LR No Kericho Municipality Block 1/265 and Chepsir Cooperative Society Plot, respectively, in line with the terms of the certificate of confirmation of grant dated 12th October, 2023.
- (ii) The OCS Chepseon Police Station and the OCS Kuresoi Police Station are ordered and directed to provide security and/or otherwise ensure maintenance of law and order during the survey and subdivision of the estate properties.
- (iii) Gilbert Kiprono Sang (3rd administrator) and Richard Kipkemoi Sang (4th administrator) are ordered and directed to execute the mutation and transfer forms for the purpose of effecting final distribution of the estate in compliance with the certificate of confirmation of grant dated 12th October, 2023.
- (iv) The Estate to meet costs of survey and Legal Fees.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 20TH DAY OF JUNE, 2024.**

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**J.K. SERGON**

**JUDGE**

In the Presence of:

C/Assistant – Rutoh



Miss Sang for the applicant

Richard Kipkemoi Sang – Present in Person.

