



**In re Estate of Kimeto Songok (Deceased) (Probate & Administration  
66 of 2021) [2024] KEHC 8817 (KLR) (17 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8817 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
PROBATE & ADMINISTRATION 66 OF 2021  
JR KARANJA, J  
JULY 17, 2024  
N THE MATTER OF THE KIMETO  
SONGOK:.....DECEASED**

**RULING**

1. The subject grant of letters of administration Intestate was issued to the Petitioner, Priscah Jepngetich Meto and Objector on the 27<sup>th</sup> March 2017, and was to be confirmed within six (6) months from that date. However, due to subsequent disputes revolving around the estate property Land Parcel No. Nandi/ Ndalat settlement/ 231 said to belong to the deceased grant remains unconfirmed to date. But, on the 10<sup>th</sup> January 2023, the Petitioner filed an application for confirmation of the grant vide the summons for confirmation dated the 22<sup>nd</sup> December 2022.

In response, Francis Rugut Metto, the Objector herein, filed an affidavit of protest dated 9<sup>th</sup> August 2023 in which he disagrees with the mode of distribution proposed by the Petitioner on grounds, that persons who are not beneficiaries of the estate, but strangers have been included in the proposed mode of distribution. The Objector contends that the only beneficiaries of the estate are himself as the surviving son of the deceased.

2. The Objector/protestor averred that he paid an outstanding sum of money to the Settlement Fund Trustee on behalf of the deceased on the understanding that he would be allocated 1.5 acres of the estate as a reimbursement. He therefore proposed that the estate be distributed between himself and the Petitioner to the extent that he gets 8.8 Acres of the property and the Petitioner gets 7.3 Acres.

In the reply to the protest the Petitioner contends that the protest is brought in bad faith and is an abuse of the court process intended to delay the distribution of the deceased's estate. That, this cause was initially commenced by her daughter Sarah Jekosgei and from the beginning the parties expressed the intention to settle the matter amicably. That, the issues on the administration of the estate were in the process resolved with herself (Petitioner) and the protest being issued with the letters of administration.

3. The Petitioner further contended and implied that the issues being raised in this protest have since been adjudicated by the court which on the 29<sup>th</sup> September 2022 directed the parties to take a date



for confirmation of the grant and on the 22<sup>nd</sup> December 2022, the Petitioner took out the present summons for confirmation of the grant. The Petitioner therefore prays for the dismissal of the protest and the confirmation of the grant as proposed in the summons.

4. Further to the affidavit of protest and the reply thereto by the Petitioner, the parties through their respective advocates filed written submissions in support of and opposition to the protest.

The basic issue for determination is really whether the Protestor has established sufficient and satisfactory grounds for upholding the protest and overruling the Petitioner's proposed mode of distribution.

5. Under Section 55 of the *Law of Succession Act*, a grant of representation does not confer power to distribute the estate property amongst the beneficiaries unless it has been confirmed as provided in Section 71 of the *Act* and under Section 83 of the *Act* it is the duty of an Administrator of the estate to have the grant confirmed and thereafter distribute the estate amongst the beneficiaries.

In this case, the beneficiaries of the estate of the deceased are the Petitioner and the Objector in their respective capacities as the widow of a departed son of the deceased and the son of the deceased. The Petitioner having stepped into the shoes of the departed son of the deceased and the Protestor as the surviving son of the deceased would equally be entitled to a share of the estate property in terms of Section 38 of the *Succession Act*.

6. Therefore, the proposed mode of distribution annexed to the Petitioner's supporting affidavit is unacceptable in so far as it includes persons who are not beneficiaries of the estate and indeed strangers to the estate. In that regard, the protest is upheld with the summons for confirmation of grant being retained with amendment to the proposed mode of distribution to indicate that the estate property be divided and distributed to both the Petitioner and Objector as the rightful beneficiaries in equal shares. A certificate of confirmation of grant shall forthwith issue accordingly.
7. The allegation that the Objector was entitled to an extra 1.5 acres of the estate property as compensation for paying an outstanding sum of money to the Settlement Fund Trustee on behalf of the deceased is a matter which ought to have been settled and was seemingly settled prior to the taking out of the summons for confirmation of grant.

In any event, if indeed such payment was made by the Objector on behalf of the deceased, then it would have been reflected as a liability of the estate but this was not done. The deceased and her estate were therefore not liable to the objector as a beneficiary for any monies which may have been paid on her behalf by the objector, if at all. The evidence of the alleged payment in the form of receipts was clearly insufficient and unreliable in as much as it was incompatible with the Objector's allegation.

8. The inclusion by the Petitioner of parties not beneficiaries of the estate in the summons for confirmation of grant implied that there was intermeddling with the estate property before the grant was confirmed and all the accusing fingers point to the Petitioner and the strangers and more so the Petitioner for having breached her duties as Co-Administrator of the estate to dispose of by sale part of the estate property and attempting to "sanitize" the breach by including the purchasers as beneficiaries of the estate. She must now carry her own cross and hive off what she sold to third parties from her share of the estate after it is formally transmitted to her on the issuance of the certificate of confirmation of grant as ordered hereinabove by this court. Short of that, the purchasers may seek remedy through the normal Civil Court Process in the form of damages and compensation of the loss suffered by each one of them.
9. In sum, the protest is allowed but only to the extent of having none beneficiaries excluded from the division and distribution of the estate. The summons for confirmation of grant is also allowed to the



extent that it excludes non beneficiaries and includes both the Petitioner and Objector as the only beneficiaries of the estate to share it equally between themselves.

**Delivered And Dated This 17<sup>th</sup> Day Of July 2024**

**J. R. KARANJAH,**

**JUDGE**

