



REPUBLIC OF KENYA



**In re Estate of Jeruto Kimurieny (Deceased) (Succession Cause 255 of 2002) [2024] KEHC 8533 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8533 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 255 OF 2002  
RN NYAKUNDI, J  
JULY 15, 2024  
IN THE MATTER OF ESTATE OF JERUTO KIMURIENY (DECEASED)**

**RULING**

Representation:

Okara & Co. Advocates

1. Before me is an application filed under certificate of urgency dated 16.5.2024 expressed in terms of Rule 49 of the *Probate and Administration Rules*, Section 63 (C) and (E) of the *Civil Procedure Act*, Article 159 of the *Constitution* of Kenya and all Others Enabling Provisions of the Law. The applicant seeks an order that this Honourable court exercise discretion to set aside an order issued on 1.4.2019.
2. The Application is supported by the following grounds:
  - a. The Honourable Court issued the Orders on 1<sup>st</sup> April 2019 reverting the property (Sergoit/ Karura Block 4 (Kiriswa)/11) to Jepkuto Kimurieny (Deceased) were at liberty to commence succession proceedings.
  - b. The dependents of the late Jepkuto Kimurieny commenced succession proceedings, Grant was issued and subsequently confirmed but the Applicant is unable to transmit the estate to the beneficiaries due to the order of the Honourable Court that was issued on 1<sup>st</sup> April 2019.
  - c. It is therefore fair and just that the application herein be allowed to enable the Applicant transmit the estate of the deceased to the beneficiaries.

**The Decision**

3. The applicable law is contained in Section 80 of the *CPA* and order 45 (1) of the *CPR*. The circumstances under which orders of this court may be a subject of review include the following
  - a. Discovery of new important matter or evidence which after exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or



- b. On account of some mistake or error apparent on the face of the record
  - c. For any other sufficient reason desires to obtain a review of the decree or order may apply for a review of judgement to the court which passed the decree or made the order without unreasonable delay
4. The court of appeal in *National Bank of Kenya Limited v Ndungu Njau* (1997) eKLR stated as follows:
- “A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established.”
5. Given this legal background, I have perused Succession Cause No 255 of 2002 in Reference to the Estate of Jeruto Kimurieny and the Chief Magistrate’s Court Succession Cause No. 233 of 2019 also in the matter of the Estate of Jepkuto Kimurieny. It is apparent that the estate was being prosecuted in the two parallel forums. With regard to Succession Cause No 255 of 2002, the last decision of the court was in respect of summons for revocation of grant dated February 17, 2004. The trial court having considered the issues pursuant to Section 76 of the *Law of Succession Act* pronounced itself as follows: In the premises, a good case has been made out by the Applicant for the revocation of the Grant of Letters of Administration Intestate, tht was issued herein on 27 June 2003 in respect of the Estate of the Deceased, Elizabeth Jepkuto Kimurieny To The Respondent, Solomon Kibet Barno, and confirmed on 19<sup>th</sup> February, 2004, Accordingly, I find merit in the Application dated 17<sup>th</sup> February, 2004 and would allow the same and order that:
- a. The said Grant of Letters of Administration issued herein on 27<sup>th</sup> June 2003 in respect of the Estate of the Deceased, Elizabeth Jepkuto Kimurieny to the Respondent, Solomon Kibet Barno, and the certificate of confirmation of that Grant issued on 19<sup>th</sup> February, 2004 be and are hereby revoked.
  - b. The costs of the application be in the cause.
6. Following that decision of the court, the record shows that on April 1, 2019 an order was made that ownership of the Land parcel No Segoit/Kanena Block IV (Kiriswa) be reverted to the name of the deceased further to the Ruling of the court dated February 12, 2019. The Land Registrar Uasin Gishu to ensure compliance. It is at that juncture, the administrators to the Estate of the deceased pursued grant of certificate of confirmation in Succession Cause No 233 of 2019. It is the Applicant’s case that in view of the order of the court dated 1.4.2019 it is unlikely on the face of the record that the certificate of confirmation of grant and the model of distribution of the estate of the deceased, can be transmitted without setting aside the impugned order of this court.
7. Having given due consideration to the application and affidavit in support the conclusion I come to is that the applicant has put forward sufficient grounds to persuade this court to exercise its jurisdiction for review as premised in Section 80 of the *Civil Procedure Act*, Order 45(1) of the *Civil Procedure Rules* and Rule 73 (1) of the *Probate and Administration Rules*. Consequently, the application dated 16<sup>th</sup> May 2024 be and is hereby allowed to pave way for the distribution of the estate of Jeruto Kimurieny. In Succession Cause No. 233 of 2019.
8. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 15<sup>TH</sup> DAY OF JULY 2024**

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**R. NYAKUNDI**  
**JUDGE**

