



REPUBLIC OF KENYA



**In re Estate of Moses Kiplagat (Deceased) (Succession Cause E931 of 2023)
[2024] KEHC 9591 (KLR) (Family) (7 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 9591 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

SUCCESSION CAUSE E931 OF 2023

SN RIECHI, J

AUGUST 7, 2024

IN THE MATTER OF THE ESTATE OF MOSES KIPLAGAT (DECEASED)

RULING

1. This Succession Cause relates to the estate of Moses Kiplagat (hereinafter ‘the Deceased’) who died in Nairobi on 28th May 2022. Following the demise of the Deceased, Mercy Mwendwa Kirigia and Jason Mangeso Kiplagat as dependants of his estate petitioned the court for Grant of letters of Administration ad colligenda bona of the estate through a Petition dated 10th July 2023 . In the Affidavit in support of the Petition it was indicated that the Deceased estate was huge and comprise of several properties
2. The petition is premised on the grounds that;
 - i. The Petitioner is a dependant of the deceased herein who is her late/former husband who died on 28th May, 2022 intestate. She referred to annexed to the petition a copy of the death certificate which was issued after he died.
 - ii. That the deceased was survived by petitioner , a former wife and two sons, Jayson Mangeso Kiplagat who is 19 years old and Jayden Mwenda Kiplagat who is 16 years old
 - iii. That the deceased estate is a huge one, an inheritance from his father who died testate on 24th August, 2016 and comprises:
 - a) a building at Langata known as Langata Mall LR No Nairobi/Block/72/2936 which is worth between Kshs 200,000,000 to 300, 000, 000 and has monthly rent of about Kshs 4 to 5 million;
 - b) a house at Karen standing on a ¼ acre parcel of land worth between Kshs 80-100 million which can fetch rent Kshs 300,000 to 350,000 a month;
 - c) an upcountry home at Eldoret Town near the Eldoret International Airport;



- d) half (1/2) of two properties at Mombasa LR No MN/NI/415 and LR No MN/VI/4160 as evidenced by annexed bundle of the deceased said father's will, codicil, a grant of probate and a certificate of confirmation.
- iv. That the larger part of the assets described above takes the form of partly the deceased share in a company known as Sweetland Holdings Limited and that of his father who pre-deceased him by four (4) years: that company had only two shareholders at the time the deceased father passed on.
- v. That the said company is the registered proprietor of a very valuable property on which stands the Langata Mall which stands on Nairobi/Block/72/2936. That the building has 25 shops let to tenants and the monthly income is between Kshs 4, 000,000 and 5, 000, 000. That the building itself is worth about Kshs 200, 000,000 to 300, 000, 000 million.
- vi. That according to the will of the deceased late father and codicil, the deceased was to be the sole owner of the two shares allotted then and since the deceased and his mother were the executor and executrix of the will of his father, the company after 14th August, 2016 was to be run by the deceased and his said late mother.
- vii. That consequently, the two were the ones to receive monthly rent of between Kshs 4, 000, 000 to 5, 000, 000. That following the dissolution of petitioner's marriage with the deceased, she did not take interest in its affairs until he died when she set out to find out what her two children with deceased were to inherit among other grounds
2. Following the filing of the petition, the objectors Charity Betty Kiplagat and Carol Wendy Kiplagat filed this instant preliminary objection dated 25th July 2023 opposing the Petition dated 10th July,2023 on the grounds that :-
1. This Honourable Court lacks jurisdiction to determine the allegations raised as against Charity Betty Kiplagat and Carol Wendy Kiplagat in that:
- a. The Petition and Summons are anchored on alleged faulty return and exercise of fiduciary responsibilities in relation to Sweetland Holdings Limited, which issues are outside the perview of the Jurisdiction of this Honorable Court.
- b. The Petitioner lacks locus standi to the extent that she seeks to challenge the role of Charity Betty Kiplagat and Carol Wendy Kiplagat as Directors in Sweetland Holdings Limited, a company limited by shares.
- c. The Petition together with the Summons offends the provisions of the [Companies Act, 2015](#) and the [Law of Succession Act](#) in respect of the handling of affairs in Limited liability Companies.
- d. The property described as LR No. Nairobi/Block72/2936 is a property held in the name of Sweetland Holdings Limited, a limited liability company. As such, the property does not vest in the deceased and is therefore not available for litigation within the present and in the manner proposed.
- e. The Petition and summon proceeds on faulty premises to the extent that they seek to accuse Charity Betty Kiplagat and Carol Wendy Kiplagat of alleged intermeddling whilst the Petitioner admits that they are acting in their capacity as the Directors of the Company which cannot be a party to the present cause.



- f. The allegations raised by the Petitioners as to the capacity of Charity Betty Kiplagat and Carol Wendy Kiplagat to run the said company are presented before a wrong forum and can only be addressed by the Commercial Court as contemplated under the Companies Act, 2015,
 - g. In the circumstances, the Petition and Summon filed therewith are an abuse of the court process and ought to be struck out.
3. The Preliminary Objection was supported by Joan Catherine Kiplagat who is mother to the deceased through a replying affidavit dated 29th August, 2023.
5. By consent of parties, the Notice of Preliminary Objection was canvassed by way of written submissions. The Objectors filed the written submissions dated 28th July 2023, Joan Catherine Kiplagat also filed submissions dated 28th July 2023 whilst the petitioners relied upon their written submissions dated 28th July 2023. I have carefully considered this Preliminary Objection, the Affidavit in Reply as well as the written submissions filed by the parties.
6. The main issue for determination is whether the Preliminary Objections dated 25th July 2023 meet the threshold of a Preliminary Objection.
7. The gist of the preliminary Objection is to challenge the Petition dated 10th July 2023. In the Petition, the Applicant seeks a grant of letters of administration ad colligenda bona of the estate of the deceased.
8. The Objections challenge the locus standi of the Petitioner to file a suit seeking a grant ad colligenda on the basis that Petition and Summons are anchored on alleged faulty information and exercise of fiduciary responsibilities in relation to Sweetland Holdings Limited, which issues are outside the purview of the Jurisdiction of this Honorable Court. The objectors aver that the Petitioner lacks locus standi to the extent that she seeks to challenge the role of Charity Betty Kiplagat and Carol Wendy Kiplagat as Directors in Sweetland Holdings Limited, a company limited by shares. The objectors aver that the Petition together with the Summons offends the provisions of the Companies Act, 2015 and the Law of Succession Act in respect of the handling of affairs in Limited liability Companies. The objectors content that the property described as LR No. Nairobi/Block72/2936 is a property held in the name of Sweetland Holdings Limited, a limited liability company. As such, the property does not vest in the deceased and is therefore not available for litigation within the present and in the manner proposed.
9. The petitioner on the hand stated that the deceased was the sole son of the former Athletes Kenya President known as Isaiah Fundi Kiplagat who together with Petitioner husband were the sole shareholders in the said Sweetland Holdings Limited. The
10. The Petitioner averred that her father in-law made a will and codicil on 10th April 2016 and have all his shares to the deceased. The petitioner averred that there are two companies bearing same name which have been registered by the registrar of companies. The petitioner stated the deceased estate is now at risk. The petitioner wish is to protect the assets of the deceased herein by instituting proceedings against the directors and obtain conservatory orders.
11. To determine this issue I will refer parties to what constitutes a preliminary objection, as set out in the celebrated case of *Mukisa Biscuit Manufacturers Ltd vs Westend Distributors Ltd* [2] where it was held:-

...so far as I am aware a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of



the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration...” (own emphases)

12. In the words of Sir Charles New Bold, P. at page 701, B:-

...A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.” (Own emphasis)

13. Therefore, a Preliminary objection may only be raised on a pure point of law which if determined would dispose the entire case. This is not the case here. The Preliminary Objection raised by the Objectors raises the issue of the in respect of assets of deceased estate. This is not a pure point of law. This is an issue, which requires that evidence be heard to determine whether the assets belong to the estate of deceased or not and who has the right of inheritance.

14. Consequently, I find no merit in the Notice of Preliminary Objection dated 25th July 2023. The same is dismissed in its entirety. The Petition dated 10th July 2023 to be set down for hearing.

DATED AT NAIROBI THIS 7TH DAY OF AUGUST 2024.

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S. N. RIECHI

JUDGE

