



REPUBLIC OF KENYA



In re the Estate of Kiprono Arap Kalya (Deceased) (Succession Cause E017 of 2018) [2024] KEHC 9682 (KLR) (1 August 2024) (Ruling)

Neutral citation: [2024] KEHC 9682 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE E017 OF 2018**

JK SERGON, J

AUGUST 1, 2024

IN THE MATTER OF THE ESTATE OF KIPRONO ARAP KALYA (DECEASED)

BETWEEN

RECHO CHEPKEMOI LANGAT 1ST PETITIONER

DANIEL KIPKURUI 2ND PETITIONER

ALFRED KIPROTICH KOROS 3RD PETITIONER

AND

JOHN KIPROTICH RONO 1ST OBJECTOR

CAROLINE CHEPKURUI 2ND OBJECTOR

RULING

1. The application coming up for determination is a chamber summons dated 4th November, 2023 seeking the following orders;
 - (i) Spent.
 - (ii) That pending the hearing and final determination of the application inter partes, this honourable court be pleased to stay the grant of letters of administration to Daniel Kipkurui, Alfred Kiprotich Koros and Recho Chepkemoi Langat (the petitioners).
 - (iii) That pending the hearing and final determination of the application inter partes, this honourable court be pleased to stay the proceedings pending final determination of summons for revocation in Nakuru Chief Magistrate Succession Cause No. E799 of 2022 Estate of Kiprono Arap Kalya (deceased) herein.
 - (iv) That pending the hearing and final determination of the application inter partes, the court in the alternative be pleased to order the transfer and/or consolidation of Nakuru Chief



Magistrate Succession Cause No. E799 of 2022 Estate of Kiprono Arap Kalya (deceased) herein and the Kericho High Court Succession Cause No. E017 of 2022 the instant succession cause.

- (v) That this honourable court be pleased to grant leave to the applicants to lodge their objection out of time.
2. The application is supported by grounds on the face of it and the supporting affidavit of John Kiprotich Rono and Caroline Chepkurui the applicants herein.
 3. The applicants aver that the 1st objector/applicant is the only surviving son of the deceased herein and that a majority of the beneficiaries have consented to him filing the instant objection proceedings.
 4. The applicants aver that the petitioners were intent on disposing the properties of the deceased, thereby overriding the wishes of the deceased, who prior to his demise had indicated how his properties ought to be distributed whereas the applicants were intent on preserving the estate of the deceased.
 5. The applicants aver that the beneficiaries of the estate of the deceased did not consent to have the letters of administration intestate issued to the petitioners herein.
 6. The applicants aver that they discovered the existence of the instant petition on 28th November, 2023 when they were served with the orders of this court dated 16th November, 2023.
 7. The applicants aver that the estate cause was determined as per the wishes of the deceased herein and a certificate of confirmation of grant issued in the succession Nakuru Chief Magistrate Succession Cause No. E799 of 2022 Estate of Kiprono Arap Kalya (deceased) herein which was filed way earlier in Nakuru where the deceased had properties.
 8. The applicants aver that Nakuru Chief Magistrate Succession Cause No. E799 of 2022 Estate of Kiprono Arap Kalya (deceased) herein was commenced by way of citation where the petitioners/respondents were cited but they opted to later file a separate succession cause in respect to the estate of the deceased, with the same beneficiaries and properties, which process was shrouded in secrecy to the detriment of the others.
 9. The applicants aver that there is a pending summons for revocation in Nakuru Chief Magistrate Succession Cause No. E799 of 2022 Estate of Kiprono Arap Kalya (deceased) herein, that is yet to be concluded and that the revocation was filed so as to include all beneficiaries which would in turn foster the unity of the family.
 10. The applicants aver that they have neither authorised, consented to the petition by the petitioner nor renounced their right over the estate of the deceased. The applicants therefore urged this Court to grant them leave to lodge their objection out of time as they were apprehensive that they would suffer irreparable loss.
 11. The respondents filed a replying affidavit in response to the application, the replying affidavit was sworn by Daniel Kipkurui the 1st petitioner/respondent herein.
 12. The petitioner/respondent avers that the prayer for stay of grant of letters of administration made to the petitioners should not be granted as the objectors/applicants would not suffer any harm as the petitioners/respondents are unable to deal in the estate in any manner detrimental to the objectors/applicants pending confirmation of the same.
 13. The petitioner/respondent avers that the prayer seeking to curtail these proceedings was in bad faith as the objectors/ applicants herein in a response to a summons for revocation filed by the petitioners/



- respondents herein in Nakuru CM Succession Cause No. E779 of 2022 also prayed that the Court also stay those proceedings pending the outcome of these proceedings and that the said prayer was denied.
14. The petitioner/respondent avers that the prayer to transfer and/or consolidate the instant matter with Nakuru CM Succession Cause E799 of 2022, ought not to be granted as the proceedings in the said succession cause refer to the estate of Kareng'e, which proceedings the parties herein are strangers to.
 15. The petitioner/respondent avers that the objectors/applicants upon learning of the commencement of these proceedings mischievously filed other proceedings in Nakuru vide Nakuru CM Succession Cause No. E779 of 2022.
 16. The petitioners/respondent avers that the instant application is based on the ground that John Kiprotich Rono; the 1st objector/applicant is the only surviving son of the deceased and purportedly holds the family together and that a majority of the beneficiaries consented to him filing the objection which was in bad faith as it discredited the right of other beneficiaries to commence the instant succession cause and further that the 3rd petitioner/respondent was a married daughter to the deceased. They attached the chief's introductory letter setting out the beneficiaries surviving the deceased herein.
 17. The petitioner/respondent contends the assertion that the grant of letters of administration issued to the petitioners was never consented by the beneficiaries as false as the same was supported by family members including the 1st objector/applicant's sister.
 18. The petitioner/respondent contends the assertion that the applicants discovered about the existence of these proceedings upon being issued with court orders of this Court dated 16th November, 2023 as they notified all members of the family from the onset and the same is evidenced by participation of Recho Chepkem'oi Langat the 3rd petitioner/respondent herein.
 19. The petitioner/respondent avers that the objectors/applicants rather than participate in the instant proceedings proceeded to file other proceedings before the Nakuru Chief Magistrates Court hurriedly moving the Court for confirmation and assigning all property to a select number of members from the 3rd house.
 20. Having considered chambers summons and the response to the summons, I find that the substantive prayer in the application is transfer and/or consolidation of Nakuru Chief Magistrate Succession Cause No. E799 of 2022 Estate of Kiprono Arap Kalya (deceased) herein and the Kericho High Court Succession Cause No. E017 of 2022, thereby forming the sole issue for this Court's determination.
 21. The application is predicated on the grounds on the face of it and the supporting affidavit of the objectors/applicants and the replying affidavit of the petitioners/respondent sums up to the fact that there exist two causes over the estate of one deceased person, Kiprono Arap Kalya.
 22. On one part the objectors/applicants submitted that the estate cause was determined as per the wishes of the deceased herein and a certificate of confirmation of grant issued in the Nakuru Chief Magistrate Succession Cause No. E799 of 2022 Estate of Kiprono Arap Kalya (the deceased herein) which was filed way earlier in Nakuru where the deceased had vast property. On the other part, the petitioners/respondents submitted that the objectors/applicants rather than participate in the instant proceedings proceeded to file other proceedings before the Nakuru Chief Magistrates Court hurriedly moving the Court for confirmation of grant.
 23. It could have been prudent to have the two causes in respect to the estate of the deceased consolidated but unfortunately that is not possible because one cause is before the High court while the other is before the Chief Magistrate's Court. This cause cannot also be transferred to the Chief Magistrate's



Court because the estimated value of the Estate is Kshs.45 Million which exceeds the pecuniary value of a Chief Magistrate's Court.

24. In the end, I find that the appropriate order which commends itself to be granted is an order for stay of further proceedings in the Succession Cause before this court pending the hearing and determination of Nakuru CMC Succession Cause No.E.799 of 2022. I grant the order. Mention on 2/12/2024 for further orders and directions.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 1ST DAY OF AUGUST, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Kibet Kirui for Petitioner

Miss Soi holding brief for Musili for Protestor

