



**In re Estate of the Late John Kipkorir Rop (Deceased) (Succession Cause 18 of 2018) [2023] KEHC 1367 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1367 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 18 OF 2018  
AN ONGERI, J  
FEBRUARY 16, 2023  
IN THE MATTER OF THE ESTATE OF THE LATE JOHN  
KIPKORIR ROP - (DECEASED)**

**BETWEEN**

**VERONICAH CHERONO RONO ..... APPLICANT**

**AND**

**MARY CHERONO TITUS ..... PETITIONER**

**RULING**

1. The ruling in the application dated March 28, 2022 seeking stay of execution of the decree and certificate of costs dated July 5, 2017 in Kericho HCCA 36 of 2013 to be staying pending the hearing and determination of this succession cause was stayed pending cross-examination of the petitioner on the supporting affidavit dated March 28, 2022.
2. The petitioner was cross-examined on November 11, 2022 but she maintained that the estate of the deceased herein has no assets.
3. Section 37 of the *Civil Procedure Act* provides as follows;
  - "(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the court which passed it to execute the same against the legal representative of such deceased, or against any person who has intermeddled with the estate of such deceased.
  - (2) Where the decree is executed against such legal representative, or against any person as aforesaid, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability the court executing the decree



may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.”

In *Bakari Ibrahim v Issa Ibrahim* [2016] eKLR Kisumu Civil Appeal 55 of 2014, the Court of Appeal observed as follows;

“ Counsel for the appellant argued that the use of the words “may apply” in that provision conferred a discretion on the appellant whether or not to apply. That it was up to the appellant to determine whether or not to apply to the court to execute against the deceased’s legal representative. We are not persuaded by that argument. In our view, the words “may apply” as used in section 37 of the Civil Procedure Act signify that a judgment creditor may elect to execute a decree or order against the legal representative of a deceased judgment debtor. However, if the judgment creditor elects to do so, he must, in our judgment, make an application to execute against the legal representative of such deceased person. [See Mulla on the Code of Civil Procedure, 14<sup>th</sup> edition by JM Shelat, volume 1 at page 354-358].

We are therefore in agreement with the learned judge of the High Court when he held that “it was imperative that if any execution proceedings were to be undertaken against the deceased’s estate, the decree holder had to comply with the provisions of section 37 of the Civil Procedure Act” and that absent such application in this case, the execution process against the deceased, was “unlawful, null and void and of no consequence.”

4. *In re Estate of Barrack Deya Okul (Deceased)* [2018] eKLR Nakuru Succession Cause 236 of 2015, Ndung’u J observed as follows;

“My clear understanding of this requirement is that once a petitioner is notified of the existence of a liability (debt) by a creditor or once the petitioner comes to learn of an existing proven liability (debt) owed by the estate, it is mandatory to include such a liability or debt as required above.”

5. *In re the Estate of Dorcas Wanjiku (Deceased)* [2014] eKLR Musyoka J had this to say in respect of creditors to an estate;

“Creditors, as mentioned earlier, are neither heirs nor survivors nor beneficiaries or dependants. They ought not to be listed in the petition as survivors, except in the column of liabilities. Ideally creditors should wait for the heirs, beneficiaries, survivors and dependants to apply for grant, failing which they, the creditors, would then become entitled to have citations issued. Where grant is not sought after they have issued citations, they should then ask the court to allow them to petition for a grant to be made to them. Where the heirs, dependants, survivors and beneficiaries obtain the grant, the creditors should, after the appointment of the administrators, prove their claim to the administrators, and if the administrators fail to honour their claims then move the court appropriately. Where the claim is comprised in a valid decree of a competent court, the creditor will seek to enforce the decree against the administrators, preferably in a civil action filed in the civil court.”

6. I grant the stay orders and I direct that the petitioner recognizes the judgment in Kericho HCCA 36 of 2013 as a liability of the estate.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**A. N. ONGERI**

**JUDGE**

