



**Moi & another (Sued as the Administrators of the Estate of the Late Jonathan Kipkemoi Moi) v Joshua Kipkemoi Mutai t/a Mutai Kipkemoi Advocates & another; Madam's Dairy and Poultry Products Limited & 2 others (Objector) (Miscellaneous Application 83 of 2019) [2023] KEHC 1265 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1265 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
MISCELLANEOUS APPLICATION 83 OF 2019  
AN ONGERI, J  
FEBRUARY 16, 2023**

**BETWEEN**

**SYLVIA J. JONATHAN MOI ..... 1<sup>ST</sup> APPLICANT**

**CLINT KIPRONO MOI ..... 2<sup>ND</sup> APPLICANT**

**SUED AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE  
JONATHAN KIPKEMOI MOI**

**AND**

**JOSHUA KIPKEMOI MUTAI T/A MUTAI KIPKEMOI**

**ADVOCATES ..... 1<sup>ST</sup> RESPONDENT**

**HEGEONS AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**MADAM'S DAIRY AND POULTRY PRODUCTS LIMITED ..... OBJECTOR**

**JOSEPHAT KIPKOECH METTO ..... OBJECTOR**

**SYLVIA J. JONATHAN MOI ..... OBJECTOR**

**RULING**

1. The Application coming for consideration in this ruling is the one dated November 23, 2022 seeking the following orders:-
  - i. That this application be certified urgent and the same be heard and determined *ex-parte* on priority basis, in any case, before the expiry of the warrants and proclamation of attachment.



- ii. That pending hearing and determination of this application, a Temporary Order of Stay be issued for the warrants and proclamation of attachment by the 2<sup>nd</sup> Respondent dated November 17, 2022.
  - iii. That the warrants and proclamation dated November 17, 2022 issued by Hegeons Auctioneers be set aside.
  - iv. That the 1<sup>st</sup> Respondent do lodge his claim as a creditor in High Court Succession Cause No 705 of 2019.
  - v. That this Honourable Court be pleased to grant any such Orders it may deem fit and just to grant.
  - vi. That costs be provided for.
2. The Application is based on the grounds on the face of it and supported by the Affidavit of Clint Kiprono Moi dated November 23, 2022.
  3. The Applicant, a co-administrator of the deceased's estate avers that the affidavit is in protest of the Respondent's warrants of attachment dated November 17, 2022 through Hegeons Auctioneers.
  4. The Applicant avers that the Respondents through Hegeons Auctioneers issued warrants and proclamation dated November 17, 2022 to the Applicants for sale of motor vehicles registration numbers KAY 826Q, KTCB 1065, KAQ 569M, KBD 094Q and livestock comprising of fifty cows, fifteen calves and twenty five goats.
  5. The Applicant avers that the said warrants refer to a decree issued in ELC Case No 97 of 2017 a matter which is unknown to the Administrators of the estate and therefore the warrants are null and void and of no effect.
  6. The Applicant avers that the property that was purportedly proclaimed and attached by the Auctioneers do not belong to the Late Jonathan Moi, rather it was owned by Madam's Dairy and Poultry Products Limited, Josphat Kipkoech Metto and Sylvia J Jonathan Moi being the 1<sup>st</sup> to 3<sup>rd</sup> objectors herein and therefore the same could not be attached.
  7. The Applicant avers that the 1<sup>st</sup> Respondent was aware that there is a suit pending in the High Court Family Division, High Court Succession Cause No 705 of 2019 in Nairobi relating to the estate of the deceased.
  8. The Applicant avers that all the creditors such as the Respondent are required under the law to lodge their claims for determination by the court at the distribution stage under the succession cause of the deceased.
  9. The Applicant avers that the instructions by the Respondent to the auctioneers to purportedly attach the estate assets amounts to intermeddling which is an offence under section 45 of the [Law of Succession Act](#).
  10. The 1<sup>st</sup> Respondent opposed the application and filed a Replying Affidavit sworn by Joshua K Mutai.
  11. The 1<sup>st</sup> Respondent avers that the instant application was frivolous, vexatious and an abuse of the court process and was vehemently opposed by virtue that the same was an obstruction to access to fair justice.
  12. The 1<sup>st</sup> Respondent avers that the advocate – client bill of costs was taxed and allowed at a sum of Kshs 1,336,900/= and the same adopted as judgment of the court by consent of both counsels rendering it res judicata.



13. The 1<sup>st</sup> Respondent avers that the bill is not opposed by the Applicants herein and further that the Applicants being the legally appointed administrators of the estate were fully responsible to satisfy the decree served upon them.
14. The 1<sup>st</sup> Respondent avers that pursuant to section 86 of the *Law of Succession Act*, all debts of every description were enforceable at law and owed by or out of an estate shall be paid out before any legacy and the applicants insisting that he paid at distribution stage was untenable.
15. The 1<sup>st</sup> Respondent avers that pursuant to section 83 (d) of the *Law of Succession Act*, it was the duty of the administrators to ascertain and pay all debts of the deceased, however, the Applicants herein had neglected and/or reneged on their legal obligations.
16. The 1<sup>st</sup> Respondent avers that the applicants' application for stay of execution of the decree was detrimental to him, they were merely out to delay and avoid settling the advocate – client bill of costs, which was unchallenged.
17. The parties filed written submissions which I have considered.
18. The Objectors contended that the 1<sup>st</sup> Respondent is aware that there were pending succession proceedings vide High Court Succession Cause No 705 of 2019 in Nairobi relating to the estate of the deceased and further that the 1<sup>st</sup> Respondent was listed as a creditor of the estate in the said succession matter on November 26, 2019.
19. The Objectors reiterated that all creditors to the estate were required under law to lodge their claims for satisfaction at the confirmation stage before distribution of the estate to the beneficiaries.
20. The Objectors reiterated that they were duly appointed administrators of the said estate and would satisfy all liabilities of the estate including that of Joshua Kipkemoi Mutai T/A Mutai Kipkemoi Advocates upon determination of the succession proceedings by the court. They cited the case *In the Matter of the Estate of Boniface Njeru Ngemi (Deceased)* [2020] eKLR.
21. The Objectors contended that executing directly against the estate of a deceased person with pending succession proceedings was tantamount to intermeddling. They relied on the provisions of section 45 of the *Law of Succession Act*.
22. The Objectors reiterated that they did not dispute that the estate owed the firm the amount awarded in ELC Case No 97 of 2017. They cited the case of *In the Matter of the Estate of Barrack Deya Okul (Deceased)* [2018] eKLR whereby the court ordered that the decree holder be listed as a liability and provision for its payment be made at the confirmation stage of the petition.
23. The Objectors were adamant that the Respondents wrongfully proclaimed for attachment of goods and livestock that did not belong to the estate of the deceased, furthermore, the firm would only be paid by the administrators from the estate upon determination of High Court Succession Cause No. 705 of 2019 pursuant to provisions of section 83 of the *Law of Succession Act*.
24. The 1<sup>st</sup> Respondent in its submissions reiterated that the application to set aside warrants and proclamation was to prejudice and/or extinguish its claim under the pretext that there are succession proceedings pending determination. The 1<sup>st</sup> Respondent was adamant that the application was an abuse of court process and therefore sought to have the application dismissed with costs.
25. The issues for determination in this Application are as follows;
  - (i) Whether the warrants and proclamation dated November 17, 2022 issued to Hegeons Auctioneers should be set aside.



- (ii) Whether the 1<sup>st</sup> Respondent should lodge his claim in High Court Succession Cause No 705 of 2019.
26. On the issue as to whether the warrants and proclamation dated November 17, 2022 issued to hegeons Auctioneers by this Court should be set aside, I find that the same were properly issued to the two applicants as Administrators of the estate of the Late Jonathan Moi.
27. I find that it is not in dispute that the two are the Administrators of the said estate, as such they are mandated under law to settle the liabilities and debts of the estate of the deceased person, section 37 (1) of the *Civil Procedure Act* provides; “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.”
28. In re Estate of Mukhobi Namonya (Deceased) [2020] eKLR the court stated that; “... After all, creditors of an estate are entitled to have their debts settled. It is for this reason that debts and liabilities are given priority over distribution of the estate. Debts and liabilities ought to be settled first. Distribution is of the net estate, after the debts and liabilities have been met. The administrators have a duty to identify the creditors of the estate and to pay them off before proposing distribution, or to make provision for them at confirmation of grant.”
29. In the case of *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.”
30. I hereby find no reason to set aside the said warrants which are properly issued in respect of the bill of costs taxed on November 17, 2021.
31. On the issue as to whether the 1<sup>st</sup> Respondent should lodge his claim in Succession Case No.705 of 2019 again I find that the applicants are the Administrators of the Estate and they are under a duty to settle the claim from the Estate of the Deceased.
32. The Objectors have not availed any evidence that the properties attached do not belong to the Estate.
33. I find that no objection proceedings have been filed by the Objectors.
34. I find that the application dated November 23, 2022 lacks in merit and I dismiss the same with costs to the Respondents.

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

**A. N. ONGERI**



**JUDGE**

