



**In re Estate of Chepkwony arap Sigira alias Chepkwony Sigira (Deceased)
(Succession Cause 55 of 2016) [2023] KEHC 18296 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 18296 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 55 OF 2016**

**RL KORIR, J
APRIL 20, 2023**

**IN THE MATTER OF THE ESTATE OF CHEPKWONY
ARAP SIGIRA ALIAS CHEPKWONY SIGIRA (DECEASED)**

BETWEEN

KIBET RONO SAMMY APPLICANT

AND

LILIAN CHEPKORIR LANGAT SIGIRA RESPONDENT

RULING

1. This ruling is in respect of two inter related applications. The first being the Notice of Motion Application dated September 20, 2018 filed by the Petitioner/Respondent Lilian Chepkorir Sigira seeking the court's assistance to facilitate implementation of the Grant issued by this court (Muya, J) on November 15, 2017. The second is the Chamber Summons Application dated May 27, 2021 filed by the Applicants/Beneficiaries John Kiplangat Ngeno and Kibet Ngeno Sammy seeking stay of any further proceedings in this matter and extension of time to appeal the Ruling of Ongeri, J with respect to the distribution of the estate of the deceased.

Notice of Motion dated September 20, 2018.

2. The Applicant, Lilian Chepkorir Langat Sigira, who was the 1st Petitioner and one of the administrators of the estate of the late Chepkwony Sigira alias Chepkwony Arap Sigira filed the aforementioned Application seeking the following Orders:-
 - i. That this Honourable Court be pleased to make an order directing Bomet County Land Surveyor to survey parcel of land registration number Kericho/bingwa/295 and carry out subdivision as per the certificate of confirmation of grant given on November 15, 2017 in the High Court of Kenya at Bomet.



- ii. That this Honourable Court be pleased to make an order directing the Officer Commanding Station, Bomet Police Station to provide security to Bomet County Land surveyor during survey and sub-division of land registration number Kericho/Bingwa/295.
3. The Application was brought under Rule 74 of the Probate and Administration Rules and is supported by the sworn affidavit of the applicant Lilian Chepkorir Sigira dated September 21, 2018.

The Applicant's Case And Submissions.

4. It was the Applicant's case that after this court issued a Certificate of confirmation of Grant on November 15, 2017, she appointed a private surveyor to survey and sub-divide Kericho/Bingwa/295 as per the Grant. That through her advocates, she requested the Chief of Bingwa location to provide security since her co-administrator, Grace Chepketer Sigira was not willing to have the land sub-divided.
5. The Applicant stated that her co-administrator and her children refused to sub-divide the land because they were not satisfied with the mode of distribution as ordered by this court. That the co-administrator and her children had become wild making it impossible for any surveyor to conduct any survey and sub-division without sufficient security. It was the Applicant's further case that there was no appeal pending before any court.
6. The Applicant urged that she was using one acre out of the twenty four acres to the detriment of her children and herself. That her children were young and school going and they required general upkeep. She stated that her co-administrator was driven by greed to an extent of disobeying court orders.
7. It was the Applicant's case that the County Land Surveyor was a public officer whose would readily act on a court order and not on any instructions of an administrator. That the issue of land was emotive and it necessitated provision of security.
8. In submissions dated March 22, 2022 the Applicant submitted that the High Court had original jurisdiction under Article 165 of the Constitution of Kenya and that Rule 73 of the Probate and Administration Rules mandated this court to make any necessary orders to facilitate justice in succession causes. It was her further submission that the confirmed Grant was still in force yet her family only occupied one acre of the land despite their allocation of more acreage in the Grant. She urged the court to grant the orders to enable her enjoy the full share of the estate granted to her and her children.

The Respondent's Case And Submissions.

9. The Respondent filed Grounds of Opposition dated October 9, 2018 in which they stated that the Family Division of the High Court had no jurisdiction to issue the orders sought by the Applicant.
10. It was the Respondent's case that the Applicant committed perjury by stating that she had copied a letter (that requested the Chief for provision of security) to M/S Siele & Co Advocates. That the said letter was only addressed to the Chief and that prompted a protest letter from her advocates.
11. It was the Respondent's case that the Application was bad in law, vexatious, frivolous, and scandalous and it amounted to an abuse of the court process. She prayed that the Application be struck out with costs.
12. The Respondent submitted that this court became functus officio upon issuing the Certificate of Grant of Confirmation of Grant on November 5, 2017. It was her further case that only the



Environmental and Land Court had jurisdiction to preside over and give appropriate orders/directions regarding security and survey of land.

13. I have perused and considered the Notice of Motion Application dated September 20, 2018, the Grounds of Opposition dated October 9, 2018, the Applicant’s Written Submissions dated March 22, 2022 and the Respondent’s Written Submissions dated June 6, 2022 and the two issues for determination are:
 - i. Whether the court has jurisdiction to determine the Application.
 - ii. Whether the Applicant has made a case for the grant of the orders sought.
14. The Respondent stated that the Family Division of the High Court did not have jurisdiction to issue orders sought by the Applicant. That it was only the Environmental and Land Court which had jurisdiction to preside over and give appropriate orders/directions regarding security and survey of land.
15. It is trite that jurisdiction is at the core of exercise of power by a court. Where there is no jurisdiction the court cannot exercise its power without violating the principles of rule of law and legality. In the case of *R v Karisa Chengo* (2017) eKLR, the Supreme Court held that:-

“By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics... where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

See also the *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* (1989) KLR 1 and *Phoenix of EA Assurance Company Limited v SM Thiga t/a newspaper service* (2019) eKLR)

16. The jurisdiction of the Environmental and Land Court is to court to hear and determine disputes relating to the environment, use and occupation of and title to land as provided for under Article 162(2) (b) of the *Constitution of Kenya, 2010*. Further, Section 13 of the *Environment and Land Court Act* also provides that:-

The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the *Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land. (2) In exercise of its jurisdiction under Article 162(2)(b) of the *Constitution*, the Court shall have power to hear and determine disputes—

- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;



- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.
17. Section 47 of the [Law of Succession Act](#) provides that:-
- The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient...
18. Similarly, Rule 73 of the [Probate and Administration Rules](#), provides that:-
- Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.
19. A reading of the sections of the law cited above shows that a probate court is not precluded from dealing with issues of land where such land forms part of the assets of an estate unless there was contestation on ownership which would need to be determined by the Environmental and Land Court.
20. In the persuasive case of [Re Estate of Alice Mumbua Mutua \(Deceased\)](#) (2017) eKLR, Musyoka, J held as follows:-
- “.....The [Law of Succession Act](#), and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.”
21. I agree with the interpretation of Muchemi J. [In Re Estate of Teresa Wangui Muruga \(deceased\)](#) [2021] eKLR, where she held that:-
- “The Environment and Land Court has jurisdiction to determine ownership of land but where such ownership results in the implementation or interpretation of a grant and which have now spilled in a subsequent succession cause which involves a sub-division parcel of the mother land in the grant, such issue cannot be determined in the ELC court, in my view.”
22. It is clear from the above provisions and case law that this court is clothed with the requisite jurisdiction to determine this Application. It is a dispute revolving around the distribution of the estate of the deceased in a contest pitting one beneficiary against another. It is my finding that this court has jurisdiction to determine the Application which I hereby proceed to do.
23. The Grant of Representation to the estate of the late Chepkwony Arap Sigira alias Arap Sigira was issued to the Applicant and the Respondent and the same was confirmed by this Court on November 15, 2017. The confirmed Grant detailed an equal sharing of 1.4826 acres between the 16 listed beneficiaries contained in the Grant.
24. The proceedings show that there has been a deep contest between the two households of the deceased over the distribution of the estate. The bone of contention by the 1st household was that the 2nd wife



- who is the 1st Petitioner joined the family 50 years after the 1st wife (objector) had acquired the land and according to her, it was therefore not fair that she should get an equal share with the 2nd wife. Her Protest dated April 5, 2016 was dismissed by this court (Muya, J) in a Ruling dated November 15, 2017 which gave each beneficiary an equal share.
25. Subsequently, two beneficiaries, John Kiplangat Ngeno and Kibet Ngeno Sammy who were also children of the 1st household filed an Application dated June 11, 2018 seeking to nullify the Grant issued to Lilian Chepkorir Langat Sigira 1st Petitioner and their mother Chepketer Grace Sigira who had also become the 2nd Administrator. Their contention was that their mother's household had been discriminated in the distribution of the property and that the 1st Petitioner, Lilian Chepkorir Sigira was not entitled to an equal share of the estate. This Application was heard and dismissed by this court (Onger J) in a Ruling dated August 4, 2020. In dismissing the Application, the court found the Application *res judicata* and held that the only recourse for the Applicants was to the Court of Appeal.
26. From the Proceeding the Ruling by Muya, J on November 15, 2017 that gave each beneficiary of the estate of the deceased an equal share remains unchallenged. This therefore means it is valid and remains in force.
27. The Applicant has stated that she has attempted to subdivide the land but she has met hostility from her co-administrator. She also stated that together with her children, they occupied only one acre contrary to the provision made to them in the Grant. That they were entitled to a cumulative 5.9304 acres being her share together with her 3 children. These facts have not been controverted by the Respondent in the present application as they have only responded through their grounds of opposition that this court has no further jurisdiction.
28. My perusal of the response shows that the Respondent was aware of the efforts of the Applicant to have the estate of the deceased sub-divided but despite being a co-administrator in the Grant, she was reluctant to participate in the sub-division process. As earlier stated, the orders of Muya, J regarding distribution remain valid and enforceable.
29. It is trite that court orders once pronounced, must be obeyed. In the case of *Shimmers Plaza Limited v National Bank of Kenya* (2015) eKLR, the Court OF Appeal held that:-
- “We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not. For as Theodore Roosevelt, the 26th President of the United States of America once said:-
- “No man is above the law and no man is below it; nor do we ask any man's permission to obey it. Obedience to the law is demanded as a right; not as a favour”.
30. In the case of *Burchell v Burchell*, Case No 364/2005 the Constitutional Court of South Africa stated that:-
- “Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The Constitution states that the rule of law and supremacy of the Constitution are foundational values of our society. It vests the judicial authority of the state in the courts and requires other organs of state to assist and protect the courts. It gives everyone the right to have legal disputes resolved in the courts or other independent and



impartial tribunals. Failure to enforce court orders effectively has the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”

31. It is my finding that the Applicant has made a compelling case for the grant of the orders sought. By refusing to participate in the sub-division of the estate of the deceased and in the absence of an Appeal or a Review of Muya J’s Orders, the Respondent has been acting contrary to this Court’s Orders evidenced in the Certificate of Confirmation of Grant.

Chamber Summons dated May 27, 2021.

32. While the 1st application was pending the two Applicants two beneficiaries of the estate John Kiplangat Ngeno and Kibet Ngeno Sammy filed the an application dated May 27, 2021 and sought the following orders:
- I. Spent.
 - II. Spent.
 - III. That pending the hearing and determination of this application, there be a stay of further proceedings/orders that the Respondent may institute/seek that are adverse to the Applicant.
 - IV. That the time given for filing of an appeal in the Ruling delivered on 4.08.2020 of 28 days be extended to include another additional 28 days from the date of a delivery of a Ruling on this current application.
 - V. That the costs of this application be in the cause.
33. The Application was brought under Section 47 of the *Law of Succession Act*, Rules 49, 63 and 73 of the *Probate and Administration Rules*, Order 50 Rule 6 of the *Civil Procedure Rules*.
- The Application is supported by the sworn affidavit of the 1st Applicant John Kiplangat Ngeno dated May 27, 2021.

The Applicants’ Case And Submissions.

34. The Applicant (John Kiplangat Ngeno) stated that Ongeri, J delivered a Ruling on August 4, 2020, at a time where there was cessation of movement due to the Covid 19 pandemic. That he resided in Nakuru and was therefore unable to visit his advocate in Kericho town as he observed the Ministry of Health Covid 19 Protocols. It was his further case that he met his advocate sometime in May 2021 where he was furnished with the copy of the Ruling, a Ruling which he wished to appeal against.
35. The Applicant stated that he was diagnosed with colon cancer sometime in the year 2020 and was in the hospital undergoing chemotherapy treatment. That his advocate tried to reach him several times on his mobile phone to no avail. It was his further case that he was a retired civil servant and was engaged in small scale farming.
36. The Applicant averred that he was aware that the 28 day period had lapsed but humbly prayed to be given an extension of 28 days to file an Appeal.
37. The Applicants submitted that it was their constitutional right to pursue an appeal in a matter they felt aggrieved.
38. The Applicants further submitted that they sought the leave of this court to remove the first Applicant John Kiplangat Ngeno (now deceased) and to leave Kibet Ngeno Sammy as the sole Applicant.



The Respondent's Case And Submissions.

39. The Respondent, Lilian Chepkorir Langat Sigira filed Grounds of Opposition dated September 22, 2021 and stated that the Applicants had no capacity to make the Application since their mother who was an administrator was still alive. That the Orders sought by the Applicants were meant to bar the Respondent from benefiting from her rightful share in the estate of the deceased.
40. The Respondent opined that the Applicants had not given any valid reason to warrant the extension of time to file an appeal. That the Application was meant to waste this court's time and frustrate the implementation of the orders issued through the confirmed Grant. She relied on the case of *In the Re Estate of M'mugwika M'maitethia (Deceased)* (2013) eKLR, to buttress her submission.
41. It was the Respondent's case that the Applicants need not to worry about getting adverse orders against them since they were all equal beneficiaries to the estate of the Chepkwony Sigira alias Chepkwony Arap Sigira (Deceased).
42. I have read through and considered the Chamber Summons dated May 27, 2021, the Grounds of Opposition dated September 22, 2021, the Applicants Written Submissions dated June 6, 2022 and the Respondent's Written Submissions dated March 22, 2022. The two issues for determination are: whether the Applicants had the capacity to bring the Application and whether the Applicant should be granted the order for stay of further proceedings.
43. The Applicants were Children of the deceased and therefore clear beneficiaries of the estate. Section 29 of the [Law of Succession Act](#) provides that a dependant is :-
 - (a) a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
 - (b) such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
 - (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.
44. It follows therefore that they were entitled to bring the present application in their capacity as beneficiaries.
45. I now turn to the issue whether or not the application to stay proceedings was merited. The principles to be considered in an application for stay of proceedings were aptly stated by Ringera J (as he then was) in the persuasive authority in *Global Tours & Travels Limited*; Nairobi HC Winding Up Cause No 43 of 2000 thus:-

“ As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity



and optimum utilization of judicial time and whether the application has been brought expeditiously”.

See also *Kenya Wildlife Services v James Mutembei* (2019) eKLR.

46. The Court of Appeal in the case of *David Morton Silverstein v Atsango Chesoni* (2002) eKLR held that:-

“.....but as the court pointed out in the case we have already cited, each case must depend on its own facts and the facts of this particular case before us, as were the facts in the earlier case, do not show that the appeal will be rendered nugatory if we do not grant a stay”.

47. As I have already stated earlier in this Ruling, there is a confirmed Grant that the Respondent (Lilian Chepkorir Sigira) sought to implement while the Applicants on the other hand want to Appeal Onger, J’s Ruling delivered on August 4, 2020. The issue in contention in the two present applications and the two households is the Grant issued by this court on November 15, 2017.

48. The Applicants wish to ventilate their grievances against this court’s decision to distribute the deceased’s estate equally between the 1st and 2nd households while their mother the 2nd petitioner had been married to the deceased for five decades before the 1st petitioner joined the family as the 2nd wife.

49. This court has a duty to balance the interests of both parties. The only pending proceedings in this court is the implementation of the Grant. This means the sub-division of the land. If the proceedings in this court are not stayed and the Respondent, Lilian Chepkorir Sigira is allowed to carry out subdivision on Kericho/Bingwa/295, the Applicants’ (John Kiplangat Ngeno and Kibet Rono Sammy) intended Appeal will be rendered nugatory as the land will have been sub-divided according to the Grant issued by this court and for which the beneficiaries are aggrieved.

50. In exercise of my discretion and in balancing the interests of the parties, I grant the prayer to stay further proceedings in this court pending the filing, of the Applicants’ intended Appeal to the Court of Appeal. Bearing the age of this matter, the stay granted will be conditional.

51. In granting the stay order, I am conscious that the Court of Appeal which is governed by its own Rules and in particular Rules 4 and 5. Rule 5 of the *Court of Appeal Rules* provides:-

The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.

52. Rule 5 (2) (b) of the *Court of Appeal Rules* states:-

Subject to sub-rule (1), the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the Court may in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 75, order a stay of execution, an injunction or a stay of any further proceedings on such terms as the Court may think just.

53. In the case of *Ngunjiri v Mbugua & another* (Civil Application 25 of 2020 (UR 17 of 2020) of 2020) [2021] KECA 22 (KLR) (23 September 2021) (ruling), the Court of Appeal stated:-

“I agree with counsel for the Applicant. Rule 4 of the *Court of Appeal Rules* gives the Court unfettered discretion to extend the time limited by these Rules, or by any decision of the



Court or of a superior Court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act on such terms as it thinks just.”

54. In the end, the prayer for stay of proceedings in Bomet High Court Succession Cause Number 55 of 2016 is granted on condition that the Applicants file their Application/Appeal in the Court of Appeal within 30 days from the date of delivery of this Ruling.
55. Failure to file the Application/Appeal within the 30 days will vitiate the order for stay of proceedings and the Respondent will be at liberty to extract the orders that:-
- i. The Bomet County Land Surveyor is hereby ordered to conduct a survey on LR No Kericho/Bingwa/295 and thereafter sub-divide it as per the Certificate of confirmation of Grant dated November 15, 2017.
 - ii. The Officer Commanding Station, Bomet Police Station to provide security to the Bomet County Land Surveyor during the survey and sub-division of LR No Kericho/Bingwa/295.
56. Each party shall bear their costs in both application.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 20TH DAY OF APRIL, 2023

.....

R. LAGAT-KORIR

JUDGE

Ruling delivered virtually in the presence of Mr. Sigira for the Applicant, No appearance for the Respondent and Siele (Court Assistant)

