



REPUBLIC OF KENYA



**In re Estate of the Late Simon Kiprop Cherruiyot (Succession Cause  
64 of 2010) [2023] KEHC 18731 (KLR) (12 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18731 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 64 OF 2010  
RN NYAKUNDI, J  
JUNE 12, 2023  
IN THE MATTER OF THE ESTATE OF THE LATE SIMON KIPROP  
CHERUIYOT**

**BETWEEN**

**HELLEN CHERUTO LELEI ..... 1<sup>ST</sup> PETITIONER**

**RAEL JEPKOECH SANGA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**MARGARET CHELAGAT CHEPTALAM ..... OBJECTOR**

**RULING**

1. The application before this court dated January 28, 2022 by Hellen Jeruto Lelei sought to review the orders of the court that were granted on April 22, 2021. The orders emanated from an application dated February 18, 2021 where the applicant/objector sought to have the court compel the deputy registrar sign the transfer documents for the properties of the estate that were to be distributed among the beneficiaries.
2. The distribution of the properties was to be pursuant to the consent dated March 7, 2011 that was adopted as an order of the court on July 23, 2012. The orders given by Hon Githinji were as a result of the applicants' refusal to execute the transfer documents. The said orders were never appealed against or set aside at all. Further, the said orders are in effect and are most probably overtaken by events.
3. The provisions of the law guiding review are set out in Order 45 of the *Civil Procedure Rules* which provide as follows;
  - (1) Any person considering himself aggrieved—



- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
  - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
4. The applicant relied on the grounds that there was a mistake apparent on the face of the record, alluding to the allocation of Parcel No Moi's Bridge/Sirikwa Block 3 (Ziwa) 333 Parcel No Moi's Bridge/Sirikwa Block 3 (Ziwa) 331
  5. Further, the applicants sought amendments to include the parcels known Soy/Kapsang Block 4 (Ziwa)/240 and plot No 55 at Ziwa Machine, and the same be distributed in favour of Margaret Chelagat Cheptalam. The final amendment sought was that the plot at Kapsoya Eld Mun Block 9/2379 be equitably shared in 2 parts between Helen Cheruto Lelei and Margaret Chelagat Cheptalam.
  6. The consequence of the proposed amendments would be to interfere with the process of distribution and further stall the process. The conduct of the applicants, especially with regard to the distribution of the estate and the refusal to execute the transfer documents is evidence of deliberate sabotage of the distribution process.
  7. The amendments sought do not meet the threshold of an error apparent on the face of the record. In *Paul Mwaniki vs National Hospital Insurance Fund Board of Management* [2020] eKLR, it was said:
 

“... a review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”
  8. I have considered what the applicant portends to be an error apparent on the face of the record and in my view the application fails to meet the threshold for the same. The purposes for the amendment regarding allocation nos. Parcel No Moi's Bridge/Sirikwa Block 3 (Ziwa) 333 and Parcel No Moi's Bridge/Sirikwa Block 3 (Ziwa) 331 are not mere errors as the process of determining a mode of distribution and entering into a consent on the same is a long and arduous one that both parties' advocates on record of the time undertook before having the same adopted as a consent order. Further, the consent was entered into in the year 2011 yet the mistakes were discovered in 2023, a position I find untenable as the delay is unexplained. Guided by the conduct of the applicant with regard to the distribution of the estate, the court has no option but to consider this an afterthought.
  9. The applicant sought to have the parcels known Soy/Kapsang Block 4 (Ziwa)/240 and plot No 55 at Ziwa Machine included in the estate of the deceased, and that the same be distributed in favour of Margaret Chelagat Cheptalam. To grant this prayer would require the introduction of evidence. Notwithstanding the fact that the grounds for the application were limited to mistake or error apparent



on the face of the record, this prayer would fall under the ambit of new and important evidence. The applicant has not tabled any evidence that these properties formed part of the deceased's estate and therefore the court cannot grant said prayer.

10. As for the amendment seeking that the plot at Kapsoya Eld Mun Block 9/2379 be equitably shared in 2 parts between Helen Cheruto Lelei and Margaret Chelagat Cheptalam, the position as per the mode of distribution is that the property was already to be distributed in that manner.
11. In the circumstances, the application fails in its entirety and is dismissed. The practical strategy of solving this conflict is to summon the current administrator and the named beneficiaries to answer to the question why this estate has remained undistributed since 2010. The Status Conference be undertaken by this court on 16<sup>th</sup> day of June 2023 in the presence of legal counsels seized of the cause of action. Each party to bear its own costs.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 12<sup>TH</sup> DAY OF JUNE 2023**

In the presence of:

Mr. Oyaro for the Petitioner

**R. NYAKUNDI**

**JUDGE**

