



**In re Estate of Robert Kipkorir Arap Chumo alias Robert Arap Rono (Deceased)
(Succession Cause 111 of 2015) [2023] KEHC 19875 (KLR) (12 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19875 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 111 OF 2015**

RL KORIR, J

JULY 12, 2023

**IN THE MATTER OF THE ESTATE OF THE LATE ROBERT
KIPKORIR ARAP CHUMO ALIAS ROBERT ARAP RONO.**

CHRISTINE CHEPKEMOI RONO 1ST PETITIONER

VERSUS

TIMOTHY KIPKEMOI KORIR 2ND PETITIONER

**IN THE MATTER OF
CHRISTINE CHEPKEMOI RONO 1ST PETITIONER
TIMOTHY KIPKEMOI KORIR 2ND PETITIONER**

RULING

1. This succession cause demonstrates the persistent tension between customary law and statutory law in succession matters. The family patriarch Robert Kipkorir Chumo alias Robert Arap Chumo had two wives. According to the court record, he married Alice Cherotich Rono in the year 1949 and were blessed with seven (7) children. Subsequently, in the year 1973 he married Christine Chepkemoi Rono and were blessed with six (6) children.
2. The family patriarch passed on, on October 12, 2003. In his life time he had settled the 1st household on LR Kericho/Kapkatet/974 a 15.5 acre piece of land said to have been acquired in the year 1962. He had also settled the 2nd household on LR Kericho/Chemagel/3500 a 3.85 acre piece of land stated to have been later. Both properties were registered in the deceased's name. At the time of his death, the 1st wife Alice Cherotich Rono and 2nd wife Christine Chepkemoi Rono were aged 80 and 64 years respectively. Alice Cherotich Rono subsequently passed on in the year 2013.



3. On July 27, 2015, one Walter Kiprono Ngeno who described himself as a son to the deceased petitioned for grant of representation of the deceased's estate. In the Affidavit he swore on July 27, 2015 in support of the petition, he listed the following be beneficiaries.
 1. 1st Household
 1. Alice Cherotich Rono – Widow – 80 years
 2. Grace Cheptanui – Unmarried – 64 years
 3. Lily Chelangat (Deceased) – Married
 4. Esther Chepngetich – Unmarried – 58 years
 5. Timothy Kipkemoi Korir – Adult son – 56 years
 6. Winy Chesigei Langat – Married – 52 years
 7. Betty Chepkoech – Married – 50 years
 8. Samwel Kimutai Korir – Adult Son – 48 years
 2. 2nd Household
 1. Christine Chepkemoi Rono – Widow – 64 years
 2. Josephine Cherotich – Married 41 years
 3. Julia Chelangat – Married – 39 years
 4. Emmy Chepkoech – Unmarried 35 years
 5. Gideon Korir – Adult son – 34 years
 6. Lidia Chepchirchir Rono – Married – 31 years
 7. Duncan Korir – Adult son 25 years
4. On September 14, 2015, Samwel Korir a son from the 1st household filed through the firm of Bii VK & Co Advocates filed a Notice of Objection to the grant of representation to Walter Kiprono Ngeno on grounds that the said Walter Kiprono Ngeno was neither an heir nor beneficiary of the estate and had not obtained the consent of the beneficiaries from the 1st household before petitioning for grant of representation.
5. The Petition by Walter Kiprono Ngeno was given effect and the estate was gazetted on September 16, 2015.
6. By consent of the parties the objection was compromised on November 23, 2016 whereby Walter Kiprono Ngeno was removed and Christine Chepkemoi (2nd wife) and Timothy Kipkemoi (son) were appointed 1st and 2nd petitioners respectively. Letters of administration were issued to them by Muya J on April 5, 2017.
7. Subsequently, the two Administrators filed two separate modes of distribution. The two households could not agree on how they would distribute the properties which comprised the estate of the deceased being Kericho/kapkatet/974 and Kericho/chemagel/3500. The 2nd Petitioner insisted on maintaining the wishes of the deceased that the two households remain in their respective land while the 1st Petitioner insisted on an equal distribution among the beneficiaries traversing both properties.



8. As a result of the disagreement, the matter proceeded for trial in which the court (Muya J) took viva voce evidence. By Judgment dated August 3, 2020 Ongeri J held that the two properties were to be divided equally among all the beneficiaries numbering 15. Following the Judgment, the Grant was confirmed and a Certificate of Confirmation dated September 30, 2021 was issued by this court detailing the share of each beneficiary in the schedule of distribution. Each beneficiary got an equal share of 1.38 acres.
9. It was clear from the record that the 2nd Petitioner was dissatisfied with the Judgement of Ongeri J. His position was that the deceased had settled the two households on separate farms being Kericho/Kapkatet/974 and Kericho/Chemagal/3500 for the 1st and 2nd households respectively. His second ground of dissatisfaction was that the court had applied Section 40 of the Succession Act and divided the estate equally to the beneficiaries irrespective of their households, age, gender or marital status.
10. The 2nd Petitioner attempted an appeal. In an application dated August 27, 2020 the firm of WK Ngenoh Lessan & Co Advocates filed an application seeking to come on record for the 2nd Petitioner. In the same Application, they sought stay of execution of the judgment of Ongeri J pending an intended appeal. On record is a Notice of Appeal dated August 26, 2020 filed by the same advocates.
11. The application was presented before Matheka J. (sitting in Nakuru during recess duty) on September 1, 2020 who directed that the application be served and the order to come on record be canvassed first before the firm of WK Ngenoh Lessan & Co could represent the Applicant/2nd Petitioner. Mr WK Ngenoh was allowed to come on record by Ongeri J on September 17, 2020.
12. The matter came up for mention on February 1, 2021. On that date, Mr JK Mutai, counsel for the 1st Petitioner drew the attention of the court to the 1st Petitioner's pending application dated November 9, 2020. Mr WK Ngenoh Lessan for the 2nd Petitioner was not present. The court directed the beneficiaries to attend court on March 4, 2021. On that date the 2nd Petitioner appeared alongside the other beneficiaries. He requested the court for another date as his advocate was not in court.
13. On December 2, 2022 Ms Koech came on record for the 2nd Petitioner and requested the court for time to put in an application seeking review of the court's Judgment and rectification of mode of distribution. Subsequently, Mr JK Mutai notified the court on July 7, 2022 that the family (beneficiaries) had agreed on an alternative mode of distribution which they wished to file. He requested 21 days and asked the court to stay the hearing of their pending application dated November 9, 2020.
14. The Application came up for mention on March 2, 2023 to confirm filing of a response and submissions to the Application dated November 9, 2020 by the 2nd Petitioner. Ms Koech for the 2nd Petitioner notified the court that the parties/beneficiaries had agreed on an alternative mode of distribution. She stated that members of the 2nd household had, pursuant to their agreement, invited a surveyor to survey according to the new agreement. She sought time to file for review of the court's orders and rectification of the Grant.
15. On March 13, 2023, Mr JK Mutai for the 1st Petitioner notified the court that the attempt to have the matter settled out of court and request the court to amend the distribution had failed. He attributed the collapse of the family talks to the 2nd Petitioner who was accused by his sisters of high handedness. Counsel submitted that the decision to amend the mode of distribution was not unanimous and the same was dictated by elders. It was his client's wishes therefore to revert to the mode of distribution earlier given by the court. In that respect therefore, he urged the court to reinstate for hearing their application dated November 9, 2020 which had been stayed pending the family negotiation.



16. Ms Koech for the 2nd Petitioner told the court that she had filed an application for review. The record also shows that no directions were given for the Chamber Summons dated March 13, 2023 and no response has been filed by the 1st Petitioner.
17. The Court directed the 2nd petitioner to file a response and submissions to the 1st Petitioner's application dated November 9, 2020 and reserved a date for ruling.
18. I will therefore determine the Application dated November 9, 2020 bearing in mind the existence of the 2nd Petitioner's Chamber Summons dated March 13, 2023 which is pending directions.

Chamber Summons dated 9th November 2020.

19. The 1st Petitioner filed the Chamber Summons dated November 9, 2020 which sought the following Orders: -
 - I. That an order be and is hereby issued directing the Officer Commanding Station, Kapkatet Police Station, do provide security to the surveyors to survey and demarcate the shares of the beneficiaries in the land parcel LR NO Kericho/kapkatet/974 as per the Certificate of Confirmation of Grant.
 - II. That an order be and is hereby issued directing the Respondent to execute application for Land Control Board Consents, the mutation forms, all the transfer documents and avail all documents necessary for the transmission of the shares to the beneficiaries as per the Certificate of Grant.
 - III. That in default of the Respondent signing all the documents, the Deputy Registrar of the court be and is hereby authorized to sign them on his behalf.
 - IV. That the necessary directions be made.
20. The Application was brought under Section 83 (f), (g) and (i) of the *Law of Succession Act* and Rules 49 and 73 of the *Probate and Administration Rules*. The Application was premised on the grounds contained in the Supporting Affidavit sworn by Christine Chepkemoi Rono on November 9, 2020.
21. The 1st Petitioner stated that wife and children of the 2nd Petitioner were hostile to them and threatened to cause death if they stepped on Kericho/kapkatet/974. That the 2nd Petitioner made verbal threats even after the Judgment was passed stating that they would not take up their shares of the land.
22. It was the 1st Petitioner's case that they visited the area chief on September 25, 2020 seeking her assistance in informing the 2nd Petitioner and his siblings that they intended to survey the parcels of land Kericho/kapkatet/974 and Kericho/chemagel/3500 but the chief insisted that a court order was necessary for them to access Kericho/kapkatet/974 due to the well-known hostility.
23. The 1st Petitioner stated that the surveyor informed her that the 1st step in subdivision was to survey the entire parcels of land and make the relevant application to the Land Control Board for subdivision. That due to the prevailing hostility, a court order was necessary for the surveyor to conduct his work.
24. It was the 1st Petitioner's case that she was suffering together with her children using the small portion of land that measured 3.85 acres while the 2nd Petitioner and his siblings were living on a prime parcel of land measuring about 15.5 acres and they were not willing to surrender it any time soon.



The Response

25. The 2nd Petitioner filed a Replying Affidavit dated March 24, 2023 and stated that after the delivery of the Judgment, a meeting was held with the clan members on June 15, 2022 where it was agreed that the deceased's married daughters namely Betty Chepkoech and Winny Chesigei each agreed to remain with 0.5 acres after ceding 0.8 acres each to be shared between him and Samwel Kimutai Korir.
26. It was the 2nd Petitioner's case that by virtue of that understanding of the beneficiaries from the 1st household, they had engaged a surveyor who visited the parcel Kericho/kapkatet/974, resurveyed the parcel in their presence and allocated it between the beneficiaries as agreed. That it was necessary to provide for an access road to pass through the land parcel Kericho/kapkatet/974, a provision which the court did not take into account during the distribution of the estate.
27. The 2nd Petitioner deposed that he had been directed by this court to hold 1.38 acres for his deceased sister Lily Chelangat (deceased) in trust for her two children, Vincent Kipkemoi Kirui and Wilfred Kipngeno Kirui. That it would be in the interest of justice that the aforesaid share of 1.38 acres be registered jointly in the names of Vincent Kipkemoi Kirui and Wilfred Kipngeno Kirui to hold in trust for themselves and Geoffrey Kiplangat Kirui and Caroline Chebet Kirui.
28. It was the 2nd Petitioner's case that there was a pending Application dated March 13, 2023 that sought review of the Judgment delivered on August 3, 2020. That it was necessary to review the Judgment to allow for the redistribution of the estate according to the wishes of the beneficiaries affected.
29. The 2nd Petitioner deposed that the alleged transfer documents had never been availed to him for execution. That the 1st Petitioner had not attached the alleged documents to demonstrate that they were availed to him and that he declined to execute them.

1st Petitioner's Submissions.

30. The 1st Petitioner submitted that there was an existing Judgment which had not been overturned or appealed. That court orders were not issued in vain and ought to be obeyed.
31. It was the 1st Petitioner's submission that the *Law of Succession Act* contemplated that administrators complete the administration of the estate within six months from the date the Grant is confirmed and that the 2nd Petitioner was unwilling to execute his duties as the co-administrator. She relied on *Standard Resource Group Ltd vs Ali Badawy & 2 others (2017) eKLR* and *Beatrice Bonchere Nyaruri vs Abel Hayora Nyaruri & another (2021) eKLR*.
32. The 1st Petitioner submitted that given the hostile and uncooperative nature of the 2nd Petitioner, it was imperative that prayer number 1 of the Application be granted. She relied on *Beatrice Bonchere Nyaruri (supra) and Genesisio Murithi Bore (legal rep of the estate of M'Boore Muranga - Deceased) & 2 others vs Genesisia Ciarwigi Muchiri (2020) eKLR*.
33. In regards to prayer 3 of the Application, the 1st Petitioner submitted that the court had inherent powers to make orders that were necessary to meet the ends of justice and to prevent the abuse of the court process. She relied on Rule 73 of the Probate and Administration Rules, *In re Estate of Wilfred Munene Ngumi (DCD) (2020) eKLR* and *In re Estate of Simon Kiprop Cheruiyot (Deceased) (2021) eKLR*.
34. It was the 1st Petitioner's submission that the costs should be borne by the 2nd Petitioner. That the present Application was prompted by his hostility and refusal to participate in completing the administration process.



35. The 2nd Petitioner did not file any submissions.
36. Key among the roles of an Administrator is to preserve and administer the estate of the deceased. *In re Estate of Makokha Idris Khasabuli (Deceased) (2019) eKLR*, Musyoka J held that:-
- ' The primary roles of administrators are several. The first is collection or gathering or getting in of the assets of the estate. The second role is the protection or preservation of the assets collected or gathered or gotten in. The third one is payment of debts and liabilities of the estate from the assets gathered and preserved. Finally is the distribution of the estate after all the debts and liabilities have been settled.'
37. In *Christine Wangari Gachigi & 3 others v Elizabeth Wambui & 9 others (2014) eKLR*, Emukule J (as he then was) held that:-
- ' Further such action must be a proper exercise of the powers of the administrator. He owes the beneficiaries a duty of care to exercise his powers properly with the sole intention of protecting the estate and their interests.'
38. Similarly *in Re Estate of David Kyuli Kaindi (Deceased) (2016) eKLR*, Musyoka J stated that:-
- ' The personal representative must give account of the assets and liabilities that he has ascertained, and the assets that he has collected, gotten in, recovered or gathered and the titles he has perfected, and the steps taken to preserve the estate.'
39. In the event that an Administrator frustrates a succession process by not executing relevant documents, this court has inherent power under Rule 73 of the Probate and Administration Rules to facilitate justice and to prevent the abuse of the court process. Rule 73 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.
40. In *Re Estate of Wilfred Munene Ngumi (deceased) (2020) eKLR*, while allowing the application for the Deputy Registrar of the court to execute completion documents, Mulwa J held as follows:-
- ' It is evident from the Applicant's affidavit in support of the application and oral arguments by her Advocate, Mr Kahiga, that the Respondents have refused to sign the necessary documents to facilitate execution of the court's judgment/decreed. To prevent abuse of the court process, by the above legal provisions, this court has inherent powers to prevent such abuse. I therefore find and hold that the petitioner's summons dated September 23, 2019 and filed on September 25, 2019 to be merited.'
41. Similarly in *Tabitha Wangithi Muriuki vs Wathiba Kimoo (2020) eKLR*, Gitari J held that:-
- ' The applicant has submitted that the respondents have refused to co-operate to have the grant executed. This has not been denied and the respondents have not sworn affidavit. They have not stated that they are willing to comply. As well submitted, an appeal does operate as a stay. There is nothing to prevent this court from making such orders that will be necessary to effect the judgment of the court. Execution of judgment is a lawful process and cannot be stopped unless for good reasons. By ordering the Deputy Registrar to sign, the court will only be ensuring that the judgment is complied with and will not be descending into the



arena of conflict. The orders are necessary for the ends of justice and to ensure that a party reaps the fruits of judgment and prevent abuse of the court process.'

42. I have gone through and considered the 1st Petitioner's Chamber Summons dated November 9, 2020, the 2nd Petitioner's Replying Affidavit dated March 24, 2023, the 1st Petitioner's Written Submissions dated November 8, 2022 and the only issue for determination is whether the 1st Petitioner has made out a case for the grant of the prayers sought.
43. The 1st Petitioner stated that the 2nd Petitioner being her co-administrator in the estate of the late Robert Kipkorir arap Chumo alias Robert arap Rono had refused to execute transfer documents, mutation forms and the Land Board Control Consents. She additionally stated that the surveyor had a hard time accessing the parcel Kericho/kapkatet/974 due to the hostility of the 2nd Petitioner and his siblings.
44. The 2nd Petitioner on the other hand denied that he had been given the transfer documents and declined to execute them. He further opined that there was to be a new mode of distribution that had been agreed upon after a clan meeting. That they had sought a review of the Judgment dated August 3, 2020.
45. That said, the Judgment dated August 3, 2020 remains valid and in force. It is trite that a court order of Judgment once pronounced, must be obeyed. In the case of *Sbimmers Plaza Limited vs 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'.

46. Similarly, in the case of *Burchell vs 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.'

47. There is no evidence of compliance of the Judgment dated August 3, 2020. It is for this reason that the 1st Petitioner filed the present Application seeking orders that would facilitate compliance with the Judgment.
48. From the background of this matter and the record, I observe that the family was not united in whether or not to distribute the estate in accordance with the Grant or to modify the distribution according to their negotiated agreement which would allow variation of their respective entitlements. This is evident from their submission in court when they requested time to come to some sort of agreement before inviting the surveyor to survey the land for distribution.



49. I have also taken note of the 2nd Petitioner's pending Chamber Summons dated March 13, 2023 seeking review of the court's orders on mode of distribution. The said application seems to be explaining the delay in compliance with the Court's judgment. As I have set out the family's push and pull in this case, I am inclined to allow the 2nd Petitioner and the 1st household time to put their affairs in order and move to comply with the Court's orders and or expeditiously prosecute their Application. In the interest of justice and in balancing the rights and needs of each party, I make the following orders: -

- I. The Chamber Summons dated March 9, 2020 is merited and is allowed in terms of prayers 1, 2 and 3.
- II. The execution of prayers 1, 2 and 3 of the Chamber Summons dated March 9, 2020 is stayed for 40 days pending the beneficiaries agreement on a new mode of distribution and the hearing and determination of the Application for review dated March 13, 2023 now on record.
- III. This being a family matter, each party to bear their costs.

50. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 12TH DAY OF JULY, 2023

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Mr. J.K. Mutai for the Applicant, and Ms. Koech for the Respondent. Siele (Court Assistant)

