



In re Estate of Clement Kipng'etich Rono (Deceased) (Succession Cause 298 of 2019) [2023] KEHC 24376 (KLR) (Family) (19 October 2023) (Ruling)

Neutral citation: [2023] KEHC 24376 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 298 OF 2019
MA ODERO, J
OCTOBER 19, 2023
IN THE MATTER OF THE ESTATE OF CLEMENT KIPNG'ETICH RONO (DECEASED)**

BETWEEN

DYPHINA JEPCHUMBA RONO APPLICANT

AND

HELLEN CHEPTUM RONO RESPONDENT

RULING

1. Before this Court for determination is the Chamber Summons application dated 31st January 2023 by which the Applicant Dyphina Jepchumba Rono seeks the following orders:-
 - a. This Honourable Court be pleased to suspend the filing and/or tendering of written submissions.
 - b. In place of prayer (a) above, this Honourable Court be pleased to grant leave to the Respondent to reopen the case limiting it to the production of additional material evidence which include:
 - i) Twenty-one (21) copies of mortgage receipts (which indicate the Respondent as the cash depositor).
 - ii) Bank statements from the respondent and deceased's joint account number 20000xxxxx – 0.
 - iii) Copy of Kipkabus land title No. Uasin Gishu/Kipkabus Settlement Scheme 44.



- c. The Respondent be allowed to recall the witness to produce the said evidence.
 - d. The cost of this application be in the cause. “
2. The application was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondent Hellen Cheptum Ronoh opposed the application through the Replying Affidavit dated 1st March 2023. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 3rd April 2023 whilst the Respondent relied upon her written submissions dated 22nd May 2023.

Background

4. This Succession Cause relates to the estate of the late Clement Kipng’etich Rono who died intestate on 2nd July 2018.
5. Following the demise of the Deceased Grant of letter of Administration Intestate was on 4th September 2019 made to the Respondent. The Applicant then filed a summons for Revocation of Grant.
6. The parties were referred for Court Annexed Mediation but no settlement was reached. This court then proceeded to hear the summons for revocation of Grant by way of *Vive Voce* evidence. Hearing of oral evidence ended on 13th December 2022 and the court gave directions on filing of written submissions.
7. The Applicant then filed this application seeking leave to re-open their case for purposes of production of material evidence.
8. The Respondent opposed the application arguing that the Applicant had already closed their case and that the court had already given directions for filing of final submissions.

Analysis and Determination

9. I have carefully considered the application before this court. The Reply filed thereto as well as the written submissions filed by both parties. The only issue for determination is whether the Applicant’s prayer to adduce additional evidence ought to be allowed.
10. In *Hon. Mohamed Abdi Mahamud -vs- Ahmed Abdullahi Mohamad & 3 Others* Petition No. 7 of 2018 the Supreme Court of Kenya set out the guide lines in allowing additional evidence as follows:-

“(19) taking into account the practice of various jurisdictions outlined above, which are of persuasive value, the elaborate submissions by counsel, our own experience in electoral litigation disputes and the law, we conclude that we can, in exceptional circumstances and on a case by case basis, exercise our discretion and call for and allow additional evidence to be adduced before us. We therefor delay down the governing principles on allowing additional evidence in appellate courts in Kenya as follows:

- a. the additional evidence must be directly relevant of the matter before the court and be in the interest of justice;
- b. it must be such that, if given, it would influence or impact upon the result of the verdict, although it need not be decisive;



- c. it is shown that it could not have been obtained with reasonable diligence for use at the trial, was not within the knowledge of, or could not have been produced at the time of the suit or petition by the party seeking to adduce the additional evidence;
- d. where the additional evidence sought to be adduced removes any vagueness or doubt over the case and has a direct bearing on the main issue in the suit;
- e. the evidence must be credible in the sense that it is capable of belief;
- f. the additional evidence must not be so voluminous making it difficult or impossible for the other party to respond effectively;
- g. whether a party would reasonably have been aware of and procured the further evidence in the course of trial is an essential consideration to fairness and due process;
- h. where the additional evidence discloses a strong prima facie case of willful deception of the Court;
- i. the Court must be satisfied that the additional evidence is not utilized for the purpose of removing lacunae and filling gaps in evidence. The Court must find the further evidence needful.
- j. A party who has been unsuccessful at the trial must not seek to adduce additional evidence to, make a fresh case in appeal, fill up omissions or patch up the weak points in his/her case.
- k. The court will consider the proportionality and prejudice of allowing the additional evidence. This requires the court to assess the balance between the significance of the additional evidence, on the one hand, and the need for the swift conduct of litigation together with any prejudice that might arise from the additional evidence on the other.”

11. I am mindful of the fact that parties in the matter had both closed their cases. However, no judgement has been rendered and submissions are yet to be filed.
12. This is a court of justice and therefore the court ought to be open to receiving all evidence that will enable it reach a just determination in the matter before it.
13. In my view the Respondents will not suffer any prejudice if the additional evidence is admitted as they will have the opportunity to rebut the same and/or to cross-examine the witness.
14. I find that it is in the interest of justice that this application be allowed. Accordingly, I do allow the Notice of Motion dated 31st January 2023 in terms of prayers (a), (b), (i) (ii) and (iii) and (c). Costs of this application will be met by the Applicant.

DATED IN NAIROBI THIS 19TH DAY OF OCTOBER, 2023.

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MAUREEN A. ODERO



JUDGE

