



In re Estate of Fredrick Kiprop Maritim (Deceased) (Succession Cause 5 of 2017) [2023] KEHC 23767 (KLR) (12 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23767 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 5 OF 2017
JK SERGON, J
OCTOBER 12, 2023**

BETWEEN

MILKA CHEPNGENO 1ST APPLICANT

JANE CHELANGAT 2ND APPLICANT

AND

JOSEPH KIPLANGAT ROP 1ST RESPONDENT

BEATRICE CHEPKIRUI KOECH 2ND RESPONDENT

RULING

1. The applicants (the 4th and 2nd Administrators herein) filed an amended chamber summons dated 29th May, 2023 seeking the following orders;
 - (a) Spent
 - (b) That this honourable court may be pleased to direct the Deputy Registrar to execute the transfer documents over and in respect of L.R NO. Kericho/Kapsuser/ 359, 361, 363 and 2325 to facilitate the sub division, transfer and registration of the resultant parcel to and/or in favour of the beneficiaries in terms of the certificate of confirmation of grant issued on 30th May, 2022
 - (c) That this honourable court may be pleased to grant such further orders as may just and/or expedient to enable the lawful heirs of the deceased herein, to benefit from the orders of this honourable court and the resultant certificate of grant issued on 30th May, 2022
 - (d) That costs of the application be provided for.
2. The Application is supported by grounds on the face of it and the supporting affidavit sworn by Milka Chepngeno the applicant with the consent of co-applicant.



3. The Applicant avers that on 20th May 2022 this court gave a ruling to the effect that the estate herein be distributed equally.
4. The Applicant avers that following the confirmation of grant of letters of administration, the administrators were obliged to proceed and distribute the estate of deceased in accordance with the confirmation of grant issued on 30th May, 2022, however, the beneficiaries were unable to benefit from the estate of the deceased owing to the unwillingness of the administrators to execute completion documents despite several demands.
5. The Applicant avers that unless the orders sought are granted the beneficiaries stood to suffer irreparable loss and damages which may not be adequately compensated in monetary terms.
6. The applicants (the 1st and 3rd Administrator herein) filed a summons for revocation and/or revocation of certificate of confirmation of grant dated 21st June, 2023 seeking the following orders;
 - (a) Spent
 - (b) That this honourable court be pleased to revoke and/or annul the certificate of grant issued herein on 30th May, 2022
 - (c) That the honourable court be pleased to issue a certificate of confirmation after the balloting by the beneficiaries for parcels L.R Kericho/Kapsuser/361, 363 and 2325 as per ruling of this court dated 20th May, 2022 and that the balloting be supervised by the Deputy Registrar of this honourable court
 - (d) That the costs of this application be in the cause.
7. The Application is supported by grounds on the face of it and the supporting affidavit sworn by Beatrice Chepkurui Koech the applicant with the consent of her co-applicant.
8. The Applicant avers that contrary to the directions contained in the ruling of 20th May, 2022 the respondents without the knowledge and/or participation of the applicants and without any attempt to reach an agreement amongst all the beneficiaries in respect of land parcels L.R No Kericho/Kapsuser/361, 363 and 2325 procured a certificate of confirmation of grant containing allocations which were done in an arbitrary, unreasonable and skewed manner.
9. The Applicant avers in the circumstances it will be fair, just and equitable that the identification as to who takes what parcel in respect of L.R Kericho/Kapsuser/361, 363 and 2325 proceed by way of balloting under the supervision of the Deputy Registrar as some of the beneficiaries had purportedly taken possession of various portions of land pursuant to the certificate of confirmation of grant dated 30th May, 2022 that the respondent procured irregularly.
10. The Applicant maintained that they had not refused to sign papers for subdivision and transfer by transmission rather the process of identification of what parcel each beneficiary should be allocated was yet to be done.
11. The 1st and 3rd administrators filed a replying affidavit in opposition to the amended chamber summons dated 29th May, 2023.
12. The 1st and 3rd administrator reiterated that they had filed an application dated 21st June, 2023 seeking orders for revocation and/or annulment of the certificate of confirmation of grant issued on 30th May, 2022 and an order that there be balloting for land parcels LR NO Kericho/Kapsuser/361, 363 and 2325 to be supervised by the Deputy Registrar of this court in strict compliance with the ruling of this court on 20th May, 2022.



13. The 2nd and 4th administrators filed a replying affidavit in opposition to the summons for revocation and/or annulment of the certificate of confirmation of grant dated 21st June 2023.
14. They maintained that on 20th May, 2022 this court gave a ruling to the effect that the estate of the deceased should be distributed equally after removing the home and booster, access roads and liabilities in various land parcels constituting the estate of the deceased and that the grant was subsequently confirmed on 30th May, 2022. They maintained that the beneficiaries were already settled on their respective portions of the estate.
15. They contended that the application dated 21st June, 2023 was a knee jerk reaction, filed after they moved the court to direct the Deputy Registrar to execute the transfer documents.
16. The court directed that both applications dated 29th May, 2023 and 21st June, 2023 be canvassed by written submissions in both applications. I have considered the responses and submissions on record and sole issue for this court determination is whether this court should revoke and/or annul the certificate of confirmation of grant issued by this court on 30th May, 2022.
17. The 2nd and 4th administrators in their submissions maintained that following confirmation of grant of letters of administration the administrators were duty bound to implement the same, however, the 1st and 3rd administrator had neglected and/or reneged to execute the confirmed grant which was inconveniencing beneficiaries of the estate who were desirous of obtaining their respective titles. The 2nd and 4th administrators therefore urged this court to allow the amended chamber summons dated 29th May, 2023 in order to pave the way for the implementation of the certificate of confirmation of grant issued by this court on 30th May, 2022.
18. The 2nd and 4th administrators opposed the application for revocation and/or annulment dated 21st June, 2023 by the 1st and 3rd administrators and contended that once a court confirms a grant, it becomes functus officio and therefore if the said administrators were intent of revoking the said grant they were at liberty to move to the court of appeal.
19. The 2nd and 4th administrators contended that it is not the duty of this court to order and/or conduct balloting for the beneficiaries.
20. On the issue as to whether the certificate of confirmation of grant issued on 30th May, 2022 by this court should be revoked and/or annulled, I find that the 1st and 3rd administrators have not ably demonstrated grounds for revocation and/or annulment and furthermore once this court confirms a grant it becomes functus officio. I therefore dismiss the application dated 21st June, 2023.
21. In the end, the amended chamber summons dated 29th May, 2023 is allowed giving rise to issuance of the following Orders;
 - (a) That the Deputy Registrar executes the transfer documents over and in respect of L.R No. Kericho/Kapsuser/ 359, 361, 363 and 2325 to facilitate the sub division, transfer and registration of the resultant parcels in favour of the beneficiaries in terms of the certificate of confirmation of grant issued on 30th May, 2022.
 - (b) That each party bears their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH OCTOBER, 2023

J.K. SERGON

JUDGE

