



**In re Estate of Kimon Kiptum (Deceased) (Succession Cause
162 of 2010) [2023] KEHC 23482 (KLR) (12 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23482 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 162 OF 2010
AC MRIMA, J
OCTOBER 12, 2023**

BETWEEN

BARNABAS ROTICH NGESEMWA PETITIONER

AND

JOSEPH KIPROTICH CHERUIYOT 1ST RESPONDENT

BARNABAS KIMUTAI KIPLAGAT 2ND RESPONDENT

RULING

1. This ruling is in respect to the amended chamber summons dated December 22, 2022, which was taken out by the petitioner/applicant.
2. The application sought the following prayers: -
 1. That service of this application be dispensed and the same be certified as urgent and be heard ex parte in the first instance.
 2. That pending the hearing of this summons inter-partes this honourable court be pleased to grant an order of preservation of the estate directing the respondents herein either by themselves agents and/or servants to desist from intermeddling with the estates assets to wit, parcel No.Cherangany/Koitugum/824 and Cherangany/Koitugum/825.
 3. That this honourable court do order the rectification of the register in respect of all that property known as Cherangany/Koitugum/824 and Cherangany/Koitugum/825 to reflect the name of the deceased, which titles were resultant of subdivision of Cherangany/Koitugum/254 illegally issued in the names of the respondents herein without grant of letters of administration.



4. That the costs of this application be borne by the respondents.
3. The application was initially supported by the affidavit sworn by the applicant on even date wherein several annexures were referred to. Later, and in response to a replying affidavit filed by the respondents, the applicant filed a Further Affidavit which he deposed to on March 24, 2022.
4. The application was vehemently opposed by the respondents. They filed a joint replying affidavit to that end which they swore on February 25, 2022.
5. On the directions of this Court, upon concurrence with the parties' proposal, the application was to be disposed of by way of written submissions. Both parties duly complied and filed their respective rival submissions.
6. This court has carefully considered the application alongside the response, the written submissions and the decisions thereto. The Court has also perused the record.
7. On October 14, 2010, the applicant herein, upon petitioning, was appointed by this court and issued with a Grant of Letters of Administration Intestate.
8. On May 28, 2018, the Court, on an application by Charles Cherutich Yego, who was a brother to the Applicant, amended the Grant of Letters of Administration Intestate issued to the applicant and included the said Charles Cherutich Yego as a Joint-Administrator of the estate herein.
9. The Administrators were directed to file for the confirmation of the grant. The Applicant filed a Summons for Confirmation of the Grant dated March 20, 2021 on March 22, 2022.
10. From the contents of an affidavit of service sworn by a Court Process Server one Jackson Nyongesa Simiyu on April 15, 2021, the confirmation summons was served upon one Benard Kipruto who was described as a beneficiary of the estate of the Late Charles Cherutich Yego. It, therefore, means that by that time Charles Cherutich Yego had also passed on.
11. The Summons for Confirmation of the Grant was heard on May 20, 2021. Those present were the Applicant herein, Benard Kipruto, Pauline Toroitich, Maria Kimoi, Mary Korir and Veronica Kimaiyo.
12. There being no objection, the Grant was confirmed and the estate property which was Cherengany/Koitugum/254 measuring 4.8 Hectares (hereinafter referred to as 'the estate property') wholly devolved to the Applicant herein.
13. A Certificate of Confirmation of the Grant was then issued. It was dated May 20, 2021.
14. According to the Certificate of Confirmation of the Grant dated May 20, 2021, the Applicant appears as the sole administrator of the estate. The record, however, does not indicate when Charles Cherutich Yego was removed as a Joint-Administrator of the estate.
15. It is also not clear whether the said Benard Kipruto or any of those who attended the confirmation proceedings was/were administrator(s) of the estate of Charles Cherutich Yego.
16. From the reading of the joint Replying Affidavit of the Respondents herein, the Respondents purchased portions of the estate property from Charles Cherutich Yego. By then, the estate property was duly registered in his name. The Respondents alleged that they were innocent purchasers without any notice of any sort of irregularities.
17. The deceased herein, Kimoi Kiptum, died on February 6, 2002. By then, the estate property was duly registered in the name of the deceased. It was, however, transferred to Charles Cherutich Yego on January 15, 2010. Subsequent to the sale to the purchasers, the estate property was sub-divided into



- two and resulted to Cherengany/Koitugum/824 and Cherengany/Koitugum/825. That was still in 2010.
18. Therefore, by the time the Grant was confirmed on May 20, 2021, the estate property which ‘devolved’ to the Applicant was non-existent.
 19. The Certificate of Confirmation, hence, suffers two major errors. One, it neither included Charles Cherutich Yego as a Joint Administrator nor was his name properly so removed from the administration of the estate on account of death. Two, the estate property, Cherengany/Koitugum/254, was not available to be devolved to the Applicant at the time the grant was confirmed. The two errors are yet to be resolved.
 20. It is, however, also not rosy for the Respondents either. Even though they alleged to have purchased the estate property from Charles Cherutich Yego, there is evidence that by the time the said Charles Cherutich Yego transferred the estate property to himself in 2010, the said property then formed part of the estate of the deceased herein, Kimoi Kiptum.
 21. Even though it can be argued that Charles Cherutich Yego, being a brother to the Applicant, was also entitled to the estate property, it is well settled in law that any dealings in the estate property ought to have been within the legal confines, a position which is not so in this matter. As such, the ‘title’ passed to the Respondents remain highly questionable and hangs on an extremely thin thread.
 22. Be that as it may, it is on record that the Respondents took possession since 2010 and have settled and carried out developments on the land.
 23. Given that the two sides are both in error, and in view of the instant application, this Court ought to strike a balance and accord the parties the best way forward towards the resolution of the main dispute in this matter.
 24. There is, hence, the need to ascertain whether the Applicant herein and the said Charles Cherutich Yego had any interests in the estate property. If so, some of the questions which would naturally arise would be whether the interests were taken care of, whether the estate of Charles Cherutich Yego had any liabilities, among others.
 25. The answers to the above questions would aid in determining whether the Respondents may be treated as liabilities to the estate of the said Charles Cherutich Yego. In the event it turns out that the Charles Cherutich Yego did not have any interest in the estate property, or their interests are opposed by the beneficiaries to the estate of Charles Cherutich Yego, then the Respondents would have to separately pursue the estate of the late Charles Cherutich Yego.
 26. To unravel the answers to the above questions and with a view to remedy the errors cited hereinbefore, the confirmation proceedings ought to be revisited. Likewise, the properties in issue must revert to the name of the deceased herein. Such would create a level field for the parties to engage towards the ultimate resolution of the dispute herein.
 27. As a consequence of the above, the Amended Chamber Summons dated December 22, 2022 is hereby resolved in the following manner: -
 - a. The Certificate of Confirmation of the Grant dated May 20, 2021 is hereby revoked and the confirmation proceedings shall be heard afresh.
 - b. The sub-divisions made in respect of the parcel of land known Cherengany/Koitugum/254 that resulted into Cherengany/Koitugum/824 and Cherangany/Koitugum/825 and the subsequent entries made into the register are hereby cancelled. The ownership of the land in



issue shall revert to Cherengany/Koitugum/254 in the name of Kimon Kiptum, the deceased in this cause.

- c. The Summons for Confirmation of the Grant dated March 20, 2021 shall be served upon the parties herein including the estate of Charles Cherutich Yego.
- d. This matter shall be fixed for directions on a date to issue.
- e. Pending further orders of this court, the current status quo in respect to occupation of the estate land shall be preserved. For certainty, parties shall remain occupying the portions of the estate land they occupy as at this date.
- f. Given that the matter involves a family, there shall be no order as to costs.

28. Those are the orders of this court.

DELIVERED, DATED AND SIGNED AT KITALE THIS 12TH DAY OF OCTOBER, 2023.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Dr. Chebii, Learned Counsel for the Petitioner/Applicant.

No appearance for Mr. Kiboi, Learned Counsel for the Respondents.

Regina/Chemutai – Court Assistants.

