



REPUBLIC OF KENYA



**In re Estate of Kimeto Arap Kili Sirtui (Deceased) (Probate & Administration
70 of 2021) [2024] KEHC 14383 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14383 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 70 OF 2021
JR KARANJA, J
NOVEMBER 20, 2024**

RULING

1. The summons dated 29th April 2024 was taken out by Samoei Metto [Applicant] seeking orders that the applicant together with Kimisik Metto, Rose Cherotich Sirtuy and Viola Sirtuy be made administrator's of the Estate of the late Kimeto Arap Kili [deceased] following the death of the late sole administrator, Thomas Kebenei.
2. The application is made under Rule 49 and Rule 73 of the Probate & Administration Rules as well as Section 47 of the *Law of Succession Act* and is based on the grounds that: -
 1. Grant of letters of administration was issued to Thomas Kebenei on 3rd August 2009.
 2. The said administrator died before the grant of letters of administration was confirmed.
 3. The substitution is necessary to facilitate the confirmation of the grant of letters of administration.
 4. It is in the interest of justice that the application be allowed.
3. The grounds are fortified by the averments contained in the supporting affidavit dated 29th April 2024, but opposed by Mary Chepkoech [Respondent] vide the replying affidavit dated 10th June 2024 and further replying affidavit dated 10th June 2024 and further affidavit dated 8th November 2024 and an additional further affidavit by Pascal Sirtuy, dated 8th November 2024.
4. The application was heard by way of written submissions. Both sides filed their respective submissions through Limo R.K. & Company Advocates, for the Applicant and Kalya & Company Advocates for the Respondent.

Under Section 47 of the Succession Act, the High Court is clothed with necessary jurisdiction to entertain any application and determine any disputes under the Act and to pronounce such decrees and make orders as may be expedient.



5. Rule 49 of the Probate & Administration Rules covers for any application relating to the estate of a deceased person, but not specifically provided for under the Rules. The present application is one such application which could also be brought under Rule 73 which confers to the court inherent powers to make any orders as may be necessary for the ends of justice or prevent the abuse of the court process.
6. This court, having considered the application on the basis of the supporting grounds and those in opposition thereto in the light of the rival submissions formed the opinion that the bone of contention is whether the Applicant and the other three proposed administrators ought to be appointed joint administrators of the Estate of the deceased in place of the late sole administrator.
7. The answer to the question would best be answered by re-tracing the history of this succession cause from the lenses of the court record which shows that the process of applying for and obtaining letters of administration respecting the estate of the deceased, Kimeto Arap Kili, was commenced on 3rd April 2009, when the late Thomas Kebenei filed the necessary petition dated 2nd April 2009, a few months after the death of the deceased on 17th October 2008.
8. The Petitioner was listed as the third eldest son of the deceased after the Applicant Samoei Metto and Kimisik Metto among other survivors of the deceased.

The property listed as being available for distribution to the survivors/ dependants/ beneficiaries included two parcels of land viz: - Land Parcel No. Nandi/Mutwot/203 and Nandi/Mutwot/216.
9. The certificate of official search dated 9th April 2009 and filed herein on 24th April 2009 indicated that both parcels of land were registered in the name of the deceased in the month of December 1960. The position remained the same as at the time the application for letters of administration was made and as at the time the necessary grant of letters of administration intestate was issued by the court on 3rd August 2009.
10. The late Thomas Kebenei was thus the duly appointed administrator of the Estate of the deceased from the date of issue of the grant.

However, on the 16th February 2010, a summons for revocation of grant dated 11th February 2010 was filed by Kiplagat Stephen Kittur, Pascally Sirtuy, Mary Kili, James Kiptoo Metto and Rose Cherotich on the basis that the grant was obtained fraudulently by making of false statements or concealment of material facts on the part of the late Petitioner.
11. It was contended that there was in existence a valid will made by the deceased and that a grant of probate had already been made in favour of Kiplagat Stephen Kitur on 19th October 2009.

It is however, instructive to note that the subject grant of letters of administration intestate was made on 3rd August 2009, prior to the grant of probate.
12. Be that as it may, the record shows that prior to the hearing and determination of the application for revocation of the grant other applications for preservation of the estate property were made in the years 2012 and 2013. Whereas the first application was dismissed by the court on 5th November 2012, the fate of the second application is unknown.
13. However, the trajectory of this cause changed on 17th November 2014 when the court approved a consent order to the effect that: -

“By consent of the parties, this Succession Cause No. 84 of 2009 is hereby stayed pending determination of application dated 21st January 2010 in Succession Cause No. 95 of 2009.”



14. Pursuant to the foregoing order this matter remained pending for hearing of any application, the most important being the application for revocation of grant dated 11th February 2010. Several mention dates were fixed for directions or further directions on the cause. The matter was thus mentioned before this court for the first time on 19th October 2023 when it was rescheduled to 21st November 2023 and then the 13th February 2024.

15. It would be interesting to note that this very court first interacted with this matter on 28th November 2011, about thirteen [13] years ago, a reflection of how the matter has been in the corridors of justice for an inordinate long period of time. On 13th February 2024, when the matter was mentioned before this court in the presence of the Learned Counsel, Mr. Tallam holding brief for Mr. Kibii for the Applicant it was indicated that the parties had filed a partial agreement which they intended to have it adopted as an order of the court.

16. The court noted that the partial agreement was as a result of a mediation process, yet there was a pending application dated 21st December 2023 for substitution of the deceased administrator. The matter was therefore rescheduled to 16th April 2024 for further mention when learned Counsel, Mr. P.K. Kibii, appeared for the Applicant and alluded to the partial agreement reached in a mediation process by the five [5] houses of the deceased.

The court therefore fixed the application dated 21st October 2023 for substitution of the deceased administrator for hearing on 13th May 2024.

17. But, on the 13th May 2024, Mr. Kibii, indicated that they had filed a notice of withdrawal of the application dated 21st December 2023 and that they had filed a fresh application dated 29th April 2024. The application dated 21st December 2023 was therefore withdrawn in favour of the fresh application for substitution dated 29th April 2024.

The present application is the said fresh application, the subject matter of this ruling.

18. It is notable from all the foregoing that as at the time this matter was firstly mentioned before this court on 19th October 2023, the Eldoret Succession Cause No. 95 of 2009 [now Kapsabet Succession Cause No. 1 of 2021] had already been concluded by a judgment delivered therein on 10th February 2023 thereby paving way for this succession cause to progress to conclusion on the merits or otherwise.

19. As noted hereinabove, the application for revocation of the grant dated 11th February 2009 is pending hearing and determination unless it is otherwise withdrawn by the Applicants or struck out by the court of its own motion.

Given that the grant sought to be revoked was issued to the late Thomas Kebenei who passed away before the application could be heard and concluded and before the grant was confirmed, it may be taken that the application has since been overtaken by events.

20. In that regard and pursuant to the provisions of Rule 73 of the Probate & Administration Rules, the summons of revocation of grant dated 11th February 2009 is hereby struck out and dismissed. Further, due to the fact that the grant has since the death of the sole administrator become useless and inoperative it is hereby revoked in accordance with Section 76 [e] of the *Law of Succession Act*.

In the circumstances, the present application dated 29th April 2024 is incapable of being allowed in favour of the Applicant or Applicants and is hereby dismissed for being overtaken by the event of the revocation of the subject grant dated 3rd August 2009.



21. Pursuant to the provisions of Section 66 of the *Law of Succession Act* and in the best interests of all the beneficiaries of the estate of the deceased and/or any other party who may be concerned with the estate, a fresh grant shall forthwith issue to the Public Trustee to administer and distribute the estate property in accordance with the Law in the shortest period possible.

Orders accordingly.

DELIVERED AND DATED THIS 20TH DAY OF NOVEMBER 2024

**J. R. KARANJAH,
JUDGE**

