



REPUBLIC OF KENYA



**In re Estate of Simeon Kiprono Kurgat (Deceased) (Probate & Administration
73 of 2021) [2024] KEHC 14382 (KLR) (19 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14382 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 73 OF 2021
JR KARANJA, J
NOVEMBER 19, 2024**

IN THE MATTER OF THE ESTATE OF SIMEON KIPRONO KURGAT:DECEASED

RULING

1. A petition for Letters of Administration Intestate respecting the Estate of the late Simeon Kiprono Kurgat [deceased] was filed here on the 17th December 2020 by Timon Kiplagat Rono (Petitioner) in his capacity as the only son of the deceased and on behalf of the deceased's other survivors including his widow Rael Jepkurgat Kurgat and eight [8] daughters.

The assets listed as belonging to the deceased were parcels of land described as LR No. Nandi/Ndalat Sett/122, 124, 125 and LR No. Nandi/Sigot/29.

The petition was contemporaneously filed with the summons dated 10th December 2020 seeking stay of any dealings with the parcels of Land No. Nandi/Ndalat Sett/124 and 891 to 898 as well as No. Nandi/ Sigot/29.

The summons was taken out against the Petitioner/ Applicant's female siblings, but was followed on the 20th April 2021 with the Respondents notice of preliminary objection dated 15th April 2021.

2. In the meantime on 13th January 2021, interim orders were granted by the court in terms of prayer [2] of the summons to the effect that there be stay of any dealing with respect to the suit parcels of Land No. Nandi/Ndalat Sett/124, Nandi/Ndalat Sett/891 – 898 and Nandi/ Sigot/29 pending hearing and determination of the summons.

Both the summons and the preliminary objection were heard by this court which rendered its ruling on 21st March 2024, dismissing the Preliminary Objection and partly allowing the summons to the extent of retaining the interim orders granted on the 13th January 2021 in the following terms: -

3. ".....it is hereby ordered that the stay order granted by the court on 13th January 2021 prohibiting any dealing with the specified parcel of land subject of the petition for grant of representation be retained and extended up to the time the succession cause shall be concluded with the issuance by the court of a certificate of confirmation of



grant to the satisfaction of all the beneficiaries or in any other lawful manner including alternative dispute resolution mechanisms such as mediation.”

4. However, after a period of about six[6] months on the 7th October 2024 the present application dated 3rd October 2024 was filed in court virtually and fixed for inter-parties hearing on 16th October 2024 on which date the hearing was moved forward to 12th November 2024 to allow the parties to engage on emerging issues.

On 12th November 2024, the application was heard by way of written submissions and brief oral submissions by the Respondent through the Learned Counsel, Mr. Kenei.

The Applicants through Learned Counsel, Ms. Tum relied fully on their written submissions, but in reply to the Respondent’s oral submissions they submitted that they did not intend to have the impugned orders set aside or reviewed in substances but only in the wordings.

5. Be that as it may, the application is brought under Section 47 and 74 of the *Law of Succession Act*, Rules 43, 63 and 73 of the Probate and Administration Rules and Order 45 of the Civil Procedure Rules seeking orders that: -

- (1) the orders made by the court on 13th January 2021 and extended by the ruling made on 21st March 2024 be reviewed and varied to provide that there should be no selling, charging or transfer of land parcels No. Nandi/Ndalat Settlement/ 124, 122, 891 – 898 and Nandi/Sigot/29 pending the conclusion of the Succession Matter.
- (2) The OCS and Officers from Kipkaren Salient Police Station and/ or any other station/ police post be prohibited from interfering with the Estate unless with the orders/ directions from the Court.

The grounds for the application are specified in the summons dated 3rd December 2024 and supported by the averments and annexures contained in the Applicant’s supporting affidavit deponed on the 3rd October 2024.

6. The Respondent/ Petitioner opposed the application on the basis of the averments contained in the replying affidavit dated and filed herein on 15th October 2024, in which he contends that the Applicants have made wild allegations against him meant to create a negative perception of him and that the impugned orders were made with the objective of protecting and preserving the estate and if they were removed, then the estate would be exposed to wastage and pilferage.
7. After due consideration of the application on the basis of the supporting grounds and the rival submissions it was clear to this court that what emerged as the basic issue for determination, in particular to prayer [2] of the application was whether the Applicants have satisfied by way of necessary facts and evidence the key elements or requirements of Order 45 of the Civil Procedure Rules so as this court may exercise discretion in their favour.
8. The said provision is among the provisions of the Civil Procedure Rules which are imported to the *Law of Succession Act* by virtue of Rule 63 of the Probate & Administration Rules.

It provides for review of the decree and/or orders made by courts in the following terms.

“[1] Any person considering himself aggrieved -

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred: or
- (b) by a decree or order from which no appeal is hereby allowed.



And who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

9. In this case, the impugned ruling was made on 13th January 2021 and extended on 21st March 2024. The present application comes three [3] years or so after the issuance of the order and six [6] months or so after the extension of the order. This was a clear demonstration that the application was not brought without unreasonably delay thereby implying that it is an afterthought or an abuse of the court process and indeed runs contrary to the procedural requirements of Order 45 of the Civil Procedure Rules.

10. The foregoing notwithstanding, it was incumbent upon the Applicants to establish any of the elements or substantive requirements provided under Order 45 Rule 1 of the Civil Procedure Rules necessary for grant of an order of review.

On the outset, the Applicants do not allege that they have discovered new and important matter or evidence which was not within their knowledge when the impugned order was made. Nor, do they allege that there is a mistake or error apparent on the face of the record. Instead, the Applicants indicate and have herein confirmed that they do not have any substantive issue with the impugned order save its wording i.e. the manner in which it is worded and/ or framed by the court.

11. The Applicants therefore implied that the manner in which the impugned order is worded or framed makes it uncertain and/or ambiguous in terms of implementation and/or compliance. This is what the Applicant consider to be any other sufficient reason for which a review order may issue.

12. In their submissions, the Applicants argue that the wording “stay of any dealings with respect to the suit parcel of land” is unclear as it could be or capable of being interpreted to mean various or distinct actions.

In this court’s opinion a stay of any dealings with respect to the property of a deceased person would mean prohibition of any activity and/or action which would alter and/or interfere with the deceased’s ownership of the estate property prior to grant of Letters of Administration and confirmation thereof.

In this case, grant of letters of administration or probate is yet to issue.

The petition for letters of administration Intestate dated 10th December 2020 and filed herein on 17th December 2020 by the Respondent/ Petitioner remains pending.

13. Therefore, the ownership of the entire estate property remains with the deceased thereby implying the “status quo” respecting the property remains the same and ought not be dealt or interfered with in any manner pending the issuance and confirmation of a grant of letters of administration. The stay order made by the court means just that. Neither the Applicants nor the Respondent should deal with the estate suit property in any manner whatsoever which is detrimental to the lawful ownership of the property by the deceased father of both the Applicants and the Respondent who are all beneficiaries of the Estate, until the issuance of grant of letters of administration and a certificate of confirmation of grant unless this succession cause is withdrawn by the Respondent/Petitioner or the stay order is invalidated and/ or set aside by the court.

14. No valid grounds have been proffered by the Applicants for exercise of this court’s discretion in their favour by way of a review order. Both the Applicant and the Respondent are hereby cautioned that; any breach of the stay order would attract penal sanctions against the offending party. And, for the



avoidance of doubt, the stay order does not extend to the occupation and/ or usage of the estate parcels of land by the beneficiaries for purposes of cultivation. Further, the occupation and usage should remain as it were prior to the death of the deceased.

15. In sum, prayer [2] of the application is unmerited and prayer [3] is misconceived and untenable against persons who are not parties to this cause and have no role to play in the usage, occupation or even administration of the estate by the beneficiaries unless lawfully ordered by the court or acting in exercise of their lawful duty of enforcing the law and/ or maintaining law and order. Otherwise, succession matters are a no go zone for the police.

The Respondent is hereby directed to expedite his pending petition for grant of letters of administration and in any event within the next four [4] months from this date hereof failure to which the Applicants may file a fresh petition or be at liberty to apply.

16. Ultimately, it is hereby ordered that: -

- (1) The application vide the summons dated 3rd October 2024 is hereby dismissed in its entirety.
- (2) There will be no orders as to costs.

DELIVERED AND DATED THIS 19TH DAY OF NOVEMBER 2024

**J. R. KARANJAH,
JUDGE**

