



**In re Estate of Daniel Kipkemoi Rotich alias Kipkemoi A. Rotich (Deceased)
(Succession Cause 89 of 2014) [2024] KEHC 15384 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15384 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 89 OF 2014**

JK SERGON, J

DECEMBER 5, 2024

**IN THE MATTER OF THE ESTATE OF DANIEL KIPKEMOI
ROTICH ALIAS KIPKEMOI A. ROTICH (DECEASED)**

BETWEEN

SIMEON CHERUIYOT LANGAT APPLICANT

AND

LEAH CHEPKORIR KIMETTO & OTHERS RESPONDENT

RULING

1. There are two applications coming up for determination: a chamber summons dated 2nd June, 2023 and chamber summons 26th October, 2023.
2. In the chamber summons dated 26th October, 2023, the applicant is seeking the following orders;
 - (i) Spent
 - (ii) That the administrators of the estate of Daniel Kipkemoi Rotich alias Kipkemoi A. Rotich (deceased) be compelled to transfer six (6) acres of land to be excised from title number Kericho/Kipkelion/Barsielle/Block 6 (Chemamul)/3 to the Applicant pursuant to the confirmed grant and court ruling issued on 25th September, 2019.
 - (iii) That the administrators herein be compelled to pay costs to the applicant.
 - (iv) Any other order which this court may deem just and fit to grant.
3. The application is supported by the grounds on the face of it and the supporting affidavit of Simeon Cheruiyot Langat the Applicant herein.
4. He avers that vide a sale agreement dated 15th June, 2015 he purchased six (6) acres of land from Leah Chepkoros Kimeto a joint administrator of the estate of the deceased and a widow to the deceased for



- the sum of Kshs. 2,500,000/= and attached a copy of the sale agreement and that the proceeds of the transaction were used to pay the liabilities of the estate.
5. He avers that at the time of the transaction the family of the deceased had filed succession proceedings at the High Court vide Succession Cause No. 89 of 2014 which proceedings were finally confirmed vide a certificate of confirmation dated 25th September, 2019 and that on the said certificate it was expressly stated that the parcels of land which had been sold by the window be transferred by the administrators of the estate to the respective buyers.
 6. He avers that some of the children being dissatisfied by the court's direction filed objection proceedings which were heard and determined by the court and consequently a ruling was issued on 25th September, 2019 directing that the parcels of land sold to third parties to repay the loan due from the estate of the deceased namely; Kericho/Kipkelion/Barsielle/Block 6 (Chemamul)/3, Kericho/Kipkelion/Barsielle/Block 6 (Chemamul)/7, Kericho/Barsielle/Block 6 (Chemamul)/28 should be transferred to the respective purchasers.
 7. He avers that it has been four (4) years since the certificate of confirmation of grant was issued and that he has not managed to gain possession of the parcel of land or transfer done in his favour.
 8. He avers that he believes that his only option is to seek orders of transmission from this court as the administrators have refused, neglected and /or ignored to transfer the parcel of land as directed by this Court and that the said administrators should be compelled to pay him mesne profits for loss of user from the date of agreement till the date the transfer is effected.
 9. This application came up for inter partes hearing and Mr. R.K. Langat for the Applicant stated that he would rely on the facts deponed in supporting affidavit and the annexures. He reiterated that the ruling of Mumbi J. (as she then was) stated that the applicants' claim should be dealt with by the estate of the deceased. He contended that upon serving the application, the firm on record for the 1st Petitioner/ Respondent filed a replying affidavit and that the same was not dated. This court having perused the file finds that the said affidavit is not in the court file.
 10. In the chamber summons dated 2nd June, 2023 there are several applicants therein seeking the following orders;
 - (i) Spent.
 - (ii) That this Honourable Court be pleased to grant leave to the intended interested parties to be enjoined in the cause.
 - (iii) That this Honourable Court be pleased to admit the intended interested parties and enjoin them in the cause.
 - (iv) Any order that this Honourable Court may deem fit and just to issue.
 11. The application is supported by grounds on the face of it and the supporting affidavit of Beatrice Chepngeno Too, on behalf of all the proposed interested parties.
 12. She avers that all the intended interested parties purchased parcels of land from the estate of the deceased from various beneficiaries to the estate of the deceased, the applicants annexed sale agreements to the application.
 13. She avers that all the proposed interested parties have an interest in the estate of the deceased, acquired by way of sale and purchase between the beneficiaries of the estate and themselves and it is therefore prudent and in the interests of justice to have them enjoined in the instant succession cause.



14. Joel Kipsang Bett the 1st Petitioner/Respondent through his advocates of record filed a notice of preliminary objection dated 3rd July, 2023 in respect to the chamber summons dated 2nd June, 2023 on the following grounds;
 - (i) This Honourable Court is functus officio and therefore not seized with the jurisdiction to entertain the said application as the grant was confirmed on 2nd February, 2023.
 - (ii) That by clear implication of the pleadings, the purchases made by the applicants were done after the demise of the deceased and therefore the lacked locus standi to make the application which is an affront to section 45 of the Law of Succession Act and rule 60 of the *Probate and Administration Rules*.
15. The 1st Petitioner/Respondent filed submissions in support of the preliminary objection and reiterated that the court is functus officio having confirmed that certificate of grant and a party aggrieved with the process leading to the confirmation of grant should appeal or apply for review.
16. The 1st Petitioner/Respondent reiterated that the applicants lacked locus standi to make the application as purchases by the applicants were done after the demise of the deceased and therefore of no legal consequence. The applicants were not bona fide purchasers. They cited the court of appeal case of Samuel Kamere v Lands Registrar, Kajiado [2015] eKLR which defined a bona fide purchaser as follows; "...in order to be considered a bona fide purchaser for value, he must prove that he had acquired a valid and legal title, secondly, that he carried out the necessary due diligence to determine the lawful owner from whom he acquired a legitimate title, and thirdly that he paid valuable consideration for the purchase of the suit property..." The 1st Petitioner/Respondent reiterated that the actions by the purported purchasers were tantamount to intermeddling as provided in section 45 of the Law of Succession Act and cited In the Matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] eKLR where the court emphasized the import of section 45 of the Law of Succession Act "... the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation, and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence."
17. I have considered the applications, preliminary objection and submissions by the parties and I find that the issues for determination are whether the administrators of the estate can be compelled to transfer the subject parcel to the applicant and condemned to pay mesne profits for loss of user from the date of the sale agreement till the date of transfer and whether this court can enjoin the intended interested parties to the instant succession cause.
18. On the issue as to whether the administrators of the estate of the deceased can be compelled to transfer six (6) acres of land to be excised from title number Kericho/Kipkelion/Barsielle/Block 6 (Chemamul)/3 to the Applicant pursuant to the confirmed grant and court ruling issued on 25th September, 2019 and compelled to pay mesne profits for loss of user from the date of sale agreement till the date the transfer is effected. Having carefully studied the record, it is the finding of this court, that Mumbi J. (as she then was) issued a certificate of confirmation of grant dated 25th September, 2019 and that on the said certificate it was expressly stated that the parcels of land, including the subject parcel which had been sold by the window be transferred by the administrators of the estate to the respective buyers. The court having pronounced itself on this matter is hereby functus officio, however, the applicant being a third party with a beneficial interest in the estate, he is therefore entitled to ventilate his claim in the Environment and Land Court and seek appropriate reliefs. In Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR Musyoka J. discussed at length on how to deal with disputes that may arise during succession proceedings. The learned judge stated as follows: ".....The Law of



Succession Act, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.

Disputes of course do arise in the process. The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules. Such have to be resolved through the structures created by the Civil Procedure Act and Rules, which have elaborate rules on suits by and against executors and administrators.

The Probate and Administration Rules recognize that, and that should explain the provision in Rule 41(3), which provides as follows – ‘Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or property comprising it to abide the determination of the question in proceedings under ... the Civil Procedure Rules ...’

Clearly, disputes as between the estate and third parties need not be determined within the succession cause. The legal infrastructure in place provides for resolution elsewhere, and upon a determination being made by the civil court, the decree or order is then made available to the probate court for implementation. In the meantime, the property in question is removed from the distribution table. The presumption is that such disputes arise before the distribution of the estate, or the confirmation of the grant. Where they arise after confirmation, then they ought strictly to be determined outside of the probate suit, for the probate court would in most cases be functus officio so far as the property in question is concerned. The primary mandate of the probate court is distribution of the estate and once an order is made distributing the estate, the court’s work would be complete. The proposition therefore is that not every dispute over property of a dead person ought to be pushed to the probate court. The interventions by that court are limited to what I have stated above.”

19. On the issue as to whether this court can enjoin the interested parties to the instant succession cause, on one hand, the interested parties argued that they have a beneficial interest in the estate of the deceased, having purchased parcels of land from the estate of the deceased from various beneficiaries to the estate of the deceased. On the other hand, the respondent filed a preliminary objection in response to the said application arguing that the court is functus officio having confirmed that certificate of grant. It is the considered view of this court that having confirmed that certificate of grant in the instant succession proceedings, it is functus officio and therefore a party aggrieved with the process leading to the confirmation of grant should appeal or apply for review. *In re Estate of Juma Shitseswa Linani (Deceased)* [2021] eKLR the court observed as follows; “The ideal situation, where a person is unhappy with the process of confirmation of grant, for it would appear that that is what the applicant herein is aggrieved about, is not to move the court under section 76 for revocation of grant, for the reasons that



I have discussed in the foregoing paragraphs. What such a person should do instead, is to file an appeal against the orders made by the court on distribution. The court confirming a grant largely becomes functus officio so far as confirmation of the grant is concerned, and cannot revisit the matter unless upon review.” In view of the foregoing, it is the finding of this court that the notice of preliminary objection dated 3rd July, 2023 against the chamber summons dated 2nd June, 2023 is found to be meritorious. It is upheld.

20. Consequently, the chamber summons dated 26th October, 2023 and the other dated 2nd June, 2023 are hereby ordered dismissed for want of merit.
21. Each party to meet their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 5TH DAY OF DECEMBER, 2024.

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J.K. SERGON

JUDGE

In the presence of:-

C/Assistant – Langat

R. K. Lang’at for the Applicant

No Appearance for the Respondent

