



In re Estate of Isaac Kipkorir Arap Salat (Deceased) (Succession Cause 299 of 1992) [2024] KEHC 15267 (KLR) (Family) (5 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15267 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 299 OF 1992
HK CHEMITEI, J
DECEMBER 5, 2024
IN THE MATTER OF THE ESTATE OF ISAAC KIPKORIR ARAP SALAT (DECEASED**

BETWEEN

MARGARET MADGE CHEPKEMOI SALAT APPLICANT

AND

JOSEPHINE CHESANG CHEPKWONY SALAT RESPONDENT

RULING

1. This ruling relates to the application dated 14TH September, 2022 filed by Margaret Madge Chepkemoi Salat seeking for Orders that:-
 - (a) Spent.
 - (b) The land registrar does process the transmission of title in respect of LR No. 631/1036 Kericho Town Commercial Plot on behalf of the Respondent.
 - (c) The land registrar does process the transmission of title in respect of LR No. 631/1036 Kericho Town Commercial Plot without the surrender of the original title deed which is in the custody of the Respondent.
 - (d) Costs for this application be in the cause.
2. The application was opposed by the Respondent vide a preliminary objection dated 14th November 2022.



3. A ruling on this application was delivered by Judge Odero on 3rd July, 2023 to wit:
- “ 20. The record in this matter clearly reveals that the High Court heard this matter and rendered a decision on 4th February, 2011. In that judgment the court detailed how the estate of the Deceased was to be distributed.
21. Following the judgment of the High Court the matter went on appeal to the Court of Appeal vide Civil Appeal No. 211 of 2012. The Court of Appeal in its judgment dated 12th June, 2015 set aside the judgment and orders of the High Court and directed that the property a commercial plot in Kericho Town known as LR No. 631/1036 should be registered in the names of Elizabeth Salat and Josephine Chesang Chepkwony Salat (the Respondents herein) as tenants in common equal shares each on behalf of their respective houses.
22. The Applicant has now come back to the High Court with the Notice of Motion dated 14th September, 2022 seeking to have the Hon. Deputy Registrar sign the documents to facilitate the transfer of the subject plot. In other words, the Applicant seeks by her application to enforce the judgment of the Court of Appeal.
23. The Respondent submits that the High Court is *functus officio* having rendered itself regarding the mode of distribution of the estate. However, what is being sought in the application of 14th September, 2022 is the ‘enforcement’ of the orders made by the Court of Appeal. The application is not seeking any orders on distribution of property which would negate or contradict the orders made by the Court of Appeal. This is an application which can properly be heard and determined by the High Court. The issue of ‘*functus officio*’ does not arise.
24. In conclusion I find no merit in the Notice of Preliminary Objection. The same is dismissed in its entirety. Costs to be met by the Respondent.”
4. The Applicant’s advocate on record, thereafter, wrote a letter dated 25th July, 2024 to this court’s Deputy Registrar requesting for a mention date to seek for clarification on the ruling delivered on 3rd July, 2023 in respect to the application dated 14th September, 2022.
5. In view of the above decision by my sister dismissing the preliminary objection I find that there is nothing left but to allow the application. It appears from the history of this matter that what is pending is execution of the grant. That should be undertaken without any let or hinderance from any of the parties and more importantly the administrators of the estate.
6. Consequently, and in line with rule 73 of the *Probate and Administration rules* I direct that:-
- (a) The Respondent Josephine Chesang Chepkwony Salat within 14 days from the date herein should execute the transmission instruments including mutation forms in respect to land parcel Number 631/1036 Kericho Town commercial plot and in default the Deputy Registrar of this court shall proceed to execute the same without further reference to her.
- (b) Within 14 days from the date herein the Respondent Josephine Chesang Chepkwony Salat shall surrender the original title deed to the Applicant and or the Deputy Registrar of this court for purposes of the above transfer and in default contempt proceedings may be taken out against her.



(c) Costs shall be in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 5TH DAY OF
DECEMBER 2024.**

H K CHEMITEI

JUDGE

