



REPUBLIC OF KENYA



In re Estate of Taplelei w/o Koromicha (Deceased) (Succession Cause 203 of 2015) [2024] KEHC 16283 (KLR) (3 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16283 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 203 OF 2015**

RL KORIR, J

DECEMBER 3, 2024

IN THE MATTER OF THE ESTATE OF TAPLELEI W/O KOROMICHA (DECEASED)

BETWEEN

JONAH KIPKOECH CHEPKWONY 1ST PETITIONER

ALICE CHERONO 2ND PETITIONER

AND

STEPHEN KIPNGETICH TONUI 1ST OBJECTOR

EDWIN KIPNGETICH TONUI 2ND OBJECTOR

AND

ELIZABETH TAPLETGOI APPLICANT

SAMMARY CHEPNGENO KOROMICHA APPLICANT

RULING

1. Sammary Chepngeno Koromicha (2nd Applicant) filed a Chamber Summons Application dated 17th February 2021 where she sought the following orders:-
 - i. Spent.
 - ii. That an order do issue that the status quo prevailing at the filing of this cause is reverted to and maintained pending the hearing and determination of this cause.
 - iii. That the costs of this Application be provided for.
2. The Application was brought under Rules 49 and 73 of the Probate and Administration Rules. The Application was based on the grounds on the face of the Application and further by the annexed Supporting Affidavit of Sammary Chepngeno Koromicha sworn on 17th February 2021.



The 2nd Applicant's case

3. The 2nd Applicant stated that Taplelei w/o Koromicha (deceased) was her step-mother and that the Petitioners were strangers to her. That Taplelei w/o Koromicha was not blessed with any child. The 2nd Applicant further stated that before Taplelei w/o Koromicha passed on, she transferred her shares in Kericho/Kapkimolwa/606 and Kericho/Kapkimolwa/589 to her mother, Elizabeth Tapletgoi (1st Applicant) on 14th September 2016 and 18th December 2016 respectively.
4. It was the 2nd Applicant's case that the Petitioners, Jonah Kipkoech Chepkwony and Alice Cheronno were given a Grant in their joint names on 29th March 2016 and the same was confirmed on 21st June 2016. That on 26th January 2021, the Petitioners issued a demand notice to her mother, the 1st Applicant, Elizabeth Tapletgoi demanding that she remove her belongings from Kericho/Kapkimolwa/606 and Kericho/Kapkimolwa/589. It was her further case that they had established their homes, other developments and planted trees and crops of the said parcels of land. That the Petitioners also destroyed the fences on both parcels and threatened them with violence.
5. The 2nd Applicant stated that her mother (1st Applicant) was the owner of Kericho/Kapkimolwa/606 and Kericho/Kapkimolwa/589 and was entitled to enjoy them.
6. It was the 2nd Applicant's case that the Petitioners wanted to dispossess them off Kericho/Kapkimolwa/606 and Kericho/Kapkimolwa/589. That they (Applicants) have lived there for the duration of their lifetime.

The Response

7. The 1st Petitioner, Jonah Kipkoech Chepkwony responded to the Application through a Replying Affidavit dated 27th June 2024. He stated that he was the son of the 2nd Petitioner Alice Cheronno who was the wife to Taplelei w/o Koromicha (deceased) in a woman to woman marriage and that the 1st Applicant, Elizabeth Tapletgoi was the co-wife to Taplelei w/o Koromicha (deceased).
8. It was the 1st Petitioner's case that Kericho/Kapkimolwa/606 and Kericho/Kapkimolwa/589 were registered in the joint names of his mother Taplelei w/o Koromicha (deceased) and Tapletgoi w/o Koromicha and they held equal shares of 11.25 acres each in Kericho/Kapkimolwa/589 and 3.25 acres each in Kericho/Kapkimolwa/606.
9. The 1st Petitioner stated that when Taplelei w/o Koromicha died, he filed this Succession Cause together with his mother (Alice Cheronno) claiming half of the deceased's share. That he was issued a Grant on 21st June 2016 and the Objectors (Stephen Kipngetch Tonui (deceased) and Edwin Kipngetch Tonui (deceased) who were children of Elizabeth Tapletgoi filed an Objection to the said Grant. The 1st Petitioner further stated that the Objection was determined by a Judgment dated 4th August 2020.
10. It was the 1st Petitioner's case that they only claimed half of the shares in Kericho/Kapkimolwa/606 and Kericho/Kapkimolwa/589 which belonged Taplelei w/o Koromicha (deceased). That they had begun the transmission process and the 1st Applicant's share had not been interfered with as she was still the registered proprietor.
11. The 1st Petitioner stated that ever since the 2nd Applicant filed her Application, she has failed to prosecute it despite several summons to attend court. That this was an attempt to delay the conclusion of the succession cause which began in the year 2015. He further stated that the Application remained unprosecuted for a period of three years.



12. It was the 1st Petitioner’s case that they were only utilizing the share of parcels that were allocated to them after the Grant was confirmed. It was his further case that the issues raised by the 2nd Applicant were dealt with in the Judgement dated 4th August 2020. It was his further case that the Application ought to be dismissed.
13. The Petitioners through their counsel Ms, Chirchir submitted orally in court. Counsel submitted that the matter had previously been referred to Court Annexed Mediation but the Applicants refused to attend. Further that the Applicants had no intention to prosecute their Application as they had been summoned severally to attend court to no avail.
14. It was counsel’s submission that a Judgement in this matter had been delivered on 4th August 2020 and no appeal had been filed against it. That the Petitioners should be allowed to proceed with transmission.

Analysis and determination

15. The history of these proceedings were aptly captured in the Judgment dated 4th August 2020 by Ongeri J. The objectors (now deceased) had sought to revoke a Grant issued to the Petitioners. In the Judgment, this court (Ongeri J.) found no merit in the objector’s Application for revocation and dismissed it.
16. In the present Application, the 2nd Applicant contended that the suit parcels Kericho/Kapkimolwa/606 and Kericho/Kapkimolwa/589 wholly belonged to her mother, Tapletgoi w/o Koromicha (1st Applicant) as her co-wife Taplelei w/o Koromicha (deceased) had transferred her shares to her before she (Taplelei) died. She attached a copy of a Title Deed for Kericho/Kapkimolwa/606 as “SCK 1”. It indicated that the 1st Applicant became the registered owner of the said parcel on 14th September 2015.
17. I have looked at the Death Certificate of Taplelei w/o Koromicha and it indicated that she died on 21st November 1995. This meant that Taplelei w/o Koromicha could not have transferred Kericho/Kapkimolwa/606 to her co-wife Tapletgoi w/o Koromicha (1st Applicant) as alleged by the 2nd Applicant because Taplelei was already dead.
18. I have also noted that these succession proceedings commenced on 10th November 2015, which meant that the transfer of Kericho/Kapkimolwa/606 was done before the commencement of the succession proceedings. Section 51(1) of the *Law of Succession Act* provides:-

No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until the grant has been confirmed as provided by section 71.
19. I agree with Musyoka J. in Veronica Njoki Wakagoto (Deceased) (2013)eKLR where he held:-

“The effect of this is that 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.”
20. The transfer of Kericho/Kapkimolwa/606 to the 1st Applicant’s name amounted to intermeddling which made the transfer illegal ab initio. This therefore meant that Kericho/Kapkimolwa/606 was legally the free property of the deceased, co-wife to Tapletgoi w/o Koromicha, which was available for distribution.



21. In any event, this court in its Judgment dated 4th August 2020 found that Kericho/Kapkimolwa/606 and Kericho/Kapkimolwa/589 were owned jointly by Taplelei w/o Koromicha (deceased) and Tapletgoi w/o Koromicha (1st Applicant). This Judgment was still in force as it had not been appealed against or reviewed.
22. Further, should any issue arise in the ownership of Kericho/Kapkimolwa/606, the proper forum to determine such a dispute would be the Environment and Land Court.
23. The 2nd Applicant contended that the Petitioners were strangers to her and that Taplelei w/o Koromicha did not have any children. The 1st Petitioner (Jonah Kipkoech Chepkwony) stated that he was the son of the 2nd Petitioner (Alice Cheronon) who was Taplelei's (deceased) wife.
24. This court is allowed to use prior evidence as evidence in the instant Application. Section 34 of the Evidence Act provided:-
 - (1) Evidence given by a witness in a judicial proceeding is admissible in a subsequent judicial proceeding or at a later stage in the same proceeding, for the purpose of proving the facts which it states, in the following circumstances—
 - (a) where the witness is dead, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or where his presence cannot be obtained without an amount of delay or expense which in the circumstances of the case the court considers unreasonable; and where, in the case of a subsequent proceeding—
 - (b) the proceeding is between the same parties or their representatives in interest; and
 - (c) the adverse party in the first proceeding had the right and opportunity to cross-examine; and
 - (d) the questions in issue were substantially the same in the first as in the second proceeding.
 - (2) For the purposes of this section—
 - (a) the expression "judicial proceeding" shall be deemed to include any proceeding in which evidence is taken by a person authorized by law to take that evidence on oath; and..... (Emphasis mine)
25. The Court of Appeal in *Abdi Adan Mohamed vs Republic* (2017) eKLR held:-

“.....To resort to previously recorded evidence under Section 34, the proceeding must be between the same parties as the previous proceeding....”
26. From the viva voce evidence tendered earlier, the 2nd Petitioner (Alice Cheronon) testified that she was married to Taplelei w/o Koromicha so she could bear children on her behalf. She further testified that the 1st Petitioner (Jonah Kipkoech Chepkwony) was her son. Additionally, the 1st Petitioner also testified that the 2nd Petitioner was his mother. From the evidence above, I am satisfied that the Petitioners were not strangers to the Applicants.
27. In any event, this court (Ongeri J.) in its Judgment dated 4th August 4th August 2020 found that there was evidence that the Petitioners were not strangers to the Applicants. That there was evidence that the 2nd Petitioner (Alice Cheronon) was married to Taplelei w/o Koromicha (deceased) in a woman to woman marriage under the Kipsigis Customary Law. The court went further ahead and found the Objectors' and 2nd Applicant's mother, Elizabeth Tapletgoi (1st Applicant) were entitled to half share



of the two properties (Kericho/Kapkimolwa/606 and Kericho/Kapkimolwa/589). Again, without belabouring the point, the said Judgement has not been appealed or reviewed.

28. Flowing from the above, it is clear that the issues that the 2nd Applicant raised in her Application had been dealt with by this court in its Judgement dated 4th August 2020. If she was dissatisfied with the Judgement, the proper procedure would be to apply for a Review or appeal against the Judgment. It is my finding that the 2nd Applicant had failed to give sufficient reasons why status quo on Kericho/Kapkimolwa/606 and Kericho/Kapkimolwa/589 should be maintained and the distribution should not proceed as ordered by this court.
29. There was a possibility that the Applicants could have given good reasons for the orders they sought. However, they did not attend court. Even when the court suo moto referred the matter to mediation, it was reported that they did not attend the mediation and the mediator referred the matter back to court.
30. I have also noted that the 2nd Applicant had been indolent in prosecuting her Application. She failed to attend court severally despite being summoned. This was a clear indicator that she had lost interest in prosecuting her Application or laboured under the mistaken belief that the court process did not matter. In the premises thereof, the Application has no merit and is ripe for dismissal.
31. I have however looked at the Certificate of Confirmation of Grant dated 21st June 2016 and I have noted that there was an error on the face of the record. The property described in the Grant was Kericho/Kapkimolwa 589 606 as opposed to the distinct properties being KERICHO/KAPKIMOLWA/589 and Kericho/Kapkimolwa 606. The Grant also did not indicate that what was being succeeded was half share of the two properties where half share would remain in the name of the co-owner, Elizabeth Tapletgoi.
32. In the face of the errors shown above, the law allows this court on its own motion to revoke a Grant. The Grant as confirmed is not implementable. Section 76 of the Law of Succession Act which states that:-

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced



any such inventory or account which is false in any material particular; or

- (e) that the grant has become useless and inoperative through subsequent circumstances. (Emphasis added)

33. In the end, I make the following orders:-

- i. The Chamber Summons Application dated 17th February 2021 is dismissed.
- ii. The confirmed Grant dated 29th March 2016 is hereby revoked.
- iii. A new Grant is hereby re-issued in the joint names of Jonah Kipkoech Chepkwony, Alice Cherono and Elizabeth Tapletgoi or her representative other than the two Applicants who have ignored and stalled court process. The name of such representative be availed to the court.
- iv. In line with the Judgement of this court (Ongeri J.) dated 4th August 2020, the joint Administrators to file a comprehensive and clear schedule of distribution of half-share of Kericho/Kapkimolwa/589 being 4.5 hectares and half-share of Kericho/Kapkimolwa 606 being 1.3 hectares.
- v. For avoidance of doubt, the half-share of the two properties held in common remain with the co-owner who is Elizabeth Tapletgoi.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 3RD DAY OF DECEMBER, 2024.

.....

R. LAGAT-KORIR

JUDGE

Ruling delivered in the absence of the Applicants, and in the presence of Mr. J.K.Koech holding brief for Ms Chirchir for the Petitioners/Respondents and Siele (Court Assistant).

