



**Kirui & another v Kirui (Succession Cause 052 of 2021)
[2024] KEHC 15468 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15468 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 052 OF 2021
JK SERGON, J
DECEMBER 5, 2024**

IN THE MATTER OF THE ESTATE OF THE LATE JOHN KIPKEMOI ROTICH DECEASED

BETWEEN

GEORGE KIPKORIR KIRUI 1ST PETITIONER

RACHEL CHEBET ROTICH 2ND PETITIONER

AND

WILLY KIPKOECH KIRUI RESPONDENT

RULING

1. The application combining up for hearing is a notice of motion dated 7th May, 2024 seeking the following orders;
 - (i) Spent
 - (ii) That the Honourable Court makes a finding that the Respondent has been intermeddling with the deceased's estate and specifically the parcel of land registered under L.R. No. Kericho/ Kipchimchim 2230 by selling part of the said land.
 - (iii) That the OCS Nyagacho Police Station provides security to ensure the orders provided in this application are executed.
 - (iv) That this Honourable Court do issue an order removing the Respondent from being one of the administrators of the estate for failing to adhere to the provisions of section 96 and 45 of the *Law of Succession Act*.
 - (v) Spent
 - (vi) That this Honourable Court do issue such further orders as will further the interest of justice in the matter.



- (vii) That costs of this application be borne by the Respondent.
2. The application is supported by the grounds on the face of it and the supporting affidavit of George Kipkorir Kirui the 1st Petitioner/Applicant and one of the sons of the deceased therefore a beneficiary of the estate of the deceased.
 3. He avers that they applied for grant of letters of administration in respect of the late father's estate and that the grant of letters of administration was issued to them on 18th February, 2022.
 4. He avers that on diverse dates, the Respondent through the firm of Onesmus Langat and Company Advocates executed land sale agreements to different individuals while aware that the instant succession proceedings were pending and the certificate of confirmation of grant had not been issued, he annexed copies of the sale agreements to the application.
 5. He avers that after filing for summons for confirmation of grant on 20th June, 2023, the Respondent herein objected to the said summons saying that the 2nd Petitioner/Applicant should hold the estate on trust for all the beneficiaries until the estate devolves to her, yet he has gone ahead to dispose part of the estate of the deceased.
 6. He avers that the Respondent illegally cleared the parcel of land by cutting down trees and illegally erecting a house on the said parcel of land without permission and/or consent from the administrators of the estate or court orders.
 7. He avers that the Respondent despite not being an administrator, dependent and/or beneficiary of the estate of the deceased has continued to flout the succession law by illegally and/or unlawfully trespassing onto the estate's parcel of land without any authority or order of this Court.
 8. He avers that the said acts by the Respondent who is a stranger to the instant succession proceedings are prejudicial to the succession process and/or peaceful subdivision of the estate among the beneficiaries entitled to the estate of the deceased.
 9. He therefore urges this court to order the respondent to vacate the subject parcel and allow them to administer the estate as required by the succession laws. He further urges this court to preserve the estate of the deceased by restraining the Respondent, servants, agents and/or any other person under his authority from offering for sale, advertising, selling, auctioning, disposing off, transferring, alienating, cutting down of trees, building and/or developing the land of land known as L.R. No. Kericho/Kipchimchim 2230 and or in any way interfering with the said parcel and any other property belonging to the estate of the deceased.
 10. He reiterated that it is in the interests of justice and for the protection and preservation of the deceased's estate that this court grants the said orders in the application.
 11. The matter came up for inter partes hearing, Mr. Kilityen, the Learned Counsel for the Applicants, stated that there was no response to the application. Miss Cherono, holding brief for Mr. Onesmus Langat the Learned Counsel for the Respondent, stated that they did not have instructions to appear in this matter and therefore requested the court for time to file an application to cease acting. Mr. Kilityen stated that the instant application should therefore be allowed as prayed and as unopposed.
 12. I have considered the application and oral submissions by the parties and I find that the sole issue for determination is whether the Respondents actions as outlined in the instant application are tantamount to intermeddling with the deceased's estate and more specifically the parcel of land registered under L.R. No. Kericho/Kipchimchim 2230 which constitutes the estate of the deceased. It is the finding of this court, that the succession proceedings in this matter are still ongoing, as this



court is yet to issue a certificate of confirmation of grant, therefore that the actions of the Respondent to wit cutting down trees and erecting a house on the said parcel of land as well as the purported sale agreements in respect to the estate property are tantamount to intermeddling.

13. In *Re Estate of M'Ngarithi M'Miriti* (2017) eKLR the term “intermeddling” was elucidated to mean as follows: “Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the *Law of Succession Act*. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the *Law of Succession Act*. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order (s) of protection of the estate against any person.”
14. The High Court has jurisdiction under the provisions of section 47 of the *Law of Succession Act* and Rule 73 of the Probate & Administration Rules to issue such orders and decrees as may be expedient and necessary for the ends of justice. In the prevailing circumstances, it is in the interests of justice that this court issue orders for the protection and preservation of the estate of the deceased.
15. This court has considered the other prayers in the application to wit that the OCS Nyagacho Police Station provides security to ensure the orders provided in this application are executed and the removal of the Respondent as an administrator of the estate of the deceased. However, this court having made a determination that there was intermeddling and having issued an interlocutory injunction to protect and to preserve the estate of the deceased from further intermeddling; finds that there is no need for the OCS Nyagacho Police Station to provide security to ensure compliance or orders and/or remove the Respondent as an administrator of the estate of the deceased.
16. Consequently, the notice of motion dated 7th May, 2024 is hereby allowed giving rise to issuance of the following orders;
 - (i) An interlocutory order of injunction is issued to restrain the Respondent, servants, agents and/ or any other person under his authority from offering for sale, advertising, selling, auctioning, disposing off, transferring, alienating, cutting down of trees, building and/or developing the land of land known as L.R. No. Kericho/Kipchimchim 2230 and/ or in any way intermeddling with the said parcel and any other property belonging to the estate of the deceased.
 - (ii) Each party to bear its 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



Kiletyen for Petitioners/Applicants
No Appearance for the Respondent

