



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT BOMET**

**SUCCESSION CAUSE NO.18 OF 2018**

**IN THE MATTER OF THE ESTATE OF THE LATE JOHN KIPKORIR ROP (DECEASED)**

**MARY CHERONO TITUS.....PETITIONER/APPLICANT**

**V E R S U S**

**VERONICAH CHERONO RONO.....DECREE HOLDER/RESPONDENT**

**RULING**

1. The Application for determination in this ruling is dated 1/11/2018 filed by the Petitioner herein **MARY CHERONO TITUS** seeking the following orders;

***i) THAT this application be certified as urgent and service be dispensed with in the first instance.***

***ii) THAT this Honourable Court be pleased to grant a temporary order of stay of execution of the judgment and decree dated 7<sup>th</sup> October, 2013 in the Kericho CMCC No.333 of 2009, Veronica Cheronon Rono – vs- Spinners & Spinners Limited & 2 Others, as against John Kipkorir Rop (deceased) pending the hearing and determination of this application.***

***iii) THAT this Honourable Court be pleased to grant an order that the estate of the deceased be administered under Part V of the Insolvency Act, No.18 of 2015.***

***iv) THAT this Honourable Court be pleased to appoint a suitable trustee to administer the estate of the deceased.***

2. The Application is supported by the Affidavit of the Applicant of even date in which it is deposed as follows;

***(i) THAT the Applicant is the widow of the deceased herein JOHN KIPKORIR ROP (deceased).***

***(ii) THAT the deceased's motor vehicle Reg No.KAT 237J got involved in an accident on or about 10/1/2009 where one VERONICA CHERONO RONO got injured.***

***(iii) THAT the said VERONICA CHERONO RONO filed a civil suit and obtained judgment in the sum of Kshs.1,293,267.00 which she is seeking to execute against the Estate of the deceased.***

***(iv) THAT the Estate has no assets and the Applicant who is the Administrator of the Estate is seeking a bankruptcy order against the Estate of the deceased.***

3. The Respondent Decree holder oppose the Application and filed a Replying Affidavit dated 20/11/2019 sworn by **FRANKLIN ORONDO KOKO** in which it is deposed that the Application dated 1/11/2018 lacks in merit, is an abuse of the court process and is bad in law and is merely brought to defeat the Respondent's realization and enjoyment of the fruits of her judgment.

4. Further, that the Applicant has filed two other applications in the lower court to frustrate the pursuance of the decretal sum.

5. The Respondent denied that claim that Auctioneers are harassing the beneficiaries of the Estate of the deceased and sought to cross-examine the Applicant on the contents of her affidavit in support of the application dated 1/11/2018.

6. The parties filed written submissions in the application dated 1/11/2018 which I have duly considered. The issues for determination in this

application are as follows;

***(i) Whether the Estate of the deceased herein should be administered under part V of the insolvency Act No.18 of 2015.***

***(ii) Whether the court should appoint a trustee to administer the Estate of the deceased herein.***

7. On the issue as to whether the Estate of the deceased herein should be administered under part V of the insolvency Act No.18 of 2015, Section 364(1) of the Insolvency Act states as follows; ***“The executor or administrator, or a person who is applying to the Court for a grant of probate or letters of administration, may apply to the Court for an order that the estate be administered under this Part if the executor or administrator or person applying is of the view that the money in the estate (together with the proceeds of any assets in the estate that can conveniently be converted into money) will not be, or is not likely to be, sufficient to satisfy the several claims made or likely to be made on the estate.”***

8. In the current case, the Respondent has a valid decree against the Estate of the deceased. There is no evidence that the said Estate has no assets.

9. I direct that the decree/holder be recognized as a liability of the Estate of the deceased and the petitioner be issued with the grant of letters of administration.

10. The petitioner to file a list of all the assets of the deceased and the matter be listed for confirmation of grant within 30 days of this date.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 1ST DAY OF OCTOBER 2021.**

**A. N. ONGERI**

**JUDGE**