



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO.131 OF 2014

KIPSOI SIGILAI alias KIPSOI ARAP SIGILAI.....DECEASED

AND

KIPKOSKEI ARAP SOI.....1ST OBJECTOR/APPLICANT

SARAH CHEPNGENO SOI.....2ND OBJECTOR/APPLICANT

RUSI CHEBOO SOI.....3RD OBJECTOR/APPLICANT

VERSUS

NAOMI CHEPNGETICH KIRUI.....PETITIONER/RESPONDENT

RULING

1. Before me is a Summons dated 20th November 2018 filed under section 27, 28 and 47 of the Law of Succession Act (Cap.160) and Rules 43 (1) and 73 of the Probate and Administration Rules, as well as Order 45, Rule 1 (1) (b) of the Civil Procedure Rules and Article 159 of the Constitution.

2. It is an application filed by Kipkoskei Arap Soi described as the objector. It seeks several orders, some of which have been spent as follows-

a) (Spent)

b) (Spent)

c) (Spent)

d) (Spent)

e) That this court be pleased to review the Judgment delivered on 15th February 2018 in terms of distribution of the estate of Kipsoi Sigilai *alias* Kipsoi Arap Sigilai (deceased) who died on the 16/3/1984 and thus set aside the certificate of confirmation of Grant issued on 15/2/2018 by Hon. Lady Justice Mumbi Ngugi and replace the mode of distribution herein or thereafter as agreed upon by the parties.

3. The application was filed with an affidavit sworn by the objector Kipkoskei Arap Soi on 20th November 2018. The affidavit mentions additional beneficiaries, without indicating what they should get from the estate. It also alleges an additional asset – Kericho/Kapsuser/1199, but the Ministry of Land's letter marked "KAS-4" does not indicate such particulars, nor the ownership of the same.

4. The application is opposed through a replying affidavit sworn by Naomi Chepngetich Kirui the petitioner/respondent in which it was deponed that the estate was distributed fairly, and that any objections had been dealt with in this court's ruling, before confirmation of letters of administration was granted. It is also denied that any additional asset exists.

5. Parties' counsel filed written submissions to the application. The applicant's counsel M/s Obondo Koko & Co. Advocates filed their submissions on 23rd May 2019. Counsel highlighted the ruling of the court and stated that under Order 45 of the Civil Procedure Rules, the ruling of the court should be reviewed as there was discovery of new and important matter or evidence, and that there was an error apparent on the face of record in that some beneficiaries were deliberately left out and some assets were not included. Counsel relied on the case of the

estate of **Charles Kibe Karanja (2015) – Nairobi Succession Cause No.339 of 2001.**

6. The petitioner/administrator's counsel J. K. Kirui & Co. Advocates filed written submissions on 13th March 2019. In the submissions they stated that the correct procedure was followed by the court in issuing the grant and confirming the same. On leaving out other beneficiaries, it was submitted that the objector's earlier application was dismissed by the court. It was claimed that the reason for the application was malice, and it was only filed because the administrator was a married woman. Counsel relied on several cases on distribution of assets of a deceased person-including the case of **Peter Karumbi Keingat & 4 Others [2016] eKLR** – in which the court emphasized that male and female children have equal rights in inheritance of their parents' estate.

7. Counsel for the parties elected not to highlight the written submissions.

8. I have considered the application and documents filed, as well as the submissions on both sides. This is a matter where confirmation of grant was issued after a ruling was delivered by this court on 15th February 2018.

9. That ruling has not been appealed from and instead the applicant has come to this court seeking review of the court's decision relying on Order 45 of the Civil Procedure Rules. In my view, the only option available to any person who is aggrieved by a substantive decision of this court, is to appeal to a higher court, not to come to this same court seeking review orders. The case in this court was otherwise finalized and closed. There is neither new matter nor new evidence disclosed herein. There is no error on the face of the record.

10. This being a succession matter the only way the matter could come to this court would be under section 74 of the Law of Succession Act (cap.160) for rectification of errors in the grant, or section 76 of the Act, for revocation or nullification of grant. The Civil Procedure Rules cannot be used in such a process.

11. I find no merits in the application, which is dismissed with costs to the petitioner/respondent Naomi Chepngetich Kirui.

Dated and delivered at Kericho this 17th July 2019.

George Dulu

JUDGE