

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
PROBATE & ADMINISTRATION CAUSE NO. 261 OF 2015

IN THE MATTER OF THE ESTATE OF THE LATE KIPLAGAT ARAP CHEBOI

TITUS KIMUTAI KIPLAGAT.....1ST ADMINISTRATOR
BETSY CHEPCHIRCHIR.....2ND ADMINISTRATOR

VERSUS

PAULINE KIPLAGAT.....3RD ADMINISTRATOR/APPLICANT

RULING

1. I delivered a Ruling in this matter on 23/02/2024 in which I dismissed the 3rd Administrator's Notice of Motion dated 23/03/2022 whereof she had sought an order staying this Cause. I captured the background of the matter in the Ruling, which I briefly recount.
2. The deceased herein, **Kiplagat Arap Kiplagat**, died on 11/04/2013 at the age of 83 years. On 8/07/2015, **Mark Kibet Kiplagat** and **Titus Kimutia Kiplagat (2nd Administrator)**, claiming as his sons, through **Messrs Ledishah J.K. Kitony & Co. Advocates**, petitioned the Court for Letters of Administration. In the Petition, it was stated that the deceased had 3 wives, namely, the late **Albina Kiplagat**, **Pauline Kiplagat**, and the late **Esther Kiplagat**, and also several children. Only one property, namely, **Uasin Gishu/Kimunu/379** measuring approximately 9.6 Hectares was said to comprise the estate.
3. Before the Petition could be processed, **Mark Kibet Kiplagat** himself died on 25/04/2016, and was then substituted with **Betsy Jepchirchir (1st Administrator** above), a grand-daughter of the deceased. However, on 4/05/2018, the surviving widow, **Pauline Kiplagat, (3rd Administrator** above), through **Messrs Rioba Omboto & Co. Advocates**, filed an Objection claiming that some other beneficiaries, and also other assets comprising the estate, had not been disclosed. She also claimed that consents from all the beneficiaries had not been obtained, and that in any case, the Petitioners had already inherited some parcels land as given to them by the deceased during his lifetime. Fortunately, on 16/07/2018, the parties recorded a consent whereof the Grant of Letters of Administration was issued to the said **Titus Kimutai Kiplagat (2nd Administrator)**, **Betsy Jepchirchir (1st Administrator)**, and **Pauline Kiplagat, (3rd Administrator)**, as 3 joint Administrators.

4. A Further consent was recorded on 27/01/2020 in which it was further agreed that the Grant be confirmed in terms that the said parcel of land, **Uasin Gishu/Kimunu/379**, and some employment benefits be shared out equally among the 3 houses. House A (**Albina Kiplagat's**) and House B (**Pauline Kiplagat's**) were also to reimburse House C (**Esther Kiplagat's**) monies paid out in clearance of land debts upon proof. The Certificate of Confirmation of Grant was accordingly issued.

5. Matters went silent for some time but once more, the 3rd Administrator, by her Notice of Motion dated 23/03/2022 moved the Court with a fresh Application, this time seeking orders that this Cause be stayed pending outcome of a Magistrate's Court Succession Cause. The ground alleged was that the estate of the late father of the deceased was to be distributed in that other Magistrate's Court Succession Cause, and some properties were expected to be allocated in that Cause to the deceased. By my said Ruling delivered on 23/03/2022, I dismissed the Application for lacking merit.

6. With the above Application out of the way, the 1st and 2nd Administrators through their said Advocates, **Ledishah J.K. Kitony & Co.**, filed the Summons dated 22/02/2025 urging that the 3rd Administrator had refused to execute the relevant documents or instruments to facilitate transmission of the estate in accordance with the Certificate of Confirmation of Grant. The Administrators thus sought orders compelling the 3rd Administrator to execute the documents, and in default, the Deputy Registrar of this Court be allowed to execute the same. The Application came up in Court on 13/03/2025 by which date, no response had been filed, and also neither the 3rd Administrator nor her Counsel attended Court. There being a Return of Service on record, I deemed the Application as unopposed and duly allowed it as prayed.

7. The 3rd Administrator has now, yet again, returned to Court with another Application, namely, the Notice of Motion dated 30/05/2025. The same is again filed through **Messrs Rioba Omboto & Co. Advocates**, and this time seeks orders as follows:
 - i) [.....] spent

 - ii) **That the interlocutory ruling entered on 13/03/2025 against the 3rd Petitioner and all consequential orders arising thereof be set aside/vacated.**

iii) That the 3rd Petitioner be granted leave to file the response to the application dated 22/02/2022.

iv) That costs of this application be provided for.

8. In her Affidavit in support of the Application, the 3rd Administrator deponed that she was never served with the Application dated 22/02/2025 and only learnt of the order allowing the Application in the Judiciary Case Tracking System (CTS) online portal, and urged that since she did not participate in the proceedings, she was not able to raise key issues to be considered. She then deponed that a Land Surveyor conducted a survey exercise on the ground but did so in her absence, and that the sub-division proposed has affected her homestead. She added that when the consent order dated 27/01/2020 was recorded, she did not know that the 1st and 2nd Administrators had possession of another parcel of land measuring 40 acres belonging to the deceased, and also that the 1st and 2nd Administrators have not complied with clauses 3 and 4 of the consent order.
9. The Application is opposed by the 1st and 2nd Administrators by way of the Replying Affidavit sworn by the 2nd Administrator, **Titus Kimutai Kiplagat**, on 13/06/2025 who deponed that the Application has been filed with the sole intention of further delaying this otherwise substantially concluded matter. He observed that it is very clear from the record that the 3rd Administrator has persistently and continuously obstructed the conclusion of this matter, not only by her reluctance to execute the completion documents, but also by bringing Applications and counter-Applications maliciously intended to frustrate conclusion of this matter. He maintained that the order issued on 13/03/2025 was procedurally and legitimately issued upon the Court being satisfied with the Return of service, and he thus denied that the Applicant was not served. He urged further that upon the Application dated 22/02/2025 being filed on 25/02/2025, the Court declined the prayer for certification of urgency, and instead directed that the same be served for *inter partes* hearing on 13/03/2025, that his Counsel then served the Application and Court directions on the Respondent on 27/02/2025 at 3:27 pm by way of the law firm's email address, namely david.rioba@yahoo.com. He urged that the hearing date was duly inscribed on the Application that was served upon Counsel as demonstrated in the Return of Service sworn on 12/03/2023, together with the email forwarding message. He deponed further that on 10/04/2025, his Advocate wrote to the 3rd Administrator's Counsel demanding that his client executes the forms, and also served the order physically but there was no response. He thus

contended that it is in bad faith for the 3rd Administrator to claim that she only learnt of the orders in the CTS.

10. He further averred that the issues raised by the 3rd Administrator are the same that she has raised before and have been determined, and that the issue of the 40 acres is only intended to mislead the Court. He also contended that the issue of non-compliance with the Consent order is misleading as it has nothing to do with the execution herein, and that in any event. He denied that the 3rd Administrator's home has been harmed by sub-division, and maintained that the same was undertaken in the most considerate form, that the land was divided into 3 equal portions in accordance with the consent order, and could not have been partitioned in any other way. He reiterated that the 3rd Administrator has always been very uncooperative even after requests for her participation, that long after the recording of the consent and the sub-division, they each took possession of their portions and ploughed thereon, but the 3rd Administrator sprayed their crops with herbicides and removed poles therefrom. He thus reiterated that the 3rd Administrator is determined to make the finalization of this matter difficult and impossible, and urged the Court not to allow it, that in any event, the consent order complained about has not been set aside, and that as the 3rd Administrator has refused to execute the transfer forms, it is only just and fair that the Deputy Registrar be allowed to execute the same in compliance with the Court order. He added that the sub-division has been concluded and is only awaiting execution and registration of instruments for transfer, which the Applicant has refused to sign, and that the partitioned boundaries will not affect the 3rd Administrator's structures at all. He urged that Court orders must be obeyed and respected.

Hearing of the Application

11. I gave the parties the liberty to file written Submissions but **Mr. Omboto**, Counsel for the 3rd Administrator, opted not to file any. On her part, **Mrs. Kipseii**, Counsel for the 1st and 2nd Administrators, filed the Submissions dated 7/07/2025, which Submissions I have read but I do not deem it necessary to recount as it basically simply recites the matters already stated in the Replying Affidavit.

Determination

12. The issue for determination herein is **“whether the Court should set aside the orders issued herein *ex parte* on 13/03/2025, on the ground that the 3rd Administrator was not served with the Application that gave rise to issuance of the orders.”**

13. As aforesaid, the 1st and 2nd Administrators' Application dated 22/02/2025 came up for hearing on 13/03/2025 by which date, no response had been filed thereto, and also neither the 3rd Administrator nor her Counsel attended Court. There being a satisfactory Return of Service on record, this Court deemed the Application as unopposed and allowed it as prayed.
14. **Ms. Kipseii**, Counsel for the 1st and 2nd Administrators, and also the deponent of the Return of Service, has ably demonstrated that service of the Application was effected upon the 3rd Administrator's Advocates via email. Neither the 3rd Administrator nor her Counsel, **Mr. Omboto**, has disputed the contents of the Return of Service, and neither has she or her Counsel denied that the email address, david.omboto@yahoo.com, belongs to the Advocate's law firm's office, and neither have they sought to cross-examine the deponent of the Return of Service. That the Application was therefore duly served upon the 3rd Administrator's Counsel is not in doubt. The Court may have been lenient and given a consideration to the 3rd Administrator had her Counsel simply owned up and admitted service and come up with grounds, such as inadvertent oversight in filing a response, or in attending Court. Since however the 3rd Administrator has relied only on the ground of non-service, she cannot succeed. As such, the 3rd Administrator cannot be heard to complain. Equity does not aid the indolent.
15. I also agree with **Mrs. Kipseii** that the purported issues being raised by the 3rd Administrator have been raised earlier in this same Cause, and have been conclusively determined. It is therefore clear that the Application is only intended to delay the conclusion of this matter.
16. Regarding the land survey that the 3rd Administrator alleges to have affected her homestead, apart from making bare statements, she has made no effort whatsoever to demonstrate that this is so. She has not given any elaboration of how the survey has affected her homestead as alleged, or how, if at all, the same was conducted in breach of the "3 equal share distribution amongst the 3 houses" formula agreed upon in the consent order recorded on 20/01/2020. No sketch, or photograph or any evidence of any kind has been presented. Surely, the 3rd Administrator does not expect the Court to rule on an allegation of the nature she is making, merely on the basis of bare statements without any support.
17. Looking at the averments made by the 3rd Administrator, it is evident that what she is trying to do is disown and run away from the consent order she, herself, signed, and which remains **Eldoret High Court Succession Cause No. 261 of 2015**

lawful and binding on her. That she knows she cannot do and is clearly why she is erecting hurdles at every stage to ensure the consent order is not actualized. The earlier consent order recorded on 16/07/2018 resulted into the 3rd Administrator being appointed a co-Administrator, and the subsequent consent order recorded on 27/01/2020, resulted into distribution of the estate in terms of the Certificate of Confirmation issued herein. The 3rd Administrator does not even deny the allegation that she has, indeed, in breach of Court orders, refused to execute the relevant instruments to facilitate transmission of the estate to beneficiaries. Regarding this refusal to execute documents, **Section 83 of the Law of Succession Act** is very elaborate on the duties of an Administrator, which includes, primarily, the duty to distribute and transmit the estate to the beneficiaries. In violation of this statutory duty, which she voluntarily assumed by demanding to be appointed an Administrator, which was done, the 3rd Administrator is, instead, the same person who is frustrating other beneficiaries, and deliberately delaying them from enjoying their rightful share of the estate.

18. In my said Ruling dated 23/02/2024, in dismissing the 3rd Administrator's Application for stay of proceedings, I made the following observation:

“30. It is also clear that the pendency of this Cause is being mischievously used by some of the family members to frustrate and hold others at ransom and to play “mind games” with each other to the prejudice of the estate. Elongating litigation by granting stay of proceedings will only give such parties a forum to perpetuate these mind games. This the Court will not allow.”

19. The above is exactly what the 3rd Administrator has perfected. By her conduct and ill-advised actions, she has now become a nuisance and is only wasting this Court's precious judicial time. She cannot be allowed to continuously keep filing these successive frivolous Applications that do nothing but to only clog this Court's diary and unnecessarily increase the Court's workload. The Court will no longer tolerate her, and I implore upon her Counsel, whom this Court knows to be a very able and experienced Advocate, to advise her accordingly.

Final Orders

20. In the end, I make the following orders:

- i) The 3rd Administrator's Notice of Motion dated 30/05/2025 is hereby dismissed.

- ii) Because of her endless frivolous successive Applications, the 3rd Administrator shall bear the costs of the Application.

- iii) To put a check on, and regulate the 3rd Administrator's habit of continuously filing frivolous Applications, she is hereby barred from filing any new or fresh Application, save with prior obtained leave of the Court.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 15TH DAY OF DECEMBER 2025

.....
WANANDA JOHN R. ANURO
JUDGE

Delivered in the presence of:

Mr. Omboto for the 3rd Administrator

Mr. Kibichi h/b for Mrs. Kipseii for the 1st and 2nd Administrators

Court Assistant: Brian Kimathi