



**In re Estate of David Kibor Rugut (Deceased) (Probate & Administration
254 of 2007) [2025] KEHC 3995 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3995 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 254 OF 2007
RN NYAKUNDI, J
MARCH 28, 2025**

BETWEEN

JOEL RUGUT 1ST PETITIONER

MILKA RUGUT 2ND PETITIONER

AND

PHILEMON KIPTANUI SITIENEI APPLICANT

RULING

1. The Applicants have approached this Court yet again with another application dated 28th February, 2025, seeking to review this Court's judgment delivered on 14th February, 2025. Their primary contention is that the two houses of the deceased allegedly lack representation in the administration of the estate. Through this application, the advocate for the Applicant was granted leave to come on record.
2. The record before this Court confirms that proper service was effected upon the Petitioner/ Respondent, as evidenced by a duly filed affidavit of service executed in accordance with Order 5 of the Civil Procedure Rules. The affidavit of service demonstrates that the Petitioner/Respondent was furnished with all relevant documents pertaining to the application, thereby providing adequate notice of these proceedings.
3. This matter has a lengthy and complex procedural history dating back to 2007. The Court has presided over a number interlocutory applications and substantive hearings in this matter, including a significant ruling delivered on 16th December, 2019, and more recently, a judgment rendered on 14th February, 2025.
4. In view of the protracted nature of these proceedings and the Court's commitment to ensuring that justice is not only done but is manifestly seen to be done, it is appropriate to enlarge time for the Petitioner/Respondent to respond to the current application. The Court is guided by the



principle that administrative convenience must yield to the imperative of justice, particularly in matters concerning deceased estates where the rights of multiple beneficiaries may be affected.

5. The prayer however worth considering even as the Respondents put in a response is that of appointment of Joel Rugut and Obadiah Kiplagat Bor. Counsel also seeks an order to remove one Philemon Kiptanui Sitienei. Section 66 of the Laws of Succession Act provides that preference has to be given to certain persons to administer a deceased's estate where the deceased died intestate and further that the court shall save as otherwise expressly provided, the final discretion as to the persons and person to whom a grant of letters of administration shall, in the best interests of all parties concerned, be made. It will however accept as a general guide the order of preference as set out in Section 66(a) – (d). Section 66 provides as follows: -

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

- a) surviving spouse or spouses, with or without association of other beneficiaries;
- b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interest as provided by Part v;
- c) the Public Trustee; and
- d) Creditors:

Provided that, where there is [atrial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

6. Further, guidelines on making of grants are found in Part VII Rule 26(1) and 2 of the Probate and Administration Rules which provides as follows: -

“Rule 26 (1) Letters of Administration shall not be granted to any applicant without notice to any other person entitled in the same degree as or in priority of the applicant.

- 2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of communication, or written consent in Form 38 or 39, by all persons so entitled in equality or priority be supported by an affidavit of the applicant and such other evidence as the court may require.”

7. In cases such as this where there is a desire to have more than one administrators, the law of succession allows up to four administrators comprising of representation from the various houses in the polygamous intestate estate. Section 7(8) of the Law of Succession Act provides as follows:

“(8) Where a grant of administration is sought jointly by more persons than one (but not exceeding four) the provisions of this rule shall apply to all applicants save that the affidavit need be sworn by one only.”

8. It is pertinent to note that this court, presided over by Justice Githinji, previously delivered a comprehensive ruling dated 16th December, 2019, which definitively addressed and determined the matter of estate administration and representation. In that ruling, Mr. Philemon Kiptanui Sitienei was



appointed as the administrator of the deceased's estate, replacing the former administrators Joel Rugut and Milka Rugut.

9. The Court is mindful of the need for adequate representation of all interested parties in the administration of the deceased's estate, particularly in polygamous situations where multiple houses may have legitimate interests. While the current administrator, Philemon Kiptanui Sitienei, was duly appointed by this Court and has undertaken his duties thus far, there appears to be merit in considering additional representation for the two houses of the deceased as alleged by the Applicants. The Court notes that Section 66 of the Law of Succession Act grants it discretion to make appointments in the best interests of all concerned parties. Furthermore, Section 7(8) of the same Act permits up to four administrators to jointly manage an estate. In this regard, the addition of Joel Rugut and Obadiah Kiplagat Bor as co-administrators alongside the existing administrator would not only ensure broader representation but may also facilitate more efficient administration of the estate and potentially reduce future disputes, provided they can work cooperatively in the interests of all beneficiaries.
10. The Court recognizes that prolonged litigation in succession matters often exacerbates tensions among family members and diminishes the value of the estate through continued legal costs. To prevent further unnecessary litigation and to ensure that all interested parties have an opportunity to be heard, this court directs that all the beneficiaries appear before it on 7th April, 2025 for further directions.
11. Accordingly, the following orders do issue:
 - a. The time for the Petitioner/Respondent to file and serve a response to the application dated 28th February, 2025 is hereby enlarged.
 - b. The parties to appear before this court on 7th April, 2025.
12. It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 28TH DAY OF MARCH 2025

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R. NYAKUNDI

JUDGE

