



**In re Estate of Nicholas Kiptum (Deceased) (Probate & Administration
383 of 2006) [2025] KEHC 3878 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3878 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 383 OF 2006
JRA WANANDA, J
MARCH 28, 2025**

BETWEEN

MARY NYOKABI 1ST APPLICANT

HELLEN MUSIMBI MUSILA 2ND APPLICANT

AND

VIOLET KHASOA MUSIDIA 1ST RESPONDENT

SILIYA KHASIALA 2ND RESPONDENT

RULING

1. Before this Court for determination is the Chamber Summons dated 23/08/2023 filed through Messrs Kiprop Luseria & Co. Advocates. It seeks orders as follows:
 - a. [.....] spent
 - b. That this Honourable Court be pleased to grant leave to the firm of Kiprop Luseria & Co. Advocates to come on record on behalf of the Applicants herein.
 - c. That this Honourable Court be pleased to order the Uasin Gishu Land Registrar to deregister a Court order registered against the registers of land parcels No. Soy/Soy Block 10 (Navillus) 950, Soy/Soy Block 10 (Navillus) 962, Soy/Soy Block 10 (Navillus) 971, Soy/Soy Block 10 (Navillus) 983, Soy/Soy Block 10 (Navillus) 989, Soy/Soy Block 10 (Navillus) 990 emanating from Eldoret High Court Succession Cause No. 383 of 2006, formerly Probate and Administration Cause No. 51 of 2001 Estate of Nicholas Kiptum (Deceased).
 - d. That this Honourable Court be pleased to issue any other directive as it deems fit.
 - e. That costs of this Application be provided for.



2. As this is an old matter commenced in the year 2001, to understand and appreciate the context within which the Application has been brought, I will give a background of the matter.
3. The deceased, Nicholas Kiptum, died on 18/01/2001 at the age of 43 years. Pursuant thereto, the 1st Respondent, claiming as his daughter, and the 2nd Respondent, claiming as his widow, on 26/02/2001, petitioned for Grant of Letters of Administration in Eldoret High Court Succession Cause No. 51 of 2001. In the Petition, it was stated that the deceased died intestate without a legitimate married wife but had several children.
4. The Grant was then issued to the two as Administrators on 03/05/2001. However, on 11/07/2001, the Respondents, also claiming as co-widows of the deceased, subsequently filed an Application seeking revocation of the Grant. The Application was filed through Messrs J. Chumba & Co. Advocates.
5. I gather that later, upon the Respondents (as Administrators) realizing or discovering that some 6 alleged estate properties had been transferred to the Applicants and/or third parties, applied for preservation of such properties. These properties were Soy/Soy/Block 10 (Navillus/950, Soy/Soy/Block 10 (Navillus/989, Soy/Soy/Block 10 (Navillus/983, Soy/Soy/Block 10 (Navillus/962, Soy/Soy/Block 10 (Navillus/990 and Soy/Soy/Block 10 (Navillus/971. The Application was filed through Messrs Manani & Co. Advocates and such preservation orders were then issued by Etyang J on 17/10/2022.
6. I also gather that by the orders made on 18/07/2005 by Gacheche J, the matter was transferred to the High Court at Kakamega where, upon receipt, it was assigned the case number Kakamega High Probate & Administration Case No. 403 of 2005. However, by the orders made by G.B.M Kariuki J (as he then was) on 16/10/2006, the matter was re-transferred back to Eldoret where, upon receipt, it was assigned the current case number, namely, Eldoret High Court Probate & Administration Case No. 383 of 2006.
7. The case then proceeded for viva voce trial and by the Judgment of Mshila J dated 29/04/2013, and read on her behalf by F. Ochieng J (as he then was), findings and orders were made as follows:
 1. This court has been convinced and finds that the Grant was procured by concealment from the court of a material fact, to wit that the objectors were beneficiaries to the Estate of the deceased.
 2. Although the court finds the objectors' application has merit, the order sought is discretionary and it is upon the court to grant and make orders that are just and fair. This court therefore, shall not revoke the grant.
 3. The court finds that the oral will disposed of most of the properties and this court has no mandate at this stage to question the validity of the disposition nor interfere with the same.
 4. This court concurs with the submissions of the objectors that the Estate of the deceased is depleted, save for only one property, namely five acres at Ngoisa.
 5. This court orders the petitioners to commence proceedings for confirmation of the Grant with regard to this sole property.
 6. The application for confirmation shall be made within forty-five (45) days from the date hereof, in default, the Grant shall stand revoked.
 7. The objectors, as beneficiaries, be and are hereby allowed to make their case for distribution of a share of this sole property.



8. On the issue of costs, as the parties are all related, therefore, the court orders that each party shall bear their own costs.
8. On 7/06/2013, the Respondents (now represented by Messrs Chemwok & Co. Advocates) filed Summons for Confirmation of Grant. However, by the Ruling of O. Sewe J dated 7/06/2018, the same was declined as it was found to have excluded the Applicants from the proposed distribution contrary to the Judgment above. Orders were made as follows:
 - (a) That the confirmation of grant herein be postponed pending reconsideration and fresh distribution proposal as aforementioned;
 - (b) That a status update of the Ngoisa Property, namely, Parcel No. Ngoisa LR No. 8384/10 comprising of 5 acres be provided on 9 July 2018, and that the Respondents be notified accordingly.
9. It is not clear from the record whether the above orders were complied with but on 4/12/2010. The Respondents filed a further Application, this time seeking Review of the said Judgment of Mshila J. The review sought was basically that the Court changes its finding that the estate only comprises the property known as Ngoisa LR No. 8384/10 and instead, revert all the other properties which Mshila J had, by the Judgment, declared to be no longer available for distribution. The Application was however dismissed by O. Sewe J on 26/04/2021.
10. Coming back to the instant Application dated 23/08/2023, the same is premised on the grounds stated on the face thereof, and is supported by the Affidavit sworn by the 2nd Applicant, Hellen Musimbi Musila.
11. In the Affidavit, the 2nd Applicant deponed that the Judgment in this matter was delivered in their favour and no appeal was ever filed, and that the Application for Review filed by the Respondents was dismissed.
12. She deponed further that there exists an order registered against their land portions that was issued in Succession Cause No. 383 of 2006 (formerly Probate and Administration Cause No. 51 of 2001), the said order allegedly emanated from an Application filed in the former Cause No. 51 of 2001 which was later changed to Succession Cause No. 383 of 2006 and that the orders have since lapsed since the case was heard and concluded as per the said Judgement. According to her, there is an unsigned order in Cause No. 51 of 2001 and it is not clear whether the same was ever signed by this Court, or whether it even existed, and the order registered against the Applicants' land title deeds' registers for over 20 years has denied them an opportunity to utilize their land parcels yet the suit was concluded. She urged that some of the land portions affected had been transferred to 3rd parties who are equally prejudiced.

Replying Affidavit

13. The Application is opposed by the Respondents vide the Replying Affidavit sworn on 02/09/2023 by the 1st Respondent, Violet Khasoa Musidia, and filed through the firm of Messrs Chemwok & Co. Advocates.
14. In the Replying Affidavit, the 1st Respondent deponed that the 2nd Respondent is an old citizen born in 1926 and can no longer travel and is merely enjoying her last days on earth and that the Application is intended to further the existence of mischief in this matter from its inception. She deponed further that the deceased died before most of the title deeds for his properties had been processed, and that most of them were under the Trustee of Umoja Self Help Group in which one Mr. Benson Karanja Wambani was the Chairman. She deponed further that she filed for a grant of representation in the year



2001 and served the said Mr. Wambani with the temporary grant and who moved the Applicants to process the title deeds with a promise to be given the centre plot, which they did. She added that the case was HCC P&A 51 of 2001 which was later sent to Kakamega as P&A 403 of 2005 and subsequently returned to Eldoret as P&A 383 of 2006.

15. She deponed further that despite the fact that the owner had died, they hurriedly removed his name from the register of members and to obtain title deeds, substituted him with the Applicants, that it was at this juncture that the “cat and mouse” games started, that at the time HCC P&A 383 of 2006 was ruled upon, the only property for which a search could be done was the Ngoisa Farm which was alleged to have been lost after clashes erupted and which the 2nd Applicant is alleged to have sold when she left her husband and joined the deceased. According to the 1st Respondent, the farm does not exist and that the Judgment of the Court to the extent of the Ngoisa Farm, was spent and could not be addressed by any appeal.
16. She urged further that the Application for Review was “thrown out” on a technicality but two more cases are in Court, namely, Eldoret CMC P&A 192 of 2020 filed by one Mary Nyokabi Kanja and in which the 2nd Applicant herein is the Applicant, and Eldoret HCC P&A 055 of 2021 filed by herself (2nd Respondent). According to her therefore, the purpose of the present Application is to defeat the two cases, that a Court of law is a Court of justice not intended to be used to defeat justice and that in Eldoret CMC P&A 192 of 2020, the Applicants alleged that they bought those parcels of land but when evidence was presented before the Court, it was otherwise.
17. She further deponed that the use of a fake death certificate in P&A 192 of 2020 enhanced this mischief and she invited the Court to request for the file in CMCC 192 of 2020 and P&A E055 of 2021 as the same title deeds are in issue but manipulated to suit the Applicants’ mischief. She urged further that several people have told her about the Applicants’ intention to sell the parcels of land to them and she thus prayed that the subject orders be left in place, and the 3 files be placed before this Court for a justiciable solution to be arrived at.

Applicants’ Supplementary Affidavit

18. In response to the Replying Affidavit, the 2nd Applicant filed the Supplementary Affidavit sworn on 7/02/2024 in which she reiterated that this case was concluded and a Judgment delivered by the Court, therefore, the interim orders registered at the land office lapsed, and that if other cases exist as claimed by the Respondents, then they should seek interim orders in those other Courts. She urged further that the Respondent has no business using the interim orders that have lapsed in this case to protect her interest in other cases before other Courts, if any, and that the Respondent has been abusing the Court process by filing numerous cases touching on issues that are Res Judicata since the issue of distribution of the estate of the deceased was well settled by the Judgment of this Court.

Hearing of the Application

19. The Application was canvassed by way of written Submissions. The Applicants filed their Submissions on 07/02/2024 while the Respondents filed theirs on 17/12/2024.

Applicants’ Submissions

20. In respect to the prayer to come on record after Judgment, the Applicants’ Counsel cited Order 9 Rule 9 of the Civil Procedure Rules and basically urged that her law firm had complied therewith. She also pointed out that the prayer has not been objected to.



21. Regarding the substantive matters, Counsel reiterated that this matter was heard and Judgement delivered in favour of the Applicants, the Respondents did not file an appeal but chose to file an Application for Review which was dismissed, that however, there is an unsigned order dated 17/10/2002 registered against the Applicants' portion of land, which was to lapse after the determination of this matter and that the order indeed lapsed upon delivery of the Judgment. She cited Section 76 of the *Land Registration Act* which, she submitted, provides for the period of time that a restriction registered against a land title should last. According to her, the order has since lapsed since the matter was concluded. She cited the Court of Appeal case of *Olive Mwhaki Mugenda & another v Okiya Omtata Okoiti & 4 others* [2016] eKLR which, she submitted, dealt with the issue of an interlocutory order issued before Judgement and in which, she urged, it was held that Section 78(2) of the *Land Registration Act* gives the Court jurisdiction to remove a restriction upon the application of an affected proprietor, and upon notice to the Registrar.
22. She submitted that since the order lapsed after the Judgement was delivered, the Court should compel the Uasin Gishu Land Registrar to deregister the order from the title to enable the Applicants enjoy their rights to own property. In conclusion, Counsel prayed that the Application be allowed and that pursuant to the provisions of Section 27 of the Civil Procedure Rules 2010, the Applicants, as the successful parties, be awarded costs. She then also cited the case of *In re estate of Harrison Muniu Kungu (Deceased) (Succession Cause 1755 of 2011)* [2023] KEHC 22088 (KLR) (Family) (26 June 2023) (Ruling).

Respondents' Submissions

23. On his part, Counsel for the Respondents similarly cited Order 9 Rule 9 of the Civil Procedure Rules and submitted that the firm of Kiprof Luseria and Co. Advocates has filed the Application and Submissions addressing the Court as though the Court had already granted the firm leave to come on record. According to him, this reflects a disregard of the legal procedure and that unless the Court grants an Advocate leave, that Advocate does not have audience before the Court. He thus urged the Court to strike out the participation of Counsel until leave is granted.
24. Regarding the substantive matters, Counsel cited the case of *Veronica Njoki Wakagoto (Deceased)* [2013] eKLR, the case of *Benson Mutuma Muriungi v C.E.O Kenya Police Sacco & Anor* [2016] eKLR and also the case of *re Estate of M'Ngarithi M'Miriti* [2017] eKLR in respect to the act of "intermeddling" with the property of a deceased person.
25. He submitted that the order registered against the titles is for protection of the estate of the deceased from the Applicants who have proven to be "intermeddlers". He reiterated that the deceased died before title deeds for most of his properties had been processed and at that time, most of them were under the trustee of Umoja Self Help Group, the 1st Applicant filed for grant of representation in the year 2001 and upon obtaining the Grant, served it upon the Group's Chairman, who, realizing that the 1st Respondent was seeking a Court order to stop the intermeddling, moved fast and convinced the Applicants to process title deeds into their names, and that the Applicants then transferred the properties to their names and to those of their enablers which amounted to intermeddling and which is an offence.
26. He submitted that the Court is obligated to uphold the rule of law and to protect the estate of the deceased, and that the Respondents moved with speed and admitted that indeed, there are cases pending, touching on the subject properties yet to be determined. He posed the question; what would be the intention of the Applicants if not to defeat the cause of justice if they get an opportunity to? On the issue of costs, Counsel cited the case of *Muchanga Investments Ltd vs Safaris Unlimited (Africa)*



Ltd & 2 Others, and submitted that the case demonstrates the importance of keeping the Court's time and termed the instant Application as a waste of the Courts' time and prayed that the same be dismissed with costs.

Determination

27. The issues that arise for determination herein are evidently the following:
- a. Whether the firm of Kiprop Luseria & Co Advocates is properly on record.
 - b. Whether the Land Registrar-Uasin Gishu County, should be ordered to deregister the Court order dated 17/10/2002 registered against the properties cited.
28. Regarding the participation of Kiprop Luseria & Co. Advocates in this matter, it is not in dispute that a Judgment was delivered herein on 29/04/2013 and that at all material times, the form of J. Chumba & Co. Advocates is the one that has been on record for the Applicants in this matter. Change of Advocate after Judgment has been delivered is governed by Order 9 Rule 9 of the Civil Procedure Rules, 2010 which provides that:
- “When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—
- (a) upon an application with notice to all the parties; or
 - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”
29. The rationale of the said provisions was set out by W. Korir J (as he then was) in the case of S. K. Tarwad v Veronica Muehleemann [2019] eKLR as follows:
- “18. In my view, the essence of Order 9 Rule 9 CPR is to protect advocates from mischievous clients who will wait until a judgement has been delivered and then sack the advocate and either replace him with another advocate or act in person. The provision is therefore an important one and cannot be wished away. Indeed, Order 9 does not foresee how Rule 9 can be sidestepped hence the enactment of Rule 10”
30. In the instant application, prayer (b) thereof seeks leave to be granted to the firm of Kiprop Luseria and Co. Advocates to come on record and it has not been denied that a Notice of Change of Advocates was duly filed and served. The Respondents' Counsel has however argued that before waiting to obtain leave, the new proposed Counsel for the Applicants, Ms. Luseria, is already addressing the Court as if such leave had already been granted. My interpretation of the Respondents' Counsel's submission is that the correct procedure would be for the incoming Advocate to first obtain leave before arguing any further prayer. While this ought to be the correct envisaged procedure and the orderly manner of coming on record after Judgment, I find that, considering the circumstances of this case, to subject the incoming Counsel to the strict course suggested by Mr. Chemwok would amount to an absurd, mechanical and robotic application of the law and would not be in consonance with the spirit of Article 159 of *the Constitution*.
31. Further, this matter having been filed in Court in the year 2001, almost 23 years ago, delaying its conclusion further by dwelling on technicalities would be a great injustice. In any event, Mr. Chemwok was present in Court on 28/10/2024, on 21/11/2024 and also on 17/12/2024, and indeed actively



participated in the proceedings, when this Court gave directions to the parties on the filing and exchange of responses and Submissions, and timelines thereon. Having not raised any objection against the Applicant's new Advocates' participation in the case on all the said dates, he cannot now be heard to take the Court back on all these matters. He is estopped from belatedly complaining. Further, Mr. Chemwok has not even alleged that he has in any way been prejudiced by Ms. Luseria's participation.

32. In the circumstances, it is my considered view that the firm of Kiprop Luseria & Co. Advocates, has to an acceptable standard, complied with the provisions of the Civil Procedure Rules on change of Advocates. I therefore determine that the law firm is properly on record and I ratify all their actions and participation in the proceedings herein. In the alternative, or in the event of any doubts, I now grant the law firm leave to come on record, and which leave, I direct, shall operate from the date of filing of the instant Application.
33. I now move to the substantive question, namely, whether the Land Registrar-Uasin Gishu, should be ordered to deregister the subject Court order lodged against the respective titles to the parcels of land cited.
34. The gist of the instant Application is that the order issued on 17/10/2022 by Etyang J, as aforesaid still remains registered against the titles to the 6 parcels of land in issue herein. As further aforesaid, by the said orders, the Court directed that the parcels of land be preserved pending the determination of the Application for annulment of the Grant. The order also prohibited any further sales or dealings with the parcels of land pending determination of the Application for annulment of Grant.
35. The Respondents have contested the Application on the basis that the restrictions placed against the parcels of land serve the purpose of preserving the estate as there are other cases in other Courts touching on the properties that are yet to be determined. However, apart from making such bare statements, the Respondents have not provided any evidence to back the allegation that there exists such other Court cases touching on the same parcels of land, and even if so, the relevance or effect thereof to this instant case.
36. Be that as it may, it is clear that the said restrictions or preservation orders were only interim in nature as they were to only remain in force pending determination of the Application for annulment of the Grant. It is also clear that Application for annulment of Grant was eventually determined vide the Judgment of Mshila J, delivered on 29/04/2013. It is further evident that in the Judgment, although the Court found that the Applicants had procured the Grant by concealment of facts, it did not at the end revoke the Grant. It is also evident that the Court made a finding that the estate of the deceased had been depleted save for only the property known as Ngoisa LR No. 8384/10 and which is thus the only property that the Court declared as available for distribution among the beneficiaries. It therefore follows that by a Court declaration, all the 6 properties cited in this Application herein do not form or comprise part of the estate.
37. Section 76 of the *Land Registration Act* provides that:
 - (1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, and after directing such inquiries to be made and notices to be served and hearing such persons as the registrar considers fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.
 - (2) A restriction may be expressed to endure—
 - (a) for a particular period;



- (b) until the occurrence of a particular event; or
- (c) until the making a further order is made, and may prohibit or restrict all dealings or only or the dealings that do not comply with specified conditions, and the restriction shall be registered in the appropriate register.

38. Given that the Court already delivered its Judgment on the objection proceedings, it follows that by operation of law, the restriction orders automatically lapsed the moment “the occurrence of the particular event envisaged”, namely, delivery of the Judgment whereof the Application for annulment of Grant was dismissed. I therefore agree with the Applicants that the preservation order or restrictions, having been issued pending determination of the Application for annulment of Grant, automatically lapsed the moment the Application was dismissed vide the Judgment of 29/04/2013.

Final orders

39. In the premises, I rule and order as follows:

- a. The firm of Kiprop Luseria & Co. Advocates, is properly on record as acting herein for the Applicants and I ratify all their actions and participation in the proceedings herein. In the alternative, or in the event of any doubts, I grant the law firm leave to come on record, and which leave, I direct, shall operate from the date of filing of the instant Application and the Notice of Change of Advocates.
- b. The Land Registrar-Uasin Gishu County, is hereby directed to deregister the Court order dated 17/10/2002 and issued in this matter by Etyang J, when it still bore the case number, Eldoret High Court Probate & Administration Cause No. 51 of 2001-Estate of Nicholas Kiptum (before it was transferred to the Kakamega High Court and assigned the case number Kakamega High Court Probate & Administration Cause No. 403 of 2005, and subsequently re-transferred to this Court and assigned the current case number, namely, Eldoret High Court Succession Cause No. 383 of 2006), registered against the titles or registers for the following parcels of land:
 - i. Soy/Soy Block 10 (Navillus) 950
 - ii. Soy/Soy Block 10 (Navillus) 962
 - iii. Soy/Soy Block 10 (Navillus) 971
 - iv. Soy/Soy Block 10 (Navillus) 983
 - v. Soy/Soy Block 10 (Navillus) 989
 - vi. Soy/Soy Block 10 (Navillus) 990
- c. Each party to bear her own costs.

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

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WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Mr. Chemwok for the Petitioners/Respondents



N/A for the Applicants

Court Assistant: Brian Kimathi

