



REPUBLIC OF KENYA



In re Estate of John Kipkirui Tesot alias John Kipkirui Tesot (Deceased) (Succession Cause 219 of 2014) [2025] KEHC 3953 (KLR) (27 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3953 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 219 OF 2014
JK SERGON, J
MARCH 27, 2025**

BETWEEN

CAROLYNN CHELANGAT APPLICANT

AND

KIPNGENO ARAP KIRUI 1ST RESPONDENT

JUSTINA CHEPKEMOI KIRUI 2ND RESPONDENT

RICHARD KIPROTICH KIRUI 3RD RESPONDENT

GEOFFREY KIPKORIR 4TH RESPONDENT

FRANSICA CHEPKEMOI KIRUI 5TH RESPONDENT

RULING

1. The application coming up for determination is a notice of motion dated 27th November, 2024 seeking the following orders;
 - (i) Spent
 - (ii) That the Honorable court be pleased to issue an order directing the OCS Litein police station to investigate any probable criminal offences associated to Land Parcel L.R No Kericho/ Chemoiben/827 and the intended illegal subdivisions which has not captured the Applicant's name.
 - (iii) That the Honorable court be pleased to issue an order directing the OCS Litein police station to take action against the 2nd Respondent's son one Festus Kiplangat Sang who has been making perpetual threats to the Applicant who is currently living in fear instead of enjoying peaceful existence in her legally acquired property and to order the area chief Chemoiben



Location and OCS Litein Police Station to supervise and enforce the implementation of the orders sought by this Honorable court.

- (iv) That the Honorable court be pleased to restrain the Respondents from trespassing into, subdividing, transferring, ploughing, farming, selling, leasing, mortgaging, charging, alienating and destruction of the property or in any other way interfering with the peaceful ownership of the Applicant's portion of Land that makes up the larger suit Land L.R No Kericho/ Chemoiben/827
 - (v) That the Honorable Court be pleased to include the Petitioner/Applicant herein as a beneficiary to the suit parcel of land of the deceased's estate which is the subject matter of this application.
 - (vi) That the cost of this application be borne by the Respondents.
2. The application is supported by the grounds on the face of it and the supporting affidavit of Carolyn Chelangat the Petitioner/Applicant herein.
 3. She avers that on several times the 2nd Respondent through her son one Festus Kiplangat Sang has continuously been destructing and destroying the perimeter wall on the subject matter parcel of land marked and attached photographs of the destruction of the said property.
 4. She avers that she purchased a portion of land measuring 0.1 of an acre from the 1st Respondent Kipn'geno Arap Kirui and subsequently entered into a written agreement on 21st November 2016 at a consideration of Kshs. 850,000/= read as (eight hundred & fifty thousand Kenya shillings only) and concluded the final payment on 6th June 2017.
 5. She avers that upon completion of payment, she started developing the suit property portion of land by constructing 6 self-contained modern suite houses and occupied one of them and rented out the rest. (Annexed hereto are photographs of the said
 6. She avers that the 1st Respondent willfully and illegally breached her right of ownership despite having fulfilled her part as per a duly consented written agreement dated 21st November 2016.
 7. She avers that the Respondents herein had filed succession petition in respect to the estate of the Late John Kipkirui Tesot alias John Kipkirui Tesot (Deceased) and grant of letters of administration intestate were issued to the Respondents by this Honorable court on 16th December 2014 and subsequently rectified on 8th February 2021 without the inclusion of her name as a beneficiary of the contested estate.
 8. She avers that upon perusing the certificate of confirmation herein she found out that her name was visibly missing from the distribution table of the beneficiaries of the deceased's estate.
 9. She avers that the Respondents deliberately and/ or fraudulently omitted her name as a legitimate beneficiary of the deceased's estate despite being an innocent and rightful purchaser/owner of the suit portion of land.
 10. She avers that she did not consent to the petition and summons of the confirmation of grant and that the 2nd Respondent through her son one Festus Kiplangat Sang has been issuing numerous threats to her and her family and the tenants at large threatening to evict them and the same time has been destroying and destructing the subject suit.
 11. She avers that she has reported to the respective authorities but he has since persisted with his untimely behaviour despite numerous warnings.



12. She avers that the 2nd Respondent through her son one Festus Kiplangat Sang has since illegally erected a structure right at the main entrance of her house hence blocking her and her tenants from easy access of their respective houses hence causing unnecessary inconvenience.
13. She avers her proprietary rights have been threatened by the Respondents herein by not including her name as a beneficiary of the estate of the deceased.
14. She avers that the instant application is made in good faith, and that no prejudice will suffer any party without remedy.
15. She avers that if the Respondents actions go unchecked, they have the consequences of further disenfranchising her and further that their actions border on criminal activities.
16. Geoffrey Kipkorir Kirui the 4th Respondent filed a replying affidavit in response to the application.
17. He avers that the said application is frivolous, mischievous, lacking in merit and is based on falsehoods, the same has been brought in bad faith and ought to be dismissed.
18. He avers that the application in question raises and wishes to canvas issues that were already raised by the applicant in her application dated the 4th June, 2024.
19. He avers that he opposed the said application vide a replying affidavit sworn on the 5th December, 2024 and further that the same was brought before this honourable court's attention and the court directed that the application be canvassed by way of written submissions.
20. He avers that they have since filed written submissions on that application of 4th June, 2024 and duly served the Applicant with the same and further that the application has been slated for hearing before this honourable court on the 10th of March 2025 and is therefore pending before this honourable court.
21. He avers that for the aforementioned reasons, the instant application offends the principle of sub judice and on the substantive issues he would be relying on the evidence dated 5th December, 2024 in response to the application dated 4th June, 2024.
22. He therefore urged this court to dismiss the application dated 27th November, 2024 with costs to be borne by the Applicant.
23. This court directed the parties to file their written submissions in response to the application.
24. The applicant filed her submissions and maintains that her application raises pertinent issues regarding the safety of the Applicant herein and the security of her developed property in the contested suit property L.R No Kericho/Chemoiben/827 that forms part of the larger estate of John Kipkirui Tesot alias John Kipkirui Tesot (deceased).
25. The applicant maintains that she has been living in constant fear of her life since the 2nd Respondent's son Festus Kiplangat Sang has been lodging numerous threats to her, her family and the tenants at large threatening to evict them and that she has reported to the local authorities but he has since persisted with his erroneous behavior despite numerous warnings. She contends that the 2nd Respondent through her son one Festus Kiplangat Sang actions and behaviors amount to criminal offence under the Penal code hence urgent punitive legal framework actions must be taken against him forthwith.
26. The applicant set out her interests on the subject property as follows; she purchased a portion of Land Parcel L.R No Kericho/Chemoiben/827 from the 1st Respondent one Kipn'geno Arap Kirui measuring 0.1 acre and subsequently entered into a written agreement on 21st November 2016 at a consideration of Kshs. 850,000 read (eight hundred & fifty thousand Kenya shillings only) and



- concluded the final payment on 6th June 2017 where a copies of sale agreement and acknowledgement certificate of full and final payment of the purchase respectively were duly issued. She argued that the right to enjoy property, including land, is protected under the Constitution and various land laws. She therefore argued that having demonstrated that she acquired the suit land in a legitimate and rightful manner, she is entitled to enjoy peaceful co-existence in the said suit property without threats, trespass and destruction.
27. The applicant contended that she will suffer irreparable loss and prejudice as she will be rendered unheard against her constitutional rights and natural justice if the orders sought in the application dated 27th November, 2024 are not granted. It is therefore in the interest of justice and fairness that if the Respondents actions go unchecked, they have the consequences of further disenfranchising the Applicant and further that the 2nd Respondent's son Festus Kiplangat Sang actions border on criminal offences in view of the numerous threats, destruction of property and trespass.
28. The 4th respondent filed submissions in opposition to the instant application. He contended that the applicant's actions were tantamount to intermeddling, he stated that he duly obtained a grant for the administration of the estate of the deceased. This occurred at the tail end of a process that had stretched through most of ten years culminating in a confirmation of rectified grant dated 8th day of February, 2021. He stated that it was worth noting that throughout the pendency of the aforementioned succession matter, the Applicant never thought to raise the issue. He further contended that in her Application the Applicant claims that she entered into a sale agreement with the 1st Respondent for the purchase of a portion of Kericho/Chemoiben/827 and allegedly purchased this parcel of land on the 21st of November 2016. The purported sale is egregious. He reiterated that at the time, the parcel of land known as Kericho/Chemoiben/827 and any resultant portion was still vested in the deceased's estate and further that no one had any colour of right to either dispose of, purchase or transact over the deceased's estate at that time. He therefore invited this court to deal with this Applicant as an intermeddler ripe for befitting consequences to follow in accordance with Section 45 (2) (a) of the Law of Succession Act.
29. The 4th respondent in his submissions pointed out that this is the wrong forum to have this matter determined and cited the case of In re Estate of Alice Mumbua Mutua (Deceased) [2017] KEHC 8289 (KLR) where the court observed as follows; "However, claims by and against third parties, meaning persons who a neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules. Such have to be resolved through the structures created by the Civil Procedure Act and Rules, which have elaborate rules on suits by and against executors and administrators."
30. The 4th respondent contended that the applicant did not acquire any beneficial interest from the purported transaction, there is nothing therefore warranting her inclusion as a beneficiary of the estate and cited In the Matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] KEHC 1930 (KLR) where the court opined that; "As the respondent had no authority to sell the property in question, Felix Kinuthia acquired no interest in it at all as the seller had no title to it whatsoever. A buyer, such as Felix Kinuthia, is not on the same footing with a creditor, for the interest he alleges to have acquired in the estate was not acquired from the deceased during his lifetime or from a person authorized to sell the property. It should be noted that even where a grant of representation has been obtained, the grant-holder has no power to sell any immovable asset before confirmation of the grant. This is the law under section 82(b)"
31. Having considered the pleadings and the submissions by the parties, on one part, it is clear that the applicant (a third party who is neither a beneficiary or dependant of the deceased) is intent on enforcing



proprietary rights in 0.1 acres of Kericho/Chemoiben/827 consisting of the estate of the deceased having purchased it from the 1st Respondent. On the other part, the respondent is adamant that at the time of the purported sale, the parcel of land known as Kericho/Chemoiben/827 and any resultant portion was still vested in the deceased's estate and further that no one had any colour of right to either dispose of, purchase or transact over the deceased's estate at that time. This claim is one that is beyond the powers of this Court sitting as a probate court, as the applicant claims that she is a bona fide purchaser for value, which claim will need to be clarified. Musyoka, J. in this regard expounded as to when a matter is best placed for a succession cause and when it ought to be referred to another Court with concurrent jurisdiction in *In Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR as follows:

“... The *Law of Succession Act*, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.

Disputes of course do arise in the process. The provisions of the *Law of Succession Act* and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the *Law of Succession Act* and the Probate and Administration Rules. Such have to be resolved through the structures created by the *Civil Procedure Act* and Rules, which have elaborate rules on suits by and against executors and administrators.

The Probate and Administration Rules recognize that, and that should explain the provision in Rule 41(3), which provides as follows –

‘Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or property comprising it to abide the determination of the question in proceedings under the Civil Procedure Rules ...’

Clearly, disputes as between the estate and third parties need not be determined within the succession cause. The legal infrastructure in place provides for resolution elsewhere, and upon a determination being made by the civil court, the decree or order is then made available to the probate court for implementation. In the meantime, the property in question is removed from the distribution table. The presumption is that such disputes arise before the distribution of the estate, or the confirmation of the grant. Where they arise after confirmation, then they ought strictly to be determined outside of the probate suit, for the probate court would in most cases be *functus officio* so far as the property in question is concerned. The primary mandate of the probate court is distribution of the estate and once an order is made distributing the estate, the court's work would be complete. The proposition therefore is that not every dispute over property of a dead person ought to be



pushed to the probate court. The interventions by that court are limited to what I have stated above.”

32. Consequently, the Notice of motion dated November 27, 2024 is hereby stuck out.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 27TH DAY OF MARCH, 2025.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Lang’at for the 4th Respondent

Carolyn Chelangat – Preset in Person.

