

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
SUCCESSION CAUSE NO. 135 OF 2013
IN THE MATTER OF THE ESTATE OF THE LATE KIPKOECH
CHUMO alias KIPKOECH ARAP CHUMO (DECEASED)

SARAH CHEPKORIR CHUMO.....PETITIONER/APPLICANT

VERSUS

DAVID KIPLANGAT KOECH
.....OBJECTOR/RESPONDENT

RULING

1. The application coming up for hearing is an amended chamber summons dated 29th January, 2025 seeking the following orders;

(i) Spent.

(ii) THAT the firm of Mitei Kirui & Company Advocates be granted leave to come on record for the Petitioner/Applicant in this cause.

(iii) Spent.

(iv) THAT leave be granted to the Petitioner/Applicant to appeal to the Court of Appeal and the Notice of Appeal dated 17th of December 2024 and filed on 18th of December 2024 be deemed properly and legally filed.

(v) THAT the ruling and order of the Honourable Court issued on 5th December 2024 be stayed pending the hearing and determination of the appeal.

(vi) THAT the Honourable Court issue such further orders as will further justice in the matter.

(vi) THAT costs be provided for.

2. The application is supported by the grounds on the face of it and the supporting affidavit of ***Sarah Chepkorir Chumo*** the Applicant herein.
3. She avers that on the 5th day of December 2024, this Honourable Court delivered a ruling on the affidavit of Protest dated 19th September 2014 against the Confirmation of Grant dated 29th August 2014.
4. She avers that in the said ruling the court held that the deceased had three properties namely:
 - i. KERICHO/CHEBORGE/399 measuring 9 acres
 - ii. KERICHO/CHEBORGE/647 measuring 3.5 acres
 - iii. MOLO SOUTH/IKUMBI BLOCK 9/75 (HARAKA FARM) measuring 5 acres.

5. She avers that this Honourable Court ruled that the deceased had distributed his estate and therefore upheld the affidavit of Protest.
6. She avers that she is dissatisfied with the Court's ruling of 5th December 2024 in that the Honourable Court failed to consider that the parcel of land number **KERICHO/CHEBORGE/647** does not belong to the deceased's estate and ought not to have included in the distribution and she attached a copy of the Certificate of Official Search.
7. She avers that she is desirous to pursue an appeal in the Court of Appeal and therefore prepared a Notice of Appeal dated 17th December 2024 and filed on 18th December 2024.
8. She avers that there is no automatic right of appeal to the Court of Appeal in Probate and Administration causes hence necessitating the filing of this application.
9. She avers that she has an arguable appeal with good chances of success as demonstrated in the Draft Memorandum of Appeal hence it is in the best interest of justice that the leave to appeal be granted. She therefore sought a stay of execution of the ruling dated 5th December

2024 and an order of status quo prevailing before the delivery of the said ruling be granted.

10. She avers that there is a real and imminent danger that the best interests of the beneficiaries are prejudiced in that the Petitioner and her children have been given a parcel of land that does not form part of the deceased's estate hence might be thrown out at any time.
11. She avers that unless the orders prayed for are granted, the applicant stands to suffer irreparable damage.
12. She avers that it is in the best interest of justice to the estate that the subject matter be preserved pending the prosecution and determination of the appeal otherwise the substratum of the appeal would be rendered nugatory.
13. She avers that the urgency of this application lies in the fact that the Respondent is at an advanced stage to transfer and/or transmit the title form the deceased to the beneficiaries which will render the appeal moot if not stayed.
14. The respondent filed a replying affidavit in response to the application, the affidavit was sworn by **Titus Kipkorir Langat** a grandson and legal representative of the estate

and the Le of the late KIPKOECH CHUMO Alias KIPKOECH ARAP CHUMO (Deceased).

15. He avers that the Petitioner's/Applicant's Amended Summons Chamber dated 29th January, 2025 has been brought with bad intention and with unclean hands.

16. He avers that in reply to paragraph 2 of the supporting affidavit, the Ruling delivered on 5th December, 2024 is genuine and the Honourable Court's Ruling is just and fair to the beneficiaries of the estate of the deceased.

17. He avers that in reply to paragraph 3 of the supporting affidavit, the estate of KIPKOECH CHUMO Alias KIPKOECH ARAP CHUMO (Deceased) comprised in the land KERICHO /CHEBORGE/399, KERICHO/CHEBORGE/647 and MOLO SOUTH/IKUMBI BLOCK 9/75 (Haraka farm) and the same should be shared equally.

18. He avers that in reply to paragraph 4 of the supporting affidavit, the Petitioner has intention to disinherit the beneficiaries unlawfully from the estate of their late grandfather.

19. He avers that in reply to paragraph 5 of the supporting affidavit, the Petitioner's allegations that the land parcel

KERICHO/CHEBORGEI /647 does not belong to the deceased is false because there is document which proves that the late KIPKOECH CHUMO Alias KIPKOECH ARAP CHUMO (Deceased) is the legal owner of said land, he attached a copy of Sale Agreement.

20. He avers that in reply to paragraph 6 of the Supporting Affidavit, the Petitioner's application has been brought in bad faith because she wanted to inherit the estate of the deceased alone, whereas it is fair and equitable that the estate be distributed equally among all the beneficiaries of the deceased as per the wishes of the deceased.

21. He avers that in reply to paragraph 10 of the Supporting Affidavit, the Petitioner's allegations are frivolous, vexatious and an abuse of the Court process.

22. He avers that in reply paragraph 11 & 12 of the Supporting Affidavit, the Petitioner meant to frustrate and deny them the use and enjoyment of the properties of the estate of the deceased and that the Petitioner's Appeal has been filed in bad faith and the same intends to deny them the fruit of their judgment.

23. He reiterates that the application is baseless, scandalous, frivolous and an abuse of Court process and therefore the Petitioner/Applicant's application dated 29th January, 2025 ought to be disallowed and dismissed with costs.

24. The matter came up for inter partes hearing, the parties elected to canvas the application via written submissions, this court therefore directed parties to file written submissions. At the time of writing this ruling none of the parties had uploaded their submission of the Case Tracking System. This court has therefore considered the material on the record in arriving at a fair and just determination.

25. I have considered the application and response files and I find that the issue (s) for determination are whether the firm of Mitei Kirui & Company Advocates be granted leave to come on record for the Petitioner/Applicant in this cause, whether leave can be granted to the Petitioner/Applicant to appeal to the Court of Appeal and the Notice of Appeal dated 17th of December 2024 and filed on 18th of December 2024 be deemed properly and legally filed and whether the ruling and order of the Honourable Court

issued on 5th December, 2024 be stayed pending the hearing and determination of the appeal.

26. On the issue whether the firm of Mitei Kirui & Company Advocates be granted leave to come on record for the Petitioner/Applicant in this cause and appear for them. This court notes that there is no objection.

27. On the issue whether leave can be granted to the Petitioner/Applicant to appeal to the Court of Appeal and the Notice of Appeal dated 17th of December 2024 and filed on 18th of December 2024 be deemed properly and legally filed. On one part, the applicant argued that there is no automatic right of appeal to the Court of Appeal in Probate and Administration causes hence necessitating the filing of this application. The applicant was adamant that the appeal has good chances of success as demonstrated in the Draft Memorandum of Appeal hence it is in the best interest of justice that the leave to appeal be granted. On the other part, the respondent contended that the Petitioner's Appeal has been filed in bad faith and the same intends to deny them the fruit of their judgment. In probate matters the right to appeal is not automatic in ***John Mwita Murimi & 2***

Others v. Mwikabe Chacha Mwita & Another [2019]

eKLR, the Court of Appeal re-affirmed this position by holding as follows: ***“...Under the Law of Succession Act, there is no express automatic right of Appeal to the Court of Appeal from the decision of the High Court exercising original jurisdiction...”*** The intended appeal arises from the decision of this court as to the mode of distribution of the deceased’s estate. The beneficiary who is aggrieved has a right to appeal. I have perused the draft Memorandum of Appeal and noted that it has raised substantive points of law for consideration by the Court of Appeal. The respondents will not suffer any prejudice.

28. On the issue whether the ruling and order of the Honourable Court issued on 5th December, 2024 be stayed pending the hearing and determination of the appeal. On one part, the applicant argued that there is a real and imminent danger that the interests of the beneficiaries are prejudiced in that the Petitioner and her children have been given a parcel of land that does not form part of the deceased’s estate hence she might be thrown out at any time. On the other part, the respondent was adamant that

the subject parcel belonged to the deceased and therefore forms a part of the estate of the deceased and ought to be distributed equally among all the beneficiaries of the deceased as per the wishes of the deceased. In the circumstances of this case, this court deems it fair and just to stay the implementation and/or execution of the ruling dated 5th December 2024 pending hearing and the determination of the appeal.

29. Having considered the arguments by both parties, the amended chamber summons dated 29th January is hereby allowed giving rise to issuance of the following Orders:-

(i) The Firm of Mitei Kirui & Company Advocates is granted leave to come on record and appear for Applicants.

(ii) This court grants an order extending time by 10 days for giving notice of appeal against the ruling of this court dated 5th December, 2024 in this case.

(iii) An order for stay of implementation and or execution of the ruling of 5th December, 2024 is

granted pending the hearing and determination of the intended appeal.

(iv) Costs to await the outcome of the intended appeal.

**Delivered, signed and dated at Kericho this 27th day
of March, 2025.**

.....
**J.K. SERGON
JUDGE**

In the Presence of:-

C/Assistant - Rutoh

Mitey for Petitioner/Applicant

Bii for the Respondent