



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of Grace Bartonjo (Deceased) (Miscellaneous Succession Cause E002 of 2023) [2024] KEHC 1988 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1988 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
MISCELLANEOUS SUCCESSION CAUSE E002 OF 2023  
RB NGETICH, J  
FEBRUARY 29, 2024  
IN THE MATTER OF THE ESTATE OF THE LATE GRACE BARTONJO**

**BETWEEN**

**WILSON RONO CHEPTINGA ..... 1<sup>ST</sup> APPLICANT**

**CYNTHIA JEPCHUMBA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**SAMSON KANGOGO BARTONJO ..... 1<sup>ST</sup> RESPONDENT**

**ZAKAYO BARTONJO CHEPKIRWOK ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before me for determination is application dated 12<sup>th</sup> November 2023 brought under the provisions of Rules 49 and 73 of the *Probate and Administration Rules* and Order 18 of the *Civil Procedure Rules*, 2010 in which the 2<sup>nd</sup> applicant is seeking the following orders:-
  - i. Spent.
  - ii. That this Honourable Court be pleased to order the transfer of Kabarnet High Court Misc. Succession Cause No. E002 OF 2023, in the matter of the Estate of the late Grace Bartonjo, from Kabarnet to Eldoret High Court forthwith.
  - iii. That the costs of this application be in the cause.
2. The application is founded on the following grounds:-
  - a. That following the confirmation of Grant in Eldoret Chief Magistrate's Court Succession Cause No. E 098 OF 2023 filed on 5<sup>th</sup> April 2023, published in the Kenya gazette on 6<sup>th</sup> April 2023, grant issued on 8<sup>th</sup> May 2023 and confirmed on 24<sup>th</sup> May 2023 the 2<sup>nd</sup> applicant herein is not satisfied with the same.



- b. That this instant cause was filed in Kabarnet instead of Eldoret High Court which is clothed with jurisdiction.
  - c. That it is only fair in the circumstances that the file be transferred to Eldoret High Court within whose Jurisdiction the cause of action arose.
  - d. That the Respondents will not be prejudiced since they will have an opportunity to defend themselves in Court.
3. The application is supported by affidavit sworn by Cynthia Jepchumba. She sought to have the matter transferred Eldoret High court to enable her apply for school fees. She avers that her father and her late step mother equally owned properties in Eldoret, Nakuru, Machakos and Nairobi hence the Eldoret High Court is clothed with the requisite jurisdiction and of great importance is that this succession cause seeks to revoke the grant that was issued in Eldoret Chief Magistrate's Court Succession E No. 098 of 2023, in the matter of the Estate of the late Grace Bartonjo and the application for revocation ought to have been filed at Eldoret High Court and not at Kabarnet High Court.
  4. Further that transfer of this matter to Eldoret High court would mitigate on travel costs for herself, her Advocate and other witnesses. She states that she resides with her uncle Philip Kipkurui in Eldoret town whenever he is not at the University; further that the 1<sup>st</sup> respondent resides within the jurisdiction of Eldoret High Court and that she did not get an opportunity to choose the jurisdiction of the court when the instant cause was being filed since she had surrendered her consent to the 1<sup>st</sup> applicant having not fully understood its implication in view of the fact that she is 19 years old, a lay person and had no opportunity to obtain independent legal advice.
  5. That the monetary value of the estate is about thirty million and not value given by the respondents at the time of filing Eldoret Chief Magistrate's Succession Cause No. E 098 OF 2023 and it ought to have been filed at Eldoret High Court as opposed to the Lower Court.
  6. The 1<sup>st</sup> Applicant Wilson Rono Cheptinga has opposed the application for transfer of suit through a replying affidavit 28<sup>th</sup> November 2023. He states that the late Grace Bartonjo whose estate is the subject of this objection proceeding was a resident of Kiboino Location Baringo County hence the Kbarnet High court has the Jurisdiction to hear and determine the objection; further that the objectors and the respondents are residents of Baringo County hence the objection is properly before the honourable court; and the High Court has supervisory jurisdiction over subordinate courts all over the county.
  7. That this objection was filed under certificate of urgency and the honourable court certified it urgent and directed that the same be disposed of by way of oral evidence and has been slated for hearing on 25<sup>th</sup> January 2024 hence the transfer sought will delay its speedy disposal; and one of the issues in contention is the filing of the succession cause the subject of this objection in Eldoret instead of Kabarnet where the deceased was domiciled.
  8. That he has been advised by his advocate which advise he verily believes to be true that succession causes are filed in the jurisdiction where the deceased was domiciled and not on the basis of location of the estate assets save for pecuniary jurisdiction and the applicant can still apply for provision of school fees and related expenses without necessarily transferring the matter to Eldoret.
  9. The 1<sup>st</sup> Respondent Samson Kangogo Bartonjo opposed the application vide a replying affidavit sworn on 22<sup>nd</sup> November 2023.
  10. He avers that him and the 2<sup>nd</sup> Respondent are blood brothers of Grace Bartonjo (now Deceased) who died on 26<sup>th</sup> January 2023 and that their late sister had a relationship with the 1<sup>st</sup> Applicant's brother



James Cheptinga (now deceased) and their union was blessed with one issue namely Sharleen Jerotich Keitany who was born on 18<sup>th</sup> January 2014. The said James Cheptinga died on 12<sup>th</sup> May 2020

11. That prior to meeting their sister Grace Bartonjo (now deceased), the late James Cheptinga had another relationship with another woman and their union was blessed with one child, Cynthia Jepchumba, the 2<sup>nd</sup> Applicant who is now 23 years, old.
12. That the late Grace Bartonjo did not at any point voluntarily assume permanent responsibility and neither did she accept the 2<sup>nd</sup> Applicant as her child and in fact, the- late James Bartonjo solely catered for the needs of the 2<sup>nd</sup> Applicant without involving their late sister and upon his demise, the family of the late James Cheptinga and specifically Philip Cheptinga took custody of the 2<sup>nd</sup> Applicant and in any event, she was adult by then and had the liberty of choosing who she wanted to stay with without seeking anyone's consent.
13. That the 2<sup>nd</sup> Applicant has not placed before this Honourable Court any material whatsoever to prove dependency and neither has she placed before this Court any evidence to support her claim that the respondents' elder sister was paying school fees for her prior to her death.
14. That following the death James Cheptinga, the relationship between their late sister and the family of the late James Cheptinga grew toxic to an extent that she resorted to raise her daughter, Sharleen Jerotich alone and swore never to set foot into the compound of the late James Cheptinga.
15. That all this animosity was fueled by the family especially by one Philip Cheptinga's greed to disposes their late sister of her shares in the assets and estate of the late James Cheptinga.
16. He further avers that their sister did not petition for letters of administration for the estate of James Cheptinga and left all the assets of the estate with the family for the sake of her peace and mental wellness and the estate of the late James Cheptinga remains unadministered to date in the absence of a valid letters of Administration issued by a Court of Competent jurisdiction; that none has been produced before this Honourable Court.
17. He further sate that being aware that it's a criminal offence to deal in the assets of a deceased person in the absence of letters of Administration duly issued by the Court, their mother who is the right person in the order of preference gave them her consent and/or permission to petition for letters of administration of her late daughter's estate as she could not take out the grant in her name for the simple reason that she is sick and elderly.
18. He avers that they filed Succession Cause No. E098 of 2023 in the matter of the Estate of Grace Bartonjo and filed Petitioned for grant of letters of administration- and the cause be advertised in the Kenya gazette as a succession cause for a thirty (30) days; that they were informed by the Court that the purpose of the advertisement was to allow any person who feels aggrieved for any reason by the Petition ample time to lodge any Objections but no objection was filed and upon the expiry of the thirty (30) day notice period, they were issued with letters of administration and they became the administrators of the estate of their late sister to enable them collect and preserve her assets.
19. That they presented the said letters of Administration to all the bankers and saccoes where their late sister had accounts and or savings just to deter any other person from accessing the said accounts and or assets without the requisite authority.
20. That they later applied to the same Court to have the grant issued to them confirmed and certificate of confirmation of the grant was issued to them and they have been informed by their Advocate that the Applicants do not have the locus to move this Court for reasons that they are not beneficiaries or dependents of the late Grace Bartonjo-and therefore have no legal claim to the estate.



21. Further the applicant has not produced any valuation to show that the estate exceeds Ksh. 30,000,000 and the same is a mere allegation not supported by law.
22. He further stated that the Applicant has not annexed any title document registered in the joint names of the late Grace Bartonjo and James Cheptinga and the mere assertion that the Applicant's father and their late sister held properties as joint owners.
23. He further avers that he has been informed by his Advocate that the instant application has been overtaken by events as letters of Administration were already issued to the Administrators and confirmed and orders for the revocation of a grant can only be issued by the Court that issued the grant which in any event cannot be allowed at this time since the same has been confirmed and a certificate of confirmation already issued. That the Applicant and her surrogates are not beneficiaries of that estate and does not have the locus to make this an application; that the question of jurisdiction of this Court was first raised in their replying affidavit in opposition to the application dated 2<sup>nd</sup> of June 2023 in Misc. Succession Cause No. E002 OF 2023 and the application is pending hearing and determination by this Court and the Court had already directed parties to file their witness statements.

### **Determination**

24. I have considered grounds of the application, averments by parties plus oral submissions by Advocates herein. I wish to consider whether the applicant has met threshold for grant of orders sought. It is not disputed that Eldoret Cm succession cause no. E008 of 2023 issued with temporary grant of letters of administration and equally confirmed the grant. The Respondents are co-administrators of the estate of their late sister Grace Bartonjo.
25. The 2<sup>nd</sup> applicant argue that the application seeks to grant issued by the magistrates court and some of the properties are located in Eldoret and the parties including herself reside in Eldoret; further that the chief magistrates' court which issued and confirmed the grant of letters of Administration does not have pecuniary jurisdiction to deal with the matter as they are valued about 30 million and the chief magistrate's court is under the supervisory of Eldoret High court making Eldoret correct the most suitable court to deal with the matter.
26. On the other hand, the respondents argue that the parties herein reside in Baringo County hence this court has the jurisdiction to handle the matter to its logical conclusion.
27. In respect to jurisdiction, the court of appeal stated as quoted below in the case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd.* (1989)

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”
28. Article 165 (6) of the *Constitution* of Kenya gives High court supervisory powers over subordinate courts under it. There is no dispute that Eldoret chief magistrate's court is a subordinate court under Eldoret High court. It is Eldoret Cm's court which issued and confirmed the Grant which is the subject matter of this proceedings. The applicant has also stated that some of the properties being subject of this succession cause, are located in Eldoret. There is no mention of any property being located in Baringo county which is served by Kabarnet High court.



29. From the foregoing, I am of the view that Eldoret High Court has competent jurisdiction to deal with issues that may find their way to High court from the subordinate court concerning the estate herein. The application to transfer this matter to Eldoret High court is therefore merited.

30. Final orders: -

1. This matter is hereby transferred to Eldoret High court.
2. Costs to the Respondent.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 29<sup>TH</sup> DAY OF FEBRUARY 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Mr Ombego holding brief for Wafula for Applicant.

Ms Awiti for Respondents.

Mr Chebii for 1<sup>st</sup> Objector/Respondent.

Kibet – Court Assistant.

