



**In re Estate of Simeon Kiprono Kurgat (Deceased) (Probate & Administration
73 of 2021) [2024] KEHC 3280 (KLR) (21 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3280 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 73 OF 2021**

JR KARANJA, J

MARCH 21, 2024

IN THE MATTER OF THE ESTATE OF SIMEON KIPRONO KURGAT (DECEASED)

BETWEEN

TIMON KIPLAGAT RONO PETITIONER

AND

PRISCAH JEROTICH RONO 1ST RESPONDENT

ELIZEBA JEMUTAI RONO 2ND RESPONDENT

RUTH JEPKEMBOI RONO 3RD RESPONDENT

SUSAN JEPKORIR 4TH RESPONDENT

JANET JEBETL 5TH RESPONDENT

CHRISTINE JEPTOO RONO 6TH RESPONDENT

CHARITY JEPCHUMBA 7TH RESPONDENT

RULING

1. The genesis of the present application dated 10th December 2020 is the petition for grant of letters of administration intestate respecting the estate of the late Simeon Kiprono Kurgat (deceased) filed herein by the Applicant/ Petitioner; Timon Kiplagat Rono, on the 17th December 2020, in his capacity as the only surviving son of the deceased on his own behalf and behalf of his eight sister, daughters of the deceased.

At the time of presentation of the petition, the widow of the deceased, Rael Jepkurgat Kurgat was also deceased and so was one daughter of the deceased, Elizabeth Jepchirchir.

2. The petitioner was filed together with the present application made vide the summons dated 10th December 2020 seeking three major orders against the Respondents. These are an order staying



any dealings respecting land parcels No. Nandi/Ndalat Sett/124, Nandi/Ndalat Sett/891 – 898 and Nandi/Sigot/29 pending interparty hearing and determination of the application, an order directed at the Nandi County Land Registrar to cancel the registration of the irregular/illegal subdivisions of Land Parcels No. Nandi/Ndalat Sett/122, Nandi/Ndalat Sett/125 and transfer of Land Parcels No. Nandi/Ndalat Sett/124, Nandi/Ndalat Sett/891 – 898 and Nandi/Sigot/29 all in the name of the deceased and an order directing the Nandi County Criminal Investigation Officer to carry out investigations into the circumstances surrounding the illegal/ irregular subdivision and transfer of the resultant titles with respect to Land Parcels No. Nandi/Ndalat Sett/122, 124, 125 and Nandi/Sigot/29 to establish existence of any fraud/ criminal offences, take appropriate legal action against those found culpable and file a report with the court within 30days.

3. The Applicant also asked that the costs of the application be awarded to him.

The order of stay of any dealings with the Land Parcels Nos. Nandi/Ndalat Sett/124, 891 – 898 and Nandi/ Sigot/29 pending the hearing and determination of this application was granted by the court on the 13th January 2021 with the concurrence of the Applicant’s Learned Counsel, Mr. Kenei and the Respondent’s Learned Counsel, Mr. Tororei.

The hearing of the application was to proceed by way of written submissions as directed by the court on 8th March 2021. However, later on the 20th April 2022, the Respondents filed a preliminary objection to the application and on the 3rd August 2022, the court directed that both the application and the preliminary objection be canvassed together.

4. It was against the background foregoing that the Applicant filed his written submissions way back on the 26th July 2021. Apparently, as at the last mention date on 19th March 2024, the Respondents had not filed their submissions and having failed to comply with the directions given by the court to that effect, a ruling date for the application and by extension the preliminary objection was set for today the 21st March 2024. This court, having considered both the preliminary objection and the application together with the grounds in support and opposition thereto as well as the Appellant’s written submissions, opined that the basic issues arising for determination are Firstly, whether the Preliminary Objection and the application are competent and proper before the court and Secondly, barring the Preliminary Objection, whether the Applicant would be entitled to the relevant orders against the Respondents.
5. On the first issue, vis a vis the Preliminary Objection, the legal parameters for validity thereof were mapped out in what is considered to be the “*locus-classicus*” case on the subject i.e. *Mukisa Biscuit Manufacturing Company Limited v West End Distributors Limited* (1969) EA 698 in which it was observed that a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.

It was held in that case that: -

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”

6. Herein, the Preliminary Objection dated 15th April 2021, is based on two grounds viz: -
 - i. That the summons dated 10th December 2020 is incompetent as the Petitioner lacks the requisite “*locus-standi*” to prefer it as the deceased left behind a will dated 20th January 2010.



- ii. That the Petitioner did not have proper authority for petition for the grant of letters of Administration intestate in respect of estate where there is a valid will. The proceedings herein as well as the summons dated 10th December 2020 are a violation of Section 3 as read with Sections 80 and 82 of the [Law of Succession Act](#).
7. The common denominator in the two grounds is the existence and validity of a will. The Respondents therefor contend that the Applicant had no “*locus-standi*” in petitioning for grant of representation respecting the estate of the deceased as the deceased left behind a will dated 20th January 2010. In that regard, the Applicant submitted that the objection is not self-proof and that additional material facts are necessary to prove the existence and validity of the alleged will. Therefore, the objection falls short of the required threshold and ought to be dismissed. Indeed, the existence and validity of the will would require evidence to establish and prove the fact. This court agrees with the foregoing argument by the Applicant only that it may, add that this petition being geared towards an intestate succession is a demonstration that the deceased did not leave behind a will or if he did, then it was not valid for purposes of a testate succession. The Respondents would in the circumstances need to adduce credible evidence to prove otherwise. Therefore their preliminary objection to the present application and/or the petition does not raise pure points of law and is clearly lacking in competence and propriety.
8. In any event, the existence of a will would not preclude a person from instituting a succession cause and snatch from him the “*locus-standi*” to do so. In as much as the present application is also anchored on the provisions of the [Constitution](#) in particular, Articles 40, 48 and 50 which are embedded in the Bill of Rights and provide for the rights to property, access to justice and fair hearing, the Applicant by dint of Article 22(1) of the [Constitution](#) was clothed with the necessary “*locus-standi*” to institute these succession proceedings. Further, the [Law of Succession Act](#) [Cap 160 Laws of Kenya] in Section 2[1] provides that: -
- “except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the Law of Kenya in respect of and shall have universal application to all cases of intestate or testamentary succession to the estate of deceased persons dying after the commencement of this Act and to the administration of estate of those persons.”
- This provision of the [Succession Act](#) was also capable of providing the necessary “*locus-standi*” to the applicant to commence these proceedings for the administration, preservation and protection of the estate property of his late father for which he is a beneficiary together with the Respondents. Notably, the property of a deceased person cannot lawfully be dealt with by anybody unless the person is authorized to do so by law by way of a grant of representation. A person who handles estate property without authority would be guilty of the criminal offence of intermeddling [See, Section 45 of the [Law of Succession Act](#)]
9. As noted herein above the Preliminary Objection is wanting on competence, proprietary and legal validity. It is therefore struck out and dismissed. With regard to the application it is proper and competent before court as it is basically anchored on the specified constitutional provisions i.e. Articles 40, 48, 50 and 159 as well as Rules 49, 59 and 63 of the [Probate and Administration Rules](#). Other than the order staying any dealings with part of the estate property which has since been granted pending the hearing and determination of the application, additional substantial orders are sought against the Nandi County Land Registrar and the Nandi County Criminal Investigation Officer in relation to the estate property.



Thus, the Applicant prays for an order against the Land Registrar for cancellation of title documents resulting from alleged irregular and illegal sub-divisions of Parcels Nos. Nandi/Ndalat/Sett/122 and 125 and transfer to the respondent of title Numbers Nandi/Ndalat/124, Nandi/Ndalat Sett/891-898 and Nandi/Sigot/29 and have the initial title Nos. Nandi/Ndalat Sett/122, 124, 125 and Nandi/Sigot/29 revert back in the name of the deceased the Late Simeon Kiprono Kurgat.

10. In the petition for grant of Letters of Administration dated 10th December 2020 filed herein on the 17th December 2020 by the Applicant the property listed as belonging to the deceased and available for distribution are the aforementioned parcels of land described as Nos. Nandi/Ndalat Sett/122, 124, 125 and Nandi/Sigot/29.

The additional parcels referred to herein i.e. Numbers Nandi/Ndalat Sett/891 – 898 are not included in the petition, hence unavailable for distribution as part of the estate property. There is indication herein that the new titles are a resultant effect of irregular and/or unlawful sub-division and transfer of the original titles issued in the name of the deceased and which are the actual subject of this succession cause.

11. The original documents were not annexed to the petition to confirm identity and ownership of the respective parcels of land. However, excerpts of the relevant information pertaining to parcels No. Nandi/Ndalat Sett/122, 124 and 125 from the lands office are annexed. They show that the original ownership of the parcels is traceable to the deceased. The same, cannot be said of Parcel No. Nandi/Sigot/29 for failure by the Applicant to exhibit any title document and/ or information in relation thereto.

Although orders herein are sought in relation to the aforementioned titles, the land Registrar who is to be affected by the order was not enjoined in these proceedings as an interested party thereby denying him the opportunity to be heard before any order is made against him.

12. It would have been prudent for the Land Registrar to be enjoined in this application especially considering that the issue emerging currently borders more on the question of ownership or valid ownership of land or an interest in land such that it would be doubtful whether this court as a succession court has power to issue orders relating to land ownership arising from an incomplete succession process or rather, a premature succession process. Such doubt would be more pronounced if due regard is given to Article 165[5] of the Constitution which provides that: -

“The High Court shall not have jurisdiction in respect of matters: -

- a. reserved for the exclusive jurisdiction of the supreme court under this constitution, or
- b. falling within the jurisdiction of the court, contemplated in Article 162 [2]”.

13. The courts contemplated in the foregoing provision of the Constitution include courts with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of and title to land. What this means is that the current dispute aptly falls within the jurisdiction of the Environment and Land Court in as much as it relates to the question of land ownership on account of an incomplete succession process where a grant of representation is yet to be issued by the court to the Applicant pursuant to his petitioner which is the source of the present application. These accruing circumstances would also render it inappropriate to at this juncture issue orders against the Criminal Investigation Officer Nandi County on account of suspected acts of fraud by the Respondents revolving around the alleged altered ownership of the material estate property



from the name of the deceased to the name of some of the Respondents by means other than the lawful transmission.

14. The officer was also not enjoined in this application as an interested party. It would be inappropriate to issue orders against him without being accorded his right of being heard. In his respect, rather than rope him into this application the best that the Applicant could have done or could still do is to make a formal report or complaint against the suspected fraudsters to the police and let them act on it in the manner provided by law with a view to arraigning the suspects in court. In the event that they fail to do so without good cause the remedy available to the Applicant would be by way of judicial review proceedings for an order of mandamus against the responsible officer.

15. There can be no doubt that in relation to succession matters the Jurisdiction of this court is derived not only from the Constitution but also from the Law of Succession Act which provides under Section 47 that: -

“The High Court shall have jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decrees and make such orders herein as may be expedient.

Provided that the High Court may for the purpose of this section be represented by Resident Magistrate appointed by the Chief Justice.”

16. The suggestion that cropped up in this application is that the estate property has been interfered with or is threatened with interference or further interference by some of the beneficiaries oblivious of the fact that no grant of representation has been issued to the Applicant or any other beneficiary either by way of a petition for grant of letters of administration intestate or with will attached or grant of probate.

In such an event, the aggrieved party would move the court under Section 45 of the Laws of Succession Act which prohibits intermeddling with the property of a deceased person by any person not authorized to so by the law which authority emanates from a grant of representation. The provision confers criminal liability on a person who intermeddles with the free property of a deceased person. This is the more reason why it was and may still be incumbent upon the Applicant to report the alleged intermeddling with the impugned estate property to the relevant law enforcement agency.

17. This is what Section 45(1) of the Act says: -

“Except so far as expressly authorized by this Act or by any other written law or by a grant of representation under the Act no person shall for any purpose, take possession or dispose of, or otherwise intermeddle with any free property of a deceased person.”

Although this court is of the view that it has no powers to deal with land ownership disputes and related matters and may not in that regard grant the orders sought herein by the Applicant against the Nandi County Land Registrar and the Nandi County Criminal Investigations Officer, it retains its inherent powers under Rule 73 of the Probate and Administration Rules while dealing with succession matter to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. This is in addition to the powers conferred to a succession court under Section 47 of the Act [supra].

18. It would follow that despite being handicapped in the manner indicated therein above with regard to the orders sought by the Applicant against the aforementioned government officials, this court may nonetheless, make and indeed deems it fit to make such orders as may be necessary to preserve and



protect the impugned estate property and with a view to meeting the ends of justice and preventing abuse of the court process. In that regard, it is hereby ordered that the stay order granted by the court on 13th January 2021 prohibiting any dealing with the specified parcels of land subject of the petition for grant of representation be retained and extended upto the time this succession cause shall be concluded with the issuance by the court of a certificate of confirmation of grant to the satisfaction of all the beneficiaries or in any other lawful manner including alternative dispute resolution mechanisms such as mediation.

It is further ordered that the parties shall bear their own costs of the application consideration being given to the fact that they are all members of the deceased family and that there is a need to foster peace and harmony between them for an expeditious and agreeable resolution of this matter in whichever way possible.

DELIVERED AND DATED THIS 21ST DAY OF MARCH, 2024.

**J. R. KARANJAH,
JUDGE**

