



REPUBLIC OF KENYA



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

**In re Estates of Taplelei Chelangat Chemaigut & Sigei Tabutany Chemaigut (Deceaseds)
(Succession Cause 29 of 2019) [2024] KEHC 2710 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2710 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 29 OF 2019**

JK SERGON, J

MARCH 19, 2024

**IN THE MATTER OF THE ESTATE OF THE LATE TAPLELEI CHELANGAT
CHEMAIGUT (DECEASED) AND SIGEI TABUTANY CHEMAIGUT (DECEASED)**

BETWEEN

THOMAS KIPKEMOI Z TOWETT 1ST PROTESTOR

ANDREW KIPKORIR TONUUI 2ND PROTESTOR

AND

LIDWIN CHEPKEMOI TOO PETITIONER

RULING

1. The application coming up for determination is a notice of motion dated 17th November, 2023 seeking the following orders;
 - (i) Spent
 - (ii) That the names of Thomas Kipkemoi Z Towett and Andrew Kipkorir Tonui be substituted as beneficiaries in this cause in place of Rose Chepkoske Chepkwony.
 - (iii) That the Honourable Court be pleased to review the orders dated 1st July, 2022 confirming the grant of representation to the estate herein by redistributing the share of the second house equally among the representative of the two children namely the late Robert Too and the late Rose Chepkoske Chepkwony to wit, the 2nd Petitioner/Respondent and the 1st and 2nd Protestor/Applicant respectively.
 - (iv) That consequently the estate be distributed as per the attached redistribution schedule.
 - (v) That the Honourable Court be pleased to make such further or other orders as it may deem fit, just and expedient in the circumstances of this case.



- (vi) That costs of this application be provided for
2. The application is supported by grounds on the face of it and the supporting affidavit of Thomas Kipkemoi Z Towett on behalf of his co-applicant.
 3. The applicant avers that Rose Chepkoske Chepkwony appears as a beneficiary of the estate herein being one of the two children of the 2nd house, she has since passed on and that the applicants herein are her only two surviving children.
 4. The applicant avers that it is imperative that the applicants herein substitute their late mother as beneficiaries in her place.
 5. The applicant avers that on 1st July, 2022 this Court granted an order confirming the grant of representation of the estate and a certificate of confirmation issued on 28th October, 2022 and the late Rose Chepkoske Chepkwony never got any share of her entitlement in the second house and all shares went to the 2nd Petitioner/Respondent.
 6. The applicant avers that they believe that the 2nd Petitioner/Respondent took advantage of their late mother and duped her into believing that she had been allocated her rightful share.
 7. The applicant avers that in the interest of justice, this Court should review orders dated 1st July, 2022 confirming the grant of representation by redistributing the share of the second house equally amongst the representatives of the two children of the late Robert Too and the late Rose Chepkoske Chepkwony to wit the 2nd Petitioner/Respondent and the 1st and 2nd Protestor/Applicant respectively.
 8. The applicant avers that the redistribution will not affect the shares of the other beneficiaries.
 9. The applicant urged this court to issue a rectified certificate of confirmation to conform with the redistribution schedule.
 10. In response to the application Lidwin Chepkmenoi Too The petitioner/respondent herein filed a replying affidavit in which she avers that on 18th January, 2022 as the administrators herself and Rose Chepkosgei Chepkwony (now deceased), petitioned this Honourable Court for a confirmation of the grant and the same was duly granted and that Rose Chepkosgei Chepkwony (deceased) conscientiously and without any force, coercion and/or fraud elected to abandon and forfeit any claim to any share in the estate.
 11. The petitioner/respondent avers that Thomas Kipkemoi Towett and Andrew Kipkorir Tonui claiming as sons of the late Rose Chepkosgei Chepkwony (deceased) do not have the legal capacity to overrun and overturn the wishes of Rose Chepkosgei Chepkwony (deceased).
 12. The petitioner/respondent avers that the applicant lacks the locus standi to make the instant application after having failed to take out any letter of administration to the estate of Rose Chepkosgei Chepkwony, they are therefore strangers in the instant succession cause.
 13. The petitioner/respondent avers that the order for review can only be granted when there is an error and /or mistake on the face of the record and the applicants had failed to demonstrate an error/or mistake on the face of the record.
 14. The parties were directed to file written submissions which this court has duly considered.
 15. The petitioner/respondent filed their submissions and maintained that Rose Chepkoskei Chepkwony (deceased) was a joint administrator in the estate till her demise, she participated in the proceedings of



- instant succession cause and obtained a final letter of confirmation of grant. She therefore at her own free will and liberty renounced her rights to any share.
16. The petitioner/respondent contended that the applicants were seeking that this Court review its own orders dated 1st July, 2022 confirming the grant of representation, review is provided for in section 80 of the Civil Procedure Act and order 45 rule 1 of the Civil Procedure Rules which stipulate that the Court may review its decision on account of some mistake or errors apparent on the face of the record or for any other sufficient reasons, the applicants had not demonstrated any of the grounds for review.
 17. The protestor/applicants filed their submissions and maintained that Rose Chepkoskei Chepkwony (deceased) was a dependent to the estate within the provisions of section 29 of the Law of Succession Act hence entitled to a rightful share of the estate.
 18. The protestors/ applicants contended that Rose Chepkoskei Chepkwony (deceased) did not express her unequivocal renunciation of her share of inheritance to the estate of the deceased herein. The protestors/ applicants were adamant that Rose Chepkoskei Chepkwony (deceased) ought to have renounced a share to the estate voluntarily and unequivocally orally or through an executed formal document and therefore the allegation of renunciation in this instance was calculated to disinherit her of her rightful share.
 19. I have considered the pleadings and the written submissions by the parties and I find that the sole issue for determination is whether the applicants have demonstrated grounds warranting this Court to review its orders on 1st July, 2022 confirming the grant of representation in the instant succession cause. I find that the answer is in the negative.
 20. Review is provided for in section 80 of the Civil Procedure Act and order 45 of the Civil Procedure Rules which stipulate that the Court may review its decision on account of some mistake or errors apparent on the face of the record or for any other sufficient reason(s). In the instant application, I find that the applicants have not demonstrated any of the grounds for review.
 21. In the case of Francis Njoroge v Stephen Maina Kamore (2018) eKLR, Njunguna J held that: “Therefore, Order 45 of the Civil Procedure Rules, 2010 is very explicit that a court can only review its orders if the following grounds exist:-
 - (a) There must be discovery of a new and important matter which after the exercise of due diligence, was not within the knowledge of the applicant at the time the decree was passed or the order was made; or
 - (b) There was a mistake or error apparent on the face of the record; or
 - (c) There were other sufficient reasons; and
 - (d) The application must have been made without undue delay”.
 22. Similarly, in the case of Sanitam Services (E.A.) Limited v Rentokil (K) Limited & Another (2019) eKLR, the Court of Appeal held that:- “Jurisdiction to review a judgment or order of a court is donated by Section 80 of the Civil Procedure Act and Order 45 Civil Procedure Rules. By those provisions of law any person considering himself aggrieved by a decree or order from which an appeal is allowed but from which no appeal has been preferred or is aggrieved by a decree or order by which no appeal is allowed and who from the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason – a person who fits within those categories may apply for a review of judgment or to the court which passed the decree or made the order and this should be done without unreasonable delay.”



23. I find that this application does not disclose any ground(s) for review thereby warranting the intervention of this Court. Consequently, the notice of motion dated 17th November, 2023 is dismissed with no orders as to costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 19TH DAY OF MARCH, 2024.

.....

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Chepkorir for Protestors/Applicants

No Appearance for the Respondent

