



REPUBLIC OF KENYA



KENYA LAW
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**Chumo v Chumo (Succession Cause 56 of 2016)
[2024] KEHC 4103 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4103 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 56 OF 2016**

RL KORIR, J

APRIL 29, 2024

**IN THE MATTER OF THE ESTATE OF THE LATE
MARTHA CHEROTICH NYORURI (DECEASED)**

BETWEEN

RICHARD KIPKOECH CHUMO PETITIONER

AND

KIPKEMOI CHUMO OBJECTOR

RULING

1. This Ruling is in respect to the involvement of Mr. Moses Kipngetch Cheruiyot in these succession proceedings. The Petitioner Richard Kipkoech Chumo petitioned for Letters of Administration of the estate of Martha Cherotich Nyoruri. The Succession Cause was gazetted on 19th August 2016 and Letters of Administration issued by this court (differently constituted) on 27th September 2016 to Richard Kipkoech Chumo.
2. The Grant was confirmed on 10th April 2017 and a Certificate of confirmation of Grant dated 10th April 2017 was issued by Muya J. The Grant confirmed that Kericho/Kaitet/586 distributed the estate in the following manner:-
 - i. Richard Kipkoech Chumo 3 acres
 - ii. Emilly Chepngeno 2 acres
 - iii. Zacharia Kipkorir Chumo 3 acres
 - iv. Samuel Kipngeno Chumo 3 acres
 - v. Joseph Kipngeno Chumo 3 acres
 - vi. Jonathan Chumo 8 acres



3. In an Application dated 28th March 2018, Mr. J.K Rono acting for the Petitioner filed an Application seeking orders for the OCS Sotik to provide security to facilitate the survey of the land parcel Kericho/ Kaitet/586 as per the confirmed Grant. The Orders were granted on 7th June 2018. It was not clear from the record whether the survey was done. On 26th September 2018, Kipkemoi Chumo one of the beneficiaries filed Summons for revocation of the Grant dated 24th September 2018 through the firm of J.K Kirui Advocates on grounds that the Petitioner had excluded Kericho/Roret/816 from the estate and also failed to obtain the consent of all the beneficiaries. Parties took directions on 7th November 2019 before Dulu J. to file witness statements.
4. On 24th July 2023, Mr. Moses Kipngetich appeared before me and stated that he represented the Objector, Mr. Jonathan Chumo (now deceased). He stated that he had been appointed by the Objector to represent him through Power of Attorney. The Petitioner Richard Kipkoech Chumo informed the court that they did not have a familial relationship with Mr. Moses Kipngetich
5. In a document headed “Facts Held” filed and received in court on 25th July 2023, Moses Kipngetich Cheruiyot stated that the Objector had passed on and he wished to represent him and his family to secure their rights.
6. I have gone through the court proceedings and I have noted that Advocate J.K. Kirui has had conduct of this matter from when he filed the Objector’s Application for revocation of the Grant dated 24th September 2018. The said advocate had appeared consistently in court on behalf of the Objector on 3/10/2018, 13/11/2018, 07/12/2018, 02/12/2019, 02/03/2020 and 14/10/2021.
7. On 15th March 2022, Mr. Moses Kipngetich appeared before me and stated that he held brief (sic!) for Advocate J.K Kirui. On 23rd March 2022, 19th July 2022, 27th July 2022 and 13th October 2022, Mr. Moses Kipngetich again appeared before me and stated that he was standing in for the Objector.
8. On 25th May 2023, Mr. Moses Kipngetich appeared before me and stated that he was a friend to the family of the Objector and informed the court that the Objector died on 30th December 2022 and had appointed him to represent his interests before he died. That he did so through a Power of Attorney.
9. I have considered the statements filed by Mr. Moses Kipngetich and part of the family of the late Objector. The statements were to the effect that Mr. Moses Kipngetich had been appointed by the late Objector after he could not raise more legal fees for Advocate J.K. Kirui.
10. As noted earlier, Advocate J.K Kirui has had conduct of this matter on behalf of the Objector (now deceased) and there was no evidence on record to show that the said advocate ceased to act on behalf of the Objector. This court however observes that J.K. Kirui Advocate just stopped representing the Objector without filing any notice to that effect and also failed to honour court summons to shed light on the issue of representation and the role of one Moses Kipngetich in the proceedings.
11. It is salient to note that Advocate J.K.Kirui filed a Chamber Summons Application dated 4th March 2022 where he sought to have Mr. Moses Kipngetich enjoined in the suit as a co-objector due to the deteriorating health of the Objector. The Application remains unprosecuted.
12. Mr. Moses Kipngetich opined that he had been appointed as the Objector by virtue of a Power of Attorney. The claim of the existence of a Power of Attorney is a matter of fact, which means that Mr. Moses Kipngetich had to prove its existence. The Power of Attorney is a formal document which would show the powers that the donor (objector) donated to Mr. Moses Kipngetich (donee) and the same document would have to be properly executed then registered for it to become enforceable. There was no such document shown to the court by Mr. Moses Kipngetich to prove his assertions and as



such his claim of being appointed by the Objector through a Power of Attorney is baseless and without legal force.

13. This Court has already found that no valid power of attorney was filed by Moses Kipngetich Cheruiyot. Upon interrogating him, this court found that the Objector (now deceased) had a family and that none of the family members had taken any interest in stepping forward to substitute their deceased family patriarch.
14. The Record shows that the Objector's counsel J.K. Kirui had been directed by the court (Dulu J.) way back on 2nd March 2020 to substitute the Objector whom counsel had said was elderly. Moses Kipngetich Cheruiyot remained insistent that he was protecting the interests of his late friend the Objector. However, he demonstrated no familial or other connection that would earn him a place either as a beneficiary or liability to the estate of Martha Cherotich Nyoruri so as to avail him the locus standi in the proceedings.
15. Until Advocate J.K Kirui can formally and procedurally cease to act on the Objector's behalf or until there is a procedural Notice of Change of Advocates or Representation, Advocate J.K. Kirui is the recognised representative of the Objector in these proceedings. So far there is no such notice though J.K. Kirui Advocate unprocedurally and without courtesy to the court and the parties stopped attending court altogether.
16. This court therefore finds that the proceedings in which Moses Kipngetich Cheruiyot purported to stand in for the Objector were irregular. In the end, I make the following orders:-
 - i. Moses Kipngetich Cheruiyot has no locus to pursue this matter and can only appear in this court as a witness if called by the parties.
 - ii. The family of the Objector Kipkemoi Chumo (now deceased) is granted 21 days to substitute the Objector. They may do so through a legal representative or act in person upon filing the Notice to so act.
 - iii. As there were no stay orders in the matter, the Petitioner/Administrator is directed to give an account of how he has administered the estate in accordance with section 83 of the [Law of Succession Act](#) within 30 days of this Ruling.
 - iv. Thereafter this succession cause shall be mentioned for further directions in the matter. The beneficiaries of the estate are directed to attend court on that date.
 - v. I make no orders on costs.
17. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 29TH DAY OF APRIL, 2024.

R. LAGAT-KORIR

JUDGE

RULING DELIVERED IN THE PRESENCE OF MRS KOECH HOLDING BRIEF FOR J.K. RONO FOR THE PETITIONER N/A FOR MR J.K. KIRUI FOR THE OBJECTOR, MOSES KIPNGETICH AND SIELE (COURT ASSISTANT)

