



**Rono & another v Langat & another (Succession Cause  
E065 of 2022) [2024] KEHC 6365 (KLR) (29 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6365 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE E065 OF 2022**

**JR KARANJA, J**

**MAY 29, 2024**

**BETWEEN**

**ESTHER CHELANGAT RONO ..... 1<sup>ST</sup> APPELLANT**

**ESTHER CHELANGAT RONO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**SALLY CHEPKEMOI LANGAT ..... 1<sup>ST</sup> RESPONDENT**

**SALLY CHEPKEMOI LANGAT ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. This appeal arose from the judgement of the Principal Magistrate at Kericho delivered on the 23<sup>rd</sup> November, 2022 in succession cause No. 117 of 2020 respecting the estate of the late Kiptonui Arap Rono also known as Kiptonui Rono (deceased) for which the Appellant, Esther Chelangat Rono, petitioned and obtained the necessary granted letters of administration intestate dated 14<sup>th</sup> December, 2020.
2. The affidavit in support of the petitioner dated 13<sup>th</sup> July, 2020 indicated that the deceased had three (3) wives during his life time and that the Appellant was the third wife. The Respondent Sally Chepkemoi Langat is indicated as a daughter of the deceased with his second wife, Chepsitei Taputany Rono (deceased). The first wife was Sarah Chepchirchir Rono.
3. It was also indicated in the petition that the estate property comprised of a parcel of land described as No. Kericho/Cheborge/623. On the 25<sup>th</sup> January, 2022, the Respondent in her capacity as a beneficiary and the estate filed the summons for confirmation of grant dated 18<sup>th</sup> January, 2022 and made a proposal on the distribution of the deceased's estate among the beneficiaries. An additional parcel of land being land parcel No. Kericho/Tebesonik/255 was included as forming part of the deceased's estate.



4. In response to the summons, the Appellant file an affidavit of protest dated 9<sup>th</sup> January, 2022, in which she made a counter proposal on the mode of distribution of the entire estate.

The trial court considered the application for confirmation of grant on the basis of the supporting grounds and the Appellants protest and in its impugned ruling or judgement made on the 23<sup>rd</sup> November, 2022 allowed the application in favour of the Respondent.

5. Being of aggrieved, the Appellant preferred the present appeal on the basis of the grounds set out in the memorandum of appeal filed herein on the 13<sup>th</sup> December, 2022 in which she prays for the impugned ruling to be set aside and for the distribution of the estate to be subjected to a mediation process or be in accordance with section 40(1) of the law of *Succession Act*.

6. The appeal was heard by way of written submissions which were filed by both sides though Tengekyon and Koske Advocates on behalf of the Appellant and Langat Godwin & Co. Advocates on behalf of the Respondent.

Having considered the rival submissions alongside the grounds in support of the appeal and those in opposition thereto , the duty of this court was to revisit the evidential material availed before the trial court and arrive at its conclusions. Apparently, affidavit evidence and written submissions was the preferred mode of hearing of the process in the trial court.

7. It is clear to this court trial from the evidence and the submissions there was no contest that the impugned grant was lawfully obtained by the Appellant on /or about the 14<sup>th</sup> December, 2020 and being the sole administrator of the estate she was required in terms of section 71(1) of the *Law of Succession Act* to have the grant confirmed within six (6) months from that date.

8. The Appellant as the holder of the grant did not take out necessary summons for confirmation of grant within the prescribed time or at all and the court did not, pursuant to section 73 of the *Succession Act* issue to her a notice to apply for confirmation of the grant within one year from the date of issue.

9. This meant that the grant remained unconfirmed for an indefinite period of time after the expiry of one year. This also meant that the estate of the deceased could not be dealt with in any manner by any of the beneficiaries until after the confirmation of the grant, hence distribution of the estate amongst the beneficiaries.

Any attempts by the beneficiaries or any other person to deal with the estate prior to confirmation amounted or would amount to intermeddling with property of a deceased person, a criminal offence under section 45 of the *Succession Act*.

10. Notwithstanding, the provision of section 73 of the *Succession Act*, the Appellant as the holder of the grant had an obligation to apply for confirmation of the grant within the prescribed period of time on at least within one year after issuance. The omission in that regard exposed the Appellant to accusations of breach of her responsibility or duty as the administrator of the estate in terms of section 83 of the *Act*.

11. Indeed, the grant was exposed to revocation on account of the omission and the failure by the Appellant to administrator the estate. It would therefore not be farfetched for this court to opine that the respondents impugned summons for confirmation of grant was informed by the Appellants lack of responsibility in having the grant confirmed within the prescribed period of time and even longer.

12. However, having been aggrieved by the Appellants, lethargy and clear lack of diligence the respondent ought to have taken out necessary summons for revocation and/or annulment of the grant under section 76 (d) of the *Succession Act*, rather than take out the impugned summons for confirmation of grant dated 18<sup>th</sup> January, 2022. In doing so, the Respondent acted without the necessary “locus-standi”



for the purposes of applying for confirmation of the grant. She was only a beneficiary of its estate and not beneficiary cum administrator of the estate.

13. It would therefore follow that the trial court with due respect, acted in error in entertaining and granting at application in which the respondent/applicant had no legal capacity to institute as she was not the holder of the grant respecting the administration of the deceased's estate. This sole reason as captured in ground one (1) of the grounds of appeal is sufficient enough for this court to allow the appeal and find that it is in the circumstances unnecessary to delve into and determine the rest of the grounds.
14. In sum, this appeal is hereby allowed to the extent that the impugned ruling/judgement of the trial court dated 23<sup>rd</sup> November, 2022 is set aside together with all consequential orders and substituted for a ruling dismissing both the impugned summons for confirmation of grant and the protest thereto by the Appellant.
15. Further, pursuant to Rule 73 of the *Probate and Administration Rules*, the impugned grant of letters of administration dated 14<sup>th</sup> December, 2020 and issued to the Appellant be and is hereby revoked. A fresh grant shall forthwith issue in the names of the first widow of the deceased, Sarah Chepchirichir Rono to represent the first house of the deceased, Recho Chemutai Mitei and the Respondent, Selly Chekemoi Langat both to represent the second house of the deceased and the Appellant, Esther Chelangat Rono, to represent the third house of the deceased.
16. The matter be reverted back to the Magistrate's court for issuance of the fresh grant as directed hereinabove and for completion of the succession process in the manner provided by law and before a different trial court of competent jurisdiction.

The parties shall bear their own costs of the trial and the appeal.

Ordered accordingly.

**J.R. KARANJAH- JUDGE**

**DELIVERED AND DATED THIS 29<sup>TH</sup> DAY OF MAY, 2024.**

**J.R. KARANJAH**

**JUDGE**

In the presence of:

Mr. Koske for Appellant

Mr. Langat for Respondent

Alex court assistant

