



**In re Estate of David Kiprugut Bor (Succession Cause  
123 of 2021) [2024] KEHC 5955 (KLR) (27 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5955 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 123 OF 2021  
RN NYAKUNDI, J  
MAY 27, 2024  
IN THE MATTER OF THE ESTATE OF DAVID KIPRUGUT BOR**

**BETWEEN**

**BERNEDINE JEBET CHERUITICH ..... PETITIONER**

**AND**

**STEPHEN KAPKITONY SITIENEI ..... RESPONDENT**

**RULING**

Representation:

M/s Kipkorir Cheruiyot & Kigen LLP Advocates

M/s Cheruiyot Melly & Associates

1. Before me for determination is an application dated 9<sup>th</sup> September, 2023 expressed to be brought under the provision of Section 1A, 3, 3A and 63(e) of the [Civil Procedure Act](#) and Order 40 of the [Civil Procedure Rules](#) 2010 seeking the following reliefs;
  1. Spent.
  2. That the area Branch manager Family Bank Eldoret Branch, the Area Branch manager National Bank of Kenya, the Area Branch manager Safaricom Limited Eldoret, the Area Branch Manager Diamond Trust Bank Eldoret Branch, The Area Branch Manager NCBA Bank Kenya PLC Eldoret Branch, The Area Branch Manager, Equity Bank Limited, The Area Branch Manager, Kenya Commercial Bank of Kenya, The Area Branch Manager, Eco Bank Limited, The Area Branch Manager, Co-operative Bank of Kenya be and are hereby compelled to supply the petitioner's Counsel with full and comprehensive reports and statements for David Kiprugut Bor ID No. 13293310 Tel Nos. 0724-608-961/ 0721-745-931 (the deceased herein) from the time of his demise to the date of the court order showing the amounts owing



and payable to the estate of the deceased from all respective accounts including mpesa they hold to enable the court distribute the Estate of the beneficiaries.

3. That in default of the above by any one and/or all the above-mentioned officer bearers, summons do issue to anyone and or all of the above-mentioned office bearers to attend court and explain why he/she or they cannot submit his/her or their respective reports and/or statements of accounts for the deceased David Kiprugut Bor of ID No. 13293310 Tel Nos. 0724-608961/ 0721-745931.
  4. That the matter be mentioned in two (2) weeks' time from the date of the orders prayed herein subject to the convenience of the court to confirm compliance with the court orders.
  5. The costs be in the cause.
2. The Application is based on six grounds and an affidavit in support sworn on 9<sup>th</sup> September, 2023 by the Petitioner. The grounds are as reproduced hereunder;
- a. That the deceased died intestate.
  - b. That the applicant has taken out letter of administration and she is awaiting confirmation of the said grant.
  - c. That the applicant had a duty of collecting and preserving the estate of the deceased pending distribution to the rightful beneficiaries and this includes the money in the bank accounts.
  - d. That the applicant cannot ascertain the account numbers and the money held within different accounts within different banks as she is not the holder and shall heed the courts authorization to access the same for purposes of collection ascertainment and preservation pending distribution to the rightful beneficiaries as the law required.
  - e. That in the spirit of upholding data privacy, the banks can only release bank details of the deceased with the Court Order and in the quest of collection, ascertain, preservation and administration of the financial estate of the deceased fully, it shall only be critical that the said orders be granted.
  - f. That it is in the best interest of justice that the said order be granted ex-parte in the first instance for the lawful purpose of collection ascertainment and preservation of the financial estate of the deceased prior to the confirmation of grant and final distribution of the same.
3. The rationale of this application, is about persons who have died intestate leaving behind beneficiaries as defined in Section 29 of the *Succession Act*. This application therefore, is underpinned on the powers of the administrators to investigate and confirm the assets of the deceased. By an order issued by this court, on the merits of this application, the administrators shall be at liberty to submit requests to financial institutions, organizations, individuals for confirmation of funds, stocks, shares, debentures, investments being held for the deceased or the deceased co-directors, former employers for confirmation of employee's benefits including unpaid salary, vacation leave pay, gratuity, trust contributions or cash assets etc.

## **Decision**

4. It is trite law that for an administrator to mount a successful claim on the free properties survived of the deceased, he/she must demonstrate sufficient degree of physical custody and control of that property acquired during the lifetime of the deceased. The information sought in this application is intended to establish rights of free property exercises by the deceased in undisturbed and exclusive possession before



his/her demise. The character and value of the property, the suitable and natural mode of using it in the course of his/her lifetime as a proprietor are to be taken into account in determining the distribution model to the beneficiaries. I think what must be shown as constituting actual possession are the details of the bank account in the name and style of the deceased. The law in this is no longer in doubt for the very reason that the fact of person's name is on the bank account with his personal details is conclusive evidence that such a person was an account holder domiciled in that respective financial institution. That in the normal course of things and business he/she properly exercised physical control of that bank account and the normal rule of survivorship will apply and the administrator is bound to take the whole of it for purposes of distribution.

5. It is then fair to say that in this area of law, the analysis of and interpretation of evidence presented before the court is sufficient to influence me to exercise discretion to grant the application in terms of prayers number two to the effect that the area Branch manager Family Bank Eldoret Branch, the Area Branch manager National Bank of Kenya, the Area Branch manager Safaricom Limited Eldoret, the Area Branch Manager Diamond Trust Bank Eldoret Branch, The Area Branch Manager NCBA Bank Kenya PLC Eldoret Branch, The Area Branch Manager, Equity Bank Limited, The Area Branch Manager, Kenya Commercial Bank of Kenya, The Area Branch Manager, Eco Bank Limited, The Area Branch Manager, Co-operative Bank of Kenya be and are hereby compelled to supply the petitioner's Counsel with full and comprehensive reports and statements for David Kiprugut Bor ID No. 13293310 Tel Nos. 0724-608-961/ 0721-745-931 (the deceased herein) from the time of his demise to the date of the court order showing the amounts owing and payable to the estate of the deceased from all respective accounts including mpesa they hold to enable the court distribute the Estate of the beneficiaries.
6. In this regard the administrator shall have given such notice as in the opinion of the court in which the branch managers of Family Bank Eldoret Branch, National Bank of Kenya, Safaricom Limited Eldoret, Diamond Trust Bank Eldoret Branch, NCBA Bank Kenya PLC Eldoret Branch, Equity Bank Limited, Kenya Commercial Bank of Kenya, Eco Bank Limited and Co-operative Bank of Kenya shall comply in providing better particulars of the named bank accounts to the administrator within a period of 21 days from the date of service of this order.
7. That upon expiry of the time limited in the said notices, or the last of the said notices for providing and supplying better particulars of the identified bank accounts and upon any default by the bank managers, the administrator be at liberty to institute any such compliance against any such defaulter served with the notice in terms of this order.
8. That it is presumed that such a right on disclosure of accounts to the administrator of the estate or executor, shall be deemed to have first accrued at the time of such a death of the deceased and in respect of whom such an estate has been placed under administration by an instrument of the court.
9. I make no orders as to costs.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 27<sup>TH</sup> DAY OF MAY 2024**

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**R. NYAKUNDI**

**JUDGE**

