



In re Estate of Christian Tabukigen Maritim (Deceased) (Succession Cause 107 of 2014) [2024] KEHC 13009 (KLR) (25 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13009 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 107 OF 2014
RN NYAKUNDI, J
OCTOBER 25, 2024
IN THE MATTER OF THE ESTATE OF CHRISTIAN TABUKIGEN
MARITIM (DECEASED)**

BETWEEN

PRISCILA CHEPKEMEI LANGAT 1ST PETITIONER

JOSEPH KOECH 2ND PETITIONER

AND

PIUS KIPCHUMBA 1ST OBJECTOR

WESLEY KOGO 2ND OBJECTOR

RULING

1. On 23rd November, 2020, this court confirmed a Grant of representation to the deceased issued to Priscilla Chepkemei Lagat and Pius Kipchumba Kemboi on 5th day of September, 2010. The 2nd Petitioner filed an application by way of chamber summons dated 16th May, 2023, which I have been called to determine. In the application, he seeks orders as follows:
 - a. Spent
 - b. The Honourable Court be and is hereby pleased to stay the implementation of the certificate of confirmation issued on 3.12.2010 and all other consequential orders emanating therefrom in respect of the Land Parcel known as NANDI/CHEPTERIT/362 pending the hearing and final determination of this application inter parties.
 - c. The Honourable court be and is hereby pleased to stay the implementation of the certificate of confirmation issued on 3.12.2010 and all other consequential orders emanating therefrom



in respect of the Land Parcel known as NANDI/CHEPTERIT/362 pending the hearing and final determination of the interest of the Applicant in this estate.

- d. In the alternative to prayer 2 and 3 above, the status quo obtaining prior to the certificate of confirmation issued on 3.12.2010 both in terms of physical occupation and the records at the lands registry in respect of land parcel known as NANDI/CHEPTERIT/362 be maintained pending the hearing and final determination of the interest of the applicant.
 - e. The Honourable Court be and is hereby pleased to order that the applicant is entitled to 2.95 Acres and that the certificate of confirmation issued on 3.12.2010 be rectified to include this interest in the estate in particular in respect of the Land Parcel known as NANDI/CHEPTERIT/362
2. The application was supported by an affidavit sworn by Joseph Kipkorir Kipkoech and grounds as tabulated hereunder;
- a. The cause herein was filed on 27.3.2016 by Priscilla Chepkemei Lagat and Joseph Kipkorir Koech.
 - b. That the court issued a grant dated 5.9.2016 to the above petitioner.
 - c. That the above petitioners moved the court for the grant as agreed by the family members.
 - d. The 2nd Administrator herein objected to the grant issued in favour of the above 2 Petitioners/ Administrators.
 - e. The court revoked the grant issued on 5.9.2016 in favour of the 2 Petitioners/Administration (Priscilla Chepkemei Lagat and Joseph Kipkorir Koech) and issued another grant dated 24.2.2020 appointing the current administrator.
 - f. The Administrators herein have obtained certificate of confirmation and has started implementing it without due regard to the interest of the applicant herein.
 - g. There is need for the court to hear the applicants first before further steps are undertaken by the administrators herein.
3. In response to the application, the 1st Objector Pius Kipchumba swore a replying affidavit dated 7th November, 2023. He deposed that the Petitioners herein have always been dishonest in regards to the information provided to this honourable court to seek to unjustly enrich themselves as beneficiaries to the estate of the deceased. He denied the averment that the 2nd Petitioner bought land as alleged in paragraph 9 of the supporting affidavit. That the annexed documents are forgeries and have no legal basis.
4. He stated that an agreement marked JKK1 was never signed by Elizabeth Koros neither did Julia Jepkoech while the other seem to have signed. He urged the court to scrutinize in finding out the authenticity of the documents adduced. That the agreement marked JKK3 is suspect because of the purchase price therein, reason being that a year earlier as seen in JKK2, the price of 0.1 acres was allegedly Kshs. 50,000/= the it appreciated exponentially to Kshs. 137,500/=. He averred that it is difficult to imagine that such a purchase price spike would have been agreeable especially to the same buyer.
5. The deponent took issue with the agreement marked JKK4 in terms of the size of the portion of land in transaction. In the agreement, it was indicated that half a point was sold. He argued that it is therefore



vague and this honourable court cannot purport the same language to mean 0.5 acres as alleged in the applicant's application.

6. Regarding the fifth agreement marked JKK5, He deposed that Reuben Kisigei is a stranger and not a family member and never has any such person had any proprietary rights over the suit land and he therefore contended that the said agreement was fabricated so as to mislead this court. He also questioned the sixth agreement marked JKK6 and stated that it is vague in terms of the acreage sold as it also states that the portion in transaction is again half a point. The non-clarity in the acreages descriptions further points to fictitious agreements which he urged the court to find null and void.
7. The respondent further stated that there is no evidence of payment of the remaining balance of Kshs. 17,000/= and therefore there is no evidence of completion which further puts the agreements adduced by the applicants herein suspect of forgeries which renders them null and void. That on scrutiny of the agreement in JKK7, the seller Noah Rono is also a stranger to the family. He is not a family member nor is he an owner to the purported piece of land a fact which renders the agreement null and void. It is trite law that a person who has no good title cannot pass any proprietary interests whatsoever.
8. That there is no clarity in the procedure of land purchase between the parties and the applicant herein. For instance, it is trite law that a person cannot confer title to land to another person while the said person has not title or has a defective title. In this regard, the respondent deposed that it is clear that Priscilla Chepkemei and Wilson Kipkemoi or any other person did not have good title especially since the process of succession to transfer proprietary rights to other persons had not been done. This further renders the agreements in question null and void and cannot be upheld by this court.
9. That it is also suspect that the proprietary/applicants acting fraudulently yet again abstained letters of administration dated 10th April, 2016 in which it is seen that Wilson Kipkemboi Koros appended his signature on the said consent to making grant administration.
10. That the said Wilson Kipkemboi Koros died two years earlier in the year 2014. It is therefore impossible that a deceased person could append signatures to documents posthumously which further exposes the applicants herein as masters of forgery whose adduced documents must be taken as frivolous and scandalous.
11. Given those and other reasons, he deposed that the application before court is frivolous and should be dismissed with costs.

1st Objector Submissions

12. The 1st objector largely addresses the issue of whether the application is merited. Learned Counsel Mr. Mawenzi submitted that in the instant suit, the Petitioner has produced a plethora of documents to support his case. However, and as clearly articulated in the 1st Objector's reply, the said documents are marred with glaring anomalies, omissions and forgeries which when taken into consideration renders his application frivolous, scandalous and vexatious. On this he cited the decision in Stanley Maira Kaguongo v Isaac Kibiru Kahuthia (2022) eKLR.
13. According to counsel, the principle is that whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of fact which he asserts, must prove that those facts exist. The burden of proof in a suit or proceeding, lies on that person, who fail if no evidence at all were given on either side. That some of these anomalies are actually glaring forgeries for instance where the said petitioner relies on a consent which he obtained as petitioners dated on 10th April, 2016 which was signed by one William Kipkemboi Koros who had died two years earlier in the year 2014.



2nd Petitioner's Submissions

14. The 2nd Petitioner through learned counsel Mr. Kiboi filed submissions in support of the application dated 16th May, 2023. Counsel made submissions along the issue of failure to file a replying affidavit. He cited the provisions in Order 51 Rule 14 of the Civil Procedure Rules. Counsel submitted that it has been held that a failure by a party to an application to reply in the formats prescribed in the aforementioned formats, it then implies that the application remains uncontroverted. He relied on the decision in Peter O. Nyakundi & 68 others vs. Principle Secretary, state Department of Planning, Ministry of Devolution and Planning & another (2016) eKLR.
15. On the mode of distribution, Mr. Kiboi submitted that the 2nd Petitioner takes issue with the mode of distribution as contained in the Certificate of Confirmation of Grant dated 3.12.2020 issued in favour of the administrators herein. That first, it has not been demonstrated that all the deceased's beneficiaries consented to the said mode of distribution. On this he relied on the case of Mercy Kiura Kithaka & 4 others v Edith Njoka Kithaka (2020) eKLR. Secondly, the said mode of distribution fails to take into account the fact that the 2nd Petitioner purchased the suit land, that he has been in occupation, possession and utilizing the same for a period of over (twenty) 20 years and has done extensive developments in the purchased portion of the suit land. Learned counsel maintained that in the circumstances, it would be extremely prejudicial and unfair should the proposed mode of distribution be adopted as prayed and the 2nd Petitioner be excluded from the same despite having paid the due consideration for the suit land.

Decision

16. Having read through the application together with affidavit in support, the sole issue I find for determination is whether the implementation of the grant issued can be stayed.
17. I have perused through the record and I take note of the judgment delivered by this court on 6th February, 2020 where the court took in evidence of the parties and underscored the fact that the applicant herein had been appointed in the initial impugned grant dated 5th September, 2016 as a purchaser representing the interests of other purchasers. It came out from the said Ruling that the process leading to the applicant herein obtaining the revoked Grant was marred with irregularities.
18. Joseph Kipkorir Kipkoech has again approached this court seeking revocation of the Certificate of Confirmation of Grant dated 3rd December, 2020 for reasons that he holds a share in the said parcel of land amounting to 2.95 Acres that he bought from the estate and he attached various agreements. Interestingly, in the summons for confirmation dated 28th April, 2020, the applicant herein signed as an administrator agreeing to a share of 1.95 Acres as allocated to him. When Wesley Kiprono Kogo testified on 16th September, 2019 he confirmed that the applicant herein was a purchaser from the estate who bought a share of the land measuring 0.25 acres but the same was done without them being notified.
19. It is trite law that application relating to stay of execution ought to be brought without unreasonable delay, it must be demonstrated that the applicant would suffer substantial loss and security has been furnished by the applicant. I take note of the fact that the Certificate of Grant was issued on 3rd December, 2020 and the application to stay its implementation was brought in on 16th May, 2023. It cannot be said that the same was filed within a reasonable period of time. On substantial loss, I note that the applicant has not deposed in his affidavit that he would suffer substantial loss should the orders be denied. There is no effort to demonstrate the nature of the substantial loss he would suffer as a consequence.



20. A Real right consists basically of a legal relationship between a legal subject holder herein the deceased and a legal object or thing herein the objector which bestows him some rights which accrue from the free property of the deceased within the range of provisions in the Land Registration Act 2012 and the Land Control Board Act. As clearly indicated, the objector is relying on some instrumentalities to effect his entitlement against the owner of the property who is the deceased person. Therefore, it is incumbent upon the objector to raise claim not on the property rights of the deceased but in the name of the expropriator with whom he entered into some agreement for the sale of land. That purported seller can be sued in his individual capacity without limiting the property rights of the other beneficiaries. In the case of most immovable properties, the limited rights are established and exercised by registration in an appropriate deeds registry. In the case of an original acquisition, the one claiming some beneficial interest or purchasers interest by operation of the law, must show that the previous owner had rights vested in him/her capable of being transmitted or transferred by way of sale. That sale must meet the minimum requirements of the law on the sale of land. That does not seem to be the case here. In the legal sense, meaning an act of preparing the legal documents like the agreements and contracts within the spectrum of the law
21. As highlighted above, the court is being asked to stay the implementation of the confirmed grant yet there is no indication if there are pending cases on appeal or revocation of the grant in line with Section 76 of the Law of Succession Act and Rule 41 (3) Probate and Administration Rules. The Certificate of Confirmation of Grant in my view serves as a final decree of this court and if a party is not satisfied, he/she should pursue and appeal or seek its revocation. I have not seen any prayers as to leave to file an appeal and therefore I do not see reasons why there should be stay of implementation of the confirmed Grant. The applicant has not shown sufficient cause. In the end, the application dated 16th May, 2023 is found without merit and is hereby dismissed with no orders as to costs.
22. For purposes of these proceedings it suffices for the objector to be granted leave under Art. 47, 48 and 50 of the Constitution to canvass the issue of being a bonafide purchaser as against the beneficiaries who offered a portion of their inheritance for sale for valuable consideration at the Environment and Land Court. This will be in line with the principles in the case of Samuel Kamere versus Lands Registrar Kajiado (Civil Appeal No. 28 of 2005) (2015) eKLR.
23. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 25TH DAY OF OCTOBER 2024

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R. NYAKUNDI

JUDGE

