



In re Estate of Paul Kimutei Cherutich (Deceased) (Succession Cause 33 of 2022) [2023] KEHC 3663 (KLR) (28 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3663 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 33 OF 2022
JRA WANANDA, J
APRIL 28, 2023**

IN THE ESTATE OF THE LATE PAUL KIMUTEI CHERUTICH DECEASED

BETWEEN

SAMSON LAGAT KIMITEI OBJECTOR

AND

HARON CHEBOI CHERUTICH 1ST RESPONDENT

SELINA JEPTANUI CHERUTICH 2ND RESPONDENT

RULING

1. On April 27, 2022, the petitioners obtained letters of administration intestate over the estate in this matter. however, subsequently, the objector applied for revocation of the grant on the ground that the same was obtained fraudulently.
2. Later, by a compromise the objector was appointed a co-Administrator and the parties were then given time to discuss and explore an amicable settlement.
3. The parties were however unable to agree. In the circumstances, the court directed them to file their respective modes of distribution after which the court would give a ruling. Pursuant thereto, the parties have presented their separate proposed modes of distribution and the court was now to interrogate the same and deliver a ruling.
4. However, in the course of preparing the ruling, I have noted the following matters:
 - a. The 1st property referred to by the Petitioners is Karuna/Sosian Block 9 (Cheplasgei/50). The parties are agreed on its existence save that the petitioner places its size at 28.6 acres while the objector places it at 20 acres. However, there is copy of a Title Deed in the record showing that the size of the property is 11.45 Hectares. Converted accordingly, this translates



to approximately 28.3 acres. I will therefore refer to this property as Karuna/Sosian Block 9 (Cheplasgei/50) measuring 28.3 acres.

- b. The 2nd property referred to by the Petitioners is Irong Block/68 whose size the Petitioners place at 11 acres. There is also a letter from the Chief in the record referring to Irong Block/68. On his part, the Objector refers to Irong Block/67 whose size he similarly places at 11 acres. The parties' submissions on these property(ies) are strikingly similar. However, the Objector has exhibited a Search Report which refers to Irong Block/67 and shows the size as approximately 4.4 acres.
 - c. The 3rd property referred to by the petitioner is Karuna (Sosiani Block 5 (Kambi Simba/41 whose size the Petitioner places at 7 acres. On his part, the Objector refers to Karuna (Sosiani Block 4 (Cheplaskei/41 which he similarly places at 7 acres. However, none of the parties has presented a copy of any title document. The Chief's letter on the other hand simply refers to Karura Sosiani Block 5.
 - d. The Objector has referred to a 4th property namely, Karuna/Sosiani Block 6 (Kaplolo) measuring 20 acres. The Petitioner has not at all referred to this property nor mentioned anything about it.
5. The above accounts are clearly conflicting and contradictory and it will not be in the interest of justice for this court to finally decide this matter before the said facts are clarified. In the circumstances, I give directions herein in terms of a Preliminary Ruling as follows:
- i. The petitioners and the objectors are hereby directed to each file and serve, within 30 days from the date hereof, respective Further or supplementary affidavits limited to only the following:
 - a. Whether the properties described as Irong Block/67 and Irong Block/68 refer to one and the same property or whether they are different. Additionally, the parties shall exhibit a copy or copies of the title document(s) and/or Search Reports or any other supporting document(s) confirming ownership, acreage and/or any other relevant particulars.
 - b. Whether the properties described as Karuna (Sosiani Block 5 (Kambi Simba/41 and Karuna (Sosiani Block 4 (Cheplaskei/41 and which both parties place at 7 acres refer to one and the same property or whether they are different. Additionally, the parties shall exhibit a copy or copies of the title document(s) and/or Search Reports or any other supporting document(s) confirming ownership, acreage and/or any other relevant particulars.
 - c. Regarding the property described as Karuna/Sosiani Block 6 (Kaplolo)33 referred to by the objector and stated by him to measure 20 acres, the parties shall exhibit a copy or copies of the title document(s) and/or search reports or any other supporting document(s) confirming ownership, acreage and/or any other relevant particulars.

The court will then deliver a final ruling after the above directions have been complied with and the particulars stated submitted.

It is so ordered.

DELIVERED, DATED & SIGNED AT ELDORET THIS 28TH DAY OF APRIL 2023

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JOHN R. ANURO WANANDA



JUDGE

