



**Bett v Bett & another (Succession Cause E013 of 2022)  
[2023] KEHC 18295 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 18295 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
SUCCESSION CAUSE E013 OF 2022**

**RL KORIR, J  
APRIL 27, 2023**

**BETWEEN**

**BORTA CHEPNGETICH BETT ..... APPLICANT**

**AND**

**HENRY KIPLANGAT BETT ..... 1<sup>ST</sup> RESPONDENT**

**RECHO CHEPKEMOI NGENY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The two Respondents filed for Petition of Letters for Letters of Administration Intestate in the estate of Kibet Arap Ngeny (Deceased) on March 3, 2022. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents applied for the Letters in their capacity as the son and widow of the deceased respectively. The deceased's property that was to be administered according to the Petition was Kericho/Kyogong/273.
2. The Petition was gazetted and later on July 20, 2022, this court issued a Grant of Letters of Administration Intestate of the estate of Kibet arap Ngeny to Henry Kiplangat Bett and Recho Chepkemoi Ngeny.
3. The Applicant, Borta Chepngetich Bett filed a Notice of Motion Application dated March 19, 2022 where she sought an order that Kericho/Ndaraweta/115 be included as part of the assets or properties to be administered. That she was the daughter of the deceased and that the deceased owned the said Kericho/Ndaraweta/115 before his demise. It was her further case that the Respondents who petitioned for the Letters of Administration intestate left out Kericho/Ndaraweta/115 with the intention of disinheriting her and other beneficiaries.
4. The 1<sup>st</sup> Petitioner filed a Replying Affidavit dated October 6, 2022 where he stated that the deceased owned Kericho/Kyogong/273 which measured approximately 3.4 hectares. The 1<sup>st</sup> petitioner further stated that the Applicant had not demonstrated that the purported Kericho/Ndaraweta/115 was registered in the name of the deceased.



5. It was the 1<sup>st</sup> Petitioner's case that this Application had been instituted by malafides and with the aim of delaying the determination of the succession cause. That his notice to the Applicant to stop constructing a permanent house of Kericho/Kyogong/273 triggered the filing of this Application.
6. The Applicant thereafter filed a Supplementary Affidavit dated October 26, 2022 where she stated that Kericho/Ndaraweta/115 was registered in the name of the deceased.
7. On November 14, 2022, the court directed that the Application be disposed through written submissions.
8. The Applicant submitted that she had demonstrated through her affidavit dated October 26, 2022 that Kericho/Ndaraweta/115 formed part of the deceased's estate. She relied on Rule 7 (1) of the Probate and Administration Rules.
9. The Respondents submitted that the Applicant had not attached a copy of an official search or extracted an abstract to prove the registration of the land in the deceased's name.
10. After considering the Notice of Motion Application dated August 19, 2022, the Replying Affidavit dated October 6, 2022, the Supplementary Affidavit dated October 26, 2022, the Applicant's Written Submissions dated March 2, 2023 and the Respondents' Written Submissions dated March 1, 2023, the only issue for my determination is whether the Application has merit.
11. It is a principle of law that whoever lays a claim before the court against another has the burden to prove it. Section 107 of the Evidence Act provide as follows:-
  1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
  2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
12. The Applicant bore the burden of proving that the deceased was the registered owner of Kericho/Ndaraweta/115. In her Application, she merely stated that the deceased owned the aforementioned parcel of land and did not attach any evidence to back up her claim. When the issue of evidence of ownership of Kericho/Ndaraweta/115 was brought up by the Respondents in their Replying Affidavit dated October 6, 2022, the Applicant filed a Supplementary Affidavit dated October 26, 2022 that was disguised as a Further Supporting Affidavit. I note with concern that the said Supplementary Affidavit was filed without the leave of the court, a practice which must be discouraged. However, in the interests of justice, I find that the filing of the Supplementary Affidavit without leave was not fatal.
13. The Applicant attached a Certificate of Official Search that was marked as BCB in the Applicant's Supplementary Affidavit. The search revealed that as at June 27, 2022, Kericho/Ndaraweta/115 that measured approximately 7.4 hectares was registered in the names of Kibet arap Ngeny who was the deceased. It is also salient to note that there was a caution on the said land by Alice Chepkoech who was the wife to the deceased from the 1<sup>st</sup> house.
14. Rule 7(I) of the Probate and Administration Rules provides that;
  - ' Rules 7. (I) Subject to the provisions of subrule (9), where an applicant seeks a grant of representation to the estate of a deceased person to whose estate no grant or no grant other than one under section 49 or a limited grant under section 67 of the Act has been made, the application shall be by petition in the appropriate Form supported by an affidavit in one of



Forms 3 to 6 as appropriate containing, so far as they may be within the knowledge of the applicant, the following particulars –

- a. .
- b. .
- c. .
- d. A full inventory of all his assets and liabilities at the date of his death (including such, if any, as may have arisen or become known since that date) together with an estimate of the value of his assets movable and immovable and his liabilities.'

- 15. The Respondents' main objection to the Application was that the Applicant had not demonstrated to the court that Kericho/Ndaraweta/115 was registered in the name of the deceased. I have no hesitation dismissing this defence as I am satisfied by the Certificate of Official Search produced by the Applicant as proof that Kericho/Ndaraweta/115 belonged to the deceased.
- 16. It is my finding therefore that unless there was evidence to the contrary, Kericho/Ndaraweta/115 should be included in the list of assets forming the estate of the deceased.
- 17. In the end, the Notice of Motion Application dated March 19, 2022 is merited. The petitioners are directed to include Kericho/Ndaraweta/115 in the assets of the deceased.
- 18. I make no order on costs.  
Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 27<sup>TH</sup> DAY OF APRIL, 2023**

.....

**R. LAGAT-KORIR**

**JUDGE**

Ruling delivered in the absence of Mr. Ngeno for the Applicant, and Mr. Koske for the Respondent. Siele (Court Assistant)

