



In re Estate of Chepchirchir Kiprotich (Deceased) (Succession Cause 317 of 2009) [2022] KEHC 13121 (KLR) (26 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13121 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 317 OF 2009
EKO OGOLA, J
SEPTEMBER 26, 2022**

BETWEEN

**GRACE CHEPKOSGEI KIPROTICH 1ST OBJECTOR
KIMUTAI ROTICH 2ND OBJECTOR
DAVID KIBET ROTICH 3RD OBJECTOR**

AND

**IGNATIUS KIPKEMEI ROTICH 1ST PETITIONER
LOUIS M. KIPRUGUT 2ND PETITIONER
MARK KIPLAGAT ROTICH 3RD PETITIONER**

RULING

1. Before me for determination is the Notice of Motion Application dated June 27, 2022 filed by the petitioners. The Motion prays for the following orders:
 1. Spent.
 2. That this Honourable Court be pleased to order the petitioners to take over land parcel known as Eldoret Municipality Block14/73 pending determination of this suit.
 3. That cost of this application be provided for.
2. The application is premised on the following grounds: -
 - i. That the petitioners had obtained grant for the estate at the time when the Objectors filed an objection application.
 - ii. That at the time the application was being made Mark Kiplagat Rotich was the one in occupation of the said parcel before travelling to the United States of America where he works.



- iii. That after he travelled, the Objectors forcefully evicted the employees of Mark Kiplagat Rotich and took over their parents' home leaving them with no property.
 - iv. That pursuant to the report dated September 20, 2021 by the Director of Criminal Investigations Eldoret West, the investigators conducted investigations whereby they concluded that the Objectors used falsified documents to petition the Court.
 - v. That the Petitioners further contend that actions by the Objectors have indeed disinherited them since they have taken over everything despite the matter still being in court
 - vi. That it is fair, just, expedient and in the interest of justice that this application be allowed.
 - vii. That this application has been brought promptly and in utmost good faith.
3. The application is further supported by the affidavit of Ignatius Kipkemei Rotich sworn on June 27, 2022. He deposed that the petitioners had already obtained the grant with respect to the deceased's estate and were in occupation of parcels of land known as Eldoret Municipality/block 14/73, Kakamega/sergoit/148 and Nandi/kiminda/736; that the court had directed that the parcel of land known as Kakamega/sergoit/148 measuring 60 acres be shared equally with the Objectors. The Petitioners contend that the Objectors to the detriment of Petitioners, had displaced them and leased out the said property. The Petitioners further deposed that the Objectors similarly had forcefully taken over parcel of land known as Eldoret Municipality/block 14/73, which was being occupied by Mark Kiplagat Rotich.
 4. The petitioners' case is that pursuant to the court order dated September 3, 2021 the Directorate of Criminal Investigations (DCI) was ordered to investigate the identities of the Objectors and file a report within 14 days from the date of the ruling. That pursuant to the said order the DCI conducted investigations and made findings that the Objectors were not the people they purported to be.
 5. The petitioners maintain that their parents were buried on parcel of land known as Eldoret Municipality/block 14/73 and that it has always been painful not to visit their grave sites as strangers are in occupation of the said parcel. The petitioners contend that before the Objectors invaded their homestead, they had their own home in TOT in Elgeyo Marakwet County and Maili Nne in Uasin Gishu County.
 6. The petitioners deposed that the documents held at the Prisons department where Esther Aregwony Cheboi, the Objectors' mother used to work indicate that her husband was one John Cheserek. The petitioners contend that after her demise the Objectors' she was buried in TOT being her matrimonial home with the said John Cheserek. The Petitioners further contend that it is unfair for the Objectors to continue being in occupation of their home despite having their own home.
 7. The petitioners' case is that the Objectors have been illegally staying in their home since 2012 when the Objection was filed. The petitioners further deposed that the Objectors will not suffer any prejudice as they are still in occupation of the 60 acres of land in Soy, within Kakamega County.
 8. The petitioners urged court to allow them to occupy the suit property.
 9. The Petitioners argued the application orally in court on July 18, 2022.
 10. The application is unopposed.



Determination

11. I have carefully considered the application, the averments by Mr. Warigi, Counsel for the petitioners and I find that the only issue for determination is whether the orders sought can be issued.
12. The Court vide its ruling dated September 2, 2021 ordered inter alia: - “that the DCI Eldoret Central Police Station do investigate the identity cards, birth certificates and death certificate produced in Court by the 1st and 3rd Respondents, the issue of dependency to be deferred until the Objectors identities have been determined, that the petitioners be allowed full access to parcel of land known as Eldoret Municipality/block 14/73, in order to repair their parents’ graveyard and conduct prayers on the property and lastly that neither parties shall intermeddle in any way with any property in dispute until the suit is finally determined.”
13. The petitioners, in light of the findings of the DCI report filed in court on September 2, 2021 filed an application dated October 19, 2021 in which they sought to have the grant of letters of administration issued on February 14, 2011 reinstated and that an order of eviction be issued against the Objectors with respect to all the suit properties. The Objectors in opposing the said application, vehemently challenged the findings of the DCI report and argued that the only way that their true identities would be proved would be if a DNA test was conducted.
14. This court vide its ruling dated June, 2022 directed that the parties undergo a DNA examination in order to determine the issue of paternity with respect to the Objectors before making a determination on how the estate of the deceased will be devolved.
15. From the above it is clear that the only issue that is pending before this court is the issue of the paternity test with regard to the respective the parties. In my view the orders of 2nd September, 2021 issued by the court regarding parcel of land known as Eldoret Municipality/block 14/73 have not been vacated nor has it been dispensed with. As it is the said orders are still in force.
16. With that said, it is my considered view that this application is premature. Instead the parties should dispense with all preliminary issues already identified in the ruling dated 2/9/21 including DNA tests so that the matter may be conclusively determined.
17. The application is denied with no orders on costs.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 26TH OF SEPTEMBER 2022.

E. K. OGOLA

JUDGE

