



**Kurgat v Wasore; Agaromba & another (Interested Parties) (Miscellaneous Succession Cause 85 of 1999) [2022] KEHC 13270 (KLR) (26 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13270 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS SUCCESSION CAUSE 85 OF 1999  
EKO OGOLA, J  
SEPTEMBER 26, 2022**

**BETWEEN**

**MARTHA CHEPCHUMBA KURGAT ..... APPLICANT**

**AND**

**JOHN ADORI WASORE ..... RESPONDENT**

**AND**

**HERMAN AGAROMBA ( SUIING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JORAM OPATI MULIMI ) ..... INTERESTED PARTY**

**KAPSAGAWAT PRIMARY SCHOOL ..... INTERESTED PARTY**

**RULING**

1. The matter before court relates to the estate of Kibore Arap Kurgat (deceased) who died intestate on March 5, 1985. The only issue pending before this court is with regard to the mode of distribution of all that parcel of land known as Nandi/Chebilat/517 (hereinafter referred to as the suit property). The court on October 11, 2018 ordered that the matter do proceed by way of viva voce evidence. All parties called their witnesses and their evidence can be summarized as follows:

**The Evidence**

2. PW1 Martha Chepchumba, the applicant, testified that she and the deceased sold the suit property to John Adori Wasore, the respondent at Kshs 6,000/= . She told the court that the land was not paid for in full. She denied selling the said land to Kapsagawat Primary School, the 1<sup>st</sup> interested party. She also told the court that the 1<sup>st</sup> interested party alleged to have bought the said property from her son although she has never entered into any sale agreement with the said school. She testified that they had sold (4) acres of the suit property to the respondent and had also sold (2) acres to one Joram Opati Mulimi, the 2<sup>nd</sup> interested party now deceased.



3. On cross-examination by Mr Yego, counsel for the 1<sup>st</sup> interested party, PW1 conceded that the 1<sup>st</sup> interested party is one of the parties who has been in occupation of the said land since 1982. She denied having testified in this matter 11 years ago. She also denied ever suing respondent and told the court that it was the respondent who had sued her. She told the court that it was the respondent who had instituted succession proceeding before the Kapsabet court in which he alleged to be a son of the deceased and also lied to court that the PW1 was deceased. PW1 acknowledged that there was a will and conceded that she did not sell the entire suit property to the respondent and that he had lied about it in court.
4. PW1 testified that after she had instituted these proceedings, one Kiptogom Lagat and the 2<sup>nd</sup> interested party came to court and testified on her behalf and was in agreement with their respective testimonies. She confirmed that the 2<sup>nd</sup> interested party had bought one acre from the deceased and another 1 acre from her son. She told the court that she has no objection to the land being surveyed and that there is a survey report on record. She admitted that one Julius Kibor Serem is her son.
5. DW1 John Adori Wasore testified that on October 21, 1984 he entered into a sale agreement the deceased and his wife for the sale of the suit property. He told the court that he bought a portion of the said land and paid the said amount in instalments until payment was made in full. He further testified that he had a witness but the witness had since died. He told the court that the vendors' witnesses were still alive. DW1 testified that he bought his parcel of land at the same time with the 2<sup>nd</sup> interested party and that he had bought (4) acres of the suit property. He further testified that the entire suit property measures 6.5 acres and that the deceased together with petitioner used to live on the said land but later moved out.
6. DW1 testified that their dispute arose in 1985 after the demise of the deceased. That the dispute begun with simple acts of trespass by the 1<sup>st</sup> interested party's teacher. He told the court that the school is on the upper portion of the land while his portion is on the lower side. He testified that the school begun building latrines on his portion and they did so without his consent, prompting him to report the matter to the District Commissioner (DC). He further testified that some of the school official also cut his trees and he reported the matter to the DC. He also told court that he had filed Kapsabet succession cause No 67 of 1997 which was resolved in his favour and he was given the land. He contended that after he bought the (4) acres there was no other piece of land available for sale. He denied being aware that the school had bought (4) acres of the same piece of land in 1986 and argued that the said purchase was a mistake on the part of the school he had already bought the land.
7. On cross-examination by the petitioner, DW1 told the court that he had already settled on the suit property when the school was constructed.
8. On cross-examination by Mr Yego, counsel for the 1<sup>st</sup> interested party, DW1 conceded that his agreement is dated October 21, 1984 whereas the agreement with the school is dated December 22, 1982. He confirmed that he is not a son of the deceased and that there is nothing in his sale agreement to show that he bought (4) acres of the suit property. Further, he testified that he does not know how to read and did not sign the sale agreement as the same was signed by a clerk. He told the court that he had obtained the land control board consent with respect to the said property but did not a copy of the same. He confirmed that he was the first one to institute succession proceedings with respect of the deceased's estate but he denied having stated that he was a son to the deceased. He told the court that had obtained the grant in 1997. DW1 testified that he had used the said grant to obtain title deed to the suit property. He later on conceded that he was issued with the said grant on the basis that he was the deceased's only son. He also conceded that the title deed in question was in respect of the whole of the suit property being 6.5 acres. He told court that the entire 6.5 acres belongs to him. He conceded



- that there is no indication in the sale agreement that he bought 6.5 acres. He admitted that a surveyor had visited the property pursuant to a court order. He denied owning a portion of the suit property being 0.893 acres. He also conceded that he does not know how long the school has been in existence.
9. On cross-examination by Mr Wafula, counsel for the 2<sup>nd</sup> interested party. DW1 testified that the entire suit property belongs to him and that the 2<sup>nd</sup> interested party is own a separate piece. He contended that the title he had obtained pursuant to the succession proceedings filed in Kapasabet has never been cancelled.
  10. PW1 Julius Kibor Serem, the deceased's son testified that the 1<sup>st</sup> interested party had bought 4.4 acres of the suit property. He testified that there were (3) agreements that they entered into with the school. He further testified that the agreements had been signed by the deceased, the petitioner and himself. The school had paid the entire purchase price.
  11. On cross-examination by Mr Nyamweya counsel for the respondent, the witness stated that land was sold during his father's lifetime in 1982. He conceded that the first agreement does not bear his name. The second agreement is dated April 30, 1985. The said agreement also does not bear his name and was made after the demise of his father. He told court the second agreement as a continuation of the first one. He told court that the said agreement was signed by his mother. He also conceded that the third agreement dated January 30, 1986 was entered into after the death of his late father and they jointly received the money from the said transaction with his mother.
  12. On cross-examination by Mr Wafula counsel for the 2<sup>nd</sup> interested party, he confirmed that they had sold 2 acres of the suit property to the said estate.
  13. PW2 Jonathan Kipruto Meli, the chairman of Kapsagwat primary school committee testified that the 1<sup>st</sup> interested party had bought 4 acres of the suit property. He told the court that there were previous parties who had testified in this matter who are now deceased. He told the court that the agreement of 1985 was signed by Kuto Korir the then chairman, Silah Suge, Eliud Saina and Naftali Meli. The first agreement was for Kshs 25,000/= but the second agreement was for Kshs 39,000/=. The variance was because the suit property kept on appreciating in value. He testified that he is aware that the petitioner had since denied signing the second and third agreements. He testified that he was present when the surveyor visited the land and that the respondent is only entitled to 0.9 acres.
  14. On cross-examination by Mr Nyamweya counsel for the respondent, he conceded that there is no indication in the second and third agreements that they were a continuation of the 1982 agreement. He further testified that the deceased died before the school had completed paying the purchase price and that the balance thereof was paid to the beneficiaries of the deceased. He testified that when the surveyor visited the land, the school did not have any documents of ownership and also conceded that there is nothing in the three agreements to show that the school had the alleged 4 acres of land from the deceased. He told the court that suit property measures 6.5 acres. He testified that DW1's agreement shows that he bought his portion in 1984 and that by that time the school had already taken possession.
  15. 2<sup>nd</sup> IPW1 Herman Agaromba testified that Joram Opati (deceased) was his father and had testified in this matter. He told the court that his father had bought (2) acres of the suit property and prayed that the same be given to them.
  16. On cross-examination by Mr Nyamweya counsel for the respondent, the witness confirmed that they have been staying on the land since 1975. He also told court that there is a road separating their land and that of the school.



17. On cross-examination by Mr Yego, counsel for the 1<sup>st</sup> interested party, the witness told the court that they have been staying on the land since 1975 and denied having bought the land in 1984. He told the court that they have a sale agreement dated 1975 when they purchased the land. He also told court that the school has been on the land since 1980 and denied that respondent is a relative to the deceased.
18. CW1 Joel Limo, the county surveyor, testified that pursuant to an order of the court, he proceeded to survey the land and the following parties were present; Martha Chepchumba, John Adori Wasore, Joram Opati Mulimu and Jonathan Meli. He further testified that he surveyed the whole parcel which measured 6.5 acres and thereafter established the boundaries. He told the court that Joram Opati had 2 acres whereas John Adori had 4.43 acres but the school had claimed 3.5 acres in Adori's portion. He also told court that the applicant claimed to have an interest of unspecified share in Joram's portion.
19. On cross-examination by Mr Yego, counsel for the 1<sup>st</sup> interested party, CW1 testified that he carried out the said survey pursuant to the order of the court dated May 31, 2010. He confirmed that clause (3) of the said order required him to establish the total acreage of the suit property and the total acreage of land claimed by the various parties. He confirmed that it was not his duty to establish who owned what as the same was the duty of the court. He also told the court that the claim on the first portion is not disputed and confirmed that according to his diagram the school owns 3.5 acres of the suit property and that there is a live fence separating the school's portion and the respondents.
20. On cross-examination by Mr Magut counsel for the 2<sup>nd</sup> interested party, the surveyor confirmed that the only competing interest is on the respondent's and the 1<sup>st</sup> interested party's portion and not the 2<sup>nd</sup> interested party.
21. At the end of the oral hearing, the parties were directed to file written submissions. All parties complied.

### **Determination**

22. I have carefully considered the application, the affidavits on record, the testimonies of witnesses and the written submissions of the parties and i find that the only issue for determination is: how should parcel of land known as Nandi/Chebilat/517 be distributed.
23. From the evidence on record it is evident that the suit property measures 6.5 acres and that the respondent, 1<sup>st</sup> interested party and 2<sup>nd</sup> interested all claim to have a purchaser's interest in the said land.
24. There is no dispute that (2) acres of the suit property belong to the estate of the late Joram Opati Milimi having purchased the said portion during the deceased's lifetime.
25. The bone of contention in this matter is the remaining 4.5 acres that both the respondent and the 1<sup>st</sup> interested party have competing interests in. From evidence presented before this court, the respondent alleges to have bought 4 acres of land from the deceased in the year 1984 whereas the school also claims to have purchased the same portion of land in the year 1982.
26. From the proceedings both the applicant and the respondent struck me as untruthful people. I have keenly perused the record and I note that from court proceedings recorded on May 13, 2008, the applicant being the deceased's wife testified that the school has been in occupation of the suit property for many years and that her husband had sold the said land to the school 24 years earlier. She later during these instant proceedings denied having sold the said portion to the school and even denied having testified regarding the same issue in court. I also find it strange that in the instant proceedings, she claims that they sold (4) acres of the suit property to the respondent who had seemingly acted as her son and obtained letters of grant fraudulently with respect to the deceased's estate.



27. It is also not in dispute that the respondent, by his own admission fraudulently instituted succession proceedings in Kapsabet P & A No 67 of 1997 with respect to the deceased estate in which he obtained the grant of letters of administration in respect of the deceased's estate. The respondent disguised himself as a son of the deceased before acquiring the said grant. He subsequently used the grant to obtain title to whole of the suit property. To my mind already the respondent is not an honest person. The respondent testified that he bought (4) acres of land from the deceased. He however, testified that he does not know how to read and right and conceded that he never signed the alleged agreement of 1984. On cross-examination, he told the court that the entire 6.5 acres belongs to him having bought the same from the deceased and has title to it. What exactly is the portion being claimed by the respondent? The respondent also conceded that the grant had been issued to him on the basis of him having alleged to be a son of the deceased a fact that was in fact not. The title obtained with regard to the transaction thereof was illegally and irregularly acquired and has since been cancelled.
28. The respondent has challenged the 1<sup>st</sup> interested party's second and third agreements on record. It is indeed true that the same were entered into after the demise of the deceased. However, with regard to the sale agreement entered into in the year 1982 it is without a doubt that the school purchased the portion in dispute before the respondent who alleges to have bought his land in 1984. It is also worth noting that the respondent alleges to have bought a portion of the suit property at the same time with the 2<sup>nd</sup> interested party, an assertion that was rebutted by the 2<sup>nd</sup> interested party when he told court that his father had bought (2) acres of the suit property from the deceased in the year 1975. The 2<sup>nd</sup> interested party also corroborated the evidence by the school when he told the court that the school has been on the said land since 1980. From the surveyor's report on record it is evident that of the 3.5 acres being claimed by the school, there are developments; there are latrines and a nursery school. The respondent on the other hand does not mention what exactly occupies his portion of land. This court is inclined to believe the 1<sup>st</sup> interested party's version of evidence.
29. Flowing from the above, I am satisfied that the school legitimately holds the 3.5 acres of land as claimed and the remainder thereof being 0.93 acres is what belongs to the respondent.
30. In the end, the court orders that parcel of land known as Nandi/Chebilat/517 shall be distributed as follows:
1. Herman Agaromba (as the legal representative of the estate of the estate of Joram Opati Mulimi – 2 acres
  2. Kapsagwat Primary School – 3.5 acres
  3. John Adori Wasore – 0.93 acres
31. It is so decreed. Parties to bear own costs.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 26<sup>TH</sup> OF SEPTEMBER 2022.**

**E. K. OGOLA**

**JUDGE**

