



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

SUCCESSION CAUSE NO. 246 OF 2005

IN THE ESTATE OF THE LATE JAMES KIPKEMOI TESOT (DECEASED)

IN THE MATTER OF AN APPLICATION BY MARGARET JESANG BUSIENEI,

SAMUEL KIPLANGAT RUTTO & ANNE CHEMUTAI

DAVID KIPRONO CHEPKWONY.....1ST PETITIONER

SAMWEL KIPNGENO KORIR.....2ND PETITIONER

-VERSUS-

JOSEPH MARITIM KILEL.....OBJECTOR

RULING

1. The Deceased herein **JAMES KIPKEMOI TESOT** (*hereafter referred to as the Deceased*) died intestate on 6th April, 2003 leaving the following beneficiaries:-

(i) MARGARET JESANG BUSIENEI

(ii) SAMWEL KIPLANGAT RUTTO

(iii) ANN CHEMUTAI

2. The Grant of Letter of Administration was made to **DAVID KIPRONO CHEPKWONY** and **SAMWEL KIPNGENO KORIR** who are nephews of the Deceased on 17th March, 2017 for reasons that the beneficiaries were still in school when the Deceased died.

3. On 6th May, 2019 a fresh grant was issued to the three beneficiaries after the two administrators relinquished the administration of the Estate of the Deceased willingly after **MARGARET JESANG BUSIENEI** filed an Application dated 6th March, 2018 seeking revocation of the grant made to the two Administrators.

4. The Applicant (**MARGARET JESANG BUSIENEI**) filed for summons of confirmation dated 20th September, 2019 seeking confirmation of the grant issued on 6th May, 2019 to her and her two siblings and also removal of **CAVEAT** placed on the Estate by **JOSEPH MARITIM ARAP KILEL**.

5. The Application coming for consideration in this ruling in a protest date 25th September, 2019 by **JOSEPH MARITIM ARAP KILEL** on the basis that he is a **PURCHASER** for value of (2) Acres comprised in Land Parcel **LR. NO.KERICHO/KUNYAK SETTLEMENT SCHEME/289C** from the Deceased on 7th June, 1994.

6. The two Former Administrators who had relinquished the Estate also filed an application dated 1/7/2019 seeking reinstatement of the Grant to them on the basis that **MARGARET JESANG BUSIENEI** is not the daughter of the Deceased and that her father is **KIPRUTO BUSIENEI of SIMAT LOCATION**.

7. The two Former Administrators who were in Court disowned their Counsel Mr. Kirui and the said Application is still pending.

8. The issue for consideration in this Ruling is where the grant issued on 6th May, 2019 should be confirmed and the **CAVEAT** placed on the Estate of the Deceased by the Protestor removed.

9. The parties filed written submissions which I have duly considered. The Protestor submitted that he purchased two Acres from the Deceased who was the registered owner and he executed a sale of land agreement dated 10th November, 1994.

10. The Protestor further submitted that both the Vendor (the Deceased) and the Purchaser (the Protestor) applied for consent of the Land control Board.

11. The Protestor further submitted that he has been in possession of the two acre portion but unfortunately the Deceased died before the transfer forms were signed and executed.

12. The Administrator **MARGARET JESANG BUSIENEI** filed a Replying Affidavit to the Protest in which she stated that the Protestor is not a beneficiary of the Estate of the Deceased.

13. The 1st Administrator also filed written submissions through her Advocate in which she stated that the sale agreement is a forgery and further that this Court lacks Jurisdiction to hear and determine the protest.

14. I find that the Protestor who alleges he bought two Acres from the Deceased in 1994 has not attached a Judgment or decree from the relevant Court for consideration by this Court.

15. This is a Probate court and the protestor's claim cannot be litigated in this succession case. In **RE ESTATE OF STONE KATHULI MUIINDE (DECEASED) [2016] eKLR** Musyoka J. held as follows;

"that claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the Civil Procedure Act and the Civil Procedure Rules. This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it. Similarly in RE ESTATE OF G.K.K (DECEASED) (2017) eKLR Musyoka J. held that " the primary function of a probate court is distribution of the estate of a dead person"

16. Since the Estate comprises of Kericho/Kunyak/Settlement Scheme/289 (the suit property) only, the Estate cannot be distributed until the dispute on the suit property is resolved.

17. The **CAVEAT** placed by the Protestor will therefore remain in force until the dispute on the suit property is resolved at the correct forum.

18. The summons for confirmation dated 20th September, 2019 held in abeyance pending determination of the dispute.

19. The Protest dated 25th September, 2019 is dismissed with no orders as to costs.

Delivered, signed and dated at Kericho this 29th day of January, 2021.

A. N. ONGERI

JUDGE