



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO. 149 OF 2001

IN THE MATTER OF THE ESTATE OF THE LATE KIPLANGAT KETER (DECEASED)

WILLIAM KIPRONO TOO.....PROTESTOR

-VERSUS-

JOSHUA KIPROP LANGAT.....1ST PETITIONER/RESPONDENT

DICKSON CHERUIYOT LANGAT.....2ND PETITIONER/RESPONDENT

RULING

1. The Protestor in this case **WILLIAM KIPRONO TOO** was directed by Hon. Lady Justice Mumbi Ngugi in ruling delivered on 31st October, 2017 to file his protest within thirty (30) days of that date for consideration by the Court.

2. The Protestor filed an affidavit of protest filed in Court on 1st December, 2017 dated 30th November, 2017 which is coming for consideration in this ruling.

3. The Protestor deposed in the said affidavit of protest as follows:-

(i) THAT his Application for revocation of grant dated 1st April 2009 was spent on delivery of the ruling dated 3rd July, 2015 by Hon. Lady Justice H. I. Ongundi and the subsequent cancellation of the title resultant from the subdivision of KERICHO/KAPSUSER/1772.

(ii) THAT the grant was obtained fraudulently by concealment from the Court of material facts including the fact that he has been in occupation of a portion of land measuring 0.5 Acres for over 40 years.

(iii) THAT between the years 1978 and 1981 or thereabouts, SIMION KIMUTAI LANGAT and his mother received money from him and put him in possession of the portion of land measuring 1.5 Acres and therefore he qualifies to be creditor of the Estate of KIPLANGAT KETER (Deceased).

(iv) THAT the confirmation of grant should be postponed to accord him time to present his claim at the relevant forum.

4. The Petitioners filed a Replying Affidavit to the Affidavit of protest in which they deposed as follows:-

(i) THAT prior to the cancellation of the title the Protestor had sued SIMION K. LANGAT in HCCC.51 of 2003 claiming ownership of 1.5 Acres but SIMION K. LANGAT who is a beneficiary was ordered to refund the Protestor Kshs. 11,500/= plus 14 % interest per annum.

(ii) THAT the said SIMION K. LANGAT settled the claim and the Protestor is not a creditor of the Estate since he did not purchase land from the Deceased.

5. The parties were directed to file written submissions in the protest. The Protestor's Written Submissions are dated 20th November, 2020 while the Petitioner's submissions are dated 20th June 2019. I have duly considered the said submissions.

6. The Protestor submitted in writing that on 3rd July, 2015 Hon. Lady Justice H. I. Ongundi delivered a ruling declaring the subdivision of land Parcel **KERICHO/KAPSUSER/1772** null and void and therefore Parcel No. **KERICHO/KAPSUSER/4048** is non - existant.

7. The Protestor also submitted that he has filed an Application in **KERICHO HCC. No. 51 of 2003** seeking to have the judgement herein set

aside in view of the decision dated 3rd July, 2015.

8. The Protestor further submitted that he has been in occupation, he has been in occupation of a portion of the subject Estate measuring 1.5 Acres for over 40 years.

9. I have considered the submissions filed by the parties and the ruling delivered on 3rd July, 2015 and 31st October, 2017. The issue for determination in this protest is whether the Protestor is a Creditor of the Estate of the Deceased herein.

10. I find that the Protestor's claim is that he was put in occupation by **SIMON KIMUTAI LANGAT** and his mother sometime between 1978 and 1981.

11. I find that **SIMON KIMUTAI** is a beneficiary of the Estate of the Deceased herein and he had no right to sell part of the Estate prior to confirmation of grant. The beneficiaries' dealings in the estate before the confirmation of grant is tantamount to intermeddling which is a criminal offence.

12. The Protestor did not purchase the portion of land from the deceased and therefore he does not qualify to be a Creditor of the Estate.

13. The Protestor is at liberty to litigate his claim against **SIMON KIMUTAI LANGAT** at the right forum. This is a probate court and the protestor's claim cannot be litigated in this succession case. In **RE ESTATE OF STONE KATHULI MUINDE (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"

14. The Protestor is therefore not a beneficiary or a creditor of the Estate of the Deceased herein and I find that his Protest filed in Court on 1st December, 2017 dated 30th November, 2017 lacks in merit and the same is accordingly dismissed with no orders as to costs.

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

A. N. ONGERI

JUDGE