



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 488 OF 2006

IN THE MATTER OF THE ESTATE OF THE LATE ERICK KIBET BOMETT

NICHOLAS KIBETI BOMETT

ROSE WAIRIMU

BETT BOMETT.....APPLICANTS

VERSUS

NANCY JERUTO BOMETT.....RESPONDENT

RULING

1. Nicholas Kibet Bomet filed the Summons dated 4th February 2020 under Section **45(1), 2(a), (b), 83(e), (g) & (h) of the Law of Succession Act and other enabling provisions of the law** The application is supported by his affidavit sworn on 4th February, 2020.

2. He seeks the following orders:

1. Spent.

2. That an order compelling the Respondent to confirm the Grant for final distribution of the Estate of ERIC BOMETT to the beneficiaries.

3. That an Order compelling the Respondent to account for the Estate assets, liabilities, gather, render the remained residue of the Estate, including all capital assets whereabouts of all farm machineries, Motor Vehicles, shares at Arama Sawmills Co. Ltd, Shares at Chepkaikori Multipurpose Co-operative Society, Gum Chem Co. Ltd, Transkenya Green Growers, Tansken Holdings Limited, Poror Properties Limited, 82 Goats, 8 heads of cattle, 10 Horses, 2 Boats at Lake Victoria, proceeds from rental houses and give an account of 1 million received from Parliament and proceeds of Sale of the property sold by Order of the Probate Court.

4. THAT an order compelling the Respondent to produce to the Probate Court and beneficiaries official search, copies of the Title Deeds, Motor Vehicles, Boats and all assets of the deceased for the Courts ascertainment.

5. THAT this Honourable Court be pleased to add the Applicant as a co-administratrix with the Respondent upon the demise and replacement of CHEPCHIRCHIR BOMETT FRASER – Deceased the previous Co-administratrix with the Respondent.

6. An Order that the Applicant be allowed to occupy and live within L.R. NO. 15333/3 premises of the estate of BRAMWEL BOMETT – (Deceased) the beneficiary of the part of the Estate of ERIC BOMETT – (Deceased).

7. That the costs of this Application be in the cause.

3. In response, through her advocates Kimatta & Co advocates, the respondent Nancy Jeruto Bomet filed Grounds of Opposition dated 10th July, 2020 stating that:

1. The application is bad in law.

2. Succession Cause No. 488 of 2006 was simply for letters of Administration Ad Litem to prosecute cases against the estate of ERICK BOMETT.

3. L.R. NO. 15333/3 is charged to National Bank of Kenya and Post Bank, Credit Bank (under auction) see attached pleadings. I.e. ELC 137 OF 2018, HCCC No. 246 of 2009 and ELC 2009/2012.

4. THAT the respondent has no letters of administration over all companies named in paragraph 3 of the summons. The applicants should have the liberty to establish the existence of the same.

5. No single property has been distributed in the Estate as the letters of administration have been issued, as all properties are the subject matter of the court and the Estate owe millions of shillings.

6. THAT the applicant is totally ignorant of the actual legal status of the estate.

7. The application is premature.

8. Applicant lacks locus standi in the matter.

4. Parties agreed to proceed to dispose of the application by way of Written Submissions.

5. The grounds for the summons are set out on the face of the summons and in the affidavit of Nicholas Kibet Bomett.

6. He states that the administratrix has failed to complete the administration of the estate within the requisite time by failing to apply for letters of administration, and, diligently distributing the estate, as a result of which the estate has been left to waste. That the *respondent has been receiving some income from the estate and has not accounted for it.*

7. He depones in his affidavit *inter alia*;

“2. THAT my father BRAMWEL BOMETT – (Deceased) was the eldest son to whom this estate of ERICK KIBET BOMETT relates.

3. THAT before the filing of the Succession Cause herein my mother had earlier died and my father BRAMWEL BOMETT was listed as a deceased beneficiary and we had our house which is currently dilapidated as the Respondent cannot allow me to live and utilize my deceased father’s share which the Respondent is not ready to distribute.

4. THAT the Respondent filed herein (sic) a full Grant on this Succession Cause in this Probate Court in August 2006 a record of 14 years ago. (Annexed herewith are P & A forms marked “NK 1”).

5. THAT out of 10 beneficiaries of estate of ERICK KIBET BOMETT, five beneficiaries have died before the Confirmation of Grant i.e.

a. CHEPCHIRCHIR BOMETT FRASER – Daughter – Deceased

b. NANCY JERUTO BOMETT – Daughter

c. BRAMWEL KIPKORIR BOMETT – Son – (Deceased)

d. JULIUS ARAP SAMOEI BOMETT – Son – (Deceased)

e. ARTHUR KIRWA BOMETT – Son – (Deceased)

f. MERYLYN CHEPTEKENY BOMETT – Daughter

g. DAISY CHELIMO WEBSTER – Daughter

h. REUBEN BOMETT – Son – (Deceased)

i. MARTHA CHEPKEMOI BOMETT – Daughter

j. PAUL BOMETT – Son

6. THAT the administrator has not applied for the confirmation of Grant without a reasonable cause(sic) and has failed to diligently cause the distribution and has willingly neglected and subjected assets forming part of the Estate of the deceased to loss and damage.

18. THAT the Grant is bound to be rendered useless and inoperative through subsequent circumstances.

20. THAT a suitable person (applicant) should be added to help the Administratrix to urgently and diligently proceed with the final distribution of the Estate.”

8. The applicant also narrates the kind of suffering he has been put through by the respondent’s failure to distribute the estate in particular being denied a place to live.

9. The applicant annexed to his application the Respondent’s Petition for Grant of letters of administration, together with the form P & A 5 listing the assets, liabilities and beneficiaries.

10. Mr. Geke for the applicant filed Written Submissions dated 9th September, 2020. He submitted that that the respondent’s position that she only had a limited grant to prosecute cases against the estate of the deceased was not true because she had been issued with Grant of Letters of Administration of estate on 17th September, 2009 signed by the *Hon. Lady Justice M. Mugo*.

11. That the court had on several occasions directed the respondent to file Summons for Confirmation of the grant so as to enable the distribution of the estate of the deceased, to no avail.

12. That the applicant as the grandchild of the deceased, whose father was also deceased, automatically stepped into his father’s shoes and became a beneficiary of his grandfather’s estate. That the respondent had refused to share any information on the status of the estate with the beneficiaries yet she was mismanaging the estate and letting it go to waste.

13. For the respondent submissions were filed by the firm of Kimatta & Company Advocates. It was argued that the application was bad in law. That this particular cause was filed for the purpose of obtaining letters of administration *ad litem* in order to prosecute suits pertaining to the estate and the same was granted on 16th August 2006 by Hon. Justice Kimaru. That the applicant was a grandchild of the deceased did not rank in priority with the children of the deceased and could only inherit what would devolve to the estate of his father Bramwel Bomett. That the applicant did not hold letters of administration to the estate of Bramwel Bomett. In any event the deceased administrator Bomett Chepchirchir Fraser was substituted with Daisy Chelimo Bomett Webster vide an order issued by *Mulwa J* on 12th July 2018 by.

14. Further, that it was the applicant who was meddling with the estate and his allegations that the administrators had distributed the estate selectively could not be because without a Certificate of Confirmation of Grant, no distribution of the estate could take place. The property LR 15333/3 was under orders of *status quo* made by *Emukule J* and was subject to various suits and no one had denied the applicant visits to his parents’ home.

15. It was also ‘submitted’ that the administrators had learnt that the deceased administrator had filed for and was granted letters of administration of estate intestate, and would, on the strength of that proceed to file Summons for Confirmation of Grant, but in the meantime, would need to ascertain the estate of the deceased.

16. The issues for determination are;

- 1) Whether the application is bad in law
- 2) Whether there is a grant of letters of administration intestate issued to respondent to the estate of Eric Kibet Bomett (deceased)
- 3) Whether the applicant is entitled to be a co- administrator in lieu of the deceased administrator Chepchirchir Bomet Fraser
- 4) Whether the premises within the property LR 15333/3 is the share of Bramwel Bomett (deceased) the father of the applicant and whether the applicant ought to be allowed to occupy and live in the same
- 5) Whether the respondent ought to be compelled to render an order for account of the estate of the deceased.
- 6) Whether the respondent ought to be compelled to file Summons for Confirmation of Grant.
- 7) Who should bear the Costs of this application.

17. Is the application bad in law? It is brought under sections **45(1), 2(a), (b), 83(e), (g) & (h)**. The applicant is the grandson of the deceased, his father Bramwel Bomett was a son of and beneficiary of the estate the deceased herein. As a grandchild of the deceased, the applicant can lay claim to what his father was entitled to from the estate. He invokes the powers of the court to protect the deceased’s estate from intermeddling and wastage and to hold the administrators to account. To that extent his application is tenable. It has been argued that he does not hold letters of administration in respect of his father’s estate and hence has no locus in the matter. While it is correct that he has not demonstrated that he is the administrator of his father’s estate, it is not denied that he is the son of Bramwel Bomett and a grandchild of the deceased herein. As a beneficiary, he is entitled to seek orders from the court to protect not only his claim to the estate but the estate itself from waste. Whether the prayers he seeks are available to him is another issue and that we will see in the ruling.

18. The second issue as to *whether there is a grant of letters of administration of estate intestate*, arises from the apparent disagreement as to whether what is in existence is a grant of letters of administration *ad litem* or the grant of letters of administration of estate intestate. A few times counsel for the respondent did tell the court that there was only a limited grant. In the submissions, counsel for the respondent tried to say that she was not aware of a grant by saying **that she discovered that the deceased administrator had obtained grant of letters of**

administration which she was now going to use to file summons for confirmation of the grant. That alleged act of discovery is not the truth. It is important to set the record straight.

19. The Record shows that on 16th August 2006, the *Hon. Justice Kimaru* issued the following orders;

IN CHAMBERS ON 16TH AUGUST, 2006 BEFORE THE HON. MR. JUSTICE KIMARU

ORDER

THIS PETITION FOR SPECIAL LIMITED GRANT dated 14th August, 2006 Brought Under Section 54, 67(1), Rule 12 of the Probate and Administration Rules and paragraph 18 of 5th Schedule of the Law of Succession Act Cap 160 Laws of Kenya.

AND UPON READING the Petition for Special Limited grant together with the annexures attached thereto AND UPON HEARING the submissions by the counsel for the Petitioner/Applicant Ex-parte;

IT IS HEREBY ORDERED THAT:

- i) This application is hereby certified as urgent.
- ii) It shall be heard in the first instance during the High Court vacation.
- iii) The petitioner CHEPCHIRCHIR BOMETT FRASER is hereby issued with a **limited grant of letters of administration limited for the purposes of receiving and collecting and doing such acts as may be necessary for the purposes of preserving the estate of the deceased and for paying the creditors, bills, rates and rents or other monies urgently demanded from the estate.**
- iv) The petitioner is further granted letters of administration ad litem **for the purposes of filing and defending suits on behalf of the estate of the deceased.**
- v) Limited Grant issued in terms of prayer iii shall only be effective for a period of **three (3) months from today's date.**
- vi) The **petitioner is ordered to apply for full grant of letters of administration for the deceased's estate within fourteen (14) days of today's date.**
- vii) For the avoidance of doubt, NANCY CHERUTO BOMETT shall not be evicted from the deceased's property known as **Nairobi/Block/60/427 but she is hereby ordered to pay rent of Kshs. 30,000/= to the estate with immediate effect.**
- viii) Any party effected by the orders of this court shall be at liberty to apply.

GIVEN under my HAND and the SEAL of this Honourable Court this 16th day of August 2006.

JUSTICE L. KIMARU

JUDGE

HIGH COURT OF KENYA, NAKURU

ISSUED by the High Court through the Registry at Nakuru this 22nd day of 22nd day of August, 2006.

DEPUTY REGISTRAR

NAKURU.

20. The record shows that the period of the Limited Grant was extended for a further three (3) months on 4th December, 2006 by the Hon Lady Justice Martha Koome (as she then was).

21. NANCY JERUTO BOMETT filed objection proceedings dated 31st October, 2007 and cross petition dated 10th March 2008. Vide a consent dated 7th September, 2009 the following compromise was made:

CONSENT

1. THAT the objection proceedings dated 31st October, 2007, filed by Nancy Jeruto Bomett be and is hereby withdrawn.

2. THAT the cross petition dated 10th March 2008 filed by the said Nancy Jeruto Bomett be and is hereby withdrawn.

3. THAT CHEPCHIRCHIR BOMETT FRASER and NANCY JERUTO BOMETT do become joint administrators of the estate of their late father ERIC KIBET BOMET

22. A grant of Letters of Administration of estate intestate was made on 17th September 2009 to Chepchirchir Bomet Fraser and Nancy Jeruto Bomet. On the same date, the Judge gave the following orders:

UPON the Petitioner's Application dated 17th September, 2009 coming up for Hearing ex-parte under Certificate of Urgency on 17th September, 2009 before Honourable Lady Justice M. Mugo judge and UPON hearing the submissions from counsel for the Petitioner;

IT IS HEREBY ORDERED THAT:

a) The administratrix of the Estate namely CHEPCHIRCHIR BOMETT FRASER and NANCY JERUTO BOMETT are hereby granted leave to:-

i) Receive monies payable to the deceased by parliament of the Republic of Kenya amounting to Kshs. 1 Million.

ii) Dividends from Carbacid Investment Ltd.

iii) All the said funds to be paid directly to M/s Kimatta & Co. Advocates who will disburse the same as would be instructed.

23. Chepchirchir Bomet Fraser passed on 26th November 2016 and on 10th July 2018, her sister Daisy Chelimo Webster substituted her. It is clear that the limited grant expired. It was expected that the late Chepchirchir Bomett Fraser ought to have filed an account of what she did with the powers that came with the limited grant. Be that as it may, the respondent joined her in the administration of the estate in on 17th September 2009. They served together until 2016 when the first administrator passed away and Daisy Bomett Webster joined her. There is therefore a substantive grant of letters of administration intestate.

24. It follows therefore that the applicant cannot be substituted instead of Chepchirchir Bomett Fraser because she was already substituted. As it is, there are two substantive administrators in this matter.

25. Should the applicant be added, as an administrator to the deceased's estate? The applicable law on priority of who should become an administrator is **Section 66** as read with **Section 38 of the Law of Succession Act**, as specifically **Section 66(b)**.

66. Preference to be given to certain persons to administer where deceased died intestate.

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) the Public Trustee; and

(d) creditors:.....

Ultimately, the court is given discretion to determine who becomes the administrator of the estate upon the above guidelines. The question then would be whether there is any good reason to add the applicant to the number of administrators. The applicant is a grandson. The deceased's estate falls in the category at **Section 38** which states:

Section 38. Where intestate has left a surviving child or children but no spouse

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

26. As pointed out hereinabove, the court is clothed with the final discretion save where there is an express provision, to determine the person or persons to whom a grant of letters of administration will issue, in the best interests of those concerned. The applicant is the child of one of the deceased children of the deceased whose estate is the subject of this cause. There are two (2) administrators to the estate, who are children of the deceased. They rank in priority to the applicant, whose beneficial interest flows from what his father's share will be. There are other children of the deceased who rank higher than the applicant does in the order of priority. The appellant ought to await his

turn should it get to that. As it is now, there is no reasonable ground for this court to exercise its discretion in granting that prayer. The answer to that issue is, no.

27. Whether the premises within the property LR 15333/3 is the share of Bramwel Bomett (deceased) the father of the applicant and whether the applicant ought to be allowed to occupy and live in the same. It is not in dispute that the applicant is the grandson of the deceased. It is also not in dispute that the deceased pre-deceased the applicant's father. Neither is it in dispute that the applicant is entitled to the share of his father's share of his grandfather's estate. The applicant is not saying that the LR 15333/3 was his (Bramwel Bomett) father's property. He is saying that his father occupied premises that is within the LR 15333/3, which belongs to the deceased herein. The applicant has not demonstrated that the said premises he talks about belonged to his own father or that he himself ever lived there. At this stage and without any other evidence this court cannot grant the order sought.

28. Whether the respondent ought to be compelled to render an order for account of the estate of the deceased. The respondent and the deceased co administrator were issued with the grant in 2009. There was a limited grant from 2006. The current co-administrator came on board in 2018. The administrators need to be reminded of their duties. These are provided for by **Sections 83 of the Law of Succession Act**, which provides for the Duties of personal representatives. It states: Personal representatives shall have the following duties—

- (a) to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;**
- (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;**
- (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);**
- (d) to ascertain and pay, out of the estate of the deceased, all his debts;**
- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;**
- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;**
- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;**
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;**
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.**

29. There is no doubt in my mind that the respondents ought to have filed an inventory a long time ago, since 2006. The administrators owe the court an explanation as to why they have not done so. It is unfortunate that they did not file any affidavit in response to the affidavit of the applicant and therefore did not respond to the factual issues raised by the applicant. Their efforts to respond to those through their submissions are unacceptable. Submissions are not evidence, and without the Supporting Affidavit what is stated in the submissions as factual responses is inadmissible, and cannot be relied on to support their case. Hence, the answer to this issue is in the affirmative. The administrators have the duty to show the court, and the other beneficiaries the extent of the deceased's estate, both in assets and liabilities. They ought to do so by filing an amended form P & A 5. In addition, some of the beneficiaries, children of the deceased, including the father of the applicant have died in the intervening period. The administrators must demonstrate to court who the remaining beneficiaries of the estate are in the same amended form P & A5.

30. Whether the respondent ought to be compelled to file Summons for Confirmation of Grant. It follows without question that since 2006 it is now going to 15 years. The administrators have a duty to wind up the estate of the deceased as by law required.

From the foregoing, I find and hold that;

1. THAT the respondent and her co-administrator are duty bound to:
 - a. To account for the estate of the deceased.
 - b. File summons for confirmation of grant to enable them distribute the estate.
2. I order that within thirty (45) days hereof, the administrators to file;

- a. A full and accurate inventory of the assets and liabilities of the deceased;
 - b. A full and accurate account of all the dealings therewith to the date of the account;
 - c. An amended Form P&A 5 hereof with all the beneficiaries, assets and liabilities of the estate as per (a) above;
 - d. Summons for Confirmation of the grant to be served upon all the beneficiaries of the estate;.
3. In default of any of (1) or (2) the court will exercise its discretion in appointing other administrators to the estate.
 4. Each party to bear its own costs.
 5. Mention on the 11th of May 2021 to confirm compliance.

DATED AND DELIVERED THIS 18TH MARCH 2021

To be sent to parties via counsel's email addresses

MUMBUA T. MATHEKA

JUDGE

Court Assistant Edna

M/s A. N. Geke & Co. Advocates N/A

M/s Kimatta and Co Advocates N/A