



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**MISC. SUCC CAUSE NO. 7 OF 2017**

**IN THE MATTER OF THE ESTATE OF JEROP KOBOT CHUMO-DECEASED**

**PAULINA JEPNGETICH KEINO.....APPLICANT**

**VERSUS**

**STEPHEN CHERUIYOT KOROS.....RESPONDENT**

**RULING**

1. The application dated 27.04.21 was filed under certificate of urgency and seeks orders to vacate, set aside, vary and/or discharge orders issued on 26.04.21

That thereafter the matter be fixed for mention for submissions and further orders.

2. The background to this is that the matter came up for mention on 26.04.20 for purposes of confirming filing written submissions and thereafter to give a ruling date. The matter was called out but only the Respondent appeared and the court noted that the petitioner was absent at 11.31 am.

3. The Respondent then addressed the court saying he had not received any submissions from the firm of Z. K.Yego and sought the court to allow him to rely on the response he had filed and set a ruling date. Ruling was thus set for 13.05.21.

4. Later after the court heard completed the call over, Mr. Yego addressed the court at 12.45pm saying he had been on the virtual platform waiting but did not hear the matter being called out. This is what has triggered the present application.

The applicant did not seem to have too much of a problem with that and infact when he appeared in court on 03.05.21 his main request was to be allowed to file written submissions to the application dated 3<sup>rd</sup> May 2017.

5. The application dated 3<sup>rd</sup> July 2017 seeks

a) Stay of further proceedings and execution of any orders and all registration and applications obtained and/or made at Kapsabet PM SUCC Cause No. 78 of 2015 pending hearing and determination of the application ingredients.

b) The Grant of letters obtained in the aforementioned Kapsabet case in the matter of the Estate of Kobot Chumo (Dcd) be revoked.

6. It is premised on grounds that the proceedings to obtain the grant were defective in-substance and the grant was obtained by means of an untrue allegation of a fact. Further that the grant was obtained fraudulently and through misrepresentation.

It is pointed out that the Petitioner (**STEPHEN CHERUIYOT KOROS**) has transferred parcel No. **NANDI/KILIBWONI/370** measuring 7.0 Ha to his name via transmission even before obtaining a certificate of confirmation of grant.

**JEROP KOBOT CHUMO** died on 25<sup>th</sup> may 1994, and **STEPHEN CHERUIYOT KOROS** petitioned for grant of letters of administration which were issued on 17.09.2015.

7. The applicant **PAULINA JEPNGETICH KEINO** contests this stating in the supporting affidavit that her husband **LAWRENCE KEINO** bought 8.5 acres of the same parcel way back in 1972, having purchased the same from **ANN MACHII TABARBUCH KOIYA** alias **BOT SAWE** who legally owned the land. Ever since then they have been in quiet uninterrupted possession. However with this new

development, the Respondent now seeks to evict her from that land. When the applicant petitioned for grant in Kapsabet, he presented a prayer seeking that the temporary grant issued be confirmed since there was no objection; and that the entire family had allowed him to register the entire parcel in his name. To support this, he annexed minutes of a family meeting which made the resolution to that effect.

8. In the Replying Affidavit in opposing the application, The Respondent states that the application fall short of requirement of Section 76 of the Law of Succession Act, and that the applicant herein is a total stranger. Further that the same offends the provision of Rule 41 (3) of the Probate and Administration Rules.

9. He points out that the grant was regularly obtained after he applied for its confirmation as per Ex. CK 2 dated 1<sup>st</sup> march 2016. Thereafter he obtained a copy of confirmed grant (EX SCK1) issued on 3<sup>rd</sup> May 2016, it was upon obtaining grant that he applied to have the registration and subsequent transmission of the asset in his name (he has annexed a copy of the green card). He points out that the applicant has her own land being property of her deceased husband, and she has no place in even claiming adverse possession.

10. In the written submissions, the applicant contends that the deceased had subdivided her land and given to his daughter **ANNE MACHII TABARBUCH KOIYA** alias **BOT SAWE**, and that the Respondent failed to disclose this fact in the court. Reference is made to the case of In **RE ESTATE JULIUS NAIBOI JAVAN – DECEASED** [2018] eKLR where the court noted that in any judicial proceedings parties must make full disclosure of all material facts. That as a consequence of the sake of the property then Paulina Jepngetich Keino should have been listed is a creditor.

That the applicant herein was to bring this matter by virtue of being an interested party, and reference is made to that case of **ANSAZI, GAMBO TINGA AND ANOR' V NICHOLAS PATRICE TABUCHE (2019) eKLR** which stated that the expression of “any interested party” is wide enough to accommodate any person with a right or expectancy in the estate.

11. In a Supporting Affidavit the grant refers to minutes of meeting held by the chief of Kilibwoni Location that after the deceased's husband died his land was subdivided equally among the two wives i.e. deceased and her co-wife, each getting a share of 8.5 acres, and when the one wife **KOBOT MACHII** died, her share was transferred to her daughter BOT SAW (who was her only child) i.e. **BOT SAWE**.

12. Section 76 of the law of Succession provides as follows:-

**Revocation or annulment of grant.**

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

- a) That the proceedings to obtain the grant were defective in substance;
- b) That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- d) That the person to whom the grant was made has failed, after due notice and without reasonable cause either-
  - (i) To apply for confirmation of the grant within one year from date thereof, or such longer period as the court order or allow, or
  - (ii) To proceed diligently with the administration of the estate; or
  - (iii) To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs € and (g) of Section 83 or has produced any such inventory or account which is false in any material particular; or
- e) That the grant has become useless and inoperative through subsequent circumstances.

13. The questions to be asked are this;

- a) Was the petitioner aware that Anne had entered into a transaction to dispose part of his father's property in 1972 when he was still alive?
- b) Was the land transferred and registered in the name of Anne Machii Tarubuch alias Bot Sawe?

If so then nothing has been presented to support that position. As at the date that the grant was confirmed, is there evidence that the land was still registered in the name of deceased's husband Arap Tongoi, or was part of it registered in Anne's name.

In my view the interest of Paulina has not been adequately demonstrated as to warrant revocation of the grant, what it demonstrates is that she should file a claim in the ELC court against the administration of the estate seeking part of the land. The application to stay and further proceedings is already overtaken since the proceedings before Kapsabet Court was completed and executed as the Respondent has already

been registered and obtained title document.

Secondly no irregularity has been demonstrated with regard to fraud and concealment.

The application fails and is dismissed. Costs to Respondent.

**DELIVERED, SIGNED AND DATED THIS 20TH DAY OF MAY 2021.**

**H. A. Omondi**

**Judge**