



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**SUCCESSION CAUSE NO. 528 OF 2015**

**IN THE MATTER OF THE ESTATE OF SIMON OTIENDE**

**ARAP KONEN *Alias* SIMION OTIENDE ARAP KONEN - DECEASED**

**ELIZABETH JEBITOK AGEYA.....OBJECTOR/APPLICANT**

**-VERSUS -**

**SOLOMON KIPKEMBOI MAIYO.....RESPONDENT**

**RULING**

The application before me is for the annulment of the Grant of Letters of Administration which were issued to the Respondent, **SOLOMON KIPKEMBOI MAIYO**.

1. It is common ground that the Respondent had filed a Succession Cause at the Principal Magistrate's Court, Kapsabet. The said cause is **Succession Cause No. 135 of 2016**, which is in relation to the Estate of **SIMON OTIENDE ARAP KONEN *Alias* SIMION OTIENDE ARAP KONEN**.
2. The Petition was filed on 9<sup>th</sup> September 2016. It was then gazetted on 6<sup>th</sup> January 2017.
3. The record of proceedings shows that on 2<sup>nd</sup> August 2017, the court issued a Grant of Letters of Administration Intestate, to the Respondent.
4. Thereafter, on 29<sup>th</sup> August 2017 the learned Senior Resident Magistrate, Hon. E.A. Obina, issued a Certificate of Confirmation of Grant.
5. Pursuant to the Certificate of Grant, the property **L.R. NO. NANDI/KAPSENGERE/175** was to be transferred to the Respondent.
6. Meanwhile, the Applicant, **ELIZABETH JEBITOK AGEYA**, had lodged a Citation in this court on 15<sup>th</sup> March 2015.
7. The Citee in that Citation was the Respondent herein.
8. On 21<sup>st</sup> December 2015 the Applicant lodged a Petition in this court. The said Petition was gazetted on 19<sup>th</sup> August 2016.
9. The record of the proceedings shows that on 28<sup>th</sup> September 2016, Majanja J. issued a Grant of Letters of Administration Intestate, to the Applicant.
10. Thereafter, the Court issued a Certificate of Confirmation of Grant on 27<sup>th</sup> July 2017.
11. Pursuant to the said Certificate of Confirmation of Grant, the Applicant was to get one-third (1/3) share in the property **L.R. NO. NANDI/KAPSENGERE/175**.
12. At this stage it is necessary to clarify some issues concerning the property **L.R. NO. NANDI/KAPSENGERE/175**.
13. The said property is registered in the names of three persons, namely;

**a. Elizabeth Jebitok Ageya;**

**b. Simon Otiende Arap Konen; and**

**c. Ochieng Arap Maiyo.**

14. Each of the said 3 persons is indicated as owning one-third (1/3) share, in the property.

15. A reading of the proceedings leading up to the confirmation of the Grant in this case, shows that the Applicant had asserted that she had purchased the one-third (1/3) share which had registered in the name of the deceased **SIMON OTIENDE ARAP KONEN**.

16. Therefore, if the Certificate of Confirmation of the Grant in this case, was given effect, the Applicant would be the owner of two-thirds (2/3) of the property: That is because apart from the one-third (1/3) already registered in her name, the Applicant stated that she had purchased the one-third (1/3) which was originally owned by the deceased.

17. By virtue of the Certificate of Grant issued by the High Court, the Applicant would be entitled to two-thirds (2/3) of **L.R. NO. NANDI/KAPSENGERE/175**.

18. Meanwhile, by virtue of the Certificate of Grant issued by the Principal Magistrate's Court Kapsabet, the Respondent would be entitled to the whole parcel of land known as **L.R. NO. NANDI/KAPSENGERE/175**.

19. The two certificates of confirmation of Grant are inconsistent. If both of them were to be executed, there would be a clash of titanic proportions.

20. The Respondent cannot get the whole parcel of land which the High Court has a large portion of to the Applicant.

21. The converse is equally true; that the Applicant cannot get two-thirds (2/3) of the parcel of land when the Principal Magistrate's Court has awarded it to the Respondent.

22. The existence of two parallel proceedings, before two different courts, in respect to the Succession of one deceased person, has given rise to positions which are not capable of being reconciled, when the orders issued by the two courts continue subsisting.

23. But more significantly, I note that when the Respondent lodged his Petition for Letters of Administration Intestate, he exhibited a Certificate of Official Search which clearly showed that **L.R. NO. NANDI/KAPSENGERE/175** was owned by 3 persons, namely Elizabeth Jebitok Ageya, Simon Otieno Arap Konen and Ochieng Arap Maiyo.

25. By a letter dated 19<sup>th</sup> August 2016, the Chief of Terik Location, Mr. Elijah Kiplagat, also stated that the parcel of land in issue belonged to the 3 named persons.

25. However, by an affidavit sworn on 29<sup>th</sup> August 2017, the Respondent supported his application for confirmation of the Grant, by asserting that he was entitled to the **WHOLE** parcel of land, **L.R. NO. NANDI/KAPSENGERE/175**.

26. I find that that deposition was known by the Respondent to be untrue. Therefore, as the certificate of confirmation was issued based on an untruth, it must be annulled.

27. Accordingly, the Certificate of Confirmation of Grant dated 29<sup>th</sup> August 2017 is hereby annulled forthwith.

28. The costs of the application dated 17<sup>th</sup> September 2018 are awarded to the Applicant.

**FRED A. OCHIENG**

**JUDGE**

**DATED, SIGNED and DELIVERED at KISUMU This 28<sup>th</sup> day of January 2020**

**T.W. CHERERE**

**JUDGE**