



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KERICHO

SUCCESSION CAUSE NO.98 OF 1994

IN THE MATTER OF THE ESTATE OF JONATHAN KIMABWAI CHEROIGIN (DECEASED)

SAMWEL KIPNGETICH MABWAI.....PETITIONER

VERSUS

JOSEPH KIPKEMOI MABWAI.....PROTESTOR

RULING

1. In this matter, letters of administration intestate in the estate of JONATHAN KIMABWAI CHEROIGIN were confirmed on 22nd March 2017 by Martin Muya J.

2. On 13th October 2017 however, a summons dated 5th September 2017 for revocation or annulment of grant of letters of administration was filed by the protestor JOSEPH KIPKEMOI MABWAI, though the application suggests that the applicant was RONALD K. NGENY.

3. Other than seeking that the summons be certified as urgent, the application seeks the following orders –

1.

2. That temporary stay of execution of the Grant of Letter of Administration issued on 22nd day of March 2017 (be granted) pending inter-partes hearing.

3. That the limited Grant of Letters of Administration issued on 27th day of September 1996 be revoked and be annulled on the ground that –

a. That the proceedings to obtain the Limited Grant of Letters of Administration were defective in substance.

b. That Limited Grant of Letters of Administration was obtained without the consent of all concerned parties as the alleged administrator went ahead and substitute (sic) himself as administrator against our mother (sic) without the consent of all family beneficiaries and/or by concealment of facts to the court of something material to the case.

c. That some assets were left out during the confirmation of grant.

d. That the alleged administrator distributed the said property against the wish of our late father and all beneficiaries.

e. That the costs of this application be in the estate.

4. The summons was filed with an affidavit of protest sworn by JOSEPH KIPKEMOI MABWAI on 5th September 2017. In the affidavit the alleged assets of the estate were listed as well as the survivors at death of the deceased on 3rd July 1994. The survivors were listed as Annah Chepngeno Cheroigin widow, Joseph Kipgetich Mabwai son, Bernard Kipkoeh Mabwai son, Sally Chebet Mabwai daughter in-law, and Nancy Chemutai daughter.

5. It was deponed that what was expressed by the administrator were not the views of the siblings, that the administrator did not know all the names of the beneficiaries and did not list all the assets, and that the administrator intended to obtain confirmation of grant contrary to the wish of family members who had appointed the objector JOSEPH KIPKEMOI MABWAI as administrator. It was deponed also that there

was annexed to the affidavit a list of the assets and proposed mode of distribution, which I however do not see.

6. The summons is opposed through a replying affidavit sworn by SAMWEL KIPNGETICH MABWAI the administrator on 23rd October 2017 in which it was deponed that the proceedings to obtain letters of administration were not defective, and that the objector and other beneficiaries were aware of the succession proceedings but had always frustrated the conclusion of the proceedings since 1994.

7. It was deponed further that some assets were left out of the confirmed grant because the objector was the person privy to the information on those assets, and that though the objector wanted the grant revoked, he was not proposing a way forward.

8. The objector JOSEPH KIPKEMOI MABWAI on 15th April 2019 also filed a Summons for Confirmation of Grant dated 11th April 2019, in which he annexed a proposed mode of distribution of assets which he signed alone, but which was consented to by a written consent dated 11th April 2019 signed by Joseph Kipkemoi Mabwai, Sally Mabwai and Nancy Chemutai Cheroigin. It was not signed by the administrator SAMWEL KIPNGETICH MABWAI, and ANNAH CHEPNGENO CHEROIGIN (the widow) said to be deceased.

9. The matter proceeded by way of filing written submissions by counsel. For the protestor Ms. EK Korir & Company Advocates filed submissions on 30th April 2019, annexing a proposed mode of distribution, which was objected to and I will not consider the said mode of distribution. In the written submissions counsel stated that section 38 of the Law of Succession Act (Cap.160) emphasized the principle of equal distribution of assets among children of a deceased person. Counsel filed further submissions on 7th August 2019 and relied on a number of decided court cases.

10. Counsel for the administrator M/s Chelule & Company Advocates on the other hand filed written submissions on 16th July 2019, in which they gave the history of the succession cause herein and supported the proposed distribution suggested by the administrator.

11. I note that this succession cause has been in court since 1994 and Letters of Administration intestate were issued and later confirmed by Martin Muya J. in 2017. It is apparent from what has been filed herein that the parties agree that the initial grant of letters of administration issued in 1994 to Samwel Kipgetich Mabwai remains intact. The only issue in contest is thus with respect to the distribution of assets in the confirmed granted issued in 2017. That is the issue that makes the protestor ask for revocation or annulment of grant.

12. Though the protestor after filing the Summons for revocation of grant filed a summons for confirmation of grant, in my view, the said application did not serve a useful purpose, as I have not been told that the confirmed grant of letters of administration herein was revoked or annulled. All the objector needed to do was to file this proposed mode of distribution to the summons for revocation of grant. I will thus treat the summons for confirmation of grant filed by the objector, to be his proposed mode of distribution of the assets.

13. Under section 76 of the Law of Succession Act (Cap.160), this court has jurisdiction to revoke or annul a grant of letters of administration whether the same has been confirmed or not on application of any interested party or on its own motion. Due to the dispute arising from the mode of distribution contained in the confirmed grant of letter of administration dated 22nd March 2017 herein, I revoke the said confirmed grant of letters of administration herein as indeed the administrator admits that some assets had been left out.

14. I now turn to the mode of distribution of the assets. The objector proposes a mode of distribution after disclosing some other assets of the deceased. The administrator says that these additional assets were not disclosed by him because the information relating to the same was only available to the objector. I note that even in the confirmed grant of March 2017 the widow of the deceased was not catered for in the distribution of assets, may be because she had already died. Nobody is currently questioning this.

15. Section 38 of the Law of Succession Act (Cap. 160) contains the provisions on the intestate distribution of assets of a deceased person where only a child or children of a deceased survive, with no surviving spouse. It states as follows –

“38. Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provision of section 41 and 42, evolve upon the surviving child, if there be only one, or be equally divided among the surviving children”

16. Having perused and considered the mode of distribution of the assets proposed by the administrator in the revoked confirmed letters of administration herein of 17th March 2017, and the proposed mode of distribution suggested by the protestor and consented to by all the survivors except the administrator, I am of the view that the proposed mode of distribution of assets proposed by the protestor comes closer to a mode of distribution that is in accordance with section 38 of the Act.

17. I thus confirm the Letter of Administration herein with Samwel Kipngetch Mabwai as administrator and order that the mode of distribution be as follows –

KERICHO/KIPKELION/CHEPSEON BLOCK 3 HECTARES

(NYANDO RIVER)/59

Samwel Kipngetch Mabwai	9.65
Bernard Mabwai Cheroigin	10.45
Simon Kipkoach Mabwai	9.44

KERICHO/CHEBORGE/39 ACRES

Joseph Kipkemoi Mabwai	0.6
Samwel Kipngetich Mabwai	0.6
Bernard Mabwai Cheorigin	0.6
Simon Kipkoech Mabwai	0.6
Nancy Chebet Mabwai	10.6
Sally Chebet Mabwai	0.6

KERICHO/CHEBORGE/48 ACRES

Sally Chebet Mabwai	12
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PLOT NO. 25, CHEBORGE ROOM

Joseph Kipkemoi Mabwai	FRONT ROOM
Samwel Kipngetich Mabwai	ROOM 5 (UPPER)
Benard Kipkurui Mabwai	ROOM 5 (LOWER)
Sally Chebet Mabwai	FRONT ROOM

PLOT NO. 9 CHEBORGE

Nancy Chemutai	Absolute
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PLOT AT SOTIK 145

Simon Kipkoech Mabwai	Absolute
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SHARES AT STANDARD CHARTERED BANK

To be shared equally among all beneficiaries

SHARES AT BARCLAYS BANK OF KENYA LTD

To be shared equally among all beneficiaries

SHARES AT BROOK BOND KENYA LTD

To be shared equally among all beneficiaries

SHARES AT KENYA COMMERCIAL BANK LTD

To be shared equally among all beneficiaries

SHARES AT SAPTET HOUSE

To be shared equally among all beneficiaries

CHEBORGE COMPANY SHARES

To be shared equally among all beneficiaries

LEGETIO FARM RONGAI

To be shared equally among beneficiaries excluding Joseph Kipkemoi Mabwai

CAR REGISTRATION KXU 091

To be disposed off and proceeds shared equally among all beneficiaries.

18. Certificate of confirmed grant to issue with the above mode of distribution of assets.

Dated and delivered at Kericho this 12th March 2020.

GEORGE DULU

JUDGE