



REPUBLIC OF KENYA

IN THE HIGH COURT AT KERICHO

SUCCESSION CAUSE NO.100 OF 2012

IN THE MATTER OF THE ESTATE OF SAMWELCHERUIYOT LANGAT

(DECEASED)

JOSEPHINE CHEPNGETICH LANGAT.....OBJECTOR/APPLICANT

VERSUS

LEAH CHEBII LANGAT.....PETITIONER/RESPONDENT

RULING

1. Letters of Administration herein were confirmed on 4th February 2014 and certificate of confirmed Grant signed by Justice J. K. Serگون in which the only land asset Kericho/Kapsuser/4192 was divided equally among two people said to be wives of the deceased that is Leah Chebii Langat 4.028 acres to hold in trust, and Josephine Langat 4.028 acres to hold in trust, the contestants herein.

2. Subsequent to the above issuance of confirmed grant of letters of administration, on 15th November 2015 – Josephine Chepngetich Langat filed a Chamber Summons (should be Summons for revocation of confirmed grant) dated 16th October 2015 under section 76 of the Law of Succession Act (Cap. 160), through counsel Sila Munyao & Company seeking revocation of the letters of administration issued to Leah Chebii Langat on 4th February 2014.

3. The application has grounds on its face which are that the proceedings to obtain the grant of letters of administration were defective in substance, that the grant was obtained by the making of a false statement or by concealment from court of something material to the case, and that the grant was obtained by means of untrue allegation of facts essential in point of law, and lastly that costs be provided for.

4. The application was supported by an affidavit sworn by Josephine Chepngetich Langat on 16th October 2015 in which it was deponed that Kericho Citation Case No.15 of 2011 was not served, that consent of the beneficiaries was not obtained for issuance of the grant, that Leah Chebii Langat had been divorced by the deceased more than 30 years before he died; and that the application for letters of administration falsely indicated that the deceased died on 16th July 2007, yet he died on 17th May 2007.

5. The application was opposed, and proceeded by way of viva voce evidence. Josephine Langat the objector testified together with two witnesses making a total of 3 witnesses. On the other hand the petitioner Leah Chebii Langat testified and called 3 other witnesses, totaling 4 witnesses. I have considered the evidence and documents filed on both sides.

6. Under section 76 of the Law of Succession Act (Cap. 160), this court has jurisdiction to revoke a grant of letters of administration whether or not the same has been confirmed. The section provides as follows –

76. 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 the 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 (e) 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.

7. I have highlighted the grounds of the application above. One of the grounds of the application is that the petitioner Leah Chebii Langat had been divorced by the deceased many years before he died. On this ground this court as a succession court has no jurisdiction to determine with finality the issue of subsistence or validity of a marriage. That is for the divorce court in a proper divorce cause. There is no dispute however that both contestants herein were married to the deceased under African Customary Law and both had children with him. The application herein did not annex any order of a court evidencing a formal divorce of Leah by the deceased. The evidence from witnesses is that she separated from the deceased because he was cruel to her. Prima facie therefore, I cannot say that there was such alleged divorce. Prima facie, Leah Chebii Langat was a wife to the deceased.

8. Section 29 (a) of the Law of Succession Act, in any event recognizes former wives as prospective dependants of a deceased person. With the facts and circumstances put before me, and especially the fact that Leah had living children with the deceased who were beneficiaries to the estate, it cannot be said she cannot benefit from the estate, unless her children challenge her, which they have not done presently.

9. The next ground is that the Citation was not served on Josephine Chepngetich Langat. In my view, that cannot be a ground for revocation of a confirmed grant unless the objector has suffered prejudice. There is no evidence that Josephine Langat has suffered prejudice. I also see petition for letters of administration filed by the objector the same Josephine Chepngetich Langat herein together with Benson Kiprotich Yator as Nairobi Succession Cause No.185 of 2008, which file was then forwarded to Kericho, in which Josephine excluded Leah Langat and the other house of the deceased in total. It is thus apparent that it is Josephine Langat the objector herein who wants to play mischief. She and her house were included in the distribution of the estate, in the confirmed grant herein. The ground on lack of service of the citation is hereby dismissed.

10. I now turn to the ground of non disclosure of material facts, or giving false information by Leah Langat to obtain the grant. The burden was on the objector Josephine Langat to prove on the balance of probabilities these allegations. From the documents filed in these proceedings Leah Chebii Langat disclosed all the two wives and their children, even a deceased son of Josephine Langat one Erick Kipkoech, when she applied for letters of administrator. It was infact the objector Josephine Langat who did not disclose any of the survivors in the 1st house, of Leah Langat numbering 10 as against 5 in the second house, in Nairobi Succession Cause No.185 of 2008. I find no non disclosure of material fact, or use of false information in court by Leah Langat. I dismiss that ground.

11. With regard to lack of consent from all the survivors, such consent was waived by the court order of Justice Jeanne Gacheche in Citation Cause No.15 of 2011 issued on 2nd July 2012 in which the court ordered as follows –

“1. That Leah Chebii Langat (citor) do petition to administer the estate of the late Samwel Cheruiyot Langat.

2. That Leah Chebii Langat (Citor) should ensure that she names all survivors”

12. Since I have not been told that Leah Chebii Langat did not comply with any of the above court orders, the ground on failure to obtain consent of all survivors lacks merits. I dismiss the ground.

13. I have also considered the way the only land asset of the deceased was distributed by Leah Chebii Langat in two equal shares to the two wives. Section 40 of the Law of Succession Act provides for the mode of distribution of a deceased husband’s estate in polygamous marriages. A house with more children would ordinarily get a bigger share. However, Leah Langat who had more children divided the land equally among the two houses. I find no reason to hold that there was improper or illegal distribution of the assets.

14. The issue on division of land by the Land Control Board testified to in evidence, in my view is not helpful. The powers of the Land Control Board do not cover registered land as is the case herein. Also the powers of the Board are limited to determining occupation and use and not ownership. More importantly, when the land owner is deceased as the case herein, in my view, only the succession court can conclusively divide the assets of the deceased including land, among the survivors. The Land Control Board could thus not divide the deceased land after he died.

15. To conclude, I find no merits in the Summons for revocation of grant herein. I dismiss the same. As this is a family matter, each party will bear their respective costs.

Dated and delivered at Kericho this 12th March 2020.

GEORGE DULU

JUDGE