



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

SUCCESSION CAUSE NO.61 OF 2004

IN THE MATTER OF THE ESTATE OF THE LATE TAPLELEI CHEPKWONY (DECEASED)

GEOFFREY KIPLANGAT YEGON.....APPLICANT

VERSUS

CATHERINE KOECH.....RESPONDENT

RULING

1. Before me is an application by way of Chamber Summons filed by Geoffrey Kiplangat yegon through counsel M/s Koech Kipkurui & Associates under Rule 49 and 73 of the Probate and Administration Rules seeking that the court do remove or order the removal of the caution placed against land parcel MOLO/MAU/SUMMIT BLOCK 1/144(TWIN PEAK) by Catherine Koech.
2. The application has grounds on the face of the Chamber Summons. The grounds are that unless the said caution was removed the lawful beneficiaries would not get their respective shares in the subject land, that on 20th July 2018 this court delivered a ruling holding that Catherine Koech was not a dependant of the deceased's estate, and that the continued existence of the caution was detrimental to the interests of the beneficiaries herein.
3. The application was filed with a supporting affidavit sworn by Geoffrey Kiplangat Yegon on 8th July 2019 in which it was deponed that despite payment of stamp duties and registration fees, the land documents were returned by the land Registrar who refused to register the documents until the caution was removed, and that the respondent was neither a liability nor a dependant in the estate of the deceased and that her claim was yet to be determined in a suit filed by the respondent in Nakuru ELC No.21 of 2018, and that confirmation of grant of letters of administration herein was issued on 20/06/2006 which was 12 years by the time the present application was filed.
4. The application has been opposed through a replying affidavit sworn by the respondent Catherine Koech on 16th July 2019 in which it was deponed that the parcel No. MOLO/MAU/SUMMIT BLOCK 1/144(TWIN PEAK) measuring 3.7 acres was sold to her after completion of the succession cause in the estate of TAPLELEI CHEPKWONY in which ARON KIBET YEGON was the administrator and other parcels were also sold likewise to other buyers, that since the respondent had filed Nakuru ELC No.21 of 2018, removing the caution would mean prematurely dispossessing the respondent her parcel of land, that the respondent had been in occupation of the land in question, and that already there was an order of injunction issued in Nakuru ELC 21 OF 2018, against the administrator herein stopping any activity on the land. The affidavit annexed copies of a land sale agreement and orders in Nakuru Chief Magistrates ELC Case No.21 of 2018.
5. Though it was agreed on initiation by Mr. Washiali for the respondent that the application proceed by way of filing written submissions, the respondent's counsel did not file written submissions. The applicant's counsel on the other hand filed written submissions on 30th October 2019, and I have perused and considered the said submissions.
6. This is an application for removal of a caution registered on land which belonged to the deceased, so that the land can be divided and registered in the respective portions in the names of the beneficiaries to the estate as determined in the confirmed grant of letters of administration herein.
7. I note that there is a ruling of this court dated 20th July 2018 in which the court found that the grant of letters of administration herein was confirmed on 20th June 2006. The subject parcel of land was however sold by the administrator Aron Kibet Yegon later on 7th July 2006 and as such Catherine Koech the respondent herein, does not either fall under section 29 or section 93 (1) of the Law of Succession Act. I also note that as at the date of the above court ruling there was already pending Nakuru Magistrates ELC Case No.21 of 2018, and this court refused to grant eviction orders against the respondent herein and left the issue of injunction of any kind to be dealt with in the Nakuru ELC cause.

8. Now, the same person Catherine Koech who in my view has no locus standi in this succession matter, has been brought to this court, while there are other proceedings on the same subject land in the ELC court at Nakuru where she is a valid party. The respondent has also been brought to this court through an application filed by Geoffrey Kiplangat Yegon a beneficiary, not the Administrator of the estate Aron Kibet Yegon who is also said to have sold the subject land to the respondent, and who is the 2nd defendant in Nakuru Chief Magistrate's ELC Case No.21 of 2018.

9. In my view, in line with this court's ruling of 20th July 2018 all further matters relating to the sale of the subject land and any equitable orders therein have to be dealt with in the Nakuru Chief Magistrate's ELC Case No.21 of 2018. On that account I find that this application is in the wrong court, and is for dismissal.

10. The second reason why this application will fail is that in my view, the application could only be validly brought in court by the administrator or administrators of the estate, which the applicant herein is not one. The applicant herein could only bring an application against the administrator(s) and not against any other person. On that account also this application cannot be sustained and is for dismissal.

11. Consequently, this application is dismissed for the above two reasons. As the respondent's counsel did not file written submissions, I order that parties bear their respective costs of the application.

Dated this 30th day of April 2020.

GEORGE DULU

JUDGE

Delivered through video conferencing in the presence of Mr. Langat court assistant, Mr. Musyoka ICT officer, Ms Koech for the applicant and Mr. Washidi for the respondent.