



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**SUCCESSION CAUSE NO.3 OF 2019**

***RE ESTATE OF KIPRUTO ARAP BIAGAN (DECEASED)***

**BAVON KIPKEMEI RUTTO.....1<sup>ST</sup> PETITIONER/RESPONDENT**  
**FRANCIS KIMAGUT SANG.....2<sup>ND</sup> PETITIONER/RESPONDENT**  
**LEAH JELAGAT.....3<sup>RD</sup> PETITIONER/RESPONDED**

**VERSUS**

**ERNEST KIBWALEI TUWEI.....1<sup>ST</sup> OBJECTOR/APPLICANT**  
**JOSEPH KEBENEI LIMO.....2<sup>ND</sup> OBJECTOR/APPLICANT**  
**HELLEN JESANG KITUR.....3<sup>RD</sup> OBJECTOR/APPLICANT**  
**SELLY JEPKURGAT KOGO.....4<sup>TH</sup> OBJECTOR/APPLICANT**  
**JANE CHELELEL SERONEI.....5<sup>TH</sup> OBJECTOR/APPLICANT**  
**FRANCIS BOR.....6<sup>TH</sup> OBJECTOR/APPLICANT**

**RULING**

1. By an application dated 4<sup>th</sup> March 2019 the objectors/applicants i.e **ERNEST KIBWALEI TUWEI, JOSEPH KEBENEI LIMO, HELLEN JESANG KITUR,** and **FRANCIS BOR** pray that the Grant of letters of administration intestate issued to **BAVON KIPKEMEI RUTO, FRANCIS SANG** and **LEAH JELAGAT** on 31<sup>st</sup> AUGUST 2010 in **KAPSABET SRM's SUCCESSION CAUSE No. 147** of 2008, be revoked, and/or nullified.

b) That upon such revocation, there be an order that the objectors are properly entitled to the land parcel known as **NANDI/KAMOBO/1000** and are entitled to receive any compensation due to the estate from the County Government of Nandi. It is premised on grounds that the proceedings to obtain grant were defective in substance as the petitioners did not involve all the beneficiaries in the filing of the cause and none of the members of the 1<sup>st</sup> house executed form 38 to signing the consent thereto.

2. It is contended that the grant was obtained fraudulently by concealment from the court of the fact that the deceased had two wives and other children (who included the objectors). That there was also the making of false statements to the effect that all beneficiaries had consented to the petitioners initiating the process, yet, the objectors were never involved. It is also pointed out that the grant was obtained by using names different from those of the genuine beneficiaries and purporting them to be sons and daughters of the deceased resulting in the grant incorporating strangers to the estate, and to the exclusion of genuine beneficiaries. This court is urged to find that the petitioners have abused the grant by purporting to distribute the deceased's estate and assigning themselves the inheritance due to the first house.

3. In the supporting affidavit it is deposed that the deceased had two parcels of land, namely **NANDI/KAMOBO/1000** and **NANDI/KAMOBO/1003** and during his lifetime, he had made it clear that **NANDI/KAMOBO/1000** belonged to the 1<sup>st</sup> house, whilst **NANDI/KAMOBO/1003** belonged to the 2<sup>nd</sup> house (where the 1<sup>st</sup> petitioner belongs). It is explained that parcel No. **NANDI/KAMOBO/1000** was taken over by the then **NANDI COUNTY COUNCIL**, for use as a cattle crush. The deceased pursued the **COUNTY COUNCIL**, to either allocate him another parcel, or compensate him; and the dispute was finally resolved by the **KAPSABET LAND DISPUTES TRIBUNAL** in **LDT case No. 17 of 2002** which awarded him the plot with a rider that he be allocated another parcel or be compensated by the County council. A decree issued accordingly, and the objectors have now learnt that the **COUNTY GOVERNMENT OF NANDI** has agreed to compensate the estate, for the said parcel. That the petitioners are pursuing that payment which is imminent, and will receive the same, to the exclusion of the objectors, despite that property belonging to the 1<sup>st</sup> house.

4. The petitioners did not file any response. The objectors describe themselves as the sons and daughter - in-law of the deceased with express authority of their other siblings to be involved in the administration of the estate of their late father. They urge that a fresh grant be issued.

5. The petitioners have not disputed the allegation that the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners are strangers to the estate. There is no dispute or contest to the claims by objectors that the deceased had two wives, and that they are beneficiaries of the estate. The letter dated 11.02.99 written by the chief **KAPSABET LOCATION**, one **SELLINAH CHELAGAT TOO** confirms the position stated by the objectors as regards the deceased's marital status, and beneficiaries.

The certificate of grant of confirmation clearly excluded members of the 1<sup>st</sup> house, and no explanation has been offered. Indeed the chief's letter dated 20.11.2007 used by the petitioners to obtain grant only listed **KIPKORIR TUWEI**, **BAVON KIPKEMEI RUTTOH** and **KIBWAMBOK MUREI** as the beneficiaries to the estate. It is significant that the letter did not disclose the relationship of the named persons to the deceased, this then gives credence to the objectors/applicant's lament, that there was misrepresentation and non disclosure by the petitioners.

6. Consequently, I hold and find that the application is merited and order as follows;

a) The grant of letters of administration intestate issued to **BAVON KIPKEMEI RUTTO**, **FRANCIS KIMAGUT SANG** and **LEAH JELAGAT** on 31<sup>st</sup> August 2010 be and is hereby revoked.

b) Restraining, orders do issue to the **NANDI COUNTY GOVERNMENT** from or releasing the compensation due to the Estate of **KIPRUTO Arap BIAGAN** in respect of land parcel **NANDI/KAMOBO/1000** to the petitioners or their agents until proper succession is done.

**DATED, SIGNED and DELIVERED** at **ELDORET** this 22<sup>nd</sup> day of **MAY** 2020.

**H. A. OMONDI**

**JUDGE**