



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KERICHO

SUCCESSION CAUSE NO.138 OF 2014

IN THE MATTER OF THE ESTATE OF THE LATE KIPKOECH ARAP CHEROROT (DECEASED)

EDWARD KOECH.....1ST PETITIONER/APPLICANT

ANDREW KOECH.....2ND PETITIONER/APPLICANT

AND

RITA CHEPKEMOI CHEROROT.....3RD PETITIONER/RESPONDENT

RULING

1. The Application coming for consideration in this ruling is the one dated 17/6/2020 filed under certificate of urgency seeking the following orders:

- i) THAT the honorable court be pleased to certify this matter as extremely urgent and dispensed with service in the first instance(SPENT)**
- ii) THAT pending the hearing and determination of this summons inter partes, the honourable court do issue restraining orders against the 3rd petitioner/respondent from intermeddling with the deceased estate, causing violence to other beneficiaries, trespassing unto 1st& 2nd households occupied parcels of land and further felling/cutting and selling the 2nd petitioners trees on the 2nd household occupied portion of piece of land comprised on L.R NO.KERICHO/KOIWA/100.**
- iii) THAT pending the hearing and determination of this suit, the honourable court do issue restraining orders against the 3rd petitioner/respondent from intermeddling with the deceased estate, causing violence to other beneficiaries, trespassing unto 1st& 2nd households occupied parcels of land and further household occupied portion of piece of land compromised on L.R NO.KERICHO/KOIWA/100.**
- iv) THAT the forest officer Bomet County proceed to L.R NO. KERICHO KOIWA, to a portion occupied by the 2nd household, prepare a report of the number of trees felled/cut and their total market value and the 3rd petitioner be compelled to pay their value to the 2nd petitioner/applicant.**
- v) The costs of this application be awarded to the 1st& 2nd petitioners/applicants.**

2. The Application is supported by the Affidavit of the Applicant EDWARD KOECH in which he has deposed that he is a joint Administrator of the Estate of the deceased herein and that the matter is pending confirmation of grant.

3. The Applicant further stated that before the deceased died, he had given land to each of his three households.

4. That further on 23/5/2020 the 3rd petitioner/Respondent RITA CHEPKEMOI CHEROROT trespassed into the portion of land where the 2nd household is in occupation and felled trees belonging to the 2nd household.

5. That the matter was reported to the police at Konoin Police Station and the Applicant is now seeking orders on behalf of the 2nd household.

6. The 3rd Petitioner/Respondent filed a Replying Affidavit in which she deposed that she got married to the deceased herein in the year 1990 as his 3rd wife.

7. That upon the marriage the deceased allocated her the suit property LR Kericho/Koiwa/100 while the 1st house was allocated LR Kericho/Koiwa/101 and the 2nd wife lived in Kitale.

8. The 3rd petitioner denied that there was an oral will left by the deceased and she also said it was the Applicant and his brother who were felling trees on the said piece of land which belongs to her.

9. The parties filed written submissions in the Application which were filed on 7/7/2020 and 21/7/2020 respectively. I have considered the rival submissions and I find that the Respondent does not deny that she felled trees on the suit property. Her submission is that she was allocated the suit property LR No. Kericho/Koiwa/100 by the deceased and that the other households were allocated other properties where they are in occupation.

10. The issues for determination in this Application are as follows:

i) Whether the Applicants are entitled to the injunctive orders they are seeking against the Respondent.

ii) Whether the Respondent has intermeddled with the Estate of the deceased.

iii) How should the Estate of the deceased be distributed?

iv) Who pays the costs of this Application?

11. On the issue as to whether the Applicants are entitled to the orders they are seeking, the conditions for grant of an injunction are now well settled in the case of **Giella vs Cassman Brown & Company Limited (1973) E A 358**, where the court expressed itself on the conditions that a party must satisfy for the court to grant an interlocutory injunction as follows: -

"First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience."

12. In the current case I find that the two Applicants and the Respondent are joint Administrators of the Estate of the deceased herein KIPKOECH ARAP CHEROROT who died intestate on 4/1/2008.

13. The grant of letters of Administration was issued on 13/11/2014 but the same has not been confirmed and the Estate remains undistributed.

14. The Applicants said the suit property LR Kericho/Koiwa/100 was given to the 2nd household by the deceased before his death.

15. The Respondent who is the 3rd wife also said the deceased gave her the suit property after she got married to him as the 3rd wife in 1990.

16. I find that the real issue is how the Estate of the deceased should be distributed. Each of the parties is claiming that the deceased gave them the suit property but there is no evidence that the deceased left an oral will upon his demise.

17. I accordingly find that the Estate should be distributed in accordance with the succession act since the deceased died intestate.

18. The duties of the Administrators are set out in Section 83 of the Law of Succession Act as follows:

Personal representatives shall have the following duties—

- (a) to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;
- (b) to get in all free property of the deceased; including debts owing to him and moneys payable to his personal representatives by reason of his death;
- (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
- (d) to ascertain and pay, out of the estate of the deceased, all his debts;
- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in

the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account; (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

19. In the current case, I find that the Applicants are joint Administrators of the Estate together with the Respondent and it is their duty to oversee the distribution of the Estate.

20. If the three Administrators have failed in their duties, the law is very clear that the court can give a notice to the holder of a grant to apply for confirmation under Section 73 of the Law of Succession Act.

21. Section 76 of the law of Succession Act also provides for revocation if the Administrators have failed to administer the Estate. The said Section states as follows:

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 for 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.

22. I find this is a case where the Administrators have failed in the discharge of their duties and instead they are fighting each other over the properties of the deceased and accusing each other of intermeddling with the Estate.

23. I find that the Application dated 17/6/2020 lacks in merit and the same is dismissed with no orders as to costs.

24. I direct that each of the parties file a schedule on their proposed mode of distribution within 30 days of this date.

25. In the meantime, status quo to be maintained. By status quo I mean that there should be no dealing with the suit property by either party such as felling of trees or any other dealings until the matter is heard and determined.

Delivered, dated and signed at Kericho this 24th day of July 2020.

A. N. ONGERI

JUDGE