



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

SUCCESSION CAUSE NO.27 OF 2017

IN THE MATTER OF THE ESTATE OF CHERES SOIT (DECEASED)

SUMMONS FOR REVOCATION OF GRANT

BETWEEN

WILLIAM CHERES.....PETITIONER

VERSUS

SIMON CHERES.....OBJECTOR/APPLICANT

JUDGMENT

1. The deceased in this case Cheres Soit (deceased) died intestate on 14/8/1965 leaving behind the following:

1st House

- a) Tabutany Soit - Widow
- b) Joseph Cheres - Son
- c) Richard Cheres - Son
- d) Janeth Chepkemoi - Daughter

2nd House

- a) William Cheres - Son
- b) Mary Chepkemoi - Daughter
- c) Samuel Busienei - Son
- d) David Cheres - Son
- e) Daniel Cheres - Son
- f) Joseph Chebusit - Son

2. The deceased left the following assets:

- i. LR. No. Kericho/Kongotik/7
- ii. LR. No.Kericho/Tegat/60
- iii. LR. No.Kericho/Tegat/925

3. The Petitioner William Cheres was issued with a grant of letters of administration intestate on 27/7/2017.
4. The Petitioner filed a Summons for confirmation dated 9/3/2018 which has not been heard as the Objector Simon Cheres filed an objection on the basis of material non-disclosure and he filed the application dated 3/5/2018 seeking revocation of the grant.
5. In his Affidavit in Support of the Application dated 3/5/2018, the Objector also stated that the land parcel LR Kericho/Tegat/60 and LR. No. Kericho/Tegat/925 belongs to his mother the late Taputany Soit (deceased) despite being registered in the name of the deceased Cheres Soit (deceased).
6. The Objector sought conservatory orders restraining the Petitioner from selling, transferring or dealing with the said properties to the detriment of their late mother Taputan Soit.
7. The hearing proceeded by viva voce evidence. The Objector called three witnesses who filed witness statements who are as follows:
 - i. Benson Rono
 - ii. Alfred Chebusit and
 - iii. Richard Tangus
8. The Objector Simon Cheres and his witnesses said Land Parcel LR No. Kericho/Tegat/60 and LR No. Kericho/Tegat/925 do not belong to the deceased herein Cheres Soit (deceased) as they were purchased by the Objector's late mother Taputany Soit(deceased) and they were registered in the names of Cheres Soit (deceased) as Kipsigis customs dictated.
9. Richard Targus stated in his statement that the Petitioner William Cheres is the son of Elizabeth Boit who was a second wife to the deceased Cheres Soit and that the Petitioner was given a share in LR. No. Kericho/Kongotik/78 belonging to the grandmother of Simon Cheres Kusor at Tapilelei Soit.
10. The Petitioner also called three witnesses who filed their statements who are as follows:
 - i. Chepkembik Arap Ketutui
 - ii. David Cheres and
 - iii. Simeon Kirinyet
11. The Petitioner said the two parcels LR. No. Kericho/Tegat/60 and Kericho/Tegat/925 belonged to his father Cheres Soit who is the deceased herein. William stated in his statement that Cheres Soit (the deceased) also owned LR. No. Kericho/Kongotik/7 which the Objector Simon Cheres sold to pay dowry and he told the Petitioner that he would give him a share in the parcel of land LR Kericho/Kongotik/78 belonging to their grandmother.
12. Chepkembok Arap Ketutui who is a neighbour of the deceased Cheres Soit said the 1st house occupied LR. No.Kericho/Kongotik/7 while the 2nd house occupied LR. Kericho/Tegat/925.
13. He said he started seeing new people on LR Kericho/Kongotik/7 and upon inquiring he was told the land had been sold by the Objector Simon Cheres. He said the two parcels is dispute LR. Kericho/Tegat/60 and Kericho/Tegat/925 belong to the deceased.
14. Simeon Kirinyet also a neighbour and David Cheres a brother of the Petitioner echoed the evidence of Chepkembik Arap Ketutui. They said the two parcels of land in dispute belong to the deceased herein Cheres Soit (deceased).
15. The parties filed written submissions which I have considered. The issues for determination in this case are as follows:
 - i. **Whether the Petitioner obtained the grant of letters of administration by concealment of material facts.**
 - ii. **Whether the two parcels of land in dispute being LR. No. Kericho/Tegat/60 and LR. No.Kericho/Tegat/925 form part of the Estate of the deceased.**
 - iii. **Whether the Objector is entitled to the reliefs he is seeking.**
16. On the issue as to whether the Grant of Letters of Administration was obtained by concealment of material facts, I find that the Petitioner disclosed all the names of the beneficiaries of the Estate.
17. The gazettelement was done and grant of the Letters of Administration issued to him and the Objector was called to attend court for confirmation of grant when he filed the Application dated 3/5/2018. I therefore find no evidence that the letters were obtained by concealment of material facts.

18. On the issue as to whether the two parcels of land in dispute in this case LR. No. Kericho/Tegat/60 and Kericho/Tegat/925 form part of the Estate of the deceased herein. I find that the answer is in the affirmative.

19. There was no evidence tabled before this court to prove that the late mother of the Objector bought the two parcels. The evidence on record is that the parcels are registered in the name of the deceased herein Cheres Soit (deceased) under Cap.300 (now repealed).

20. I therefore find that the two parcels form part of the Estate of the deceased and they should be shared equally amongst all the beneficiaries of the Estate.

21. On the issue as to whether the Objector is entitled to the relief he is seeking, I find that he is seeking conservatory orders to restrain the Petitioner from dealing with the properties and also to be appointed co-administrator.

22. I find that the Petitioner was properly appointed by the court and issued with the grant of Letters of Administration. There is no basis for grant of an injunction.

23. The conditions for consideration in granting 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."

24. The principles in **Giella vs Cassman Brown** (supra) are as follows:

"i) Is there a serious issue to be tried?;

ii. Will the applicant suffer irreparable harm if the injunction is not granted?

iii. Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits? (often called "balance of convenience")

25. I find that the Objector has not established the grounds for grant of an injunction. I accordingly find that his application lacks in merit. I also find that he is not entitled to be appointed as an administrator as there's evidence that he sold a parcel of land belonging to the deceased to pay dowry.

26. I accordingly dismiss the application dated 3/5/2018 and direct that the Summons for Confirmation dated 12/2/2018 be listed for hearing.

27. Any party aggrieved by this judgment has a right of Appeal within 28 days of this date.

Delivered and signed at Bomet this 5th day of August 2020.

A.N. ONGERI

JUDGE