



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

SUCCESSION CAUSE NO.5 OF 2016

IN THE MATTER OF THE ESTATE OF KIPRUTO ARAP NGENY- DECEASED

AND

IN THE MATTER OF EUNICE CHEPKIRUI NGENY.....PETITIONER

AND

IN THE MATTER OF JOSEPH KIPRONO LANGAT.....OBJECTOR

JUDGMENT

1. The deceased in this case KIPRUTO ARAP NGENY (Hereafter referred to as the deceased) died intestate on 18/5/2008 at Kyogong village leaving behind the following beneficiaries:

- i. Eunice ChepkiruiNgeny - Widow
- ii. Joseph Langat - Son
- iii. Linah Langat - Daughter in law
- iv. Floridah Chelangat Ngeny - Daughter

2. The widow; Eunice Chepkirui Ngeny petitioned for grant of Letters of Administration and the same were issued to her on 30/6/2016.

3. When the petitioner applied summons for confirmation of grant dated 26/5/2016, the Objector/applicant herein filed a summons for revocation and annulment of grant dated 29/12/2016 on the following grounds:

i. That the grant was obtained fraudulently by concealment of material facts.

ii. That the Petitioner failed to disclose the full extent of the Estate of the deceased and to seek the consent from other beneficiaries.

iii. That the grant of Letters of Administration was obtained by means of untrue allegations.

4. The Objector Joseph Kiprono Langat is the son of the Petitioner. He said the Petitioner forged the death certificate. He called the following witnesses:

- i. Lina Langat
- ii. Samuel Kiprongetich Ngeno
- iii. Kirui Kiprono Jeremiah

5. The Objector said in his evidence that the Petitioner left out his six sisters as follows:

- i. Annah Chebet Langat

- ii. Recho Chepkemoi
- iii. Joyce Chemutai Ngeny
- iv. Nancy Chepkoech Cheruiyot
- v. Margaret Chepngetich and
- vi. Sophia Cherono

6. The Objector also said the Petitioner being misled by Floridah Chelangat who deserted her husband. He proposed that the estate be shared into three equal shares and that the Petitioner shares her portion with all the seven daughters.

7. The Objector and his witnesses said that the Petitioner was favouring one daughter to the exclusion of the other six daughters. They said a meeting was called on 1/12/2012 where it was agreed that the estate be shared between the petitioner, the objector and a daughter in law.

8. The Petitioner called the following witnesses;

- i) Eunia Ngeny
- ii) Zakayo Kental Keter

9. The Petitioner and her witnesses said that the reason the Objector did not want her to share the Estate is that he did not want Floridah Chelangat and the Petitioner to get a share of the Estate.

10. The Petitioner said the property in dispute LR Kericho/Kyogong/66 is registered in the name of the deceased and that he had established their matrimonial home in the said parcel.

11. The Petitioner and her witnesses also said that the Petitioner has priority over the Objector since she is the widow of the deceased while the Objector is the son.

12. The petitioner and her witnesses further said the objector wanted the property to be shared between him and his sister in law leaving out the Petitioner and the objector's sisters.

13. The parties filed written submissions which I have duly considered. I have also considered the viva voce evidence adduced herein together with the written statements and affidavits.

14. I find that it is not in dispute that the Petitioner is the mother of the objector. It is also not in dispute that the property the subject of this Succession Cause is registered in the name of the deceased.

15. The issues for determination in this case are as follows:

- i. Whether the grant of Letters of Administration was fraudulently obtained by the Petitioner.**
- ii. Whether the Petitioner obtained the letters by means of untrue allegations and failed to disclose the extent of the Estate.**
- iii. Whether the grant of Letters of Administration should be revoked and issue to the Objector.**

16. On the issue as to whether the grant was fraudulently issued, I find that the Petitioner did not disclose that the deceased had seven daughters and two sons. The Petitioner filed an affidavit by one of the daughters Joyce Chemutai Stating that the married daughters had renounced their right to inherit the Estate.

17. I find that the Petitioner was bound to disclose all the beneficiaries whether they had renounced their right or not. Each beneficiary is entitled to an equal share of the estate. In the case of **RE ESTATE OF JOHN MUSAMBAYI KATUMANGA (DECEASED)[2014] eKLR MUSYOKA J** stated as follows on the issue of equal distribution of the Estate:

“Equal distribution is envisaged regardless of the ages, gender and financial status of the children”

18. On the issue as to whether the grant should be revoked, I find that the answer is in the affirmative. There was concealment of material facts by the petitioner.

19. I accordingly allow the application dated 29/12/2016 in the following terms;

- i. That the grant of Letters of Administration issued on 30/6/2016 be and is hereby revoked and a fresh grant be issued to the Objector Joseph Kiprono Langat as a co-administrator of the Estate of the deceased herein with the Petitioner.**

- ii. That the list of beneficiaries be amended to include all the six daughters left out by the Petitioner.
- iii. That the two administrators to apply for confirmation of grant within 30 days upon issue of the grant.
- iv. That all the six daughters to file consents or to appear in court during confirmation to confirm whether or not they wish to renounce their right to inherit the estate.
- v. This being a family matter, each party to bear their own costs of this application.

Delivered, signed and dated at Bomet this 4th day of August 2020.

A. N. ONGERI

JUDGE