



REPUBLIC OF KENYA

IN THE HIGH COURT AT BOMET

MISCELLANEOUS APPLICATION NO.56 OF 2015

IN THE MATTER OF THE ESTATE OF KENIK ARAP NGASURA (DECEASED)

AND

KIMUTAI LANGAT.....APPLICANT

VERSUS

JEREMIAH CHERUIYOT KOSKEI.....1ST PETITIONER

ELIZABETH CHEPKORIR NGASURA.....2ND PETITIONER

JULIANA CHEPKOSKE KOSKEI.....3RD PETITIONER

JUDGMENT

1. The deceased in this succession case, KENIK ARAP NGASURA (hereafter referred to the deceased) died intestate on 15/10/1885 leaving behind the following beneficiaries:

- i) Jeremiah Cheruiyot Koske - Son
- ii) Elizabeth Chepkorir Ngasura - Daughter
- iii) Juliana Chepkorir Koske– Daughter in-law
- iv) Julius Kipkirui Chepkwony – Cheruiyot - Son

2. The 1st, 2nd and 3rd petitioners JEREMIAH CHERUIYOT, ELIZABETH CHEPKORIR NGASURA and JULIANA KOSKE petitioned for Grant of Letters of Administration and the same were granted in SPM's Succession Cause No.38 of 2012 on 15/3/2013.

3. The grant has not yet been confirmed as the matter was transferred to the High Court for reason that the value of the Estate is excess of 28Million Kenya Shillings.

4. The Applicant who is a son to the 2nd petitioner ELIZABETH CHEPKORIR NGASURA has filed a summons for revocation and annulment of the grant of letters of administration on the ground that 3rd Respondent JULIANA KOSKE has been intermeddling with the Estate of the deceased.

5. The Applicant also wants the Respondents to render an account of the assets of the deceased. He submitted that the 3rd Respondent has transferred part of the property to herself.

6. The parties gave viva voce evidence and they also filed written submissions. I took over this matter from Hon. Justice Martin Muya at Judgment stage.

7. I find that it is not in dispute that the 1st, 2nd and 3rd petitioners were issued with grant of letters of administration to administer the Estate. The duties of the Administrators are outlined in section83 of the Law of Succession Act as follows;

83. Duties of personal representatives

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.

8. In the current case, the issues for determination are as follows;

i. Whether the grant issued herein to the 1st and 3rd petitioners should be revoked.

ii. Whether an injunction should issue to restrain the Petitioner/ Respondents from dealing with the properties.

iii. Whether the Applicant has *locus standito* file this Application.

iv. Who pays the costs of the Application?

9. On the issue as to whether the grant issued herein should be revoked, The grounds for revocation of grant are also set out in section 76 as follows;

Revocation or annulment of grant

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 to 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.

10. The grant was issued on 15/3/2013 but the same has never been confirmed.

11. I find that the Petitioner/Respondents have failed to deliver their mandate and they ought to be removed as administrators of the Estate of the deceased.

12. On the issue as to whether the Applicant has locus standi, I find that he is the son of the 2nd petitioner and he is not a direct beneficiary. The Applicant has no locus standi to file this Application. The 2nd petitioner is the one who can move the court on his behalf.

13. On the issue as to whether an injunction should issue. 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."

14. I find that the Applicant is not even a direct beneficiary of the Estate and therefore he lacks *locus standi* to file the Application. In the circumstances, no injunction can issue.

15. I find that the Application dated 30/10/2015 has no merit and I accordingly dismiss it with no orders as to costs.

16. I direct that the beneficiaries agree on an Administrator and failure to agree, the court to choose one in order to complete the process of administration.

17. The property of the deceased cannot be sold before confirmation of grant and therefore any property sold to revert back to the Estate for distribution.

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

A. N. ONGERI

JUDGE