



REPUBLIC OF KENYA

IN THE HIGH COURT AT BOMET

SUCCESSION CAUSE NO. 92 OF 2016

IN THE MATTER OF THE ESTATE OF KIMUTAI ARAP KETIENYA (DECEASED)

KIPKORIR ARAP CHUMO.....PETITIONER

AND

PAUL KIPSANG TONUL.....OBJECTOR

RULING

1. The deceased herein KIMUTAI ARAP KETIENYA (hereafter referred to as the deceased) died intestate on 2/7/1987 leaving the following beneficiaries;

1st house

- i) Kipkemoi Korgon (deceased)
- ii) Cheruiyot Korgon (deceased)
- iii) Kiptener Korgon

2nd house

- i) Kipsiele Chumo
- ii) Kipkorir Chumo

3rd house

- i) Kiptanui Chumo (deceased)
- ii) Kiprotich Chumo
- iii) Kimutai Chumo

2. The deceased had one asset namely land parcel LR No Kericho/Kapkimolwa/120.

3. The petitioner herein Kipkorir Arap Chumo petitioned for grant of letters of administration intestate and the same were issued on 31/7/2013.

4. The grant was confirmed on 27/3/2017 and the property was shared as follows;

- i) Kipsiele Chumo – 7.5 Acres
- ii) Kipkorir Chumo - 7.5 Acres
- iii) Kiprotich Chumo – 5.4 Acres

- iv) Kibet Kimutai – 5.4 Acres
- v) Tapnyobi Chumo –5.4 Acres
- vi) Taplelei Korgoren – 5.4 Acres
- vii) Taplule Korgoren – 5.4 Acres
- viii) Tapletgo Korgoren – 5.4 Acres

5. On 15/9/2017 the objector PAUL KIPSANG TONUI filed an application for revocation of the confirmation of grant. The objector who is a grandson of the deceased herein stated in the Affidavit in support of the summons for revocation that the petitioner filed the petition secretly without the consent of other family members of the deceased who were residing at Transmara East.

6. The parties filed witness statements and submissions which the court has relied on. This matter proceeded before Hon. Justice Martin Muya and I took it up at ruling stage. The witnesses did not adduce viva voce evidence.

7. The objector submitted that the petition was filed and it proceeded secretly and the objector discovered the grant had been issued and confirmed and the property distributed.

8. The objector is now seeking annulment of the grant certificate of confirmation in his summons for revocation dated 15/9/2017. The objector submitted that the Application dated 15/9/2017 was dismissed on 24/9/2018 for want of prosecution.

9. The objector in his application dated 10/10/2018 is now seeking to set aside the order dismissing the summons for revocation dated 15/9/2017 on the grounds that he was in court with his witnesses when the said summons for revocation was dismissed.

10. The petitioner in his submissions opposed the application dated 10/10/2018 on the grounds that it was filed on 19/10/2018 which was 26 days after the summons for revocation dated 15/9/2017 was dismissed on 24/9/2018.

11. The petitioner submitted further that there had been a delay of one year in prosecuting the summons for revocation dated 15/9/2017 and the objector had been given the last adjournment and yet the objector's Advocate failed to come to court.

12. Upon considering the submissions, I find that there is no dispute that there is no dispute that it was the objector's Advocate who was absent and not the objector. There is no dispute that the objector was in court with his witnesses when the case was dismissed. In the Case of **Lucy Bosire v Kehancha Div. Land dispute Tribunal & 2 Others (2013) eKLR, Odunga J** held as follows: -

“It must be recognized that blunders will continue to be made from time to time and it does not follow that because a mistake has been made a party should suffer the penalty of not having his case determined on its merits.”

13. I find that to refuse to reinstate the summons for revocation for hearing interpartes would be tantamount to punishing the objector for the mistakes or blunders of his counsel.

14. In the circumstances I find that it is in the interest of justice that the Application dated 10/10/2018 be allowed. I accordingly reinstate the summons for revocation dated 15/9/2017 on the following conditions;

i) THAT the hearing of the said summons for revocation dated 15/9/2017 proceeds by viva voce evidence on a date to be taken in the Registry.

ii) THAT the costs be in the cause.

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

A. N. ONGERI

JUDGE