



REPUBLIC OF KENYA

N THE HIGH COURT OF KENYA

AT BOMET

SUCCESSION CAUSE NO.80 OF 2015

IN THE MATTER OF THE ESTATE OF KIPKOSKEI ARAP SIGIRA *alias* CHEBORGE SIGIRA.....(DECEASED)

AND

IN THE MATTER OF SAMWEL CHEPKWONY KOSKE.....PETITIONER

AND

IN THE MATTER OF ROBERT KOSGEI.....OBJECTOR

JUDGMENT

1. The deceased Kipkoske Arap Sigira alias Cheborge died on 14th day of August 2007. Grant of letters of administration were issued on 3rd May 2017 to the petitioner Samwel Chepkwony Kosge.

2. On 13/9/2017 summons for revocation or annulment were filed in court. The grounds are that:

a) That the petitioner violated the Succession Act by not distributing the Estate, the two land parcels L.R Kericho/Kapkiniolwa/5176,L.RNo. Kericho/Kapkiniolwa/988 to all the beneficiaries as agreed by all the dependants to the estate of the deceased.

b) That the petitioner included-two brothers, Zephania Kosgei and Joseph Kosgei contravening the succession Act.

c) That the deceased before he died, had distributed his entire estate to all his sons and one daughter of the two households on 28/10/1982 but the petitioner acted contrary to the wishes of the deceased.

d) That the estate of the deceased is in danger of being not distributed as agreed, wasted if the petitioner is allowed to administrate the whole estate.

e) That the petitioner did not abide with the wishes of the deceased, the other family members wanted the estate to be distributed equally to all without favouring anybody and confirmation of grant be revoked and the entire estate be distributed equally.

f) That for the interest of justice and safeguard the entire Estate from being wasted the objector be allowed to co-petition to administer the estate on behalf of others.

3. The hearing proceeded by way of viva voce evidence. The objector Robert Kosgei relied on the affidavit in support of the summons for revocation in which he deposed as follows:

i. That he is the son of the deceased in this case, Kipkoske Arap Sigira alias Cheborge Sigira (Deceased) and the Petitioner Samwel Chepkwony Kosge is his brother.

ii. That the deceased died on 14/8/2007 and left the following beneficiaries.

a) Philip Kosgei - Son

b) Dickson Kosgei - Son

- c) Robert Kosgei - Son
- d) Samwel Chepkwony Kosgei - Son
- e) Zephania Kosgei (deceased) - Son
- f) Joseph Kosgei (deceased) - Son
- g) Daniel Kosgei - Son
- h) Wilson Kosgei - Son
- i) Richard Kosgei - Son
- j) Betty Chepkoech - daughter
- k) Samwel Kosgei - Son

iii. That the deceased left a will which the petitioner has not followed.

iv. That the Estate should be distributed equally if the will is not followed.

v. That the petitioner has not involved the other beneficiaries in ascertaining their shares of the two assets left by the deceased namely:

- a) LR No. Kericho/Kapkimolwa/517
- b) LR. No.Kericho/Kapkimolwa/988

vi. That the Estate is in danger of being wasted if the petitioner is allowed to administer due to the reasons stated and further that the objector should be allowed to administer the estate as a co-petitioner.

vii. The Objector also filed a witness statement and he called three witnesses, David Arap Koech, Dickson Kiprono Kosge and Mapego Arap Tuiwa. David Arap Koech stated in his statement filed in court on 18/12/2017 that the deceased had subdivided his land in 1982 and all the sons took vacant possession to date. He stated that on 5/5/2013 an elder's meeting was called and a verdict was passed that the land should remain as was subdivided.

4. Dickson Kiprono Kosge who is a brother to both the petitioner and the objector said that the objector filed this petition without consulting the other family members. He also said the deceased had subdivided the land and each was given a portion. He said the grant should be revoked and the objector be allowed to administer the Estate in accordance with the wishes of the deceased.

5. Mapego Arap Tuiwa also stated in his statement that the deceased had subdivided his land in 1982 and he called him and informed him that no one should contradict his wishes or change boundaries. He said on 5/5/2012 an elders meeting was called and it was decided that the deceased's wishes be respected.

6. The petitioner also called one witness, Philip Kipkorir Kosgei who is a brother to the petitioner Samuel Chepkwony Kosgei and both brothers filed identical statements in which they stated as follows:

a) That all the beneficiaries had a meeting early January 2017 and agreed that Samwel Chepkwony Kosgei (the petitioner) should petition the High Court at Bomet to undertake Succession Cause No.30 of 2015 in which it was agreed that LR No.Kericho/Kapkimolwa/517 be subdivided equally among the 1st house as follows:

- i. Phillip Kosgei - 5.02 acres
- ii. Robert Kosgei - 5.02 acres
- iii. Samuel Chepkwony Kosgei - 5.02 acres
- iv. Zephania Kosgei - 5.02 acres
- v. Joseph Kosgei - 5.02 acres

b) They further stated in their written statements that they agreed that the land parcel LR Kericho/Kongotich/988 be subdivided equally among the 5 beneficiaries of the 2nd house as follows:

- i. Daniel Kosgei - 2.076 Acres
- ii. Wilson Kosgei - 2.076 Acres
- iii. Richard Kosgei - 2.076 Acres
- iv. Betty Kosgei - 2.076 Acres
- v. Samuel Kosgei - 2.076 acres

c) The petitioner and his witness also stated in their written statements that in the year 2015 and grant of letters of administration was issued on 30/6/2016 and the same was confirmed on 3/5/2017.

d) The petitioner and his witness asked the court to uphold the grant and certificate of confirmation and approve the proposed mode of distribution.

7. I have considered the evidence on record by the objector and his witnesses and I have also considered the evidence of the petitioner and his witness. I find that it is not in dispute that the deceased herein Kipkoske Arap Sigra alias Cheborge sigira died intestate on 14/8/2007.

8. There is also no dispute that the deceased left behind the following beneficiaries.

- a) Philip Kosgei - Son
- b) Dickson Kosgei - Son
- c) Robert Kosgei - Son
- d) Samwel Chepkwony Kosgei - Son
- e) Zephania Kosgei (deceased) - Son
- f) Joseph Kosgei (deceased) - Son
- g) Daniel Kosgei - Son
- h) Wilson Kosgei - Son
- i) Richard Kosgei - Son
- j) Betty Chepkoech - daughter
- k) Samwel Kosgei - Son

9. The deceased left behind two parcels of land as follows:

- a) LR. No. Kericho/Kapkimolwa/517
- b) LR. No. Kericho/Kapkimolwa/988

10. The objector is seeking to revoke the grant of letters and certificate of confirmation the grounds that the same were obtained without the consent of all the beneficiaries.

11. The grounds for revocation of grant are provided for under section 76 of the Law of succession Act 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.

12. I have perused the record and I find that all the beneficiaries signed the consent for confirmation of grant except Daniel Kosgei and Richard Kosgei. (the objector herein). The petitioner in this Case Samwel Chepkwony was appointed by the court.

13. I find that the reasons for seeking to revoke the grant are not valid. The consent of all beneficiaries is not a ground for revocation of grant. The court has authority to appoint an administrator. Grant of letters of administration were issued on 3rd May 2017 to the petitioner Samwel Chepkwony Kosge and on 13/9/2017 summons for revocation or annulment were filed in court. The petitioner did not delay to make an Application for confirmation of the grant.

14. I also find that the deceased in this case died intestate and he did not leave a will. The Law of Succession Act provides for distribution of the Estate under the prevailing circumstances. Section 40 of the Law of Succession provides for distribution of the property in a polygamous setting. The property should be distributed equally.

15. I find that there are no grounds to warrant the revocation of the grant issued to the petitioner. There is no evidence that the petitioner has failed to administer the estate.

16. I accordingly dismiss the summons for revocation and direct as follows:

i. That the grant of letters of administration issued to the petitioner is valid.

ii. That the administrator is directed to file a summons for confirmation of grant within 30 days of this date and to involve all the beneficiaries in the distribution of the estate.

iii. The Administrator to take into account the current settlement of the beneficiaries in the distribution of the estate.

Judgment delivered dated and signed at Bomet this 4th day of August 2020.

A. N. ONGERI

JUDGE