



REPUBLIC OF KENYA

IN THE HIGH COURT AT BOMET

SUCCESSION CAUSE NO.93 OF 2002

IN THE MATTER OF THE ESTATE OF MARTHA BYEBEI (DECEASED)

AND

IN THE MATTER OF PAUL KITONU LANGAT & ELIJAH CHERUIYOT LANGAT

RUCY CHEBORE KIPKEINO.....1ST OBJECTOR/APPLICANT

KIPRONO LANGAT A.K.A

FRANCIS LANGAT.....2ND OBJECTOR/APPLICANT

VERSUS

RAELI CHEPNGETICH LANGAT.....1ST PROTESTOR

RULING

1. The Application coming for consideration in this ruling is the one dated 13/3/2019 seeking the following orders;

- i) The Honourable Court do hereby certify this application as of utmost urgency and service be dispensed with in the first instance(spent).
- ii) The Honourable Court be pleased to issue an Order of Temporary Injunction restraining the respondent, her servants, agents, representatives, relatives and heirs from constructing permanent structures on land parcel **No.KERICHO/SOSIOT/1811** measuring 3.2 Ha and or alienating, selling, transferring and or distributing amongst themselves the land known as **KERICHO/SOSIOT/1811** measuring 3.2 Ha or doing any act that will prejudice the interest of the beneficiaries pending the hearing and determination of this application interpartes.
- iii) The Honourable Court be pleased to issue an Order of Temporary Injunction restraining the respondent, her servants, agents, representatives, relatives and heirs from constructing permanent structures on land parcel **No.KERICHO/SOSIOT/1811** measuring 3.2 Ha and or alienating, selling, transferring and or distributing amongst themselves the land known as **KERICHO/SOSIOT/1811** measuring 3.2 Ha or doing and act that will prejudice the interest of the beneficiaries pending the hearing and determination of this application interpartes.
- iv) In the alternative to pray No.2 above, the Honourable Court be pleased to issue an Order for Status quo to be maintained as of now to preserve the estate and wastage of the estate pending the hearing and determination of this application interpartes.
- v) The Honourable Court be pleased to issue an Order to include **RUCY CHEBORE KIPKEINO** as co-adminstratrix to the estate of **MARTHA TAPRUNO BYEBEI [DECEASED]** to prevent any mismanagement by my co-wife **RAELI CHEPNGETICH LANGAT** on behalf of our late husband/2nd petitioner herein **ELIJAH CHERUIYOT LANGAT** and other beneficiaries.
- vi) The Honourable Court be pleased to issue any other remedy and or order that is fit and just grant for the benefit of the beneficiaries and preservation of the estate of **MARTHA TAPRUNO BYEBEI**.
- vii) Costs of this application provided for.

2. The Application is supported by the Affidavit of **RUCY CHEBORE KIPKEINO** dated 13/3/2019 in which she deposed as follows;

i) **THAT** her husband **ELIJAH CHERUIYOT LANGAT (now deceased)** and her brother-in-law **PAUL KIPTONUI LANGAT** took letters of administration of the Estate of **MARTHA TAPRUNO BYEBEI (the deceased herein)** who died on 21/2/2002.

ii) **THAT** the certificate of confirmation has not been issued yet some of the beneficiary and especially her co-wife who is the Respondent (**RAEL CHEPNGETICH**) I have started intermeddling with **parcel No.Kericho/Sosiot/1811**.

iii) **THAT** she is praying for an order to preserve the Estate and to be included as an administratrix of the Estate since her husband has since passed away.

iv) **THAT** she will administer the Estate of the deceased fairly and equally distribute it to the beneficiaries.

3. The 1st petitioner **PAUL KIPTONUI LANGAT** filed a Replying Affidavit dated 29/4/2019 in which he deposed as follows:

i) **THAT** he was in the process of obtaining a certificate of confirmation when the objector objected to the same.

ii) **THAT** land parcel Kericho/Sosiot/1811 belongs to him as the objectors were given land at Soin which they sold and came back to Kericho/Sosiot and he gave them a share.

iii) **THAT** the Application dated 13/3/2019 should be dismissed and the 1st petitioner be allowed to proceed with the summons for confirmation.

iv) **THAT** 1st petitioner is seeking to administer the Estate of his mother alone since 2nd petitioner has since died.

v) **THAT** the Applicant has no right to administer his mother's Estate.

4. The parties filed written submissions dated 13/11/2019 and 28/7/2020 respectively which I have duly considered. The deceased herein, **MARTHA TAPRUNO BYEBEI LANGAT** (deceased) died intestate on 21/2/2002 leaving behind the following beneficiaries:

i) **KIPRONO LANGAT – SON**

ii) **ELIJAH LANG – SON (NOW DECEASED)**

iii) **PAUL K. LANGAT - SON**

5. The deceased left one asset, **LR KERICHO/SOSIOT/1811** (here after referred to as the suit property.)

6. The 1st petitioner **PAUL KIPTONUI LANGAT and ELIJAH CHERUIYOT** (now deceased) were issued with letters of Administration on 22/4/2005 and the same has not been confirmed.

7. I find that the certificate of official search shows that the suit property is registered in the name of the deceased herein. The 1st petitioner and the Respondent have no basis to say that the 1st petitioner inherited the suit property from the deceased.

8. 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."

9. The Application dated 13/3/2019 be and is hereby allowed pending the confirmation of grant herein in the following terms:

i) **THAT the Respondent be and is hereby restrained from constructing permanent structures on land parcel KERICHO/SOSIOT/1811 and/or alienating, selling, transferring and/or distributing the said parcel pending confirmation of grant.**

ii) **THAT the beneficiaries to appoint another Administrator to replace the late ELIJAH CHERUIYOT LANGAT (now deceased).**

iii) **THAT the death certificate for ELIJAH CHERUIYOT LANGAT (now deceased) to be availed.**

iv) **THAT each party to bear its own costs of this Application.**

v) **Mention on 28/9/2020 for compliance.**

Delivered, dated and signed at Kericho this 18th day of September 2020.

A. N. ONGERI

JUDGE