



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**SUCCESSION CAUSE NO. 117 OF 2014**

**IN THE MATTER OF THE ESTATE OF MIRIAM JERUTO MARITIM - DECEASED**

**PAULO KIPKORIR RONO .....OBJECTOR/APPLICANT**

**JOSEPH KIPKOECH RONO.....APPELLANT/RESPONDENT**

**R U L I N G**

1) In his application dated 27/7/2018 the applicant prays that:

**1) The Land Registrar Trans Nzoia be enjoined from issuing new titles in respect to land parcel No. Kaplamai/Sirende Block 2 (Ngonyek) 225 pending the determination of this application**

**2) The grant of probate ( or letters of administration made on 28/1/2016 and confirmed on 29/3/2018 be revoked or annulled and that the Honourable court do recall the issued and confirmed grant.**

**3) The title deeds issued if any be cancelled and the former title deed too revert.**

2. The same is supported by the applicants affidavit sworn on 27/7/2018 together with the attached annexures. Basically he depones that this succession proceedings went on without his involvement. That the family members held deliberations in his absence. More importantly that the suit property namely **Kaplamai/Sirende Block 2 (Ngonyek) 225** does not form part of the estate.

3. The Petitioner Joseph Kipkoech Rono swore a replying affidavit dated 27/9/2018 in which he denied that the applicant did not know the family meetings which deliberated on the deceased estate and that in all such meetings the applicant has always refused to attend including meeting chaired by the deceased.

4. He said that the applicant fraudulently had the land transferred to himself 10 months before the death of their mother. According to him the same was supposed to have been shared equally among the family members just like the rest of the estate.

5. The court has perused the entire proceedings herein as well as the submissions by the counsels on record. What is clear is that the parties in the cause are related by virtue of being deceased children.

6. Secondly, prior to her death and subsequently, the family held meetings as is exhibited by the minutes attached. This court is completely unable to believe that of all the deceased children and beneficiaries, the applicant failed to attend for he was not notified. On this part I find that the applicant deliberately failed to attend the meetings for whatever reasons he had. The meeting held on 1/03/2009 chaired by her mother (deceased) was attended by all the brothers except him. As stated above, no reasons was given by the applicant.

7. However as regards the suit property namely Kaplamai/Sirende Block 2 (Ngonyek) 225, I find the applicant's claim to be valid. He acquired the title on 2/12/2009 several months before her mother died. In whatever means he acquired, as at the date of the deceased death, the title had passed and thus it does not form part of her estate.

8. If there was fraud in obtaining the same as claimed by the respondents, then the same should be addressed in another forum and not in this cause. The proceedings under the Succession Act must always relate to the assets in the name of the deceased as at her death. The land was not in her name as shown by the title deed as well as the official search.

9. Consequently I shall allow the application as follows:-

**1) The prayer to revoke the grant is hereby rejected or disallowed.**

**b) The confirmed grant dated 29/3/2018 is hereby rectified so as to remove the suit parcel No.. Kaplamai/Sirende Block**

2( Ngonyek) 225 and its subsequent distribution.

c) Costs in the cause.

Delivered, signed and dated at Kitale this 22<sup>nd</sup> January 2019.

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H.K. CHEMITEI

JUDGE

22/1/19

In the presence of:

Chepii for Objector

Wanyama holding brief for Mengich for the Respondent

Court Assistant – Kirong

Ruling read in open court.