



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

PROBATE & ADMINISTRATION CAUSE NO. 93 OF 2012

IN THE MATTER OF THE ESTATE OF MARY CHESIROYEBEI (DECEASED)

AND

IN THE MATTER OF AN APPLICATION FOR REVOCATION AND/OR ANNULMENT OF GRANT

BETWEEN

SAMWEL KIMAIYO BITOK.....APPLICANT

AND

RICHARD KITUM CHUMO.....RESPONDENT

RULING

[1] The application dated **1 November 2012** was herein filed by the Applicant, **Samwel Kimaiyo Bitok** pursuant to **Section 76(a) and (c)** of the **Law of Succession Act, Chapter 160** of the **Laws of Kenya** and **Rules 44 and 73** of the **Probate and Administration Rules** for orders that:

[a] the Grant of Letters of Administration Intestate issued on **7 July 2012** to the Respondent, **Richard Kimaiyo Bitok**, be revoked or annulled;

[b] An order for full and accurate inventory be made;

[c] Costs of the application be provided for.

[2] The application was predicated on the ground that no provision was made for the Applicant, who is also interested in the Estate of the Deceased, **Mary Chesiro Yebei**; that the Estate of the Deceased, comprising of property known as **Kapsaret/Simat Block 2(Simat) 228**, measuring 9 acres, was not properly distributed; and that there is need for a full and accurate inventory to be made. The application was supported by the Applicant's affidavit sworn on **1 November 2012** as well as the documents annexed thereto.

[3] According to the Applicant, he bought a piece of land measuring one acre from the deceased; and that the Sale Agreement was signed not only by the Deceased but also by her son, **Richard Kiptum Chumo** on the **18 April 2008**. That after the death of the Deceased, he bought a further 0.4 acres of the Deceased's land from her son **Philip Kibet Busienei**; and that he was allowed to take possession of the portion he bought as from **18 April 2008** and has been on the property to date. His cause of action was that he was not included in the list of the Deceased's beneficiaries; and therefore risks losing his property that he bought for value from the Deceased and her legal representative. He therefore posited that the Grant, which was issued to the Respondent herein on **17 July 2012** was fraudulently obtained by concealing his interest in the Estate; yet other purchasers' interests were taken on board.

[4] As far as the record shows, the Respondent did not file any response to the application for annulment; and although he employed an Advocate who came on record on **30 September 2014**, no rebuttal was made to the Applicants averments in support of the application. The record further confirms that the Deceased, **Mary Chesiro Yebei** died on **20 December 2010**; and that she left behind an estate comprising of only one asset, namely, the aforementioned land parcel known as **Kapsaret/Simat Block 2/(Simat) 228** valued at approximately **Kshs. 2,700,000/=**.

[5] In accordance with the provisions of the Law of Succession Act, the Respondent, as one of the sons of the Deceased, filed this Succession Cause on **20 March 2012** for Grant of Letters of Administration Intestate in respect of the Estate of the Deceased. The record confirms that

he had the approval and consent of his siblings to file the Petition on their behalf. Thus, having complied with all the requirements for issuance of Grant, the Respondent was issued with Grant of Letters of Administration Intestate in respect of the Estate of the Deceased on **17 July 2012**.

[6] There is no dispute that the Applicant bought a piece of the suit property. He produced the Sale Agreements as **Annexure "SKB2" and "SKB3"** to augment his averments. There is also no dispute that the interest of the Applicant as a purchaser was not recognized or noted by the Respondent in his Affidavit in Support of Petition for Grant. What was declared by the Respondent was that the Deceased died intestate and was survived by the following persons:

- [a] Philip Kibet Busienei - Son
- [b] Richard Kiptum Chumo - Son
- [c] Joseph Kimaiyo Busienei - Son
- [d] Rodah Jesang Letting - Daughter
- [e] Joel Kipleting - Son
- [f] Hellen Jepkemei Kosgei - Daughter
- [g] Prisca Jepkoech Songok - Daughter, and
- [h] Wilson Kiprotich Lelei - Son.

[7] Section 76 of the **Law of Succession Act**, pursuant to which the application was filed, provides that:

**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 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.**

[8] It is now settled that the above provision is wide enough to include a purchaser. Thus, in **Musa Nyaribari Gekone & 2 others v Peter Miyianda & another [2015] eKLR** for instance, the Court of Appeal sitting in Kisumu held that:

**"The expression *"any interested party"* as used in that provision, in its plain and ordinary meaning, is in our view wide enough to accommodate any person with a right or expectancy in the estate. We are not persuaded, as Mr. Oguttu urged, that that expression is limited by or should be construed against the provisions of sections 66 and 39 of the Law of Succession Act. Section 66 provides a general guide to the court of the order of preference of the person(s) to whom a grant of letters of administration should be made where the deceased has died intestate. Section 39 provides for the order of priority of persons to whom the net intestate estate shall devolve where the deceased left no surviving spouse or children. Those provisions do not in our view have a bearing on the question of who may be an 'interested party' for purposes of an application for revocation or annulment of grant of letters of administration under section 76 of the Law of Succession Act. There is therefore no merit in the complaint that the learned judge paid undue premium or undue regard to section 76 of the Law of Succession Act when he held that the 1<sup>st</sup> respondent has the *locus standi* to present the application for revocation of the grant. We agree with the learned Judge that the 1<sup>st</sup> respondent's interest as a purchaser of the property of**

**the deceased qualifies him as an 'interested party' with standing to challenge the grant."**

**[9]** In the premises, a good case has been made out by the Applicant for the revocation of the Grant of Letters of Administration Intestate, that was issued herein on **17 July 2012** in respect of the Estate of the Deceased, in that the Respondent concealed to the Court the interests of the Applicant. It is for that reason that I find merit in the application dated **17 February 2004** and would allow the same and order that:

**[a]** The Grant of Letters of Administration issued herein on **17 July 2012** to **Richard Kiptum Chumo** in respect of the Estate of the Deceased, Mary Chesiro Yebei, be and is hereby revoked;

**[b]** The costs of the application be in the Cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 20<sup>TH</sup> DAY OF FEBRUARY 2019**

**OLGA SEWE**

**JUDGE**