



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITALE**

**SUCCESSION CAUSE NO. 259 OF 2014**

**IN THE MATTER OF THE ESTATE OF THE LATE SIMEON KIPTUM CHOGE (DECEASED)**

**EGLYNE C. CHOGE     }**

**MIRIAM CHOGE-ARUM }**

**CHRISTIAN CHOGE     }**

**JOSEPH ANGANGA     } -PETITIONER/ADMINSTRATORS**

**AND**

**DAVID KIPTUM.....1<sup>ST</sup> INTERESTED PARTY**

**ERIC WEKESA KIPRUTO.....2<sup>ND</sup> INTERESTED PARTY**

**GEOFFREY KIMUTAI.....3<sup>TH</sup> INTERESTED PARY**

**EDWIN KIPTUM.....4<sup>TH</sup> INTERESTED PARTY**

**RULING**

1. The application dated 15<sup>th</sup> January, 2019 by the applicants who are the administrators of the deceased estate herein in a nutshell seeks to restrain the 2<sup>nd</sup> interested party, hereinafter referred to as the respondent from intermeddling with the deceased parcel of land namely **NGAMBO FARM LR No. 8915(BLOCK C-129)** pending the hearing and determination of this application and thereafter the substantive cause.

2. The said application is supported by the annexed affidavit of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> administrators as well as the 1<sup>st</sup> Administrator. They have accused the respondent of trespassing into the deceased parcel of land by carrying out subdivision exercise and ploughing illegally and without any express authority of the Administrators. They attached several sets of photos depicting the alleged trespass.

3. They argued that despite verbal and written warnings, the respondent has continued to defy the same hence this application which unless granted will bring into disrepute the estate and jeopardize the work of the Applicants as Administrators to the estate.

4. The 2<sup>nd</sup> Respondent vide the replying affidavit sworn on the 23<sup>rd</sup> January, 2019, states that he has not trespassed on the land illegally but was only dealing with the land given to him pursuant to the family meeting of 27<sup>th</sup> July, 2016 in which he was allotted on interim basis 50 acres out of the deceased parcel of Land.

5. He went ahead and attached the minutes of the said meeting which shows the entitlement of the rest of the beneficiaries. He accused the applicants of high handedness and dictatorial tendencies.

6. The parties thereafter filed several sets of applications which included that dated 21<sup>st</sup> January, 2019 by the Applicants in which they seek contempt orders against the 4 Respondents from intermeddling with the estate and disobeying the ex-parte interim orders issued by this court . They have accused the Respondent jointly and severally of exceeding the 120 acres given to them to utilise pending the determination of this cause.

7. The other application is by the 2<sup>nd</sup> Respondent dated 4<sup>th</sup> February 2019 in which he seeks to vary, review or have the orders issued ex-parte in application dated 15<sup>th</sup> January, 2019 for the simple reason that the same were oppressive and were issued in era and that it curtailed his business on the farm. That the said orders gave undue advantage to the Respondents to continue misusing the estate herein.

8. The application dated 4<sup>th</sup> February, 2019 by the 1<sup>st</sup> Administrator seeks contempt orders against the 2<sup>nd</sup> Respondent and other third parties ostensibly working in cahoots with him to disobey the courts orders issued on the 16<sup>th</sup> January, 2019.

9. The court has perused the entire rubric of the rival applications and seized with this matter is of the considered opinion that the determination of the application dated 15<sup>th</sup> January, 2019 as well as giving directions will enable the parties to move forward and continue with hearing this high octane matter to its logical conclusion without being distracted by interim applications.

10. The court has perused the submissions on record in support and in opposition to the application as well as the attached authorities and there is no reason to reproduce them here save to state that the gist of it is whether in light of this cause can the 2<sup>nd</sup> Respondent be termed a trespasser or an intermeddler in the estate?. The provisions of Section 45 of the Law of Succession Act are clear on who is an intermeddler and what sanctions should follow in such an event.

11. The annexure to the replying affidavit sworn by the respondent on the 23<sup>th</sup> January 2019, specifically annexure EK1 shows some family meetings minutes of 27<sup>th</sup> July, 2016. It appears most of the family members were present including the parties on record who appended the signatures. The resolutions reached was to deal with the suit land and the same states inter alia and specifically the section affecting the 2<sup>nd</sup> respondent that;

**“ block c-129 AC- Sehemu ya chini ya shamba hadi mto moiben magharibi (kililma)**

**2. Erick kipruto wekesa 50 AC. Magharibi mwa shamba mpaka na kilima.”**

12. From the above portion of the minutes it is clear that the Respondent was allotted 50 acres albeit on a temporary basis. I have not been shown anything to the contrary and if there is, then this court should be guided. The said minutes gave general boundaries and features of where each person was to occupy. It then appears from the affidavit evidence by the applicant that the respondent was not entitled to any portion of the estate.

13. It may not be true that the Applicant may not be aware that the Respondent is entitled to the deceased portion of land as the affidavits of the 1<sup>st</sup> Administrator has made which are attached to the respondents replying affidavit clearly shows that she was conscious of such arrangements including the 120 acres given temporarily to the parties herein.

14. All in all, I find that based on the family arrangements and the final determination of this protracted matter the respondent should be permitted to work on the 50 acres allotted to him vide the aforestated minutes.

15. The above conclusion in my view applies to the rest of the other family members including the 1,3 and 4<sup>th</sup> interested parties as well as the Respondents and those mentioned in the said family meetings. They should each stick to the portions allotted to them pending the determination of the substantive cause.

16. For the above reasons and to ensure smooth administration of the estate and the quick conclusion of the determination of the case it is hereby ordered that :

**a. A survey be done by the Administrators herein so as to ascertain the portions of each individual to work on as per the family meetings minutes of 27<sup>th</sup> July, 2016 pending the determination of this cause.**

**b . Temporary boundaries and features may be placed by the surveyors.**

**c. Each of the portions should be as approximately as possible to the acreages agreed by the family.**

**d. For the avoidance of doubt the above exercise is purely on a temporary basis so as to maintain peace and harmony awaiting the final orders of this court.**

**e. The cost of the survey work should be met by each individual and failure to do so his portion shall not be excised.**

**f . The County Surveyor or any Government Surveyor should carry out the exercise or one agreed upon by the Administrators.**

**g. The applications dated 15<sup>th</sup> January, 2019, 21<sup>st</sup> January, 2019 and 4<sup>th</sup> February, 2019 and 4<sup>th</sup> February, 2019 by the 4<sup>th</sup> Respondent and 1<sup>st</sup> Administrator respectively are hereby disallowed .**

**h. Each party shall bear their respective costs.**

**Dated, signed and delivered at Kitale in open Court this 30<sup>th</sup> day of April 2019.**

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**H .K. CHEMITEI**

**JUDGE**

**30/4/19**

**In the presence of:-**

**Mr Katwa for the 3<sup>rd</sup> family**

**Ms Arunga holding brief for Otieno for first family**

**Arunga for Interested Party.**

**Mr Mukabane for the 2<sup>nd</sup> Interested Parties**

**Bisonga Wabomba for 2<sup>nd</sup> Intersted Party**

**Khisa holding brief for Barasa**

**Kamau for 1 intersted Party.**

**Court Assistant - Kirong**

**Ruling read in open court.**