



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT ELDORET**

**SUCCESSION CAUSE NO. 278 OF 2013**

**(ESTATE OF KIPCHUMBA MISOI)**

**PHILIP KIPCHIRCHIR CHUMBA.....APPLICANT/OBJECTOR**

**AND**

**REGINA JEPKOECH MISOI.....RESPONDENT**

**RULING**

1. After the death of **KIPCHUMBA MISOI** (deceased) on 11<sup>th</sup> June 2002, **REGINA JEPKOECH MISOI** (the Respondent) petitioned for and obtained grant of letters to administer his estate in her capacity as the widow, having presented the consent form P& A 38 purportedly signed by **PHILISTER CHEBITOK** and **ALFRED KIPLIMO SERONEY**. The grant of letters of administration intestate was issued to her on 19<sup>th</sup> December 2013.

2. The applicant/objector (**PHILIP KIPCHIRCHIR CHUMA**) later on learnt about such issuance and filed a summons for revocation of the grant, and urged the court to declare the said **REGINA** unfit to be an administrator of the estate. He prays to substitute her as the administrator by virtue of being the deceased's eldest son.

3. He also prays that the said **REGINA** be ordered to render and produce a full and accurate inventory of the assets of the deceased.

4. Further that the assets of the estate being **NGERIA/CHEPYAKWAI BLOCK 2 (KAPLELACH) 227, 210, 228 AND NANDI/KAMOBO/306** which has already been sub-divided be distributed into equal portions to the family of the applicant and the respondent.

5. The basis for these prayers is that the procedures to obtain the grant were defective in substance based on Form 38, and the grant was obtained without taking into consideration other members of the family like the applicant, who is the deceased's first son. That in any event the said grant has become inoperative as the Respondent failed to apply for confirmation within a period of one year. Further, that the Respondent has already sub-divided the land and disposed off by way of selling without consent from the entire family namely parcel No. **NANDI/KAMOBO 3042, 3043, 3044, 3045 & 3048**.

6. She has also subdivided parcel No. **NANDI/KAMOBO/3041** into 3 portions and allocated the same to herself and **SILA KIPLAGAT**, leaving out the applicant. She is now in the process of disposing off more parcels to third parties in a bid to defeat the ends of justice and disinherit the applicant.

7. In the Supporting Affidavit, the applicant deposes that he was surprised to learn that part of the estate was being sold yet Succession had not been finalized.

He explained that the deceased owned land parcels No. **KAPSARET/KAPSARE BLOCK 6, KAPSARET/63, NANDI KAMOBO/3042, 3043, 3044, 3045, 3046, 3047 & 3048, PIONEER/NGERIA/BLOCK 1 (EATEC) 2651, 2661, 2650 & NGERIA/CHEPYAKWEI BLOCK 2 (KAPLELACH) 227**.

Upon inquiry from lands office he discovered the parcels had been sold and transferred, infact **Nandi/Kamobo/3045 – 3047** had been transferred to **STANLEY KIPLETING**, **Nandi/Kamobo/3048** had been transferred to **DONALD KIBET KOROS** – this was in addition to the parcels the Respondent transferred to herself and **SILA KIPLAGAT**.

8. In her replying affidavit, the Respondent describes the application as being made in bad faith and in furtherance of mischievous intentions against the Respondent and his siblings who have not raised any issues.

It is her contention that all the children are settled in their portions (entitlements\_ pursuant to instructions by the deceased who had

distributed the properties prior to his demise through a written will. Further that it is the applicant who has caused unnecessary frictions and disharmony between family members and, even evicted her from the matrimonial home, and his sisters from their shares of the estate.

This has forced the Respondent to move out of the estate's properties and buy land elsewhere so as to protect her life.

The applicant is accused of threatening the Respondent's life yet he does not rank higher than her as she is the widow and takes precedence in the order of priority in petitioning for grant of letters of administration by virtue of Rule 7(1) e (iii) of the Probate and Administration Rules.

9. It is her contention that the monies she received can be accounted for as it is what she used to buy land in **NANDI** to establish her home after the applicant removed door, and cut iron sheets from the roof, resulting in her eviction from her matrimonial home.

10. She insists that under Section 36 of the Law of Succession Act, she is entitled to 20% share of the Estate, and having been confirmed as the administrator, that all the property vests upon her and she is obliged to get all the property of the deceased. She alludes to a will purportedly made by the deceased wherein he instructed how his property was to be dealt with or had been dealt with, and denies that she had disposed of the estate's property to the applicant's detriment. She contends that the applicant is demanding more than her late husband had given him.

11. The matter was disposed of by written submissions where the applicant reiterated his prayers and pointed out that the Respondent had not annexed the purported will, and her claim that the transfer to the purchasers was made in good faith and some transaction had taken place during the deceased's lifetime is not supported by any evidence such as a sale agreement.

That in any event such transfer could not have been legal as grant had not been confirmed. He denied tampering with the Respondent's peaceful existence or causing friction among other family members.

12. The Respondent did not file any submissions. One thing is clear, the grant of

letters of administration had not been confirmed, and that issuance in no way give the Respondent authority to complete the transaction she purported to engage in. Secondly there is no evidence that the deceased had sold the parcels to the named purchasers as no sale agreement was annexed, nor did any of the purported purchasers swear an affidavit to state the correct position.

(3) The Respondent alludes to a will whose copy she has not annexed, and the allegation remains hot air.

(4) As for the parcels she concedes to have sold, the Respondent does not say how much she sold them for, and she must render proper and detailed accounts within 21 days of this ruling.

13. Certainly the Respondent ranks first in order of priority as regards who ought to apply for grant of letters of administration, but that does not bar other beneficiaries from seeking to be co-administrators.

By her conduct, I am persuaded that there is need to have a co-administrator to stem the fast rate of disposal of the estate even before confirmation of grant. Consequently the grant issued to Respondent is revoked and a fresh one do issue in favour of the applicant and the Respondent as joint administrators.

14. I had directed that parties file submissions on mode of distribution but only the applicant made a proposal.

I now direct Respondent to file and serve detailed proposed mode of distribution within 7(seen) days hereof.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 11<sup>TH</sup> DAY OF APRIL 2019**

**H. A. OMONDI**

**JUDGE**