



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT ELDORET**

**SUCCESSION CAUSE NO. 11 OF 2013**

**ESTATE OF THE LATE ANNA KIBOGI ARAP BIRECH (DECEASED)**

**PAULINA CHEPKETER BIRECH.....APPLICANT**

**AND**

**EMMANUEL KIPNGETICH CHELOGOI.....RESPONDENT**

**AND**

**NANCY KHAMAYO AMBANI.....1<sup>ST</sup> INTERESTED PARTY**

**AMINA RAJABU.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. When **KIBOGI Arap BIRECH** died on 12<sup>th</sup> April 1995, **EMMANUEL KIPNGETICH CHELOGOI** petitioned for and obtained grant of letters of administration which were made on 4<sup>th</sup> December 2014 in Kapsabet PMCC 7 of 2015 having stated that he was the deceased sole surviving brother.

2. Upon hearing of this grant had issued the applicant **PAULINA CHEPKETER BIRECH** sought orders to amend the grant on grounds that the proceedings to obtain the grant were defective in substance, and that the grant was obtained fraudulently by the making of a false statement or by the concealment of material in portion.

3. The applicant describes herself as the widow of the late **KABOGI Arap BIRECH** and therefore ranks first in priority in list of beneficiaries. It is her contention that she ought to be the sole beneficiary of land parcel No. **NANDI/KAMOBO/196** as she did not have any children with the deceased.

4. The applicant points out that the said **EMMANUEL KIPNGETICH CHELOGOI** inserted his name into the petition forms as a co-petitioner without authority, then caused the court to sign and issue a notice to the Principal Registrar on an application for grant in his own name – this was the same information sent to the government printers, as per the Gazette Notice No.2146 – which excluded her name.

5. However on 20<sup>th</sup> May 2014, the said **EMMANUEL** caused the court to issue the letter of administration intestate in both his and the applicant's names. Then on 22.05.14 the court granted him exclusively the grant of letters of administration intestate, which was then confirmed on 4<sup>th</sup> December 2014 and issued on 8<sup>th</sup> December 2013.

The applicant was never invited to attend court for hearing of the confirmation of grant.

The asset which was listed for distribution was parcel No, Nandi/Kamobo/196, where one **JAMES AMBANI** had registered a caution on 2<sup>nd</sup> June 1997 with the **NANDI COUNTY LAND REGISTRAR**.

6. It is also her contention that the court then did not have jurisdiction to deal with the matter as the estate was worth Ksh.200,000/-.

Incidentally the applicant had sold the said parcel to **JAMES AMBANI**, and in January 2015, the applicant learnt from his widow **NANCY KHAMAYO AMBANI** that **EMMANUEL** intended to transfer the same property to himself as he had obtained the grant of letters of administration. **EMMANUEL** then got an order of injunction restraining **NANCY** from ploughing the said parcel yet the applicant had surrendered full and uninterrupted possession to her husband and family in 1996.

The applicant is apprehensive that **EMMANUEL** may adversely deal with the said piece of land.

7. The Respondent confirms that he petitioned for grant of letters of administration in respect to the said estate saying he had petitioned in his capacity as a brother to the deceased because the applicant had separated from the deceased.

That the deceased was in fact buried on the Respondent's land in Kaptien. He contested the applicant's claims that she has sold the land to Nancy, saying;

**(i) There was no copy of a sale agreement or any evidence of a sale transaction,**

**(ii) The applicant having separated from the deceased moved to live with his brother in KOBUJOI, Nandi South Sub-county,**

**(iii) The applicant has not been on the said land for 20 years prior to the same being sold to the deceased vendor,**

**(iv) In any event, the applicant had no capacity to sell the property as the same was not in her name, nor was she an administrator of the deceased's estate.**

8. The Respondents is convinced that **NANCY** is the unseen hand pushing the applicant to pursue this application for annulment.

9. The appeal was canvassed through written submissions where the applicant's counsel submitted that although the grant is said to have been made on 30.05.2017, the proceedings show that the same was done on 20.05.2014, so the purported grant of 30.05.2017 was intended to sanitize and remove the applicant's name although she has since died as per the chief's letter dated 24.02.2014.

10. That since there was a caution lodged way back in 1997, the Respondent ought not to have gone ahead with the Succession proceedings, and even obtain a title for the parcel. Thus any dealings registered were fraudulent and corrupt.

11. It is also argued that the value of the property was Ksh.200,000/- as indicated in the Respondent's affidavit of 23<sup>rd</sup> October 1997, which placed a restriction on which court would deal with the matter, courtesy of **Section 48** of the law of succession Act. The court is urged to direct that the title registered in the name of the Respondent be cancelled.

12. The Respondent's counsel urges this court not to interfere with the mode of distribution, saying the property is already registered in the appellant's name as the absolute owner. That in any event there was an agreement between the Respondent and the deceased in relation to the said parcel, and he took, possession of the parcel, to the exclusion of the applicant. He contends that what is now in dispute ideally ought to go to the Environment and Land court for determination, and not the High Court as the dispute is relating with regard to control, possession and titles.

13. The Respondent claimed to have purchased the parcel from the Respondent at a sum of Kshs.200,000/- although no sale agreement has been presented to this court. There is also an oddly twisted turn in the documents – **P & A 80** which is a petition for letters of administration intestate shows only one petitioner **PAULINA CHEPKETER BIRECH** who presented the petition in her capacity as the wife/widow of Kibogi Arap Birech, yet at paragraph 4, the Respondents name is obviously inserted above that of the applicant. Thus now there is the entry in form P&A.5 where the Respondent is now listed as a beneficiary.

For reasons which are not clear when the Respondent sought a notice of publication of grant, he was the only one listed as the administrator. I have failed to trace any letter from the chief to confirm whether the Respondent had been listed as a beneficiary in his capacity either as the deceased's sibling or as a purchaser.

14. But even if he was to be believed, that somewhere along the way **PAULINA** died, then the question which remains is there was a caution placed on the property, he does not deny being aware of the caution, yet when he petitioned for confirmation of the grant, he opted to be economical with the information.

The further question is – as at the time of confirmation, was the applicant alive, and if she was, did he invite her to attend court for confirmation proceedings? There are too many unanswered questions, with a lot of suspicion amounting to fraudulent non-disclosure.

In any event whether the appellant sold the land to the Ambani's or to the Respondent – she did so before obtaining grant of letters of administration, so her action was illegal.

15. I am satisfied that there was a lot of material non-disclosure to warrant annulment of the grant and I so order.

Each party shall bear its own costs.

**DATED, SIGNED and DELIVERED at ELDORET this 11<sup>th</sup> day of April 2019.**

**H. A. OMONDI**

**JUDGE**