



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITALE**

**SUCCESSION CAUSE NO. 137 OF 2010**

**IN THE MATTER OF THE ESTATE OF THE LATE WILLIAM CHERIUYOT LELMET (DECEASED)**

**MIKE LELMET & OTHERS-PETITIONERS/RESPONDENT**

**VERSES**

**JULIA KIMOI CHEBIATOR & OTHERS .....OBJECTORS**

**AND**

**RICHARD TOROITICH.....APPLICANT**

**RULING**

1. The Applicant vide his application dated 23<sup>rd</sup> May, 2019 claims that he purchased part of Land Parcel number LR. 6614/4 from the deceased herein. According to his affidavit in support he purchased 5 acres and not 2 acre as per the judgement of this court dated 10<sup>th</sup> December, 2018.
2. He has thus sought orders that the said portion be preserved as was ordered by this court. He went on to state that there was a suit number ELC 17 of 2014 which was pending as at the time of this cause proceeding. He attached two sets of agreements which showed that he purchased the land from the deceased.
3. In his view therefore should the judgement be enforced then he stands to suffer loss and that the matter at the ELC court shall be rendered nugatory.
4. The Respondent has filed grounds of opposition which he has stated inter alia that the application has been brought too late in the day and that the same is premature and has no legal basis.
5. I have perused the application and note that in paragraph ( E) of the decision of this court dated 10<sup>th</sup> December, 2018, the court stated that;  
**“The portion which is currently contested by Dr. Richard Toroitich vide ELC case no. 17 of 2014 be held in abeyance. However should the same revert to the estate then it shall equally be shared by the three objectors equally.”**
6. The court was alive to the matter. The court did not want to venture into the jurisdiction of the Land and Environment Court which in any case does not have jurisdiction.
7. What then shall the estate suffer if the portion claimed by the applicant is held in abeyance or preserved pending the outcome of the land case? I do not see any prejudice. Prima facie, the documents or the agreements attached to the application shows that the Applicant may have purchased 5 acres from the deceased. That would be for that court to determine.
8. For now, and having captured the same in the judgement, I find that it may be prudent to preserve the same. This will not in any way stop the other processes in the estate but will give comfort to the applicant as he battles at the land court. It appears that the applicant is already occupying the land.
9. Consequently, the application is allowed only to the extent that the portion currently claimed by the Applicant RICHARD TOROITICH comprised in LR No. 6614/4 measuring 5 acres is preserved and shall remain in the name of the deceased pending the determination of case No. 17 of 2014 at Kitale ELC. The directions on how it should be dealt with as directed in the judgment of 10<sup>th</sup> December, 2018 shall stand.

10. Each party shall meet its respective costs.

**Dated, signed and delivered in open court at Kitale this 26<sup>th</sup> day of September, 2019.**

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**H K .CHEMITEI**

**JUDGE**

**26/9/19**

**In the presence of:-**

**Ambutsi for the Applicant**

**Cheptoo for Sifuna for the Administrator**

**Court Assistant – Kirong**

**Ruling read in open court.**