



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO.133 OF 2007

IN THE MATTER OF THE ESTATE OF PAUL KIPNGENO CHUMO (DECEASED)

BETWEEN

KIMETO KIBET PETER.....APPLICANT/ADMINISTRATOR

AND

STANELY KIPLANGAT KIMETO.....RESPONDENT

RULING

1. Before me is an application dated 1st May 2018 brought by way of summons under section 47 of the Law of Succession Act (Cap.160), Rule 49 and 73 of the Probate and Administration Rules.

2. The application filed in court on 3rd May 2018 has neither a date nor was it signed though it was drawn by Wesonga, Mutembei, Kigen advocates for the beneficiaries of the estate of John Ngeno the deceased. It also does not state who the applicant is. The certificate of urgency is however, clearly dated 1st May 2018, and from the replying documents filed, that is the grounds of opposition and replying affidavit, there is admission that the application served was dated 1st May 2018.

3. The substantive prayers in the application for my decision are as follows:-

1.(spent)

2. That the properties known as Kericho/Kipkelion/Barsiele Block 1 (Kaula)/227 1.18 Ha. and Kericho/Kipkelion/Barsiele Block 1 (Kaula) 209-14.905 Ha be excluded from the list of properties forming part of the estate of Paul Kipngeno Chumo in Succession Cause No.133 of 2007.

3. That costs of the application be borne by the estate.

4. The application was filed with a supporting affidavit sworn by Linus Kirui on 17th April 2018 said to be son of proposed administrator in which it was deposed that copies of title searches had been annexed to the affidavit which showed that the said properties were not registered in the name of Paul Kipngeno Chumo, but in the name of the father of John Ngeno (now deceased) in 1990 and 1996 long before the demise of Paul; Kipngeno Chumo the grandfather of the petitioners.

5. The respondents, the two petitioners through counsel Motanya & Company advocates filed grounds of opposition stating as follows:

1. That the applicant had no *locus standi* as he did not obtain grant of letters of administration ad-litem, neither did he petition for grant of letters of administration.

2. That the objector or applicant is a total stranger to the succession proceedings and wants to put into dispute the court's record by engaging in side shows.

3. That the objector was not entitled to any notification by the petitioner in the petition for the application for grant as he is a stranger to this cause.

4. That the application dated 1st May 2018 is full of mala fides and lacks merits both in fact and law.

5. That the objector/applicant's supporting affidavit is full of half-truths and does not disclose all the material facts to this court.

6. That the application is misconceived, bad in law and has no merits and is therefore an abuse of court process and same should be struck out.

7. That the application does not disc lose any cause of action.

6. The applicant (Kimeto Kibet Peter) filed a replying affidavit dated 31st May 2018, apparently without the leave of the court in which it was deponed that the land parcel LR No.Kericho/Kipkelion/Barsiele Block 1 (Kaula)/277 – 1.18 Ha; and LR. No.Kericho/Kipkelion/Barsiele Block 1 (Kaula)/209 – 14.905 Ha was currently registered in the name of John Ngeno (Deceased) his grandfather who bought the same but died before registering the same in his name and that the respondents (petitioners) took it upon themselves to register the same in their names, and thus became trustees. It was also deponed that Paul Kipngeno A. Chumo was a member of kaula Kipsigis Farm Co. Ltd which he joined and bought 3.00 acres in 1971 and 1972, equivalent to 36 acres of land, but John Ngeno (deceased) registered the parcels in his name and his beneficiaries were now occupying the land.

7. Linus Kirui, again without leave of the court filed a further affidavit sworn on 25th September 2018 stating that on 6th June 2018 he was granted Letters of Administration Colligenda bona in Kericho High Court Succession Cause No.6 of 2018 to preserve his father's estate, and annexed a certificate of Grant of Letters of Administration, ad colligenda bona dated 6th June 2018.

8. Again, Kimetto Kibet Peter filed a response dated 11/10/2018 to the further affidavit of the respondent deponing that the registration of John Ngeno as proprietor of the land was fraudulent, and that the green card showed that registration was done in the name of Paul Kipngeno Chumo in 1990, when he was critically ill and then died in 1991 when shares in the company had not been allocated. That the only parcel of land that Paul Kipngeno Chumo was entitled to, subject to Confirmation of Grant was LR. No.Kericho/Kipkelion/Barsiele Block 1 (kaula)/65. He reiterated that the parcels of land herein did not belong to Paul Kipngeno Chumo's estate.

9. In the written submissions, the counsel for the applicant submitted that on *locus standi*- the applicant had obtained a limited grant of letters if administration in Succession Cause No.6 of 2018, and had commenced Succession Cause No.85 of 2018 at Kericho High Court with the two land assets being the main properties to be inherited. He thus had *locus standi*.

10. With regard to the merits of the application, counsel argued that sufficient evidence had been provided to this court through documents filed herein, establishing that the subject two land assets did not form part of the estate in Succession Cause No.133 of 2007, and that in any case, the affidavit sworn by a beneficiary Rorogu Cheruiyot Ngeno in Succession Cause No.133 of 2007 confirmed that the two properties belonged to John Ngeno.

11. The respondent's counsel does not appear to have filed written submissions to this application. They filed submissions to application dated 28th March 2019, to which I have already delivered a ruling.

12. This is a preliminary application in this succession matter in which, Letters of Administration have not been confirmed. It is a dispute on whether two land assets belong to this estate or to another estate. From documents filed, it comes out that both the applicant and the respondent are relatives.

13. Though the respondent has argued that the applicant has no *locus standi* to bring the application, I think that the argument is misplaced. He has obtained limited Letters of Administration in another Succession Cause, in which the two assets herein are said to belong. He thus has locus to bring this application. The issue of fraud in obtaining those Letters of Administration can only be raised in that Succession Cause, not in this Succession Cause. As things stand now, those Letters of Administration still stand and have not been challenged, so the applicant has *locus standi* in this matter to file the application.

14. Having said so, the issues that have been argued on fraudulent or dishonest registration of land are certainly not for this court but for the Environment and Land Court. As for this Succession court, it can only deal with straight forward matters of distribution of assets which have been established, without dispute, to belong to the deceased's estate herein.

15. I take note that, this is a 2007 Succession Cause, and parties who are related seem to be minded to delay it by filing one application after another. In my view, the applicant herein should have come as an interested party, and filed his objection to inclusion of the land assets in the Confirmed Grant, and attach the clear copies of documents of title, and this court would have excluded them from the list of assets in the Confirmed Grant. He has instead come to this Succession Cause through an application raising substantive land ownership issues and brought into by the operations of a land buying company, which this Succession court cannot deal with.

16. As decided earlier in this court's ruling dated 18th June 2019 – the petitioner herein is required to apply for confirmation of Grant for Letters of Administration, and file all necessary signed consents by beneficiaries and supporting documents. If the applicant wishes that any assets should be excluded from distribution herein, he should file his objection therein and attach necessary documents. The court will then hear the petitioner, the applicant herein, and all beneficiaries and interested parties, and make a decision on which assets will be distributed herein, and which assets will be excluded.

17. Any dispute as to ownership of land assets, will have to be determined by the Environment and Land Court, and the applicant is hereby guided to approach that court.

18. I thus determine that the issues in this application on whether the two land assets will be excluded from distribution will be determined in the Summons for Confirmation of Grant to be filed by the petitioner.

19. I note that the petitioner has not filed the Summons for Confirmation of Grant as ordered by this court on 18th June 2019, and he is warned that if he delays further, this court will take necessary steps to finalise this matter, as provided for under the law. I will thus hereafter fix this matter for mention to confirm filing by the petitioner of Summons for Confirmation of Grant.

20. Costs will be in the cause.

Dated at Kericho this 25th day of September 2019.

GEORGE DULU

JUDGE