



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

P&A CAUSE NO. 335 OF 2013

IN THE MATTER OF THE ESTATE OF PAULO KIBET CHERONO ALIAS PAUL CHERONO (DECEASED)

CLEDY KIPROP CHERUIYOT.....1ST APPLICANT

MARY JEPKORIR CHERUIYOT.....2ND APPLICANT

-VERSUS-

ABRAHAM KIPTOO CHEBII.....RESPONDENT

RULING

[1] Upon the demise of **Paulo Kibet Cherono alias Paul Cherono**, a Petition for Grant of Letters of Administration Intestate was filed herein on **31 October 2013** by **Abraham Kiptoo Chebii**, the Respondent herein, in his capacity as the deceased's son. In his Affidavit in Support of the Petition, the Respondent averred that the deceased had left a widow, **Esther Jebet Chebii** and a daughter **Alice Jepkoech**, in addition to himself. In terms of assets, it was the averment of the Respondent that the deceased left behind the following pieces of land:

[a] **KAPTAGAT SETTLEMENT SCHEME PLOT NO. 173/046**

[b] **ELGEYO MARAKWET/KESSUP/ 'B'/953**

[c] **ELGEYO MARAKWET/KESSUP/ 'B'/1216**

[d] **ELGEYO MARAKWET/KESSUP/ 'B'/1271**

[2] A perusal of the court record shows that notice of the filing of the Petition was duly issued vide **Gazette Notice No. 975** dated **14 February 2014**. Accordingly, on the **25 March 2014**, a Grant of Letters of Administration Intestate was issued to the Respondent, there having been no objection or cause shown within the notice period of 30 days as to why the same should not issue. Thereafter, on **24 June 2014**, the Applicants approached the Court vide their Summons of even date, filed on **9 July 2014** seeking an order that they be allowed to file objection to the confirmation of grant outside the requisite time. That is the application that is the subject of this ruling. It was filed pursuant to **Section 68** of the **Law of Succession Act, Chapter 160 of the Laws of Kenya** and **Rules 17, 49 and 67** of the **Probate and Administration Rules**.

[3] The application was premised on the grounds that the Applicants have a beneficial interest on **Plot No. 173/046 Kaptagat Settlement Scheme**; and that the same was allocated to the Applicants' father **Paul Cherono alias Philip Cherono** who died on **31 December 1976**, in respect of whom the Applicants have filed **Succession Cause No. 296 of 2013**, in which the Petitioner is the Objector. The application was supported by the affidavit of **Cledy Kiproprop Cheruiyot**, the 1st Applicant, in which he averred that the Respondent in this matter is totally unrelated to him and is therefore not a beneficiary or dependant of his late father's estate.

[4] The application was opposed by the Respondent vide his Replying Affidavit sworn on **17 March 2015**. He averred that, to the best of his knowledge and information, the Applicants have no interest whatsoever in **Kaptagat Settlement Scheme No. 173/046**; and that his father was never known by the name **Philip Cherono**. He further averred that his father only allowed one **Philip Cheruiyot Tumbes** to take care of the land since his father was then staying at **Irong Location**, far from the subject land. Hence, it was his assertion that the application is not only based on false, malicious facts, but is also supported by suspicious documents. Thus, the Respondent urged for the dismissal of the application with costs.

[5] The application was disposed of by way of written submissions. In support of the Application, their Advocates, **Anassi Momanyi & Co. Advocates**, made it clear that the only reason why the Applicants have filed this application is because their father's property, **Kaptagat Settlement Scheme, Plot No. 173/046** has been included in this Petition as part of the property belonging to the estate of the deceased,

Paulo Kibet Cherono. Counsel reiterated that the Applicants, whose father died in **1976**, have no interest in obtaining Grant of Letters of Administration to the estate of the Respondent's father; and that they stand to suffer grave injustice and prejudice should they be precluded from ventilating their rights in this matter.

[6] Learned Counsel for the Respondent, **Mr. Kiboi**, similarly reiterated the Respondent's posturing that the subject property is part of the estate of his late father; and that, because the Applicants falsely claimed it in their **Succession Cause No. 296 of 2013**, the Respondent was constrained to file objection proceedings in **Succession Cause No. 296 of 2013**. Counsel urged the Court to note that Grant of Letters of Administration Intestate has already been issued in this matter; and therefore that the provision which the Applicants have cited in support of their application was never intended to cover the situation obtaining in this matter. Accordingly, Counsel prayed for the dismissal of this application with costs.

[7] Having carefully considered the application, the affidavits filed herein in respect thereof, the written submissions by the Advocates for the parties and the documents filed herein, it is manifest that the property in dispute herein, namely, **Kaptagat Settlement Scheme Plot No. 173/046**, is the subject of this cause as well as **High Court Succession Cause No. 296 of 2013**. It is similarly evident that the names of the deceased persons in the two matters, though somewhat similar, are in respect of two completely different individuals. The parties in both matters are already feuding in **Succession Cause No. 296 of 2013** wherein the Respondent herein admittedly filed an Objection application.

[8] In the premises, going by the principle of equality of arms, it would only be fair and just that the Applicants be allowed to stake their claim, for whatever it is worth, in this cause to protect their perceived interest in the subject property. Nevertheless, I would agree with Counsel for the Respondent that an objection is only tenable in so long as no Grant of Letters of Administration has been issued. I say so because **Section 68(1)** of the **Law of Succession Act** does provide that:

"Notice of any objection to an application for a grant of representation shall be lodged with the court, in such form as may be prescribed, within the period specified by such notice as aforesaid, or such longer period as the court may allow."

[9] Hence, whereas the Court does have the power to extend time for purposes of the aforementioned provision, it is my considered view that such an application can only be validly filed and entertained before a Grant of Letters is issued. After the issuance of Grant, the only recourse available would be for an aggrieved party to seek revocation or annulment pursuant to **Section 76** of the **Law of Succession Act**. It is for this reason that I find the application misconceived. The same is accordingly struck out with costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 28TH DAY OF NOVEMBER 2018

OLGA SEWE

JUDGE