



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAPENGURIA**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 6 OF 2016**

**IN THE MATTER OF THE ESTATE OF LOTUPOKOL SIRMA (DECEASED)**

**BETWEEN**

**MANUEL LIOMOKWANG.....PETITIONER/APPLICANT**

**AND**

**WILSON LOTUPOKOL.....1<sup>ST</sup> OBJECTOR**

**KEPINA MERIKOI.....2<sup>ND</sup> OBJECTOR**

**CHEPOKACHEMWOLEL KAPELINYANG.....3<sup>RD</sup> OBJECTOR**

**RULING**

**Application**

1. The Objectors all filed affidavits of protest against confirmation of Grant under **Rule 40(6)** of the **Probate and Administration Rules**.
2. The 1<sup>st</sup> Objector WILSON LOTUPOKOL filed his affidavit dated 6<sup>th</sup> May 2017. He states that he is the 5<sup>th</sup> born in the family of LOTUPOKOL SIRMA (Deceased) and his wife CHEPKAMOI LOTUPOKOL. He also depones that the deceased had three families, the 1<sup>st</sup> house with 10 children (2 were then deceased) the 2<sup>nd</sup> house with 2 children and the 3<sup>rd</sup> house with 1 child. The deceased left land parcel WEST POKOT/SIYOI A/1939 measuring 5.4 hectares, but did not leave any will neither did he carry out any sub division of his land.
3. The 1<sup>st</sup> Objector avers that the petitioner commenced a fraudulent process of succession without involving all the beneficiaries and that the proposed mode of distribution aims at disinheriting all the beneficiaries of the estate who are entitled to equal shares of the property. The 1<sup>st</sup> Objector further depones that the petitioner refused all family interventions and proceeded to seek letters of administration without consent of all the beneficiaries of the Estate, and that the consent filed as WL-2 with the application for grant contains the 1<sup>st</sup> Objector's name wrongly written as WILSON SIRMA and his signature forged. He also says that the Chief's letter dated 26<sup>th</sup> January 2016 contains information that is false since at no time had the beneficiaries met and decided to appoint an administrator to the estate of the deceased. He prays that the application for confirmation of Grant dated 15<sup>th</sup> December 2016 be dismissed with costs.
4. The 2<sup>nd</sup> Objector KEPINA MERIKOI filed an affidavit dated 21<sup>st</sup> July 2017 as the daughter of LOTUPOKOL SIRMA (Deceased) in support of the averments in the affidavit of protest filed by the 1<sup>st</sup> Objector.
5. The 3<sup>rd</sup> Objector CHEPOKACHEMWOLEL KAPELINYANG a daughter of the deceased similarly filed an affidavit supporting the contents of the affidavit of protest filed by the 1<sup>st</sup> Objector.
6. By an Order dated 28<sup>th</sup> June 2017 following a request by the Objectors the court directed that the D.C.I.O investigate the alleged forged signatures on the consent attached on the Application for confirmation of grant. However the same was never acted upon.

**Submissions**

7. The Objectors filed written submissions. In addition to what they stated in their affidavits, they submit that the Applicant did not approach this court with clean hands. They also submit that the petitioner admitted on 30<sup>th</sup> November 2017 that the signature on the consent forms purported to be that of the 1<sup>st</sup> Objector WILSON LOTUPOKOL was not signed by the said Objector and further that the proceedings were informed by the ill motive of disinheriting the other beneficiaries hence the court ought to dismiss the application dated 15<sup>th</sup> December 2016 with costs to pave way for a proper application for grant which will include all the beneficiaries.

8. In response, the petitioner submits that in his petition for letters of administration intestate he stated that he is son to the deceased and therefore a lawful beneficiary of the Estate, a fact which the 1<sup>st</sup> objector confirmed in the affidavit of protest dated 6<sup>th</sup> May 2017. He also averred that he would faithfully administer the estate and render a just and true account of such estate whenever required by law. The petitioner further submits that he petitioned for the letters of administration in good faith and is ready to administer the estate according to the law and distribute the same to all the beneficiaries. He stated that he failed to include all the beneficiaries as he was not guided properly while filing the petition for letters of administration as he did not have a counsel on record to guide him properly since he filed the application in person. In addition to that he submitted that some of the beneficiaries occupy the estate and have shares thereon. The petitioner agrees that the application dated 15<sup>th</sup> December 2016 can be dismissed with no orders as to costs as it is a family matter and all parties be allowed to propose a mode of distribution acceptable to all beneficiaries.

### **Background**

9. The Petitioner MANUEL LIOMOKWANG filed a petition for letters of administration intestate for the Estate of LOTUPOKOL SIRMA (Deceased). He listed the beneficiaries as follows:-

- a. **Chepokamoi Sirma- Widow**
- b. **Longura Sirma – Son**
- c. **Wilson Sirma – son**
- d. **Tudokou Sirma – Son**
- e. **Joel Sirma – Son**
- f. **Lokedikou Sirma – Son**
- g. **Moses Sirma – son**

10. Thereafter he filed summons for confirmation of grant dated 15<sup>th</sup> December 2016 alongside a proposal that the property West Pokot/Siyoi 'A' /1939 measuring 5.4Ha all be transferred to his name MANUEL LIOMOKWANG, the Petitioner.

11. In the affidavit of protest against confirmation of grant by the 1<sup>st</sup> Objector he lists the following as beneficiaries:

- a. **Kepina Merkoi –Daughter.**
- b. **Manuel Yomokwang –Son**
- c. **Chepokachemwolel Kapelinyang – Daughter**
- d. **Wilson Lotupokoi – Son**
- e. **Joel Lotupokol – Son**
- f. **Agather Karita – Daughter**
- g. **Jane Kiyar – Daughter**
- h. **Moses LOTUPOKOL – Son**
- i. **Tudokou – LOTUPOKOL – Son**
- j. **Lokedikou LOTUPOKOL – Son**
- k. **Marko Longura – Son**
- l. **Chepkamoi – Widow**

### **Issues, Analysis and Determination**

12. From the affidavits of Objection the issues for determination are:-

- a. **Whether the application for administration as well as application for confirmation of grant were made in good faith; and**
- b. **Whether the summons for confirmation of grant should be dismissed.**
- c. **Issue of Costs.**

13. With regard to the first issue, it is worth noting, that the Petitioner does not refute the claims that the Objectors are beneficiaries of the Estate of the deceased. The petitioner states that he left them out as he was not represented by an advocate and submits that the summons for confirmation of grant can be dismissed with no orders as to costs. He does not offer any explanation as to why he used a forged signature of the 1<sup>st</sup> Objector. The application was clearly made in bad faith.

14. On the second issue both parties agree that the summons for confirmation of grant should be dismissed, the only issue is that costs. Although the petitioner filed the summons for application of grant without the knowledge of the other beneficiaries, it is my considered view that since the parties herein are all family, each side should bear its own costs.

### **Conclusion**

15. In light of all the above, I make the following final orders on the application before me:-

- a. **The Grant of Letters of Administration Intestate issued to MANUEL LIOMOKWANG on 6<sup>th</sup> June 2016 be and is hereby revoked.**
- b. **The summons dated 15<sup>th</sup> December 2016 be and is hereby dismissed.**
- c. **A fresh Grant of Letters of Administration Intestate shall be issued in the joint names of MANUEL LIOKOKWANG, WILSON LOTUPOKOL and KEPINA MERIKOI.**
- d. **Within thirty (30) days of issuance of a fresh Grant under (c) above, the petitioners shall file summons for confirmation of Grant.**
- e. **Costs of the application shall be in the cause.**

16. It is so ordered.

Ruling delivered, dated and signed in open court today at Kapenguria on this 18<sup>th</sup> day of December 2018.

**RUTH N. SITATI**

**JUDGE**

### **In the presence of**

M/S Chebet for Mr. Nyamu for objectors

M/S Bartilol for M/s Opondo for petitioner

Mr Juma – Court Assistant