



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
SUCCESSION CAUSE NO.227 OF 2006

**IN THE MATTER OF THE ESTATE OF ELI KIMNGENO SIGE *alias* ELI KIPNGENO SIGE-
(DECEASED)**

COSMAS KIPLANGAT NGENO.....APPLICANT

VERSUS

JOHN KIPNGETICH NGENO.....1ST RESPONDENT

GEOFFREY KIPLANGAT NGENO.....2ND RESPONDENT

JUDGMENT

1. This matter relates to the estate of **Eli Kimngeno Sige** (deceased), who died intestate in Motobo sub-location within Kericho on the 7th of June 2006. Letters of administration intestate to his estate were granted to two of his sons, John Kipngetch Ngeno and Geoffrey Kiplangat Ngeno, the 1st and 2nd respondent, on 7th March 2007. The grant was confirmed on 26th September 2013.

2. By an application dated 30th October 2014 brought under certificate of urgency, the applicant, Cosmas Kiplangat Ngeno, sought an order for the revocation of the grant. The basis of the application was that the proceedings to obtain the grant were defective in substance, that it was obtained fraudulently by the making of a false statement or by concealment of something material from the court, and that it ought not to have been confirmed without notice to the applicant.

3. In his affidavit in support of the application, the applicant averred that he was one of the sons of the deceased but that he and his mother, one Clementina Cheboo Sigei, were omitted when the application for grant was made and confirmed. Orders were issued by Ong'udi J on 6th November 2014 staying the grant pending inter partes hearing of the application.

4. The respondents replied to the application through two affidavits. The first was sworn by Geoffrey Kiplangat Ngeno on 20th November 2014. The respondents averred that due process of law was followed in the process of obtaining the grant. They denied that the applicant's mother was married to the deceased, or that the applicant and his mother were maintained by the deceased. It was also their averment that the applicant was aware of the proceedings, and that he had filed objection proceedings which were dismissed. Further, that he was present in court when the grant was confirmed.

5. In his affidavit sworn on 21st November 2014 in opposition to the application, John Kipngetch Ngeno echoed his brother's averments that the applicant and his mother were not members of the family of the deceased, but were strangers. Consequently, no consent was required from them when the application for

grant was made. He however, averred that a meeting was held on 5th September 2006 at home in Motobo where the elders decided that since the applicant was born by the deceased outside wedlock, he should be given 10 acres of land at Ngoina settlement scheme. He annexed to his affidavit minutes of the meeting, at which the applicant was present, when it was resolved that the applicant should get 10 acres at Ngoina, a jua kali plot in Kericho to be shared with one Janet Ngeno, and the Rhonda plot within Nakuru municipality.

6. The parties called oral evidence in support of their respective positions. The applicant testified and called no witnesses, while the respondents called three witnesses.

7. The applicant's case is that he seeks revocation of the grant in this case as he had been left out of the succession proceedings and was never allowed to participate. Further, that he was not given any share in the estate of the deceased. He was a son of the deceased and had taken care of him when he was unwell. He had also been recognised by the deceased in his lifetime. He was therefore asking to be given an equal share with his brothers of the estate of the deceased in accordance with section 35 of the Law of Succession Act which provides for distribution of the estate of an intestate.

8. His oral evidence was that he was a farmer based in Kuresoi. He conceded that he had been given some land in Jua Kali, Kericho with his brother, Kipkoech Ngeno, who was now deceased. With respect to the land in Nakuru, his evidence was that it was bought by the deceased, but that the deceased sold it to him. He also used to take care of the deceased when he was unwell, and that he also used to take care of his brothers presumably the respondents when they were young.

9. According to the applicant, he was given 10 acres of land at Ngoina by the deceased when he was alive. He conceded in cross-examination that he was at the meeting on 5th September 2005 when it was agreed that he should be given the 10 acres at Ngoina. He also conceded that he had attended another meeting on 7th July 2016 when he was shown the 10 acres. He stated that he would reluctantly accept the 10 acres if he was given by the court.

10. The respondents' case was that the objector was aware of the succession proceedings and had sat through meetings of the family. He was also present when the grant was confirmed and he chose not to object. The respondents stated that they did not contest the fact that the applicant was a son of the deceased. They contended, however, that the applicant had been provided for during the lifetime of the deceased. He had been given two plots, one in Rhonda Nakuru and another in Jua Kali area of Kericho town. He had also been offered 10 acres of land in Ngoina which he had declined to accept. The respondents asked the court to take these factors into account in deciding whether or not to revoke the grant.

11. They also argued that the estate of the deceased had been distributed and some of it sold to third parties, a fact they argued the court should consider in determining whether or not to revoke the grant.

12. The respondents called 3 witnesses to support their case. The first witness was Geoffrey Kiplangat Ngeno, the 2nd administrator. He agreed that the applicant was a son of the deceased, but that his mother was not married to the deceased. The deceased had two wives, Esther Sigei and Mary Sigei. That the deceased had told them to give the applicant 10 acres out of Kericho Ngoina/8. That they had subdivided the land and left 10 acres for the applicant at Kericho/Ngoina/8. The land was still available. They had shown the land to the applicant but he had refused to co-operate.

13. In cross-examination, the 2nd administrator conceded that they had not included the applicant in the confirmation of grant. He also stated that the total land comprised in the estate was 69.9 acres.

14. The evidence of the second witness for the respondent, Shadrack Kipsiele Arap Chumo, the area assistant chief of Matobo sub-location, was that he knew the deceased, who was a neighbour. He knew that he had two wives, the first of whom had 5 children and the second two. He had been told by the deceased that the applicant was also his son; that the deceased used to live with the applicant's mother in

Nairobi but they were not married.

15. The assistant chief confirmed that they had held a meeting at home in 2006 when it was decided that the applicant should be given the 10 acres that the deceased had directed he should be given. He had also been present when the applicant had been shown the land but had declined it. In cross-examination, he confirmed that the applicant had been shown the land at Ngoina, though he did not know the title number of the land.

16. The third witness for the respondents was Ali Kiplagat Ruto, also a resident of Motoba, Kericho. He had known the deceased all his life and knew his family. He knew that the deceased had two wives. He also knew the applicant, whom he had asked the deceased about and the deceased had told him that he was his son born outside marriage.

17. He also confirmed that a clan meeting had been held at which it was agreed that the deceased had said that the applicant should be given 10 acres. Another meeting had also been held at which the applicant was shown the land but, according to Mr. Ruto, he started arguing. It had also been decided that the applicant should be given a cow as he had taken care of the deceased. In cross-examination, he stated that he used to work for the deceased so he knew his land. That the deceased also had cattle, vehicles and tractors, as well as tea shares and plots at Nyagacho, but that the applicant was not given any.

18. The parties filed written submissions which I have read and considered alongside their affidavit and oral evidence.

19. There is no dispute that the applicant is a son of the deceased. This has been conceded by all the parties, including the respondents and their witnesses, and it is therefore not an issue that should detain us. He was, according to all the evidence, born outside marriage. However, as he was recognised by the deceased and, it is acknowledged, took care of the deceased during his lifetime, it cannot be argued that he was not a beneficiary of the estate for purposes of succession.

20. It has also been conceded by the respondents that they did not include him when they applied for letters of administration intestate and for the confirmation thereof.

21. I note from the record, however, that prior to the confirmation of grant, that is on 30th July 2013, Counsel for the parties, Mr. Maengwe appearing for the objector and Mr. Motanya for the petitioners had appeared in court before Sergon J. The parties were given time to enable counsel for the parties to take instructions, one would presume with respect to the applicant's claim. The matter was then scheduled for mention on 26th September 2013 for the parties to record a settlement. The record indicates that when the matter next came up before the court, nothing had been filed on behalf of the objector, and the application for confirmation of grant dated 28th February 2013 was allowed as prayed.

22. Thus, it is not correct, as argued by the applicant, that the application for grant and confirmation thereof was made without his knowledge. What is clear, and has been admitted, is that he was not included in the grant or in the confirmation thereof. As a son of the deceased, he was entitled to be included in the list of beneficiaries and to inherit part of the estate of the deceased.

23. I have considered the list of assets belonging to the deceased as set out in form P&A 5. They comprised the following:

i. Kericho/Ngoina/8 - 15.8ha

ii. Kericho/Kipchimchim/4510 - 0.6 ha

iii. Kericho/Kipchimchim/544 - 1.2ha

iv. Kericho/Kipchimchim/580 - 2.2ha

v. Kericho/Kipchimchim/540 - 7.0ha

vi. Shares in Kenya Commercial Bank-CDS Account No. 7508 and 81565

vii. Co-operative Bank of Kenya Limited A/C No. 8316 (shares)

24. In the certificate of confirmation of grant issued on 26th September 2016, the estate of the deceased is distributed as follows:

i. Kericho/Ngoina/8 (15.8 ha)

a. Mary Chemutai Sige-7.9 ha

b. John Kipngetich Ngeno-2.63 ha

c. Priscilla Chepkurui Ngeno-2.63 ha

d. David Kimutai Ngeno-2.63 ha

ii. Kericho/Kipchimchim/4510(0.6 ha)

a. Mary Chemutai Sige-0.176 ha

b. John Kipngetich Ngeno-0.05866 and 0.0383 ha

c. Priscila Chepkurui Ngeno-0.05866 and 0.0383 ha

d. David Kimutai Ngeno- 0.05866 and 0.0383 ha

iii. Kericho/Kipchimchim/544 (1.2 ha)

a. John Kipngetich Ngeno To be shared

b. Priscila Chepkurui Ngeno among the

c. David Kimutai Ngeno three

iv. Kericho/Kipchimchim/580 (2.2 ha)

a. David Kimutai Ngeno To be shared

b. Priscila Chepkurui Ngeno equally between the two

v Kericho/Kipchimchim/540 (7.0 ha)

a. Mary Chemutai Sige-5.2 ha

b. John Kipngetich Ngeno-1.33 ha

c. Priscila Chepkurui Ngeno-0.233 ha

d. David Kimutai Ngeno-0.233 ha

25. The shares held by the deceased at KCB were to be shared between Mary Chemutai Sige, who would get 50%, while John Kipngetich Ngeno, Priscilla Chepkurui Ngeno and David Kimutai would share 50% equally. The three would also share the deceased's shares at Co-operative Bank equally.

26. If one adds up the land parcels distributed out of Kericho/Ngoina/8 as they are set out in the certificate of confirmation of grant, they add up to 15.79ha. It is thus evident that notwithstanding the averments by the respondents that the deceased had directed that the applicant should be given 10 acres out of Kericho/Ngoina /8, they had no intention of honouring the wishes of the deceased: they were intent on dishonouring his wishes and disinheriting the applicant.

27. If that was not the intention, they would not have distributed the Kericho/Ngoina/8 parcel in its entirety, but would have left the 10 acres that they say the applicant was entitled to, according to the wishes of the deceased. The grant confirmed on 26th September 2013 cannot be allowed to stand as it is. Though the applicant was aware of the proceedings but did not file an objection then, nonetheless there was a clear intention by his brothers to disinherit him, and he is entitled to assistance from this court.

28. The total acreage belonging to the deceased was, according to the respondents in their testimony before me, 69.9 acres. The respondents say that the deceased had directed that the applicant should get 10 acres out of Kericho/Ngoina /8. This, I believe is fair in the circumstances. Though there was mention of a plot in Rhonda, Nakuru and Jua Kali in Kericho, there was no evidence placed before me with respect thereto. In any event, it appears that the deceased had intended that the applicant should get 10 acres out of Kericho/Ngoina/8 in addition to the other two plots.

29. Accordingly, I direct that the certificate of confirmation of grant dated 26th September 2013 is rectified as follows with respect to Kericho/Ngoina/8 measuring 15.8ha (or 39 acres):

i. Cosmas Kiplangat Ngeno -10 acres

ii. Mary Sige-14.5209

iii. John Kipngetich Ngeno - 4.843

iv. Priscilla Chepkurui Ngeno - 4.843

v. David Kimutai Ngeno - 4.843

30. I have allocated a larger share of Kericho/Ngoina/8 to Mary Sige as it is evident from the certificate of confirmation of grant issued on 26th September 2013 that the beneficiaries had intended that she should get a larger share of that land parcel.

31. The rest of the distribution of the estate shall remain as set out in the certificate of confirmation of grant.

32. With respect to costs, given that the respondents excluded the applicant despite being fully aware that he was their brother and that the deceased had directed that he should be given 10 acres out of his estate, I direct that the respondents meet the applicant's costs of these proceedings.

33. It is so ordered.

Dated, Delivered and Signed at Kericho this 24th day of July 2017.

MUMBI NGUGI

JUDGE