



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**SUCCESSION CAUSE NO.149 OF 2001**

**IN THE MATTER OF THE ESTATE OF KIPLANGAT KETER (DECEASED)**

**JOSHUA KIPROP LANGAT.....1<sup>ST</sup> PETITIONER**

**DICKSON CHERUIYOT LANGAT.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**EZEKIEL CHEPKOWONY.....PROTESTER**

**RULING**

1. The present proceedings relate to the estate of Kiplangat Keter (deceased), who died on the 24<sup>th</sup> of April 1974. The deceased was survived by the following beneficiaries:

- i. Simon Kimutai Langat**
- ii. Joshua Kiprop Langat**
- iii. Paul Kipyegon Langat**
- iv. Dickson Cheruiyot Langat**
- v. Daudi Kimisk Langat**

2. The sole asset of the estate of the deceased comprised land title number Kericho/Kapsuser/1772.

3. An application for grant of letters of administration intestate to the estate of the deceased was made on 27<sup>th</sup> May 2002 by Joshua Kiprop Langat and Dickson Cheruiyot Langat, and were duly issued on 24<sup>th</sup> July 2002. In the undated form P & A 5 attached to their application, the applicants indicated that the estate had no liabilities.

4. By an application dated 1<sup>st</sup> April 2009, one Mr. William Kiprono Too sought revocation of the grant of letters of administration intestate issued to Joshua Kiprop Langat and Dickson Cheruiyot Langat. The revocation was sought on the basis that the proceedings to obtain the grant were defective in substance, and the grant was obtained fraudulently by the concealment from the court of something material to the case. The applicant also averred that the administrators had failed to apply for confirmation of the grant within one year from the issuance thereof. They had also concealed from the court that the applicant was a beneficiary of the estate, and further, had proceeded to distribute the land comprised in the estate to themselves, while he still occupies a portion of the land, Kericho/Kapsuser/1772.

5. In her ruling dated 3<sup>rd</sup> July 2015, Ong’udi J, in exercise of powers granted by section 76(d) (i) and (ii), revoked the grant *suo motu*. She declared any subdivision of the original land parcel number Kericho/Kapsuser/1772 null and void and that all the titles that had emanated therefrom be cancelled. She also directed that the land shall revert to the original title until the succession cause is heard and determined by the court in accordance with the law.

6. On 22<sup>nd</sup> July 2015, the petitioners and the objector, represented by Mr. Siele Sigira, appeared before Ongudi J. Also present was the Land Registrar, Kericho. The Land Registrar produced the green cards in respect of the land and confirmed that he had cancelled the titles emanating from title number Kericho/Kapsuser/1772 as ordered by the court on 3<sup>rd</sup> July 2015. The court also directed that the petitioners file for confirmation of grant and that the objector, Mr. William Kiprono Too, should be served.

7. On 21<sup>st</sup> September 2015, Joshua Kiprop Langat and Dickson Cheruiyot Langat applied for confirmation of the grant of letters of administration intestate. In their affidavit in support of the application for confirmation of grant, the administrators proposed that the estate of the deceased be distributed as follows:

- i. Simon Kimutai Langat 1.89 acres**
- ii. Joshua Kiprop Langat 1.69 acres**
- iii. Paul Kipyegon Langat 2.64 acres**
- iv. Dickson Cheruiyot Langat 2.74 acres**
- v. Daudi Kimisik Langat 1.54 acres**
- vi. Daniel Kimutai Ngeno 1 acre**
- vii. Cheruiyot Koskei Rono 1.45 acres**
- viii. Ezekiel Chepkwony 0.8 of an acre**
- ix. Joyland Church 0.15 of an acre**
- x. Erick Kiplangat Ngeno 0.25 of an acre**
- xi. Geoffrey Kipkemoi Tanui 0.6 of an acre**
- xii. David Kipngetich Rotich 0.25 of an acre**
- xiii. David Kipkoech Rono 0.30 of an acre**
- xiv. Jonathan Kiplangat Sigei 0.55 of an acre**

8. Following the application for confirmation of grant, Ezekiel Chepkwony filed an affidavit of protest sworn on 18<sup>th</sup> December 2015. Mr. Chepkwony avers that the administrators have fraudulently concealed the fact that he had bought 0.50 ha of land from Paul Kipyegon Langat who was also a son of the deceased. He further avers that the parcel of land had been transferred to him in 2005 as parcel No. **Kericho/Kapsuser/4394**. According to the protestor, the said parcel of land had been transferred to him pursuant to a court order dated 13<sup>th</sup> June 2003. The said order, issued by the Principal Magistrate’s Court in Kericho in Miscellaneous Civil Application No. 81 of 2002, had directed that **Kericho/Kapsuser/4045** should be subdivided into two portions and 1.25 acres thereof be transferred to the protestor herein.

9. The court notes from the certified copy of the green card annexed to the affidavit of protest that land parcel number Kericho/Kapsuser/4045 had been excised from title number Kericho/Kapsuser/1772. The subdivision of title number Kericho/Kapsuser/4045 resulted in two parcels, namely Kericho/Kapsuser/4393 and Kericho/Kapsuser/4394, and the protestor was allocated title number Kericho/Kapsuser/4394. The protestor's title was cancelled, as noted earlier, following the orders of Ong'udi J which revoked all titles emanating from sub-division of property title number Kericho/Kapsuser/1772.

10. The court notes further that though an application dated 24<sup>th</sup> February 2017 for an injunction was made by the protestor and orders issued temporarily restraining dealings with title number Kericho/Kapsuser/4394, it was an application in futility in view of the orders of Ong'udi J made on 3<sup>rd</sup> July 2015 cancelling all titles resulting from subdivision of Kericho/Kapsuser/1772.

11. In their response to the protest, the petitioners filed an affidavit dated 3<sup>rd</sup> March 2017 in which they averred that Paul Kipyegon Langat had not informed them of the transaction between himself and the protestor. They also averred that should the protestor have such a claim against the said beneficiary, he should pursue it in a different forum, not in the present succession cause.

12. The parties hereto filed written submissions in support of their respective positions of the protest. In his submissions dated 25<sup>th</sup> May 2017, the protestor concedes that he does not have a direct claim against the estate of the deceased. He submits that his claim is from the share of one beneficiary, Paul Kipyegon Langat.

13. In their submissions in response, the petitioners/respondents contend that the property claimed by the deceased is not part of the estate of the deceased; that the property that belongs to the estate is title number Kericho/Kapsuser/1772. They also question the jurisdiction of this court to entertain the protest, contending that it should be heard in the Environment and Land Court.

14. It is also their contention that if the protestor had obtained any title whatsoever, it was not a good title as it was not sold to him by the deceased, and none of the beneficiaries had the right to sell the land to the protestor.

### **Analysis and Determination**

15. The protest before me raises one core issue: whether the protestor is entitled to a property known as title number Kericho/Kapsuser/4394, which had allegedly been excised out of the estate of the deceased and sold to the protestor by one of the beneficiaries of the estate.

16. A subsidiary issue raised by the petitioners/respondents relates to the jurisdiction of this court to deal with the issue that the protest raises. The petitioners have argued that the issue should be dealt with by the Environment and Land Court. I believe that Rule 41 of the Probate and Administration Rules vests in this court the requisite jurisdiction to hear and determine the question raised in the protest. It empowers the court, in an application for confirmation of grant, to ***“hear the applicant and each protestor and any other person interested...”*** What orders the court will grant upon hearing the protestor(s), however, will depend on the nature of the protest and the orders sought by the protestor.

17. In the protest before me, the protestor claims to have an interest in the deceased's estate as a purchaser, not from the deceased, but from a beneficiary of the estate, a son of the deceased by the name Paul Kipyegon Langat. He claims a parcel of land known as Kericho/Kapsuser/4394, which had been excised out of Kericho/Kapsuser/1772. As already noted earlier in this ruling, Ong'udi J had addressed herself to this matter in her ruling dated 3<sup>rd</sup> July 2015. In that ruling, details of which I have set out above, she ruled that the subdivision of the original title Kericho/Kapsuser/1772 was null and void. She further proceeded to cancel the titles issued from the said subdivision, and to order that the property reverts to the original title.

18. By his application and protest, the protestor is, in a roundabout way, asking the court to reverse the orders of Ong’udi J, which this court cannot do. He was a purchaser, as he concedes, from a beneficiary of the estate. The beneficiary, in purporting to sell a portion of the said property, was intermeddling with the estate. If the protestor has a claim against a beneficiary with respect to an alleged sale transaction, this is not the forum for such a claim. As was recognised by the court in **the Estate of G K K (Deceased) [2017] eKLR**, the primary function of a probate court is to distribute the estate of a deceased person. It is not to adjudicate on the validity or otherwise of sale transactions, particularly where such transactions have been undertaken in violation of the provisions of the Law of Succession Act that prohibits intermeddling with the estate of a deceased person. In **Paul Gituma Kiogora vs Doris Mukiri Magiri & anor [2017] Eklr** Musyoka J stated as follows:

***“I see the claim by the Protestors is that of a purchaser and is based on a sale of land agreement with the widow of the deceased. Doubtless, the agreement was done after the death of the deceased and before confirmation of the grant herein. Such purchaser is not a beneficiary of the estate and should not be tried in a succession cause.***

19. The court went on to note that the protestors before him had recognised that their claim as purchasers could not be dealt with in a succession cause, they not being entitled as beneficiaries of the estate. He stated as follows:

***I am glad the protestors recognized this reality of law and made the following submission:-***

***“The law verily clear (sic) the protestors cannot inherit the estate of the deceased since they are not dependants; however we urge the honourable court to invoke the Provisions of Rule 73 of the Probate and Administration rules, which gives the court the inherent power to make orders that many [sic] make ends of justice to be met”.***

***As the protestors are not beneficially interested in the estate, their claim cannot be litigated in this succession cause or even be set aside by this court under rule 41(3) of the Probate and Administration Rules.***

21. In the matter before me, the protester has acknowledged that he does not have a claim against the estate: he had not purchased the parcel of land that he claims from the deceased, but from a beneficiary, prior to the confirmation of grant and distribution of the estate.

22. Under section 45(1) of the Law of Succession Act, a beneficiary to the estate has no right or authority to sell any part of the estate prior to confirmation. It provides that:

***(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.***

23. In his decision in **Paul Gituma Kiogora vs Doris Mukiri Magiri & Anor (supra)** Musyoka J observed as follows:

***“Given the circumstances of the case and the fact that the sale of the land violated the Law of Succession Act, the court cannot draw from its inherent jurisdiction to assist an unlawful transaction.”***

24. In this case the protester bought property belonging to a deceased person without the grant to the estate having been confirmed. Paul Kipyegon Kiplangat, in purporting to dispose of the property of the deceased, committed an offence under section 45(2) of the Law of Succession Act. The purported subdivision of the land has already been declared null and void by the court. In the circumstances, the present protest has no merit. Such claim as the protestor has in respect to land that Paul Kipyegon Kiplangat purported to sell to him from the estate of the deceased must be directed at the said Paul Kipyegon Kiplangat in the appropriate forum. It does not fall for determination in this succession cause.

The protest is therefore dismissed, but with no order as to costs.

25. The court notes, both from the protest and the affidavit by the petitioners for confirmation of grant, that another beneficiary had purported to sell property to the protestor out of the estate of the deceased. The protestor avers that the petitioners have only listed, in the affidavit in support of the application for confirmation of grant, only the 0.8 acres that he purchased from Daudi Kimisik Langat. The petitioners have included the protestor, Ezekiel Chepkwony, as a beneficiary, evidently in respect of the said 0.8 acres bought from Kimisik Langat.

26. It bears repeating that the protestor is not a beneficiary of the estate. He cannot properly be included as a beneficiary, to whom any part of the deceased's estate devolves on transmission. As the administrators, however, do recognise him as entitled to the portion of 0.8 acres, the said parcel shall be transferred to him by the administrators upon payment of the requisite government taxes.

27. There remains one unresolved issue in relation to the estate of the deceased. **Mr. William Kiprono Too** had filed an application dated 1<sup>st</sup> April 2009 seeking revocation of the grant to the petitioners. I have set out elsewhere above the grounds on which the application had been made. On 22<sup>nd</sup> July 2015, Ong'udi J had directed that the present protestor and the said William Kiprono Too must be served with proceedings in this matter. The matter again came up before her on 10<sup>th</sup> March 2016 when the court directed that the issues raised by William Kiprono Too and Ezekiel Chepkwony should be sorted out. The court further directed that the two should file and serve their protests within 21 days of that date. While Ezekiel Chepkwony filed his protest which this court has disposed of in this ruling, none was filed by Mr. William Kiprono Too. It seems, indeed, that the said Too has taken no further action to prosecute his claim against the estate of the deceased, if that is where his claim lies.

28. The court notes from the affidavit sworn by Mr. Too on 1<sup>st</sup> April 2009 seeking revocation of the grant to the administrators in this cause that he claims an interest as creditor. He avers at paragraph 2(i) (a) that

***(a) It has not been disclosed that I am a creditor to the estate of the late Kiplangat Keter. Currently I occupy a portion of land originally known as Kericho/Kapsuser/1772.***

29. The court has, in the course of writing this ruling, noted a letter from the firm of Siele Sigira & Co. Advocates addressed to the firm of Orina & Co. Advocates and copied to the Deputy Registrar of this seeking to stay further proceedings in this matter until the said firm is served with all applications filed in the matter. The said letter refers to a caveat placed on 1<sup>st</sup> January 2009 against proceedings in this matter by Willaim Kiprono Too, as well as the directions of Ong'udi J of 22<sup>nd</sup> July 2015 that he should be served.

30. The court observes that the said Mr. Too has not taken any steps in this matter since 2015, and further notes that his caveat and objection were filed 8 years ago. A serious creditor would definitely have taken steps to pursue his claim.

31. Nonetheless, the court notes that indeed neither Mr. Too nor his advocate appears to have been served with notices to appear in court as directed on 22<sup>nd</sup> July 2015. This may explain why he has not filed a protest as directed on 10<sup>th</sup> March 2016.

32. It is not clear whether or not Mr. Too is a creditor of the estate or, like the present protestor, he too purchased a portion of the estate from a beneficiary. In the event that he purchased a portion of the property comprised in the estate from a beneficiary, then he would be in the same position as the present protestor, Mr. Ezekiel Chepkwony, and must litigate his claim against the beneficiary elsewhere, as no beneficiary has a right to dispose of the estate of a deceased person prior to confirmation of grant.

33. Should he, however, be a creditor of the estate, having purchased a portion of the land from the deceased registered owner, then he must file his protest within the next **thirty (30) days** hereof for consideration by the court. Should he fail to do this, then the petitioners may proceed to fix the

application for confirmation of grant dated 21<sup>st</sup> September 2015 for hearing.

**Dated, Delivered and Signed at Kericho this 31<sup>st</sup> day of October 2017.**

**MUMBI NGUGI**

**JUDGE**