



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO.311 OF 2007

IN THE MATTER OF THE ESTATE OF THE LATE KIBET ARAP KIRUI ALIAS KIBET KIRUI

SILVESTER MARITIM KIRUI.....1ST PETITIONER/RESPONDENT

CHRISTINE BETT.....2ND PETITIONER/RESPONDENT

FRANCIS KIPKORIR BETT.....3RD PETITIONER/RESPONDENT

VERSUS

HILLARY KIPROTICH TIROP.....1ST OBJECTOR/APPLICANT

EDWIN CHERUIYOT KIRUI.....2ND OBJECTOR/APPLICANT

RULING

1. The applicants in this matter, **Hillary Kiprotich Tirop** and **Edwin Cheruiyot Kirui** have filed the application dated 22nd May 2017 in which they seek the following orders:-

- a. That this application be certified as urgent and service thereof be dispensed with in the first instance.*
- b. That the subdivision of the original parcel number KERICHO/KIPCHICHIM/238 be declared null and void. That all titles that have emanated therefrom be cancelled.*
- c. That the land be reverted back to its original title and the same to be resurveyed and subdivided as per the certificate of confirmation of grant dated 12.04. 2016.*
- d. That the costs of this application be provided for and borne by the Petitioners/Respondents.*

2. The application is based on the following grounds:

- a. That the petitioners/respondents are in the process of fraudulently obtaining a new title on the land parcel KERICHO/KIPCHICHIM/238 as per the certificate of confirmation of grant dated 24th September 2013.*

b. That the said certificate of confirmation of grant has been rectified and an amended one issued on 12th April 2016 over the estate of the late KIBET ARAP Kirui alias KIBET KIRUI (deceased).

c. That even though the petitioners/respondents knew about the said rectification they fraudulently misled the land registrar to cancel the original title of parcel of land KERICHO/KIPCHIMCHIM/238 and are in the process of obtaining a new title to the detriment of the applicants herein.

d. That the objectors/applicant will suffer irreparable loss and damages if the orders herein are not granted.

3. The application is not opposed. Though the respondents were granted time over a period of four months to file a response, they did not do so. When the matter came up for hearing on 19th September 2017, they had changed advocates and sought more time on the basis that their new advocates were newly instructed, an argument that the court deemed to be intended solely to delay the hearing of the application further and consequently disallowed.

4. The applicants are grandchildren of the deceased in this matter, Kibet Arap Kirui *alias* Kibet Kirui. Under a certificate of confirmation of grant issued in this court on 24th September 2013, Tabelga Chelangat Kirui, the widow of the deceased, was to hold the sole asset of the estate in trust for other beneficiaries of the estate. However, the applicants approached the court to rectify the confirmation of grant so that the respective shares of the beneficiaries could be indicated as they were in danger of being evicted from the land by the respondents. The court (Ong'udi J) allowed the application in her ruling dated 24th March 2016.

5. The applicants averred in the affidavit sworn in support of the application dated 22nd May 2017 now before me that when they went to the Land Registry at Kericho following the issuance of the orders of Ong'udi J, they found that the title to the land, **Kericho/Kipchimchim/238**, had been cancelled and the Registrar was in the process of issuing a new title in the name of **Tabelga Chelangat Kirui**. They prayed for the title to be cancelled and for the land to revert to the original title to allow for distribution on the basis of the confirmed grant issued pursuant to the orders of 24th March 2016.

6. When the parties appeared in court on 30th May 2017, Mr. Kirui for the respondents informed the court that the original title was still intact, and no change had taken place. However, by his affidavit sworn on 12th June 2017, Edwin Cheruiyot Kirui averred that a search at the Kericho County Land Registry indicated that title number **Kericho/Kipchimchim/238** was closed on 24th February 2014 and subdivision done resulting in four parcels of land, namely:

i. Kericho/Kipchichim/6108

ii. Kericho/Kipchichim/6109

iii. Kericho/Kipchichim/6110

iv. Kericho/Kipchichim/6111

7. I have examined the green card annexed to the affidavit of Edwin Cheruiyot Kirui referred to above against the proceedings and rulings of this court. The initial confirmed grant in this matter was issued on 24th September 2013. It was presented to the Lands Office at Kericho and registered as an entry against the title on 11th December 2013. A further entry was made on 24th February 2014 in which the old title No. **Kericho/Kipchichim/238** was closed and title numbers Kericho/Kipchichim/6108, 6109, 6110 and 6111 issued.

8. It will be noted from the record of the court, however, and the various orders and rulings made in this matter, that there was no point at which an order was made for subdivision of the land parcel in this cause into four parcels of land. The certificate of confirmation of grant issued on 24th September 2013 indicated that the land would be transferred to and held by Tabelga Chelangat Kirui in trust for the beneficiaries of the estate. Under the confirmed grant issued on 14th April 2016, the property was to be subdivided into five parcels as follows:

- i. Silvester Maritim Kirui-4.5 acres**
- ii. Christine Bett-4.5 acres**
- iii. Francis kipkorir Bett-4.5 acres**
- iv. Edwin Cheruiyot Kirui-2.25 acres**
- v. Hilary Kiprotich Tirop-2.25 acres**

9. It is evident therefore that such action as the Land Registrar at the Kericho Land Registry took at the behest of the respondents in issuing the four titles was unlawful and not in keeping with the orders of this court. Consequently, it is my finding that the application dated 22nd May 2017 is merited, and it is hereby allowed. Orders are hereby issued as follows:

(a) That the subdivision of the original parcel number Kericho/Kipchichim/238 be and is hereby declared invalid, null and void.

(b) That title numbers Kericho/Kipchichim/6108, Kericho/Kipchichim/6109, Kericho/Kipchichim/6110 and Kericho/Kipchichim/6111 which have emanated from the subdivision and cancellation of title number Kericho/Kipchichim/238 be and are hereby cancelled.

(c) That the land comprising the estate shall revert to its original title Kericho/Kipchichim/238 and the same shall be resurveyed and sub-divided as per the certificate of confirmation of grant dated 12.04.2016.

(d) That the applicants' costs in respect of this application shall be borne by the petitioners/respondents.

Dated, Delivered and Signed at Kericho this 18th day of October 2017.

MUMBI NGUGI

JUDGE