



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO.30 OF 2003

IN THE MATTER OF THE ESTATE OF KIBET ARAP BOR (DECEASED).

CHEPKOECH MUTAI.....APPLICANT

VERSUS

ESTHER CHEPKORIR.....RESPONDENT

RULING

1. The Applicant herein filed a Chamber Summons dated 15th September, 2014 seeking the annulment of the Grant of Letters of administration issued to the Respondent on 25th January, 2011 and confirmed on 24th September, 2013 on grounds that;

- a. *The grant and confirmation thereof was obtained fraudulently by making a false statement that the petitioner, who has no interest in the estate whatsoever, was on the heirs of the estate.*
- b. *The Petition did not disclose the true dependants, to wit, the Applicant and her two sons.*
- c. *The applicant who is a very elderly lady did not consent to the petition.*
- d. *The petition itself was not even signed by the Petitioner.*

2. The application is supported by her affidavit in which she claims that she is a widow to the deceased and had two (2) sons with him yet they have been locked out of the deceased's estate.

3. She states that she has always lived on the land **L.R KCO/KIPCHIMCHIM/1216**. That she buried the deceased on this land. She had also been issued with a burial permit and death certificate respectively (CM2 and CM3).

4. That early 2014 the Petitioner entered into the land with surveyors accompanied by the area Assistant Chief with the intention of subdividing the land in issue to which she vehemently protested.

5. Upon making inquiries she learnt that the Petitioner had filed this Succession Cause and a grant was issued to her. That the Petitioner obtained another birth certificate which she used to file this Petition.

6. She also states that the Petitioner/Respondent does not reside in the area of Kapkugerwet but comes from an area called Siongiroi of Bomet County.

7. The Petitioner/Respondent filed a Replying Affidavit in which she says the deceased **Kibet Arap Bor** died unmarried on 18th October, 1999. That the Applicant's son **Francis Kipruto Langat** filed an objection to the succession proceedings but later withdrew the objection.

8. She however admits that the Applicant cohabited with the deceased prior to his demise. She annexed some proceedings from the Land Disputes Tribunal concerning this matter (“ECS-4”).

9. Both Counsel appearing for the parties agreed to dispose of the application by way of written submissions. They did file the said submissions and highlighted them. Mr. Langat for the Applicant in his submissions identified the following as the issues for determination;

a. Whether or not the grant of letters of administration issued herein and confirmation thereof is unambiguous, has no errors and clearly identifies the rightful heirs of the estate?

b. Which law is applicable to the administration of the estate of the deceased?

c. Whether or not the heirs of the estate were duly and or properly identified?

d. Whether or not consent of the applicant and that of her children was necessary before issuance of grant and if the answer is to the affirmative, was it ever obtained before the grant was issued and confirmed?

e. What orders can the court subsequently issue and who bears the costs?

10. He asked the court to confirm that the Applicant has an interest in the estate. He pointed out that there was no letter from the Chief confirming that the Petitioner/Respondent is from his local area of administration. That there was no confirmation of the beneficiaries, and the Applicants consent was never sought.

11. Mr. Mutai for the Petitioner/Respondent opposed the application saying the Applicant was never married to the deceased, and she was not related to him. That she was another person's wife and had children.

12. He reiterated what is contained in the Petitioner/Respondent's Replying Affidavit. He further submitted that the sole objector who is the Applicant's son had filed an objection which he later withdrew and a grant was issued.

13. I have considered the application together with the affidavits, annexures and the submissions by Counsel. I have equally had the privilege of perusing the record herein.

14. The record reveals the following which will assist this court in determining the issue before it. They are as follows;

- The deceased died on 18th October, 1999.

- The Applicant obtained a death certificate B No.567100 issued on 16th November, 1999 (CM3).

-The Petitioner/Respondent obtained a death certificate B No.797558 issued on 31st October, 2003.

- The Petition was filed on 20th March, 2003.

- On form P&5 the Petitioner/Respondent has identified herself as the widow of the deceased together with nine (9) sons and five (5) daughters, as dependants.

- Francis Kipruto Langat S/O the Applicant filed an objection and cross petition to the grant which

were filed on 17th November, 2003 and 24th May, 2004.

- Another objection was filed by M/s Matwere & Co. Advocates on 14th October, 2004. It is dated 2nd October, 2004. The objectors in this one were Kipsigei Arap Muge & Cheruiyot Arap Chumo.

- On 25th January, 2011 the objection by Kipsigei & Cheruiyot dated 2nd October, 2004 was withdrawn by Mr. Matwere acting for them.

- On the same 25th January, 2011 Mr. Chelule for Petitioner and Mr. Matwere for the two objectors agreed that letters of administration be issued to the Petitioner.

- The grant was issued and later confirmed on 24th September, 2013.

15. **ISSUE NO. (I)**

What was the relationship between the Petitioner and the deceased?

As stated earlier in Form P&A 5 filed herein the Petitioner indicated that she was a widow of the deceased. In her Summons for Confirmation of grant she has at paragraph 1 of the affidavit sworn on 12th July, 2013 stated;

“That I am the widow of the deceased and therefore competent to swear this affidavit.”

16. At paragraph 3 of the same affidavit she has gone further to enumerate the several children of the deceased as in Form P&A 5.

At paragraph 6 she avers;

“That as the administrator and the only widow of the deceased, I will hold the above asset in trust for the other rightful beneficiaries.”

17. The deceased died on 18th October, 1999 and the Petitioner/Respondent was only able to obtain a death certificate on 31st October, 2003. It is clear from the tribunal proceedings, annexed to the Petitioner/Respondent's Replying Affidavit that the Petitioner was never a wife of the deceased herein. She was a wife of one Arap Soi Maritim.

18. At paragraph 7&8 of her Replying Affidavit sworn on 29th January, 2015 she avers as follows;

Paragraph 7:

*“That it is **NOT** true that the Applicant herein is the widow of the deceased, **KIBET ARAP BOR**, as the deceased was never married and the Applicant just cohabited with the deceased before his demise.”*

Paragraph 8:

“That the deceased and the Applicant herein did not have children together however the Applicant had three (3) sons with a different person before she started cohabiting with the deceased.”

19. From the above averments and presentations by the Petitioner/Respondent it is clear that she represented herself to the court as the widow of the deceased, a fact she knew to be false. She has also presented some proceedings from the Land District Tribunal ('ECS-4'). A perusal of the proceedings shows that it is only the claimant (Petitioner/Respondent) and her witnesses who testified and the elders went ahead to deliberate on the matter. The Objector **Francis Langat** was never given a hearing which is

against the tenets of natural justice.

20. The decision of these elders cannot be relied on by any Court of Law because;

(i) It was never filed in court for adoption.

(ii) The matter deliberated on, was a succession cause in which the Land District Tribunal had no jurisdiction under the repealed land district act.

21. From the record it is clear that the objection withdrawn was the one dated 2nd October, 2004 and it related to **Kipsigei Arap Muge** and **Cheruiyot Arap Chumo**. The objection and cross petition filed by **Francis Kipruto Langat** who is the sole objector applicant was not withdrawn and it was never addressed. Mr. Matwere was not acting for the said Francis K. Langat.

22. The Counsel appearing on 25th January, 2011 i.e Mr. Chelule for Petitioner and Mr. Matwere for two objectors misled the court into assuming that Mr. Matwere's objection was the only one on record. Had the court been aware that the Objection by Francis was still pending it could not have issued the letters of grant to the Petitioner as agreed to by the Counsel on record.

23. My finding therefore is that the grant of letters of administration was erroneously issued by the Court at that point. It follows that the certificate of confirmation that followed cannot be left to stand.

24. From what I have set out hereinabove it is clear that the Petitioner/Respondent is not a widow of the deceased as she presented herself to the Court. She lied on oath through her affidavits. The many defendants listed in her P&A 5 and affidavits are not the deceased's dependants.

25. The Petitioner/Respondent has admitted that indeed the Applicant lived with the deceased before his demise. That why Francis Langat laid a claim of being the deceased's son. It is also not disputed that the Applicant and her children are the ones occupying the deceased's land. The Petitioner/Respondent lied to the Court in order to inherit the deceased's estate. She had even to get a 2nd death certificate when another one had already been issued to the Applicant four (4) years earlier.

26. I find that the Petitioner/Respondent is not a widow of the deceased. The person the deceased was living with prior to his demise is the Applicant. He accepted her the way she was and it is not for the Applicant and others to determine which children the Applicant came with or did not come with. The insincerity and fraud committed by the Petitioner/Respondent is excusable.

27. I therefore allow the application dated 15th September, 2014 and make the following orders;

(i) The Applicant and her children are the beneficiaries of the deceased.

(ii) The grant of letters of administration to Esther Chepkorir Soi on 25th January, 2011 and confirmed on 24th September are hereby annulled. Any transfers based on the annulled grant is revoked.

(ii) A fresh grant of letters of administration to issue to Chepkoech Mutai;

(iii) The grant is also confirmed in her name.

(iv) The property L.R. Kericho/Kipchimchim/1216 to be registered in her name in trust of her sons Francis Kipruto Langat and John Cheruiyot Langat.

(v) The Petitioner/Respondent is condemned to pay costs owing to her conduct in this succession cause.

Orders accordingly.

DELIVERED, SIGNED AND DATED THIS 21ST DAY OF DECEMBER, 2015.

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H.I.ONG'UDI

JUDGE