



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS SUCCESSION CAUSE NO. 223 OF 2010**

**IN THE MATTER OF THE ESTATE OF KIPRUGUT SINGOEI (DECEASED)**

**BETWEEN**

**AGNES JERUTO BARSOSIO ..... 1<sup>ST</sup> PETITIONER/RESPONDENT**

**KIPKEMEI ARAP TUWEI ..... 2<sup>ND</sup> PETITIONER/RESPONDENT**

**VERSUS**

**JANE JERONO SINGOEI ..... OBJECTOR/APPLICANT**

**JUDGMENT**

Before this court for determination is Summons for Revocation of Grant dated 9th September, 2010. The Applicant is the widow of the deceased by the name Jane Jerono Singoei. It is brought under S. 76 of the Law of Succession Act and Rule 44 of the Probate and Administration Rule.

From the face of the application, the grant of Letters of Administration was issued to Agness Jeruto Barsosio and Kipserem Arap Tuwei on 9th September, 2009. It was thereafter confirmed on 28th June, 2010.

There were two parcels of land related to the estate namely **Nandi/Kamobo/15** and **Nandi/Kamobo/22**. Upon the confirmation of the grant, several titles were created from the land. As such the Applicant also prays that those titles be cancelled.

There are three grounds upon which the application is premised:-

1. The Principal Magistrate's court in Kapsabet issued the grant without jurisdiction.
2. The grant was issued fraudulently through misrepresentation of facts to the Applicant who is a lay person in legal matters.
3. The distribution of the estate was done without the consent of the Applicant.

The application is supported by the affidavit of the Applicant sworn on 9th September, 2010. She deponed that the co-administrators of the estate were beneficiaries only by way of purchase but had no blood relationship with the deceased.

She stated that land No. Nandi/Kamobo/22 in Kapsabet measured about 4.2 acres. It has rental

houses each fetching a rent of Ksh. 600/= per month and Nandi/Kamobo/15 measuring 6.8 Hectares located 200 metres from Kapsabet – Eldoret main road. She knew that the value of the estate was more than Ksh, 100,000/= but since she was a lay person, she did not know that the succession cause ought to have been determined in the High Court pursuant to Sections 48 and 49 of the Law of Succession Act.

The Applicant further stated that the grant was distributed in her absence and the whole of the two parcels of land were distributed to her daughter-in-law one Rosemary Jebet. That she realized later that the third co-administrator was coercing her to give her the title to the land so that she transfers them to her, but unfortunately her daughter in law had already transferred them to herself.

Kipserem Arap Tuwei, the 2nd Respondent herein swore a Replying Affidavit on 17th February, 2011. He deponed that the Applicant was aware of the succession process and in fact took a lead position thereof. She indicted that the deceased had seven beneficiaries. Two of the deceased's sons were to share the two portions of land in equal proportions of five (5) acres each while the Applicant was to get the larger portion of 7.4 acres.

He further stated that the Applicant's application had been overtaken by events because the plots had already been sub-divided and new titles processed pursuant to the confirmed grant. That if the court deems it fit to annul the grant, then the Applicant should be ordered to meet all the costs of processing the titles and the succession cause.

On the 18th July, 2012, rosemary Jebet, the deceased's daughter in law also swore a Replying Affidavit. He averred that the application is an afterthought, misconceived, an abuse of the court process and ought to be dismissed.

She deponed that the Applicant was all along aware of the succession cause and consented to the mode of distribution of the estate. According to Rosemary Jebet, she only got two portions of land, one measuring 4.2 acres and another 0.8 acres making a total of 5.0 acres for which she received the titles. The Applicant wanted to disinherit her because she had bad blood relations with the family since their only serving son Boaz killed their other son (Wilson), who was her husband. The Applicant on the other hand got a total of 7.4 acres. She further stated that the Magistrate's court had jurisdiction to entertain the succession cause and that the Applicant was ignorant of the law in this respect.

This dispute involved the Applicant and the 2nd Interested Parties. At the commencement of the proceedings learned counsel Mr. Chemwok for the 2nd Interested Party informed the court that although the dispute revolved around the 2nd Interested Party and the Applicant, all other Interested Parties ought to be involved because they would be affected by the orders given. Counsel for the Applicant, Mr. Were on the other hand indicated that since the dispute revolved around only one parcel of land namely Nandi/Kamobo/22, other Interested Parties who did not benefit from it would not be affected by the outcome of the decision.

At this juncture therefore, it is important to point out that the request for nullification of the grant cannot affect only some assets. If the grant is revoked, it would affect the whole estate for which it was issued. However, the court can only address a dispute filed by the parties on record. Unless for very good reasons, parties who are not a party to the dispute cannot be fetched to participate in the dispute. If the outcome of the dispute affects them, though, the court shall direct that they be served with that outcome for their action and information. The latter applies in the present scenario.

Parties agreed to dispose of this application by way of adduction of viva voce evidence. Each of them called only one witness.

The Applicant testified as PW1. In a nutshell, she testified that her daughter-in-law was not entitled to Plot No. Nandi/Kamobo/22 (hereafter Plot No. 22). She stated that when she consented to the confirmation of the grant, she was of the impression that she (Rosemary) would only

facilitate the distribution of the estate. She did not intend that she gets the whole parcel. She was only allowed to build a house on it by her late husband which did not entitle her to inherit it. She said the plot has rental houses which ought to go to her.

In cross-examination, PW1 agreed that she participated in the succession cause before the Magistrate's court. She said that each of the sons of the deceased was to get five (5) acres. She said that Plot No. 22 was 4.2 acres but there was no agreement that Rosemary would get an additional 0.8 acres from Plot No. 15 to make up for 5 acres.

She also agreed to attend the meeting at the Land Control Board. She said she consented to the transfer of the land but not its subdivision.

She stated that she continues to collect the rent from the rental houses on Plot No. 22 to which Rosemary has never objected. She agreed that Rosemary and her son were entitled to a share of the deceased's estate. She stated that her claim is only on 0.2 acres of the portion that the rental houses are built. She did also state that she was present when the land was surveyed and allocated to the buyers.

Rosemary Chebet testified as DW1. She stated that PW1 was her mother-in-law having been married to her deceased son Wilson Cheruiyot Rugut. The latter was killed by his own brother Boaz Rugut.

She testified that her mother-in-law (PW1) filed the succession cause before the Magistrate's Court in Kapsabet because she wanted to transfer titles to some people who had bought part of the deceased land. PW1 led the entire process. DW1 got portions of land from the two parcels of the deceased's land so that the two could total her entitlement of five (5) acres. Therefore, after the confirmation, she had two titles processed accordingly.

She produced in court copies of summons for confirmation of the grant, the certificate of confirmation of the grant thereof. She also exhibited the two copies of title deeds issued to her in respect of the two parcels of land.

In cross examination, DW1 stated that she did not know if PW1 understood English and who drafted the succession cause papers for her. She stated that parcel No. 22 was still in the old number which was distributed to her entirely. Title No. 4925 in her name was processed from parcel No. 15 which was also bought by other interested parties. She further stated that her brother-in-law Boaz got his five (5) acres from parcel No. 15. She said that her mother-in-law (PW1) continues to collect rent from the rental houses on Plot No. 22.

The respective advocates were to file written submissions. Unfortunately only the Applicant's counsel filed on 8th August, 2013.

He submitted that the application was predicated on three issues, namely jurisdiction, fraud and misrepresentation.

On jurisdiction, it was submitted that the estate was valued in excess of Ksh. 100,000/= for which the Magistrate's court has no jurisdiction.

On fraud, it was submitted that PW1 and her entire family did not consent to Rosemary Jebet getting the entire parcel No. 22. That when PW1 consented to the confirmation of the grant, she was under the impression that parcel No. 15 would be distributed to the purchasers but that parcel No. 22 would not be distributed to Rosemary Jebet.

On misrepresentation, it was submitted that Rosemary Jebet misrepresented facts that she was entitled to the entire parcel of land No. 22.

I have accordingly considered the application, the evidence adduced and the submissions made. The most important factor which this court ought to consider first is whether the Kapsabet Magistrate's Court had jurisdiction to entertain Succession Cause No. 55 of 2009. This will determine whether other issues ought to be considered thereafter.

Section 48 and 49 of the Law of Succession Act spell out the jurisdiction of the Magistrate's court in succession matters. They provide as follows:-

***“48. (1) Notwithstanding any other written law which limits***

***jurisdiction, but subject to the provisions of section 49, a resident***

***magistrate shall have jurisdiction to entertain any application other than an application under section 76 and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed one hundred thousand shillings:***

***Provided that for the purpose of this section in any place where both***

***the High Court and a resident magistrate's court are available, the High Court shall have exclusive jurisdiction to make all grants of representation and determine all disputes under this Act.***

***(2) For the avoidance of doubt it is hereby declared that the Kadhis'***

***courts shall continue to have and exercise jurisdiction in relation to the estate of a deceased Muslim for the determination of questions relating to inheritance in accordance with Muslim law and of any other question arising under this Act in relation to such estates.***

***49. The resident magistrate within whose area a deceased person***

***had his last known place of residence shall, if the gross value of the estate of the deceased does not exceed one hundred thousand shillings, have in respect of that estate the jurisdiction conferred by section 48:***

***Provided that -***

***(i) the magistrate may, with the consent or by the direction of the High Court, transfer the administration of an estate to any other resident magistrate where it appears that the greater part of the estate is situated within the area of that other magistrate or that there is other good reason for the transfer;***

***(ii) if the deceased had his last known place of residence outside***

***Kenya, the High Court shall determine which magistrate shall have jurisdiction under this section;***

***(iii) every resident magistrate shall have jurisdiction, in cases of apparent urgency, to make a temporary grant of representation limited to collection of assets situated within his area and payments of debts, regardless of the last known place of residence of the deceased.”***

In the Replying Affidavit of Rosemary Jerono sworn on 1st July, 2012, she annexed as annexures RJ 5(a), 5(b) and 5(c) Sale Agreements between the deceased son Boaz Rugut and the purchasers of portions of land comprising parcel No. 15. The values of the portions were given as Ksh. 265,000/=, 110,000/= and 125,000/= respectively. These portions being only a part of parcel No. 15 means that the entire parcel costed much more than the figures at which the portions were sold

put together. In respect thereof, the entire estate was valued at even a much higher figure. By dint of Section 48 of the Law of Succession Act, it followed that the Magistrate's Court at Kapsabet had no jurisdiction to entertain the aforesaid Succession Cause No. 55 of 2009.

The Applicant then ought to have come to the High Court for purposes of distributing her deceased's husband's estate.

It is evidence that she participated in the entire process of the Succession Cause in the Magistrate's court. It seems that thereafter she appeared not comfortable that Rosemary Jebet got the portion that houses the rental building as a result of which she filed this application.

The Succession Cause papers show that she did not object to the mode of distribution of the estate. But there is the question of her illiteracy. She stated that she did not understand English and that although she consented to the mode of distribution of the estate she was not of the impression that Rosemary Jerono would get the entire parcel No. 22. This is an issue that can be addressed by the High Court when a fresh Succession Cause is filed. At this point, it matters not whether or not each of the beneficiaries got their entitlement. The fact is that the Magistrate's court entertained the cause when it ought not to. For this reason, I find that the grant of Letters of Administration issued by a court that had no jurisdiction was incomplete. This court has no alternative but to annul the same. Having said this, I find no justification for considering other issues raised in the application as it will be an exercise in futility as a fresh petition will be filed, any way.

In the result, I order that the grant issued by the Magistrate's court, in Kapsabet vide Succession Cause No. 55 of 2009 in respect of the deceased's estate on 8th September, 2009 and confirmed on 28th June, 2010 be and is hereby revoked on account of want of jurisdiction.

On request for cancellation of the current titles, it is noted that the dispute is majorly with respect to parcel No. 22 in which the Applicant is claiming a portion of it. She has no problem with parcel No. 15 which was distributed to her, her son Boaz Rugut, her daughter-in-law (DW1) and the purchasers. Further the title to parcel No. 22 remains in its original number. However, having revoked the grant, it follows that all titles must revert into the name of the deceased. I therefore order that the current titles in respect of the whole of the deceased's estate revert into the name of the deceased, Kiprugut Singoei. The cost of the conversion of the titles into the deceased's name shall be born by the Applicant. She will also bear the cost of this application.

It is so ordered.

**DATED and DELIVERED at ELDORET this 25th day of September, 2014.**

**G. W. NGENYE - MACHARIA**

**JUDGE**

**In the presence of:**

Kimani holding brief for Wamboba for the Applicant

No appearance for Chemwok for for the Respondents (*duly served with Judgment date*)