



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

SUCCESSION CAUSE NO. 39 OF 2005

TAPNYOBI CHEMURER

LELDAYET.....DECEASED

AND

**WILLIAM KIMIBEI KOROMICHA.....1ST
PETITIONER**

**JACKSON KIPYEGON A. KOROMICHA.....2ND
PETITIONER**

RULING

TAPNYOBI CHEMURER LELDAYET, a lady, died intestate on 21st May 2004 leaving six parcels of land known as **L.R Numbers Kericho/Kyongong/673, 686, 687, 183, 196 and 199**. He was survived by five sons one of whom has died leaving a widow and children. These are Kimkuei Arap Leldat, Stephen Kipchumba Koromicha now deceased, who is represented by Esther Cheron Koromicha, William Kimibei Koromicha and Jackson Kipyegon Koromicha.

The Grant of Letters of Administration intestate was made on 10/11/2005 to **William Kimibei Koromicha** and **Jackson Kipyegon Koromicha**.

On 11/6/2010, **KIMURET ARAP LEDAT**, one of the sons of the deceased filed an affidavit of protest against the confirmation of the Grant pursuant to **Rule 40 (b) of Probate and Administration Rules**.

When the matter came up for directions before me on 16/11/2010, Mr. Matwere, Learned Counsel for the Protestor, and Mrs.J. K. Kimeto, Learned Counsel for the Protestor, consented that the Court do proceed to give directions.

The affidavit sworn on 9/6/2009 by the Protestor shows that the Land title No. **L.R KERICHO/KYOGONY/183** is registered in the name of the deceased and was so registered at the time

of his death. The Certificate of official search dated 21/1/2005 filed in this cause shows that the deceased was registered as the proprietor of the said parcel of land on 27/1/77.

In his said affidavit, the Protestor concedes that the said parcel of land is registered in the name of the deceased but contends that the deceased ***was registered as a trustee for him***. His word is not enough.

The Law of Succession Act, Cap 160, was enacted to amend, define and consolidate the laws relating to intestate and testamentary succession and the administration of estates of deceased persons and for purposes connected therewith and incidental thereto. It came into force on **1st July 1981** and has universal application to all causes of intestate or testamentary succession to the estates of deceased persons dying after the commencement of the Act as well as to the Administration of estates of those persons.

The jurisdiction of this Court under the Law of Succession Act extends to entertainment of any application and determination of any dispute under the Act and pronouncement of such decrees and making of such orders as may be expedient. It is discernible that claims against estates which do not hinge on testate or intestate succession fall outside the purview of claims that can be considered in succession to the estate of a deceased person. The Protestor's claim is based on trust. It cannot be canvassed in this cause in which the Court is considering the heirs and dependants of the deceased to whom the estate should be distributed for the simple reason that the objector's claim is neither on the basis of inheritance nor on the basis of dependency. For this reason, the Protestor's claim on the basis of trust cannot but be misplaced in this cause. Accordingly I reject it.

DATED at KERICHO this 25th day of January, 2011

G B M KARIUKI, SC

RESIDENT JUDGE

COUNSEL APPEARING:

Mr. Matwere, Advocate, for the Petitioners

Mr. J.R. Kimeto, Advocate, for the Protestor

Mr. Bett, Court clerk