

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
MISCELLANEOUS CIVIL APPLICATION 302 OF 2008

IN THE MATTER OF THE ESTATE OF LEAH JELAGAT
RULING

For consideration are summons for Revocation or Annulment of Grant brought under section 76 of the Law of Succession Act cap.160 of the Laws of Kenya as read with Rule 44(1) of the Probate and Administration rules. The Letters of Administration was issued by the Resident Magistrate's Court Iten on 26th October 2007 and it was confirmed on 24th December 2007. The Application also seeks a restriction order to issue stopping any transaction on that parcel of land known as ELDORET/MUNICIPALITY BLOCK 7/154 listed in the Iten Cause as being the property of the late Leah Jelagat. The application is grounded on the basis that the proceedings in the Iten court were defective and proceeded in a court without the requisite jurisdiction. That it was obtained fraudulently and by concealment of the fact that the property belonged to the objector or that there was a dispute as to its ownership. That the Applicant and the deceased never resided in Iten and the value of the property in question exceeded the jurisdiction of the Magistrate at Iten. There is an affidavit sworn by the Applicant in support of the application.

SILAS KIPCHILLAT is the administrator of the estate of the late LEAH JELAGAT KIPCHILLAT to whose estate the succession proceedings relate. He depones that the main issue in this application concerns the ownership of the parcel of land described as ELDORET MUNICIPALITY BLOCK 7/154 and that the issue of ownership is not the concern of the succession court and therefore the objector lacks capacity to bring the application for annulment of Grant.

The issues for determination in this application are, to my mind, two fold one – whether or not the Applicant has capacity to bring the application and two – whether or not the Resident Magistrates Court Iten had jurisdiction to proceed as it did. Both parties herein are agreed that the value of the property in issue is way beyond the pecuniary jurisdiction of the Resident Magistrate at Iten. On that ground alone the application for annulment of Grant must succeed. The court cannot pretend to be annulling the Grant on its own motion as it has indeed been prompted so to do by the application under consideration. The first issue above must be considered on the basis of whether the applicant has capacity to bring this application. Section 76 of the Law of Succession states that a grant of representation whether confirmed or not confirmed may at any time be revoked or annulled if the court decides, either on application by any interested party (emphasis provided) or of its own motion. Rule 44(1) of the Probate and Succession Rules states that where any person interested in the estate of the deceased (emphasis provided), seeks pursuant to the provisions of section 76 of the Act to have a grant revoked or annulled.....

In this case the Applicant claims that the land in question and which forms part of the estate of the deceased herein belongs to him. The administrator of the estate states the contrary that the land in issue belonged to the deceased and the Applicant has no interest in it whatsoever and if he has any title documents then the same must be forgeries. I have no doubt in my mind that I am not being called upon to decide whose land in dispute it is. That the parties have to sort out in a civil suit. I am also persuaded that the claim by the Applicant of the land in dispute creates sufficient interest by the Applicant in the estate of the deceased. He qualifies, in my considered view, to be called an interested party in the estate of the deceased, by his claim of ownership of the land. Whether or not he will succeed in the case he should file for ownership is not a matter for my consideration now. I find that he has established that he is a party/person interested in the estate of the deceased's estate. For those reasons the application for revocation or annulment of Grant succeeds and the Grant of Letters of Administration and the confirmed Grant issued by the Resident Magistrate sitting at Iten are hereby annulled. I cannot decline to order, as prayed for in prayer (ii) of the summons herein that the administratrix does not dispose, transfer or part with the parcel of land known as ELDORET MUNICIPALITY BLOCK 7/154 until the determination of a suit to be filed by the applicant in respect of ownership of the said parcel of land. And so that the Applicant does not hold the administrator of the estate of the deceased in indefinite abeyance such suit shall be filed within three (3) months of the date of this Ruling hereof in default of which the administrator will be at liberty to proceed as she deems fit. In the end the application succeeds in its entirety with costs.

DATED AND DELIVERED AT ELDORET THIS 25TH DAY OF FEBRURY, 2010.

P.M.MWILU

JUDGE

IN THE PRESENCE OF

Paul Ekitela - Court Clerk

Chemwoiyo holding brief for Limo Advocate for the Applicant

Mr. Mbeja - Advocate for the Respondent.