



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

Succession Cause 337 of 2007

ESTATE OF THE LATE SAMSON CHEPKWONY BUNE...DECEASED
AND
LILY CHEPKIRUI BUNE.....PETITIONER
RULING

Confirmation of grant Application dated 12th May 2009 That is refused by court

1. Background

1. Samson Chepkwony Bune [*Bune*] (*deceased*) passed away on the 28th December 1998 at the age of eighty seven (87) years old. A male adult, he died at Chemosot of Malaria.
2. One Lily Chepkemoi Bune a female adult aged thirty eight (38) years old obtained a letter from the chief stating that she Lily Chepkemoi Bune and three others Annah Chepkorir Chepkwony, Leah Chelangat Too and Mathew Kipkemoi Soi was the beneficiary to the estate. With this letter, Lily Chepkemoi petitioned for letters of grant intestate for the said estate in this Succession Cause. From the documents filed she was able to show that the deceased was proprietor of land parcel Kericho/Kabartegan/366 amounting to 13.5 acres. She disclosed that she was a granddaughter to the deceased aged thirty eight (38) years old in 2001 and the other two ladies were the widows to the deceased aged forty two (42) years and fifty three (53) years old respectively. The 4th beneficiary is said to be a male adult purchaser.
3. Though the Kenya Gazette was issued on the 30th November 2007 by the Deputy Registrar form P & A 30 was not obtained until 12th February 2008 to initiate that the Principal Registry does not have the same grant being appealed from elsewhere.
4. The petitioner on 14th July 2008 filed an affidavit under **Section 26** to state she is a dependant of the deceased. On 29th September 2008 she was issued with temporary grant of letters intestate (*G.B.M. Kariuki J*).
5. By 12th May 2009 she applied for confirmation of letters of grant intestate to the estate which is the subject of this ruling. Should this application be granted?

II. Opinion

6. According to the line of consanguinity, the widows of the deceased being the spouses have a right to apply for letters of grant intestate. If they fail to do so, any person may apply for these letters. The procedure though having

that such person must first file for a citation seeking request to those rightfully to apply to do so within fifteen (15) days. Failure to accept to apply then the citor would be permitted to proceed with the letters intestate.

7. In applying for the letters all survivors of the deceased must be named. This is the deceased parents, widow and children failure to children grandchildren. In this cause none of the survivors including the petitioner parents is named on the form P & A 5 as children of the deceased. Whilst the estate is still being gathered no sale of the property is permitted to be undertaken. If the transaction occurred before the deceased died then the purchaser is a liability to the estate which the administratrix require to deal with and settle.
8. In this Succession cause the proceedings by the petitioner is wrong in coming to court. This should have been by way of citation proceedings.
9. *(The Hon. Judge never gave orders nor signed the court file for temporary grant intestate to issue. How one was issued is unclear).*
10. This court hereby declines to allow the application of grant dated 12th May 2009 for confirmation of grant. By notice under P & A 69 *Suo Moto*, the grant temporary issued, will be revoked. The notice to issue to parties concerned for the revocation proceedings to take place on a date convenient to parties. The said persons will have leave to state why the grant ought not to be revoked.

Dated this 30th day of November 2009

M. A. ANG'AWA
JUDGE