

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

PROBATE & ADMIN CAUSE 274 OF 2003

IN THE MATTER OF THE ESTATE OF KIPKEINO A. CHEPLANGET – DECEASED

RULING

The applicants **BARNABA KIPKORIR METTO, ISAAC KIPCHUMBA CHEPKWONY and MATHEW KUTO** have brought this application under rules 17,59 and 73 of the Probate and Administration Rules seeking for leave from the court to file objections in this petition out of time.

It was deponed in the supporting affidavit and submitter by Mr. Machio for the applicants that the three applicants had bought parcels of land from the deceased **KIPKEINO ARAP CHEPLANGENT**. They started transfer process but unfortunately he fell ill before it was finalized. However the deceased before he died made a will and bequeathed the applicants the portions of land each had bought alongside other beneficiaries. The copy of the sale agreement and the will were all annexed to the affidavit.

Court was further told that after the demise of the deceased the 2nd petitioner filed a succession cause before Kapsabet Court. The three applicant objected on the ground that their names were left out. Later the High court ordered that Kapsabet succession cause be transferred to Eldoret and this was done and it became Eldoret CMC.Succession Cause No. 33 of 1989. Later that cause was ordered transferred to High Court for hearing and determination. It is still pending but the petitioners filed this new cause though the other is still pending. The applicant said that the petitioners omitted their names as beneficiaries. They were not aware of this petition and that is why they did not file their objection within the stipulated time. They told court they have beneficial interest in the Estate as the deceased had put them into occupation of their respective pieces of land and they all live there now.

Ms. Wambua opposed the application. She said the alleged will made by the deceased was defective as it is shown to have been signed by only one witness. Also she said the alleged sale agreement was a nullity as the vendors are shown to be three yet the land was registered in the name of the deceased alone. Further there was no consent from the Land Board as provided for in the Land Control Act.

I have considered the application. the applicant have clearly stated why they did not file their objection within the 30 days given when the cause was gazetted. They deponed that they were not aware of this cause as there was another one still pending. They did not expect a fresh Petition to be filed by the same parties. They deponed that it was only much later they discovered this cause had been filed and by then the time had run out and hence this application. That explanation is plausible and satisfactory to court.

As to the issues raised by Ms Wambua about the will being defective and the agreement being void these are issues which can only be addressed when the applicants have come on board and the petition goes for hearing. At that time parties can call evidence and/or witness in support or in objection to the will and the agreement. The objections at this stage therefore are untenable.

In the circumstances I allow the application. The applicants are hereby given 30 days from today's date to file their objections.

Dated and delivered at Eldoret this 21st day of June,2007

KABURU BAUNI

JUDGE

DELIVERED IN THE PRESENCE OF:-

C/C - David

.....for applicant

.....for respondent