

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Prob & Admin 179 of 1998

IN THE MATTER OF THE ESTATE OF JEMELI KOBOT KIMUTAI (DECEASED)

AND

PRICILA LELELI AND SARAH JEPTOO

RULING

In 1998 the applicant herein PRICILLA LELEI and her sister SARAH CHEPTOO, who is now the respondent, filled this succession cause jointly seeking for grant of Letter of Administration for the Estate of their late mother CHEMELI KOBOT CHEMUTAI who had died on 26th January 1998. On 15th July 1999 the court granted Letter of Administration to the two of them jointly.

Later SARAH, the respondent applied for the confirmation of that grant and indicated that land parcel No. **NANDI/ITIKO/179** measuring 21 acres, being the only asset of the Estate be divided equally between the two administrators as they were the only children of the deceased. However the applicant filed an affidavit opposing that mode of distribution. She wanted the whole land given to her. The court directed that parties call evidence over distribution. The applicant called four witnesses and matter rested awaiting the respondent to call her evidence. However before such evidence was called applicant brought the present application. It seeks the following orders:-

- i. That proceedings be stayed herein pending the hearing and determination of the petitions intended suit.
- ii. That the petitioner/applicant be allowed 21 days to give the intended suit upon granting prayer (c) below.
- iii. that the Letters of Administration be amended to extent that the 2nd Administrator has resigned and Sarah Kosgei be deemed to be sole Administrator.
- iv. Cost in the cause.

Respondent did not appear on the hearing day though she had filed a replying affidavit. Mr. Mwetich for the applicant made no submission except to state that he is relying on the supporting affidavit.

I have considered the application and the affidavits. I will deal with prayer (iii) first. The prayer is not very clear. It seeks the first administrator who is the respondent to be declared the sole administrator and the Letters of Administration issued to be amended to reflect that. This is said to be upon the resignation of the 2nd administrator. Court was not told if the 2nd administrator has already resigned or he is seeking to resign through this application. That is why I find the prayer ambiguous. However in the supporting affidavit the applicant averred that she intend to file a suit against the Estate and there will be conflict of interest if she remains as an administrator. I therefore take it that she is seeking to resign as an administrator though the matter is part heard. If she want to resign the court can't force him to remain as an administrator. I therefore allow that prayer and order that grant be amended to show the respondent as the sole administrator.

I now turn to prayer (ii) which seeks court to allow the applicant to file an intended suit within 21 days. This is a succession cause and not a civil suit. The court do not know what "**the intended suit**" is

all about. There are no provisions in the Law of succession Act which provides for a court to allow a party to file a suit. There are no such provisions in the Probate and Administration rules either - certainly not rule 49 or 74 under which this application is made. It is for the applicant to file a suit or not and he cannot seek the court to “**allow**” him to do so. I therefore find no merit in that prayer and dismiss it.

In prayer (i) the applicant seeks court to stay further proceedings in this cause until the hearing and determination of the petitioners intended suit. the court is not aware of any intended suit. this application was filed in September 2006 almost 9 months to date. The court has not been told that the petitioner intended suit has been filed. This is 1998 matter. To grant a stay on basis of an intended suit which has never been filed is not just. there is no way court would know if there will be a suit filed or not. Applicant is trying to put the cart before the horse and get herself a blank order of stay. this would be prejudicial to the disposal of this cause. I therefore decline to grant the order of stay sought.

The upshot of the above is that prayer (iii) of the application is granted as prayed. Prayer (i) and (ii) are dismissed.

Costs in the cause.

Dated and Delivered at Eldoret on 11th June,2007.

KABURU BAUNI

JUDGE.