



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT ELDORET**

**Probate & Admin Cause 170 of 2005**

**IN THE MATTER OF THE ESTATE OF KIPYEGO CHEPSIROR KOLIL**

**RULING/DIRECTION**

I have considered the submissions by Counsel and the Provisions of Rule 41 (3) of the Probate & Administration Rules as read together with section 82 and 71(2) of the Law of Succession Act.

The Property herein is an asset belonging to the Estate of the deceased. The Sale of the land took place during the deceased's life-time. Now there is a dispute between Shangilia Children's Home and Symbios's Micro Community – Kaibeyo as to the owner of the portion that was sold. Various members of the Estate have taken different sides. One house supports one party and the other house supports the other.

The issues in dispute between the two claimants go beyond the purchase and involve their own relationships, source of funds and agreements inter se. If the said case is heard within the succession cause, it would create a lot of confusion and in particular if the matter goes on appeal. There is no direct dispute with the Estate. The beneficiaries' role is purely as witnesses in the dispute. The dispute really is not that of beneficial interest.

However, the Court cannot allow distribution of the said property until the dispute between the purchasers is resolved.

I hereby order and direct that all proceedings in the Succession Cause be stayed. The two disputants to institute proceedings against each other in the High Court. Which ever of them is successful shall lodge the judgment and Decree in this course upon which this Court as a Succession Court will order transmission to the rightful claimant.

The Administrators shall not transfer, dispose or part with the assets of the Estate until determination of the intended suits and any subsequent appeal. I hereby grant an order of inhibition against the title inhibiting any dealing with the property L.R. No. Uasin Gishu/Sosiani Settlement Scheme/112 until further orders of this Court. Each party to bear his costs in respect of the application herein.

**DATED AT ELDORET THIS 23<sup>RD</sup> DAY OF NOVEMBER 2007**

M.K.IBRAHIM,

JUDGE.