



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

Succession Cause 82 of 2005

TABSABEI CHEPKOECH MILGO.....1ST APPLICANT

JULIUS KIMUTAI KORIR.....2ND APPLICANT

VERSUS

JOEL KIPLANGAT KORIR.....1ST RESPONDENT

PHILIP KIPNGENO KORIR.....2ND RESPONDENT

RULING

The applicants filed an application by way of Notice of Motion brought under **Section 45** of the **Law of Succession Act** and **rule 73** of the **Probate and Administration Rules**. They sought the following orders:-

“(i) That the respondent and/or his brother Philip Kipngeno Korir, their servant, agents and/or assigns be restrained from intermeddling with the estate of the deceased in any way or at all.

(ii) That pending the hearing and determination of this cause, the status quo as pertaining to the existing boundaries be maintained and that each party do remain on the part he is occupying until the cause is determined i.e. with respect to Land Parcel No. Kericho/Kibwastuiyo/365.

(iii) Necessary directions be made.”

The application was made on the grounds that the second respondent had crossed over to the portion of land that was occupied by the applicants and started planting tea bushes. It was also stated that the said respondents had on two occasions entered the portion of land occupied by the applicants and uprooted gum trees and damaged crops thereon. The applicants further alleged that the second respondent had taken people to the portion of land occupied by the applicants with intention of leasing the land to them and thereby deny the applicants use and occupation thereof.

The aforesaid application was supported by an affidavit sworn by the second applicant, Julius Kimutai Korir, which amplified the aforesaid grounds. The respondents filed replying affidavits and denied the allegations made by the applicants.

Philip Kipngeno Korir denied that he had encroached into the portion of land that was occupied by the applicants and stated that it was the second applicant who had created a lot of unrest to the estate of their late father by entering the parcel of land that the beneficiaries of the deceased had been cultivating long before he showed up to claim that he was also a beneficiary of the deceased's estate sometimes in the year 2002 after he was evicted from a Government land where he had settled. The second respondent further deposed that he planted the tea bushes which the applicants were referring to in the year 2003 on a portion of land which was pointed out to him by his mother. He claimed that the second applicant had in May 2006 erected some fencing posts purporting to subdivide the entire parcel of land into two portions. He was doing so while this matter was still pending before this court. He further alleged that the second applicant had encroached into the portion of land on which he had planted crops. The second respondent denied that he had ever taken any people to their late father's land with an intention of leasing the same.

The depositions of the second respondent were supported by an affidavit sworn by Tabsabei Chepkoech Milgo, a co-administratrix of the estate of the late Kipkobel Arap Milgo, (hereinafter referred to as "***the deceased***"), who was her husband. She stated that the estate of her late husband was not under any threat of being wasted. She further stated that the second respondent had not encroached into the portion of land that was occupied by the applicants.

Mr. Nyagwencha for the applicants urged the court to maintain the status quo until the main suit was heard and determined. On the other hand, Mr. Onyango for the respondents submitted that the existing status quo had been created illegitimately by the wrongful acts of the second applicant, Julius Kimutai Korir who went to the suit land after the death of the second respondent's father and insisted on being given a share of the suit land, saying that he was a son to the deceased. Counsel referred to the second applicant's illegal act of subdividing the land in May 2006. He further submitted that if orders for maintenance of the existing status quo were ordered, the beneficiaries of the deceased's estate would not be able to till the portions of land which they had been tilling before the second applicant purported to subdivide the land illegally. He urged the court to dismiss the applicant's application.

I have considered all the affidavits on record as well as the submissions made by both counsel in this matter. It is not in dispute that the second applicant alleges that he is a son of the deceased and that he claimed that he was entitled to a portion of the deceased's estate like any other beneficiary. He made the said claims after the demise of the deceased. He also purported to subdivide the deceased's land in an unlawful manner in May 2006. **Section 45** of the **Law of Succession Act** prohibits intermeddling with property of a deceased person except so far as expressly authorised by the **Act** or by any other written law or by a grant of representation. Such intermeddling is an offence that is punishable by a fine not exceeding Kshs.10,000/- or a term of imprisonment not exceeding one year or both.

The dispute as to whether the second applicant is rightly entitled to a share of the deceased's estate has not been determined. It was therefore improper for him to purport to apportion the deceased's land by erecting a boundary that divided the land into two portions. There is evidence that the second respondent planted the tea bushes which the applicants complained about sometimes in the year 2003. The tea bushes were planted on a portion of land that was pointed out to the second respondent by his mother. The second respondent had been harvesting those tea bushes for some time. The second respondent has also denied that he is intending to lease any portion of the deceased's property and in any event it would be illegal for him to do so. It is evident that the existing status quo on the suit land has been created illegally and the court cannot sanction the same. The boundary that was created by the second applicant is illegal and ought to be removed. The parties herein and the other beneficiaries should continue utilising the portions of land which they were occupying prior to the filing of this succession cause pending the hearing and determination of the matter. For these reasons I dismiss the applicant's application dated 2nd June 2006. I further direct that a hearing date for the main cause be fixed on priority basis. The costs of this application shall be in the cause.

DATED, SIGNED and DELIVERED at Nakuru this 18th day of July, 2006.

D. MUSINGA

JUDGE

Ruling read in open court in the presence of Mr. Mbeche for one of the parties.

D. MUSINGA

JUDGE