



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

**Succession Cause 500 of 1997**

**IN THE MATTER OF THE ESTATE OF THE LATE KIBOWEN KOMEN**

**(DECEASED)**

**WILLIAM KIPROP KOMEN.....PETITIONER**

**VERSUS**

**RACHEL KIPNGENO KOMEN.....OBJECTOR**

**RULING**

Kibowen Komen to whose estate these proceedings relates, died on the 15th of February 1997. He died intestate. Succession proceedings were commenced before this court in 1997. Objections were however filed. It appears that the several widows of the deceased were not in agreement how the estate of the deceased should be distributed. However none of the parties to this succession proceedings moved the court to have the dispute resolved for a period of nearly seven years. William Kiprop Komen, the petitioner in this case has now filed an application under **Section 45 and 55 of the Law of Succession Act and Rules 49 and 73 of the Probate and Administration rules** seeking the orders of this court to restrain the respondents (who are some of the dependants of the deceased's estate) from disposing alienating or selling parcels No. 9038/4, 9038/3, 9038/2, 9038/36 and LR Zone 58 Kabarnet pending the hearing and determination of the succession proceeding herein.

From the affidavits filed and the submissions made before me by Miss Mathenge, Learned Counsel for the Petitioner and Mr Ndeke Gatumu, Learned Counsel for the Respondents, it is conceded that all the above properties which are situated within the Municipality of Kabarnet were once owned by the Kibowen Komen (deceased). Whilst the respondents contend that the said properties were legally transferred to the beneficiaries by the deceased prior to his death, the applicant contends that the said properties were fraudulently transferred after the death of the deceased. The applicant is apprehensive that the said properties would be transferred to third parties before the Succession Cause is heard and determined. On their part the respondents have stated that they would not sell or transfer the subject properties.

I have carefully considered the arguments made. It is apparent that there is a dispute between the applicant and the respondents concerning how the subject properties were transferred and registered in the names of the respondents. The applicant is of the view that the said properties were fraudulent transferred after the death of the deceased. On their part the respondents are contending that the said properties were transferred to them by the deceased before his death. The respondents are in essence stating that the deceased transferred to them the said properties as gifts in contemplation of death. What is not in doubt is that the petitioner is actually challenging the distribution of part of the estate of the deceased to the said dependants and beneficiaries. The rival views of the applicant and the respondents will only be resolved when the objection proceedings filed herein is heard and determined. The respondents are however mistaken to think that the fact that the said properties were transferred to them by the deceased precludes the said properties from being considered as part of the deceased estate for the purposes of determining the distribution of the deceased's estate to his dependants and beneficiaries. During the hearing of the objection proceedings, the adequacy of the legacies will have to be considered by the court. If the gifts given by the deceased in contemplation of death are found to be skewed in favour of some of the beneficiaries, the Law of Succession Act gives this court powers to re-distribute such properties to the beneficiaries. In the circumstances therefore the applicant, as a beneficiary, has a stake in the properties given to the respondents by the deceased as a gift in contemplation of death. The status quo should

therefore be preserved pending the hearing and determination of the objection proceedings.

The respondents are therefore restrained from transferring to any third party the said properties, namely parcels No. 9038/4, 9038/3, 9038/2, 9038/36 and LR Zone 58 Kabarnet pending the hearing and determination of the objection proceedings. I will not make any orders for the time being concerning the way the said properties are being managed. This is an issue that shall be addressed during the hearing of the objection proceedings. There shall be no orders as to costs. This court advises the parties to this proceeding to prepare and have this matter ready for hearing so that all the outstanding issues may be determined once and for all.

**DATED at NAKURU this 20th day of May 2005.**

**L. KIMARU**

**JUDGE**