REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET
SUCCESSION CAUSE 7 OF 1987

IN THE MATTER OF THE ESTATE OF CHEPSIROR ARAP METIT (DECEASED)

AND

KIPSUGUT ARAP CHEPSIROR ……..……APPLICANT

AND

KIPKURGAT CHEPSIROR AND OTHERS …..… OBJECTORS/RESPONDENTS

RULING

This is a Summons for confirmation of grant of letters of administration to the estate of the late Chepsiror arap Metit. The application was dated 16th February 2004 and is purported to have been brought under rule 40(2) of the Probate and Administration Rules.

The application is supported by the affidavit sworn by the applicant Kipsugut arap Chepsiror on 16th February 2004. The applicant is also the petitioner in this cause.

According to the supporting affidavit, it is deponed that the deceased was married to five wives, which translates to five houses. That on 19th May 1988, the court amended the grant of letters of administration to include beneficiaries who had been left out, that was, Kipkurgat arap Chepsiror, Kipkemei arap Barno, Kipkilach arap Manyim and Sabina Tapchumo. That an appeal was filed to the Court of Appeal on that ruling in Civil Appeal No.24 of 1991 but the same was struck out as being incompetent. That the deceased left one piece of land L. R. NAND/LESSOS/35 measuring 19.5 hectares which should be divided equally among the five (5) houses with each house getting 3.84 hectares.

The application was opposed by way of replying affidavit sworn jointly on 15th July 2004 by Kipkurgat arap Chepsiror and Kipkilach arap Manym. They depone in the replying affidavit that the name of David Tangut (which appears in the list of beneficiaries in the summons for confirmation) was not included in the list of beneficiaries in the court order dated 19th May 1988. That there was another parcel of land, that is, NANDI/LESSOS/46 which the deceased had registered in the name of Kipsugut son of arap Chepsiror (the applicant) in 1976 to hold in trust for and on behalf of the other children. The said Kipsugut son of arap Chepsiror was the eldest son of the deceased. That they therefore objected to the mode of distribution proposed by the applicant and deponed that the distribution of NANDI/LESSOS/35 be in four equal shares to Kipkurgat arap Chepsiror, Kipkemei arap Barno, Kipkilach arap Manyim and Sabina Tapchumo each getting 4.875 hectares. Their counsel Messrs. Chemwok and Company Advocates also filed grounds of opposition to the summons for confirmation of grant.

The grounds of opposition were firstly that the grant of letters of administration was confirmed on 10th February 1988, and that the issues raised in the summons for confirmation of grant were therefore res-

judicata. Secondly that the application was not issued by the Registrar as required by the Probate and Administration Rules. Thirdly, that the application was brought under rule 40(2) of the Probate and Administration Rules which applied to confirmation of grants of probate before the expiry of six (6) months, while in our present case the grant was issued 17 years earlier. Fourthly, that the letters of administration dated 11th December 1987 were not lawful as it was not signed by a Judge as required under Rule 25(1) of the Probate and Administration Rules.

At the hearing of the application on 16th May 2005, Mr. Chemwok for the objectors did not attend court, though the hearing date was taken in court in the presence of Ms. Wambua who was holding his brief. The objectors also did not attend court. Mr. Machio for the applicant submitted that, though in the replying affidavit, the objectors were raising the issue of another parcel of land, that issue had already been dealt with in the ruling of Justice Aganyanya on 19th May 1988 at page four. The learned Judge decided that the subject land was not part of the estate. He submitted that the only property that was part of the estate was L.R. NANDI/LESSOS/35 and that that parcel of land should be distributed equally among the houses.

I have perused the file and considered documents on record and the submissions of Mr. Machio. I will start with the issues raised in the grounds of opposition. On the issue as towhether the letters of administration were confirmed on 10th February 1988, I find no basis for that assertion from the record. The record shows that letters of administration were confirmed by Justice Aganyanya on 8th February 1988. However, on 22nd November 1996 Justice Nambuye found that though the letters of administration were confirmed, the estate was not yet distributed. Therefore she ordered that the applicant herein initiates the process for distribution first.

The law requires that the mode of distribution be filed before confirmation in a succession cause under intestacy – see the provisal to section 71 of the Law of Succession Act (Cap.160). In my view, the directives by Justice Nambuye had the effect of setting aside or annulling the earlier confirmation of grant of letters of administration. Therefore the ground of objection that the grant was confirmed on 10th February 1988 fails. Also the ground that the application for confirmation of grant of letters of administration is res judicata also fails. It fails because, in my view, once Justice Nambuye ordered that distribution be done before confirmation, as required under section 71 of the Law of Succession Act (Cap.160), one cannot say that there was a confirmed grant of letters of administration intestate in existence.

The ground of objection that the application was not signed by the Registrar also fails. Though the summons for confirmation of grant was not typed in such a way as to indicate that the Registrar was to sign, it was actually signed and stamped by the Deputy Registrar of the High Court Eldoret on 11th April 2004. Therefore one cannot say that the summons for confirmation of grant was not signed by the Registrar. Therefore I find no basis for that objection.

Now, I turn to objection that the application was brought under provisions for confirmation before 6 months. It is true that the application cited rule 40(2) of the Probate and Administration Rules. That rule is for bringing applications for confirmation of grant before the lapse of six (6) months. The correct rule to be cited herein should have been rule 40(1). However, I do not think that citing the wrong rule, as happened in this case is fatal to the application. The objectors have not stated that they were prejudice. I do not find any prejudice to them. If the procedure followed by the applicant was the wrong procedure, I would have found substance in that objection (see Salume Namukasa –vs- Yozefu Bukya [1966] EA 433). However, the complaint herein is about quoting sub-rule (2) instead of sub-rule (1) of the same rule. In my view, this error is curable by virtue of the provisions of Order 50 rule 12 Civil Procedure Rules.

On the objection that the letters of administration issued on 11th December 1987 was not lawful as it was signed by the Deputy Registrar and not by the Judge was mandated by Rule 25(1) of the Probate and Administration Rules. It is true that the letters of administration were issued by Boaz Olao as Deputy Registrar on 11th December 1987. Rule 25(1) of the Probate and Administration Rules provides –

“25(1) Every grant made and issued through the principal registry or a High Court district

registry shall be in Forms 41 to 52 as appropriate and shall be signed by a judge of the High Court and sealed with the seal of that registry.

Though there were a number of applications in this matter before Justice Aganyanya and Justice Nambuye, no one raised the issue of the validity of the initial grant of letters of administration specifically until now. From the proceedings on record, both Justice Aganyanya and Justice Nambuye took it that the grant of letters of administration was proper. The issue raised herein however, appears to have been dealt with by Justice Aganyanya in his ruling of 19th May 1988 when he stated –

"I do not find it meritorious to warrant the nullification of the letters of administration granted and confirmed."

None of the parties appealed from that ruling. I therefore find this objection to be unmeritorious, as any aggrieved party should have appealed against that decision of Justice Aganyanya to a higher court.

I now turn to the issues raised in the replying affidavit. On the issue of inclusion of the land parcel number NANDI/LESSOS/46 in the estate, I find that Justice Aganyanya on 21st March 1989 found that that land did not belong to the estate of the deceased, but to one of the beneficiaries, who is also the petitioner herein. No one appealed against that decision. The objection therefore must fail.

On the issue of David Tangut not being a beneficiary, I observe that his name features for the first time in the affidavit sworn by the petitioner on 16th February 2004. I find that he is not a beneficiary. I therefore exclude him from the list of beneficiaries.

As was held by Justice Aganyanya in his ruling of 21st March 1989, the deceased left land parcel number NANDI/LESSOS/35 and was married to five wives. So the subject land is to be divided among the five wives (houses) in equal shares. I am of the view that this is the fairest mode of distribution as envisaged under section 40 of the Law of Succession Act (Cap.160 Laws of Kenya).

For the above reasons, I find no merit in the objections raised by the two objectors, Kipkurgat arap Chepsiror and Kipkilach arap Manyim and dismiss the said objections.

Consequently, I confirm the letters of administration issued to Kipsugut arap Chepsiror and direct that each of the five houses gets an equal share of the land L.R. NANDI/LESSOS/35 measuring a total of 19.5 hectares. The parties will bear their respective costs.

Dated and Delivered at Eldoret this 20th Day of June 2005

George Dulu

Ag. Judge

In the Presence of: Mrs. Nyaundi h/b for Mr. Machio for applicant.