



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

MISC CIV APPLI 137 OF 2004

IN THE MATTER OF THE ESTATE OF
PHILIP KIPRONO BETT - DECEASED

PASILISA CHEPKOECH BETT

SISILIA JEBAGA KIRONGO PETITIONERS/APPLICANTS

RULING

This is A Summons dated 28th June 2004 for revocation or annulment of a grant of Letters of Administration and brought by Messrs. Omwenga & Company Advocates on behalf of the applicant Jepkurgat Hellen Bett. It is purported to have been brought under section 76 of the Law of Success (Cap.160 Laws of Kenya). The application seeks for the following orders –

- i) The honourable court do call for the lower court file, Kapsabet Principal Magistrate's Court Succession Cause no.14 of 1995, In the Matter of the Estate of Philips Kiprono Bett (deceased) and revoke and/or annul the grant of Letters of Administration intestate issued to Pasilisa Chepkoech Bett and Sisilia Jebaga Kirongo.
- ii) That costs of the application be provided for.

The grounds are on the face of the summons and are supported by the affidavit of the applicant sworn on the 28th June 2004. The grounds are in summary, that the grant of letters of administration was obtained fraudulently; that there were untrue allegations of facts in that not all dependants and beneficiaries were disclosed; that not all beneficiaries of the estate were provided for; that not all the properties of the deceased were disclosed; that the Principal Magistrate's Court at Kapsabet did not have jurisdiction to grant the orders since the value of the estate was over Kshs.100,000/= and that the proceedings were defective. The application was opposed and a replying affidavit was filed by Pasilisa Chepkoech Bett.

At the hearing of the application Mr. Omwenga submitted that the grant of Letters of Administration was issued on the basis of untrue allegations of facts. Not all beneficiaries were disclosed. The Letters of Administration were issued on the basis that the respondents were the only beneficiaries. The children were not disclosed. Secondly, not all properties were disclosed. There was an additional property at Eldoret measuring about three (3) acres which was not disclosed when the Letters of Administration were applied for, and even when the said Letters of Administration were confirmed.

Thirdly, not all beneficiaries benefited from the estate. The children of the deceased were excluded

from benefiting in contravention of sections 35 and 40 of the Law of Succession (Cap.160 Laws of Kenya). Fourthly, that the Principal Magistrate at Kapsabet did not have jurisdiction as the net worth of the deceased's estate was more than Kshs.100,000. An additional property suddenly emerged at the confirmation stage. Also Form P&A 38 was not signed by all the adult beneficiaries, therefore the grant of Letters of Administration was defective in substance.

Mr. Chepkonga for the first respondent opposed the application. He submitted that the applicant did in fact file the documents for Letters of administration and participated in the same. The matter was gazetted and no objection was recorded. He submitted that the application was an after thought. That all beneficiaries were provided for as the property was divided among two houses and the applicant belonged to the first house. It was therefore not true that the applicant was not provided for. The respective petitioners were holding the property in trust of for the children, including the applicant.

He also submitted that no official search certificate had been provided to prove ownership of plots that were alleged by the applicant to have belonged to the deceased. Also no valuation of the properties had been provided to court. He submitted, that as at the time that the matter was heard by the magistrate at Kapsabet, which was more than 10 years ago, the magistrate had jurisdiction as the value of the property was low.

He submitted that the property that was alleged to belong to the deceased person actually belonged to other persons and not the deceased. He submitted further that the allegation of an oral Will should be disregarded. The said alleged oral Will was not made within three months before the deceased died. He also submitted that the allegation that Cherono donated 1.5 acres to the applicant should be disregarded as that land did not exist in the estate of the deceased. He further submitted that it was not true that four properties were mentioned at the confirmation of the grant. He stated that properties had already changed hands and it was very difficult to revert to the original position.

The second respondent, Sisilia Kirongo submitted that the properties were divided among the two houses. That one person had already bought 1½ acres from her.

I have considered the application and the submissions by counsel for the parties as well as the submissions of Sisilia Jebaga Kirongo. It is clear from the documents that Sisilia Jebaga Kirongo and Pasilisa Chepkoech Bett applied for Letters of Administration to the estate of Philip Kiprono Bett (deceased). They applied as wives or widows of the deceased. They disclosed one plot as belonging to the deceased, that is, Nandi/Songoliet/146. They estimated the value of that plot to be Kshs.100,000/=. They disclosed that the deceased died intestate and that he left only Sisilia Jebaga Kirongo and Pasilisa Chepkoech Bett as the survivors, and there is no mention of children or any other beneficiaries.

In my view, the other beneficiaries should have been disclosed in the Administration Cause before the learned magistrate at Kapsabet. It has been argued that the children are covered in the two houses. However, the requirements in Rule 7(e) of the Probate and Administration Rules is that all the survivors, whether they are heads of houses, adults or children, should be disclosed. Non-compliance with that rule in my view, means that the court will not be able to determine the matter, taking into account the interests of all beneficiaries including infant children. It will also mean that the consent, by adult survivors for both the Grant of Letters of Administration as well as the Confirmation of Grant and mode of distribution, as required by law will not be given. I therefore, find that the non-disclosure of all beneficiaries is a defect which goes to the root of the Administration Cause.

On the issue of properties, I observe that even at the confirmation stage, the property in question that disclosed was only Nandi/Songoliet/146. However, there were also properties which emerged at confirmation stage as Nandi/Songoliet/115; 153; and 369. Certificates were issued by Mr. Moitui, District Registrar on 11th July 1996. The property Nandi/Songoliet/146, which was initially

disclosed was estimated by the petitioners, Pasilisa Chepkoech Bett and Sisilia Jebaga Kirongo to be Kshs.100,000/=. It is apparent from the above evidence that what was disclosed as being of the value of Kshs.100,000/- was the property Nandi/Songoliet/146. Any additional land, therefore would, on the face of it, mean that the value of Kshs.100,000/= was exceeded. This means that the learned magistrate did not have the jurisdiction to entertain the matter, as section 49 of the Law of Succession Act limits his jurisdiction to Kshs.100,000/=. Prima facie therefore I hold that the learned magistrate did not have jurisdiction to entertain the subject Probate & Administration Cause.

It has been argued by Mr. Chepkonga that Confirmation was done many years ago, possibly 10 years. That properties have changed hands. In my view, the law does not put a limit on time for the annulment or revocation of a grant which has been issued. Section 76 of the Law of Succession Act does not provide for a time limit for annulment or revocation. It confers on this court powers to annul or revoke a grant. The law also allows this court to make orders in the interest of justice. The issue as to whether properties have changed hands will be determined when they are raised at the appropriate time.

For the above reasons, I am of the view that the grant of Letters of Administration as well as the Confirmation by the Principal Magistrate at Kapsabet was contrary to the requirements of the law. I am therefore persuaded to revoke and annul the grant of Letters of Administration in Kapsabet Principal Magistrate Succession Cause No.14 of 1995 issued to Pasilisa Chepkoech Bett and Sisilia Chebaga Kirongo. The matter will be re-opened and heard before the High Court at Eldoret for it to be determined on its merits.

The costs of this application will be in the cause.

Dated and delivered at Eldoret this 3rd day of October 2005.

George Dulu

Ag. Judge

In the Presence of: Mrs. Mutai h/b for Mr. Omwenga for applicant

Mr. Chepkonga for the respondent.