



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

Prob & Admin 222 of 2000

IN THE MATTER OF THE ESTATE OF CHEPSIROR - DECEASED

JANE MOIBEN CHEPSIROR PETITIONER

JEROP TABUNEI KOGEI OBJECTOR

MARY CHEPKEMBOI.....OBJECTOR

RULING

Before me is an application by way of summons dated 14th March 2005. It was filed by Manani & Co. Advocates on behalf of several applicants who claim to be purchasers from the deceased's estate. The application was purported to be brought under Rule 59 and 73 of the Probate & Administration Rules. It seeks for two Orders that:-

1. The Purchasers/applicants be granted leave to participate in the proceedings as parties and to file their annexed affidavits.
2. That upon such leave being granted, the annexed affidavits be deemed as filed and served subject only to payment of the requisite court fees.

The application has grounds on the face of the summons and is supported by the affidavit of Benard Odongo Manani sworn on 14th March 2005, and affidavits of the respective applicants. The grounds of the application are that the applicants have an interest in the estate of the late Chepsiror Sitienei Lulei having purchased part of the land forming part of the estate. Secondly that the applicants need to protect the interests of the estate of the late Chepsiror Sitienei Lulei to the extent of their respective parcels of land they had purchased.

The application was opposed and grounds of opposition were filed. The grounds of opposition are that some of the applicants bought land from the administrator before she obtained letters of administration; and no consent of the Land Control Board was obtained within six months as required by law. Secondly that some of the applicants who claimed to have acquired interest in the land through gifts and purchases had not proved those gifts and sales and had shown no proof of consent to transfer the respective portions of land. That the applicants were not entitled to be heard on the application for revocation, and their application was premature. That section 93 of the Law of Succession Act did not protect them as persons who purported to buy land from a person who was not confirmed as an administrator. That the applicants were guilty of intermeddling with the estate of the deceased contrary to section 45 of the Law of Succession Act.

At the hearing of the application, Mr. Mwetich for the applicants submitted that the applicants had a purchasers interest. Some purchases of the land were done after grant was issued and some after

confirmation of grant. He submitted that the issue of Land Control Board Consent would be raised in another forum, not this forum. The issue of intermeddling with the estate did not arise as the petitioner had the right to deal with the estate.

Mr. Kuloba for the objectors opposed the application. He submitted that there was no evidence that the applicants had appointed M/S Manani & Co. Advocates to act for them. Therefore the application was incompetent.

Secondly, ten of the applicants had bought land from a person who had not been appointed a personal representative. Therefore the sales were null and void. He sought to rely on section 82 (b) (ii) of the Law of Succession Act. The subject purchases of land were also not approved by the Land Control Board. They were void.

Additionally, eight applicants had made claims without any proof. Gifts made before grant was confirmed were null and void. No consent of the Land Control Board was annexed. He further submitted that the applicants could only come in if the grant was revoked. There was a pending application for revocation of grant. He also submitted that under section 93 of the Law of Succession Act a revocation should not affect only sales that were done by a personal representative. Section 3 of the Act defined a personal representative. In his view, the only applicants who had an interest in the estate were those that acquired an interest in the land after 20/6/2002. He lastly submitted that the applicants were guilty of intermeddling with the estate in terms of section 45 of the Act. They should not be allowed to participate in the proceedings.

I have considered the application, the grounds of opposition and the submissions of both counsel for the parties. This application was brought under rule 59 and 73 of the Probate and Administration Rules seeking for the exercise of the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent an abuse of the process of the Court. The applicants are seeking for leave to participate in the proceedings in this succession cause. The grant of letters of administration was confirmed on 20/06/2002 and there is a pending application for annulment dated 7th August, 2003. It appears from an order made by Justice J.V. Juma on 17th July 2003 that the original file was lost and another file was to be reconstituted.

The application raises a number of issues and I will deal with them as I understand them. The first issue is whether Manani & Company Advocates can file this application for the applicants. Mr. Kuloba has argued that they are not properly on record. I see in the file a notice of appointment of advocates dated 19th October, 2004 and filed on the same date for Manani & Co. Advocates to appear on behalf of the purchasers. This application was filed on 14th March 2005. In my view, Manani & Co. advocates were perfectly entitled to file this application on behalf of the purchasers/applicants.

The second issue is whether the applicants have demonstrated an interest to justify their participation in the proceedings. Their declared interest is purchase of land. Mr. Kuloba has argued that there is no proof that they bought or got gifts of land from a personal representative and, in any event, the consent of the Land Control Board was not obtained. He stated that only land that was acquired from 20/06/2002 created an interest. He has relied on section 82 and 93 of the Law of Succession Act (cap 160). I have perused the subject sections. Section 82 provides for the powers of a personal representative. Section 93 provides that transfer of interest by personal representative is not affected by the revocation of a grant.

The applicants herein are not trying to say that they want their interest not to be affected by the revocation. They want to participate in the proceedings. Revocation of grant can be done at any time, even if it is confirmed. This is the impost of section 76 of the Law of Succession Act (cap 160). They could as well make their own application for revocation, if they choose to, after they are granted leave to participate in the proceedings. An affidavit of the petitioner sworn on 23rd September, 2003 and filed in court on the same date clearly avers that the petitioner herein sold some land and also that gifts were given to various persons. This was the replying affidavit to the motion for revocation of grant. I hold that the arguments raised by Mr. Kuloba can only be addressed after the applicants become parties in the proceedings.

On the issue of intermeddling under section 44 of the Law of Succession Act(cap 160), it is true that intermeddling is a criminal offence. However, if there was any intermeddler at all in this case, it would have been the petitioner and not the applicants herein. She is the one who is purported to have sold the land, and she has sworn an affidavit to that effect, as I have stated above.

Having considered this matter and the above issues involved, I am of the view that interests of justice demand that the applicants be granted leave to participate in the proceedings herein. I therefore order as follows:

1. That the purchasers/applicants are hereby granted leave to participate in the proceedings as parties and file their affidavits.
2. Such affidavits to be filed and served within 14 days from today.
3. Costs will be in the cause.

Dated at Eldoret this 25th day of November, 2005.

GEORGE DULU,

Ag. Judge.

In the presence of:-