



In re Estate of Rebecca Chebor Tiriki (Deceased) (Succession Cause 106 of 2006) [2024] KEHC 1249 (KLR) (6 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1249 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 106 OF 2006**

JK SERGON, J

FEBRUARY 6, 2024

IN THE MATTER OF THE ESTATE OF REBECCA CHEBOR TIRIKI (DECEASED)

BETWEEN

ANGELINA CHELANGAT TURGUT OBJECTOR

AND

JOSEPH KIMUTAI KIRUI 1ST RESPONDENT

CHRISTOPHER KIPNGETICH KIRUI 2ND RESPONDENT

PRISCILLA CHEPKEMOI TURGUT 3RD RESPONDENT

NELLY CHEPKOECH LANGAT 4TH RESPONDENT

KIRUI KIPLANGAT JOSHUA 5TH RESPONDENT

RULING

1. The application coming up for this court's determination is a notice of motion dated 3rd July, 2023 seeking the following orders;
 - (i) Spent
 - (ii) That there be a stay of proceedings of Sotik ELC No.43 of 2021 pending the hearing and determination of the present application.
 - (iii) That the Honourable Court be pleased to issue an order of injunction restraining the respondents, their servants, agents, servants and or anyone else acting on their behest from disposing of selling, transferring, intermeddling, or otherwise dealing with parcel of land Kericho/chemoiben/2135, 2136, 2137 and 2138 (formerly) Kericho/chemoiben/111 registered in the name of Rebecca Chebor Tiriki pending hearing and determination of the present application.



- (iv) That upon prayer (iii) above being granted, the Honourable Court be pleased to issue an order of cancellation of title Kericho/chemoiben/2136, 2137, 2137 and 2138 issued together with an order for the amendment of the map to restore land parcel Kericho/chemoiben/111 to its status and allow the confirmation of grant for purposes of distribution of the estate among the beneficiaries as required by law.
- (v) That costs be borne by the Respondents.
2. The Application is supported by grounds on the face of it and the supporting affidavit sworn by Angelina Chelangat Turgut the Applicant herein.
 3. The Objector/Applicant avers that she is one of the beneficiaries of the estate of Rebecca Chebor Tiriki, the deceased herein who died intestate on 24th October, 1995 and that Kericho/Chemoiben/111 belonged to the deceased and therefore formed part of her estate.
 4. The Objector/Applicant avers that the Petitioners/Respondents applied for letters of administration intestate and obtained the grant on 19th December, 2006 and further that upon obtaining letters of administration intestate the Petitioners/Respondents filed summons for confirmation of grant and before confirmation one of the beneficiaries filed a protest which was not heard and determined by this court.
 5. The Objector/Applicant avers that when the matter came up for hearing on 9th November, 2010 all parties were absent and the matter was stood over and since then none of the parties took any steps to move the court.
 6. The Objector/Applicant avers that sometime in 2015 the Petitioners/Respondents fraudulently closed Kericho/Chemoiben/111 on subdivision and created new numbers 2135 - 2138, subsequently 2135 was closed and created new numbers 2428 - 2430.
 7. The Petitioners/Respondents transferred the land into the names of the 3rd, 4th and 5th Respondents before confirmation of grant thereby disinheriting the Applicant and abandoning the instant succession cause.
 8. The Objector/Applicant avers that the 4th Respondent having obtained title deed fraudulently instituted a suit against the applicant and other beneficiaries vide Sotik ELC Case No. 43 of 2021 with the intention of evicting the Applicant.
 9. The Objector/Applicant avers that the Petitioners/Respondents purported actions were illegal and tantamount to intermeddling with the estate of the deceased.
 10. The Objector/Applicant avers that there is an urgent need to preserve and protect the estate of the deceased so as to avoid being wasted by way of injunction thereby restraining the Respondents jointly and severally from further intermeddling with the deceased's estate and that the proceedings in Sotik ELC Case No. 43 of 2021 be stayed as the Respondents had jointly denied her rightful inheritance by illegally subdividing and disposing the land parcel Kericho/Chemoiben/111 pending the determination of the instant succession cause.
 11. Priscilla Chepkemoi Turgut the 3rd Respondent filed a replying affidavit in response to the application.
 12. The 3rd Respondent avers that she is the wife to the late Jonathan Kipkoech Turgut and the daughter-in-law to the deceased.



13. The 3rd Respondent avers that the family appointed Joseph Kimutai Kirui and Christopher Kingetich Kirui as administrators to the estate of the deceased and further that the assets of the deceased consisting of Kericho/Chemoiben/748 and Kericho/Chemoiben/111 were to be shared equally among the beneficiaries. She stated that she was aware that the administrators applied for letters of administration intestate and upon gazettelement, her co-wife filed a protest which was never heard and/or determined since 2010 to date.
14. The 3rd Respondent avers that she learnt from a friend that her co - wife namely Nelly Chepkoech Langat (the 4th Respondent herein) fraudulently obtained a title deed being Kericho/Chemoiben/2137 which title was purportedly obtained through subdivision of the original title of land parcel Kericho/Chemoiben/111.
15. The 3rd Respondent further avers that Nelly Chepkoech Langat filed a suit vide Sotik ELC Case No. 43 of 2021 using the title she fraudulently obtained to seek eviction orders against the objector/applicant one of the beneficiaries of the estate.
16. The 3rd Respondent avers that upon being served with the instant application, she stumbled upon an official search of land parcel Kericho/Chemoiben/2136 in her name without her knowledge.
17. The 3rd Respondent conceded that it was true that the administrators distributed the estate of the deceased before completion of the succession process, she therefore urged this court to intervene and distribute the estate of the deceased fairly among the beneficiaries.
18. The court directed the parties to file their written submissions. The Objector/Applicant complied and filed written submissions whereas the Respondents did not file any submissions.
19. The Objector/Applicant filed submissions and maintained that she was a beneficiary of the estate of the deceased herein and that the Petitioners/Respondents have denied her right for inheritance and further that sometime in 2015, the Petitioners/Respondents fraudulently closed land parcel no. Kericho/Chemoiben/111 which constituted part of the estate of the deceased and subdivided the same to create new numbers being 2135-2138 and later 2135 was closed to create new numbers being 2428-2430 and the Petitioners/Respondents transferred the new properties to the 3rd, 4th and 5th Respondents leaving the applicant out. The 4th Respondent upon obtaining title instituted a suit against the objector/applicant vide Sotik ELC No. 43 of 2021 with the intention of evicting her from the suit parcel hence necessitating the instant application for an injunction.
20. The Objector/Applicant maintained that she had met the threshold required for the issuance of an interlocutory injunction and relied on section 40 (1) (a) and (b) of the *Civil Procedure Rules*, 2010. She further cited the case of *Giella v Cassman Brown & Company limited* (1973) EA 358 where the court expressed itself on the conditions that a party must satisfy in order to grant an interlocutory injunction;

“First, an applicant must show a *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”
21. The Objector/Applicant contended that she had established a *prima facie* case with a probability of success, it was her position that she was entitled to benefit from the estate of the deceased yet she was



denied of her rightful inheritance. She cited the case of *Mrao Ltd v First American Bank of Kenya and 2* (2003) KLR which defined a *prima facie* case as follows;

“A *prima facie* case in a civil application includes but is not confined to a “genuine and arguable case. It is a case in which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter.”

She is also cited the case of *Kenleb Cons Ltd v New Gatitu Service Station & Anor* (1990) eKLR in which the court set out what party seeking an injunction must demonstrate as follows;

“To succeed in an application for injunction an applicant must not only make a full and frank disclosure of all relevant facts to the just determination of the application, but must also show he has a right, legal or equitable, which requires protection by injunction. He must also satisfy the three tests set out in the often cited case of *Giella v Cassman Brown & Co Ltd*, 1973 EA 358; for the grant of an interlocutory injunction.”

22. The Objector/Applicant contended that she would suffer irreparable injury if not granted a temporary injunction pending hearing and determination of the suit, as she stood to lose her right to inheritance and such loss cannot be adequately compensated by damages. The Objector/Applicant further contended that the balance of convenience was tilted in her favour.
23. Finally the Objector/Applicant urged the court to stay proceedings in Sotik ELC to allow confirmation of grant for purposes of distributing the estate among beneficiaries as per the law of succession and urged the court to allow the notice of motion dated 3rd July, 2023 with costs.
24. I have considered the application, replying affidavit and submissions on record and I find that the issues for this court’s determination is whether to issue an Order of temporary injunction restraining the Respondents from dealing with the estate property and whether to issue an order for cancellation of titles emanating from the subdivision of Kericho/Chemoiben/111.
25. On the issue as to whether to issue a temporary order of injunction, it is trite law that the Applicant must show a *prima facie* case with a probability of success. The Applicant herein has indicated that she is entitled to inherit as a beneficiary the Estate of Rebecca Chebor Tiriki, deceased. It is alleged that the parcels of land known as LR No. Kericho/Chemoiben/2135-2138, 2428-2430 have already been transferred to 3rd, 4th and 5th Respondents. It is stated that the transfer of the aforesaid parcels was done fraudulently.
26. The assertion that the parcels of land were fraudulently transferred can only be ascertained after considering the evidence from both sides. In the circumstances, it cannot be said that the claim has been proved to the required standards. I find that a *prima facie* case has not been established.
27. The Applicant has further asked this court to issue an order cancelling titles to LR No. Kericho/Chemoiben/2136-2138 and restoring the Parcel of Land known as LR No. Kericho/Chemoiben/111 to the name of Rebecca Chebor Tiriki, deceased. There is no evidence to explain how the aforesaid parcels of land were subdivided and transferred without having the grant confirmed. The particulars of fraud have not been given.
28. Titles cannot just be whimsically cancelled. Parties must be heard first before making a determination on the allegation of fraud.



29. It would appear that the dispute should have been filed in the Environment and Land Court. The Applicant has specifically averred that there is a pending case before the Sotik S.R.M's Court i.e. Sotik ELC. No.43 of 2021 relating to aforesaid Parcels. This Court has been urged to stay further proceedings in Sotik ELC. No.43 of 2021 pending the hearing and determination of this Application. It is clear in my mind that having come to conclusion that this dispute substantially belongs to the Environment and Land Court, I find it not appropriate to issue an Order staying further proceedings in the Sotik Court.
30. In the end, I find no merit in the Motion dated 3rd July, 2023. The same is dismissed with each party bearing their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 6TH DAY OF FEBRUARY, 2024.

J.K. SERGON

JUDGE

In the presence of:-

C/Assistant – Rutoh

Miss Chelangat holding brief for Maengwe

for Objector/Applicant

No Appearance for the Petitioner

