



**In re Estate of Chemisto Sawe Suter (Deceased) (Probate & Administration
5 of 2021) [2024] KEHC 3495 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3495 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 5 OF 2021
JRA WANANDA, J
APRIL 12, 2024
IN THE MATTER OF
JANE JEPKOSGEI CHEPKIYENG
APPLICANT**

**IN THE MATTER OF
JANE JEPKOSGEI CHEPKIYENG APPLICANT**

RULING

1. This Ruling is in respect to a Preliminary Objection.
2. The background of the matter is that the Applicant, vide the Summons dated 1/03/2021 and filed on 10/03/2021 through Messrs Ledisha J.K. Kitttony & Co. Advocates, sought prayers as follows:
 - i. That the Grant of Letters of Administration made to Jackson Kimutai Suter on the 6th October 2017 by the Eld CMCC No. P/A 226 of 2017 be revoked and/or annulled.
 - ii. The costs of this Application be provided for.
3. The Application is expressed to be brought under Rule 44 of the Probate and Administration Rules and is premised on the grounds stated on the face thereon. It is then supported by the Affidavit sworn by the Applicant.
4. In the Affidavit, the Applicant deponed that she is the daughter in law of the deceased, the late Chemisto Sawe Suter, that the grant of letters of administration made to the Petitioner-Administrator herein, Jackson Kimutai Suter, was obtained by making of false statement and/or concealment of material facts from the Court, that the Petitioner misrepresented to the Court that the deceased was survived by only one son and thus excluding the Applicant's husband, that the Applicant came to learn that the Petitioner had obtained the grant when she was survived with an Application for confirmation of the grant, and that the Petitioner has proceeded to dispose of the deceased's parcel of land.



5. In response, on 9/07/2021, through Messrs Bundotich Korir & Co. Advocates, the Petitioner filed the instant Preliminary Objection. The same is premised on the grounds that the Application does not lie in law, the Application is fatally and incurably defective and that the Court lacks jurisdiction to entertain the Application. It is evident that the said grounds are too generalized and lack clear specificity on what they exactly entail.
6. When the matter came up before me on 20/02/2023, it was agreed, and I directed, that the Preliminary Objection be canvassed by way of written Submissions. I then gave the parties respective timelines within which to file their Submissions. When the matter came up again on 22/05/2023, the Petitioner's Advocate stated that he had already filed and served his Submissions. In turn, I informed him that the alleged Submissions were not in the Court file and directed him to ensure that a copy thereof is so supplied. On subsequent Court appearances, on 22/06/2023, 16/10/2023 and 23/11/2023, the Petitioner's said alleged Submissions filed in support of the Preliminary Objection had still not been provided. I successively on each occasion repeated the directions to the Petitioner's Counsel to supply a copy of his said alleged Submissions. To date however, if at all such Submissions were ever filed, the same has never been supplied as directed. I do not know whether the Applicant was ever served by the Petitioner's said elusive alleged Submissions but if the same was served, then the Applicant's response Submissions, if any was filed, is also not in the Court file.
7. In the absence of the Administrator's written Submissions to support the Preliminary Objection, and coupled with the too generalized and ambiguous manner in which the Notice of Preliminary Objection has itself been drafted, I am unable to decipher the nature of the Objection sought to be argued. It will also not be wise for the Court to purport to enter into speculation or guesswork in attempting to unravel the exact grounds for the Preliminary Objection. If Counsel, in his wisdom, made the decision to "hide" or "conceal" the real nature of his Preliminary Objection, then so be it, the Court has "taken the bluff".
8. In the circumstances, the Notice of Preliminary Objection dated 7/07/2021 is hereby dismissed with costs to the Applicant.
9. Directions shall now be taken in respect to the hearing and disposal of the Summons for Revocation of Grant.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 12TH DAY OF APRIL 2024

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WANANDA J. R. ANURO

JUDGE

