



REPUBLIC OF KENYA



In re Estate of Cheres Tapkero Koske (Deceased) (Succession Cause E045 of 2021) [2024] KEHC 4909 (KLR) (9 May 2024) (Judgment)

Neutral citation: [2024] KEHC 4909 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE E045 OF 2021**

JK SERGON, J

MAY 9, 2024

BETWEEN

JOSEPH KIPKEMOI CHEPKWONY PETITIONER

AND

JONAH KIPRONO CHEPKWONY 1ST OBJECTOR

BERNARD KIPRONO CHERUIYOT' 2ND OBJECTOR

JUDGMENT

1. The petitioner filed summons for confirmation of grant dated 4th August, 2022 seeking the following orders;
 - (i) That the grant of letters of administration intestate made to Joseph Kipkemoi Chepkwony by this Honourable Court on 10th January, 2022 be confirmed.
 - (ii) That costs be in the cause.
2. The application is supported by grounds on the face of it and the affidavit sworn in support of summons for confirmation of grant by Joseph Kipkemoi Chepkwony the petitioner herein.
3. The petitioner avers that the grant of letters of administration in the estate of the deceased was made to him on 10th January, 2022 and that six (6) months had lapsed since the grant of letters of administration intestate was made to him.
4. The petitioner set out the dependents of the deceased and the proposed mode of distribution of the estate of the deceased and avers that there was no objection to the confirmation and subsequent distribution of the estate of the deceased.
5. Bernard Kiprono Cheruiyot, the 2nd objector herein filed an affidavit of protest against issuance of the grant of letters of administration dated 12th January, 2023.



6. The objector avers that he is the son of Mary Chebet Sanga who was the former registered owner of land parcels numbers Kericho/Kaptebengwet/256, 257 and 289. The objector avers that his deceased mother sold two acres of land as comprised in land parcel number Kericho/Kaptebengwet/256 to Cheres Takpereno Koske (deceased) through a sale agreement dated 14th November, 1990 and transferred the whole parcel to him.
7. The objector avers that it therefore was shocking to them when the late Cheres Takpereno transferred two other parcels comprising of Kericho/Kaptebengwet/257 and 289 to his name without the prior knowledge, consent and information of his mother (now deceased) and that the same caused his family great distress.
8. The objector avers that they approached the petitioners and his brothers to include them in the instant succession cause to no avail. The objector avers that they were therefore surprised to learn that the petitioner had obtained letters of administration intestate with respect to the estate of the deceased without their knowledge.
9. The objector avers that they were apprehensive that the petitioner was out to exclude him and his siblings from inheriting the estate of their late mother. The objector maintained that Kericho/Kaptebengwet/257 and 289 form part of the estate of his late mother and therefore ought to be distributed among him and his family members.
10. The objector aver that a portion of 0.6 of an acre of their land, in which they were currently occupying was subject to the instant succession proceedings.
11. The objector reiterated that they were apprehensive that the petitioner's intention was to grab land and apportion upon themselves land which was wrongfully and fraudulently acquired by the deceased and if the same is left unmitigated by this Court, the objectors would be rendered landless and destitute.
12. The objector avers that they held a family meeting on 26th December, 2022 and resolved to report the matter to the Area Chief. The objector therefore urged this Court to allow the protest in the interest of justice.
13. On 29th January, 2023, Joseph Chepkwony the petitioner filed a replying affidavit in response to the protest.
14. The petitioner avers that his deceased father the late Cheres Tapkerono Koske owned all three land parcels to wit Kericho/Kaptebengwet/256, 257 and 289 and attached the copies of official search.
15. The petitioner avers that they have all supporting documents to prove that the deceased legally purchased all the three land parcels and attached copies of the purchase agreement.
16. The petitioner avers that the objector was not included in the proceedings because he was not one of the beneficiaries of the estate of the deceased.
17. The petitioner avers that the instant succession proceedings were proper and followed due process of the law.
18. The petitioner avers that the 0.6 acre the objector claims, forms part of the estate of the deceased herein and therefore the objector was living illegally on the estate. The petitioner maintains that the estate under distribution was legally acquired by the deceased and in the circumstances the protest should be disallowed.
19. Subsequently the petitioner filed an amended summons for confirmation of grant dated 23rd February, 2023 seeking the following orders;



- (i) That the grant of letters of administration intestate made to Joseph Kipkemoi Chepkwony in this matter on 10th January, 2022 be confirmed.
 - (ii) That six (6) months have lapsed since the grant of letters of administration was issued.
 - (iii) That land parcel Nakuru/Olenguruoni/Amalo 345, 354 and 355 to be added as part of the deceased's property and be shared by the beneficiaries equally.
 - (iv) That there is no dispute between the beneficiaries.
 - (v) That the costs of the application be in the cause.
20. The application is supported by grounds on the face of it and the affidavit sworn in support of the amended summons for confirmation of grant by Joseph Kipkemoi Chepkwony the petitioner herein.
 21. The petitioner avers that the grant of letters of administration in the estate of the deceased was made to him on 10th January, 2022 and that six (6) months had lapsed since the grant of letters of administration intestate was made to him.
 22. The petitioner set out the dependents of the deceased, the properties constituting the estate of the deceased to wit Nakuru/Olenguruoni/Amalo 345, 354 and 355 and the proposed mode of distribution of the estate of the deceased.
 23. The petitioner avers that there was no objection to the confirmation and subsequent distribution of the estate of the deceased.
 24. The matter proceeded via viva voce evidence. The objector called six (6) witnesses in support of his case, whereas the petitioner opted not to call any witnesses.
 25. Bernard Kiprono Cheruiyot (Pw.1) stated that he filed the protest and would be relying on his witness statement dated 12th January, 2023 as his evidence in chief. He stated that they were claiming Kericho/Kaptebengwet 257 and 289 which are in the name of Cheres Tapkerono Koske (deceased).
 26. He reiterated that the said land parcels were acquired fraudulently and that the said parcels were previously in the name of Mary Chebet Sanga. He urged this Court to retransfer the titles to Mary Chebet Sanga and produced a bundle of documents PExh. 1-5 in support of his case.
 27. On cross examination Pw. 1 confirmed that he had authority to represent the estate of Mary Chebet Sanga (deceased). Pw.1 confirmed that the land parcels were registered and transferred to the deceased herein fraudulently. On re-examination Pw. 1 stated that they filed a succession cause in Bomet in respect of the estate of Mary Chebet Sanga vide Succession Cause No. 41 of 2023 and he was appointed as an administrator.
 28. Kipkemoi Arap Keter (Pw. 2) adopted his witness statement dated 12th January, 2023 as his evidence in chief. On cross examination Pw. 2 maintained that Mary Chebet Sanga did not sell land to Cheres Tapkerono and he did not witness Mary Sanga signing any purchase agreement in respect to the properties. Pw. 2 stated that he was not aware that they ought to have filed their claim in the Environment and Land Court.
 29. Ruth Chepkemoi (Pw. 3) adopted her witness statement dated 12th January, 2023 as her evidence in chief. On cross examination Pw. 3 stated that she was aware that Mary Chebet Sanga had sold some land, however, she was not aware whether Mary Chebet Sanga sold land to Cheres Tapkerono and that the said land was registered in the name of Cheres Tapkerono.



30. David Kipkoech Keter (Pw. 4) adopted his witness statement dated 12th January, 2023 as his evidence in chief. On cross examination Pw.4 stated that he was not aware whether Mary Chebet Sanga had signed an agreement thereby selling her land and that the land in dispute was registered in the name of Cheres Tapkerono. On reexamination Pw. 4 confirmed that he did not witness Mary Sanga signing an agreement selling land to Cheres Tapkerono.
31. Esther Chepngetich (Pw. 5) adopted her witness statement dated 12th January, 2023 as her evidence in chief. On cross examination Pw. 5 stated that she did not witness Mary Sanga signing an agreement selling land to Cheres Tapkerono.
32. Samuel Kipyegon (Pw. 6) adopted his witness statement dated 12th January, 2023 as his evidence in chief. On cross examination Pw. 6 confirmed that he was not aware that Mary Sanga sold land to Cheres Tapkerono, however, he was aware that Cheres Tapkerono obtained the land in dispute fraudulently and set up boundaries.
33. At the close of the protestors case. Joseph Kipkemoi Chepkwony (Dw.1) the petitioner testified in open court and did not call any witnesses in support of his case. Dw. 1 stated that he filed a replying affidavit dated 14th August, 2023 in response to the protest and would rely on it as evidence-in-chief. He urged this court to adopt the mediation report dated 16th January, 2023 as a decision of this Court and further that the distribution of the estate be done as agreed in the mediation agreement. On cross examination (Dw.1), he confirmed that his father bought land from Mary Chebet Sanga, he was in possession of the sale agreements. Dw.1 confirmed that his late father Cheres Tapkerono did not illegally transfer to himself land belonging to Mary Sanga, he followed due process and further to this Dw. 1 had the consent forms.
34. The parties were directed to file written submissions which this Court has considered.
35. The objector filed submissions in which he reiterated that filed a protest against issuance of grant of administration to the petitioner. The objector maintained that land parcels Kericho/Kaptebengwet 257 and 289 rightfully belonged to Mary Chebet Sanga who was the proprietor and registered owner of the said titles.
36. The objector contended that the land parcels were fraudulently acquired by the late Cheres Tapkerono Arap Koskei, the deceased herein. The objector was adamant that the land parcels did not constitute the estate of the deceased and therefore ought not be subdivided among the dependents of the late Cheres Tapkerono Arap Koskei. The objector cited the case of Zacharia Wambugu Gathimu & Another v John Ndungu Maina [2019] eKLR whereby the Environment and Land Court in Nyahururu upon making a finding that the land belonging to the deceased proprietor was fraudulently obtained, the Court canceled the resultant title and reverted to its rightful owner.
37. The petitioner filed submissions in which he maintained that the 1st objector was a brother to the petitioner and they settled their issue through mediation whereas the 2nd objector is a total stranger claiming ownership of L.R. No. Kericho/Kaptebengwet/257 and 289 and was intent on frustrating the instant succession proceedings. The petitioner maintained that the late Cheres Tapkerono legally purchased the said parcels of land and therefore the said parcels formed part of the estate of the deceased.
38. Having considered the pleadings, viva voce evidence and submissions by the parties, I find that the sole issue for determination by this court is whether to allow the protest against the grant of letter of administration intestate, on the ground that the deceased had irregularly and/or unlawfully obtained land parcels Kericho/Kaptebengwet 257 and 289 and therefore the said land parcels were not part of the deceased's estate. The answer is in the negative. I find that the protestor is a stranger to the estate of



the deceased and the protest raises issues of ownership. Succession proceedings are not an appropriate forum for determining disputes between the estate and third parties over title to and/or ownership of assets placed before the court for distribution.

39. In *re Estate of Stone Kathuli Muinde (Deceased)* [2016] eKLR Musyoka J. held as follows; “ It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere. Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the Civil Procedure Rules. This could mean filing suit at the magistrates’ courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such a suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.”

40. The affidavit of protest against issuance of the grant of letters of administration dated 12th January, 2023 is hereby dismissed. The cost of the protest shall be borne by the protestor. Consequently, the amended summons for confirmation of grant dated 23rd February, 2023 is hereby allowed and the costs shall be in the cause.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 9TH DAY OF MAY, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Mr. Rutoh

Miss Chemutai for the Objector

No Appearance for the Petitioner

