



**In re Estate of Taplule W/O Teituk (Deceased) (Succession Cause
143 of 2014) [2023] KEHC 1261 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1261 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 143 OF 2014
AN ONGERI, J
FEBRUARY 16, 2023**

BETWEEN

REUBEN KIPKURUI LANGAT ADMINISTRATOR

AND

EVALINE CHEMUTAI LANGAT OBJECTOR

RULING

1. The deceased herein Taplule W/o Teituk died intestate on 23/1/2008 while domiciled in Kenya.
2. The deceased left behind one parcel of land being Kericho/Litein/489 measuring 18.5 Acres (hereafter referred to as the suit property).
3. The deceased also left the following beneficiaries;
 1. Evaline C. Langat - daughter in law
 2. Johnstone Kipkorir Langat – Son
 3. Reuben Kipkurui Langat – Son
4. Johnstone Kipkorir Langat (now deceased) was issued with the grant of letters of Administration on 9/10/2014.
5. The grant of letters of Administration was subsequently amended on 11/11/2022 and issued to Reuben Kipkirui Langat.
6. Reuben Kipkirui Langat filed a summons for confirmation but the grant has not been confirmed since Evaline Chemutai Langat filed an objection on the basis that she is entitled to a bigger share of the Estate since her late husband Robert Langat purchased 10 acres and the deceased also bought 2 Acres.



7. The objector proposed that the property be distributed as follows;
 1. Robert Langat 9^{1/2} Acres
 2. Johnstone Langat 2 Acres
 3. Stephen Langat 7 Acres
8. The petitioner filed a Nopo dated 3/11/2022 to the protest on the following grounds;
 - i. That the court lacks the requisite jurisdiction to hear and determine the issues raised in the objector's affidavit of protest
 - ii. That the objector lacks the locus standi to lodge the protest.
 - iii. That the protest is therefore fatally defective and incompetent in both form and substance; and is scandalous, frivolous, vexatious and therefore an abuse of the court process.
9. The parties canvassed the application by way of written submissions which I have duly considered.
10. The administrator submitted that the preliminary objection was not frivolous and meet in the threshold set out in *Mukhisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696.
11. The administrator submitted that the court lacked the jurisdiction to hear and determine the instant application and cited the case of *Owners of Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Limited*.
12. The administrator contended the crux of the matter, based on the averments in the affidavit of protest dated 24/2/2021, was on land ownership.
13. The administrator further contended that the affidavit of protest, was essentially inviting the court to determine questions of formalities of sale such as whether there was an agreement of sale, proof of consideration et al. which the court is not equipped to hear and determine.
14. The administrator reiterated that disputes on ownership of land were within the mandate of the Environment and Land Court as opposed to the Probate Court whilst placing reliance on article 162 of *the Constitution* and section 13 of the *Environment and Land Court Act*. The administrator cited the following cases *Stanley Mathenge Ruruga (Deceased)* [2018] eKLR, *Elijah Gachoki & Another v Stanley Mugo Kariuki & Another* (2016) eKLR, *Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR.
15. The administrator reiterated that the objector did not have locus standi, in her affidavit of protest she was not pleading dependency on the estate of the late Taplule.
16. The administrator contended that the protestor was asserting proprietary and beneficial interests as the widow to Robert Langat yet she was not yet appointed a legal representative to his estate, this was tantamount to intermeddling. The administrator cited the provisions of section 45 of the *Law of Succession Act* and the holding in *Veronica Njoki Wakagoto (Deceased)* (2013) eKLR.
17. The administrator contended that for want of jurisdiction or a cause of action the instant application was frivolous and /or vexatious and therefore an abuse of court process, the administrator therefore sought to have the court uphold the preliminary objection and strike out the affidavit of protest with costs.
18. The objector in opposition to the Nopo dated 3/11/2022 submitted that the preliminary objection had not met the threshold set out in *Mukhisa Biscuits Manufacturing Co. Ltd v West End Distributors*



Ltd (1969) EA 696 and further that the preliminary objection was meant to delay the expedient determination of the protest filed herein.

19. The objector contended that there was no dispute as to the ownership and/or the registered proprietor of the suit property herein known as Kericho/litein 489 and rather that the issues in the protest herein were deeply rooted in the grant in which only a succession/probate court possesses the jurisdiction to hear and determine.
20. The objector reiterated that she had locus standi in the matter to lodge the protest and cited cases in which the courts recognized a daughter in law (a widow to a son of the deceased) as one of the beneficiaries of the estate of the latter deceased parent in law, to wit the cases of *Nabashon Karungu Macharia v Rosemary Kabura Njoroge* (2016) eKLR, *Re Estate of Samuel Gichuhi Mugambi Alias Gichuhi S/O Mugambi (Deceased) & Re Estate of Gatumo Njimuko (Deceased)* [2021] eKLR.
21. The objector reiterated that allowing the preliminary objection would deny her a chance to ventilate her case and given the fact that she had demonstrated that; preliminary objection had not met the threshold established in *Mukhisa Biscuit Manufacturing Co, Ltd.* (supra), the court had jurisdiction to hear and determine the claim, the objector had locus standi to lodge the protest, invariably, the Nopo dated 3/11/2022 was devoid of merit and ought to be dismissed with costs.
22. The sole issue for determination in this application whether this court has the jurisdiction to hear this case.
23. I find that the dispute arose when Evaline Chemutai Langat filed an objection on the basis that she is entitled to a bigger share of the Estate alleging that her late husband Robert Langat purchased 10 acres and the deceased also bought 2 Acres.
24. I find this is an issue to be determined by the Family court as it relates to the distribution of the Estate.
25. I dismiss the Nopo and direct that the objection proceeds by viva voce evidence.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 16TH DAY OF FEBRUARY, 2023.

A. N. ONGERI

JUDGE

