



REPUBLIC OF KENYA



In re Estate of Cherono Arap Chepkoiyo (Deceased) (Succession Cause 10 of 2014) [2023] KEHC 22336 (KLR) (21 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22336 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 10 OF 2014
RN NYAKUNDI, J
SEPTEMBER 21, 2023**

IN THE MATTER OF THE LATE CHERONO ARAP CHEPKOIYO (DECEASED)

BETWEEN

**KIMOI CHERONO 1ST PETITIONER
PERIS KIMOI CHERONO 2ND PETITIONER
LUCAS CHANGWONY CHERONO 3RD PETITIONER**

AND

KOBILO CHERONO OBJECTOR

AND

**LUCAS CHERONO 1ST CITOR
HENRY CHERONO 2ND CITOR**

RULING

1. What is pending before this court is the objectors' objection proceedings filed on 8th October 2015 and another one filed on 12th October 2015.
2. The first objection filed on 8th October 2015, is premised on the following grounds;

That several properties have been omitted being;

14 acres of land at Kaptum sub location, Kokwao location – Elgeyo Marakwet County Kibutan – 7 acres, Chepcharau farm – 2 acres, Metchi farm – 1 ½ acres and Chepnyal Farm 2 ½ acres. Cheplaskei farm – 14 acres – Uasin Gishu County Lelan/Kaptalamwa/144 – 44 acres – Elgeyo Marakwet County That the widow of the deceased – Mrs. Kimoi Cherono has been excluded All daughters of the deceased have been excluded from the estate That Mr. Fredrick Cherono, born out of wedlock, is a child of Peris Kimoi Cherono, has been excluded That the guarantors of the estate cannot be the son of the



administrator Lucas Changwony Cheron. That the entire proceedings have been done secretly. That consent to the making of the grant was not sought by the petitioners from the objectors. That the petitioners are hell bent on the property comprised in title no. Lelan/kaptalamwa/152 whereas none of the petitioners stays therein at all. That the petitioners stay on Lelan/kaptalamwa/144 which they have failed to disclose to the court. That Kimoi Cheron, John Kipkemoi Cheron, Paul Kiptoo Cheron, Lazarus Cheron, Mary Jematia, Anna Cheron, Grace Cheron live in Cheplaskei farm/Karuna/Block 9/109 and have failed to disclose the same. That prior to applying for letters of administration, the petitioners herein irregularly, unlawfully and fraudulently disposed of a substantial portion of the estate to the exclusion of the objectors. The petitioners intend to deprive the objectors of their lawful inheritance in the estate of the deceased. That the consequences of the foregoing the petitioners are unfit to be granted letters of administration to the estate of the deceased. That the deceased had fully settled Lucas Changwony Cheron and has failed to disclose the same to the court. The objection filed on 12th October 2015 is a replication of the objection filed on 8th October 2015.

3. The petitioners opposed the objection vide a replying affidavit filed on 23rd October 2015 wherein they deponed that they followed the relevant proceedings and that the properties listed in the objection did not form part of the estate of the deceased. They stated that the property known as Lelan/kaptalamwa/144 was purchased for valuable consideration by Charles Chemae, Lucas Cheron and Henry Cheron and they annexed the copies of official search. Further, that the deceased had debts including hospital bills at Elgon View Hospital amounting to Kshs. 320,000/- and Kshs 30,000/ for burial. That he had a debt with Lucas Changwony Cheron for 11 barbed wires valued at Kshs 3000.
4. The petitioners contended that the objectors were not dependants as they were not maintained by the deceased prior to his death. They urged that the objection is unmerited and prayed the court dismiss it.
5. The petitioners filed witness statements by their witnesses. The objectors had a witness in their list of witnesses but no witness statement is on record.
6. The 3rd petitioner, Lucas Changwony Cheron, stated that he is the first born to the deceased and that the family has four households. Further, that the properties left behind by the deceased are Lelan/kaptalamwa/152 measuring 1/3 acres and Cheplaskei farm measuring 7 acres. He stated that Lelan/kaptalamwa/144 is not part of the estate as it was auctioned and purchased by three beneficiaries who it should go to.
7. The 2nd witness, Wilson Chepkoiyo, a neighbour to the deceased, stated that the deceased left behind three properties being Lelan/kaptalamwa/152, Cheplaskei Farm and Plot no. 44. Further, that the properties mentioned by the objectors had not been divided among the larger family and therefore did not form part of the estate.
8. The remaining witnesses, being Nicholas Kipchumba Chepkoiyo and Thomas K Kimaiyo reiterated the testimony of the 1st two witnesses.

Objector's case

9. The objectors have not filed submissions on the objection proceedings.

Petitioners' Case

10. The petitioners submitted that they filed their petition for grant of letters of administration in compliance with the legal requirements. They filed their Petition for Letters of Administration Intestate dated the 9/1/2014 on the 14/1/2014 and the same proceeded to court for hearing. Vide a Notice dated 15/1/2014, the Deputy Registrar, Eldoret High Court sent a notice to the Principal



Registrar High Court informing him of the said application for letters of administration filed by the Petitioners and another notice was sent to the Kenya Gazette for publication in compliance with the Rules. Vide Gazette Notice No. 975 published on the 14th February, 2014 this cause was gazetted. There having been no Notice of Objection filed/received within the prescribed period, the Honourable Justice Fred A. Ochieng (as he then was) proceeded to issue the Grant of Letters of Administration to the Petitioners on 26th March, 2014.

11. The petitioners submitted that the Objectors' Objection to the making of Grant was first filed on the 8/10/2015 which is more than one year after the lapse of the 30 days' notice period and that period was equally never extended neither was this court offered any explanations as to the objectors' inordinate delay. As such, the petitioner contends that the objection was filed contrary to the provisions of section 68 of the Law of Succession Act. They cited the cases of in In re estate of Agnes Qqolas Akoth (Deceased) (2016) eKLR and in In re Estate of Stephen Taraiya Kapande (Deceased) (2021)eKLR in support of this submission.
12. The petitioner cited Rule 17(2) of the Probate and Administration Rules and urged that despite the lapse of time for filing of objection, no request for extension of time under Section 68(1) was filed by the Objectors calling for extension of time as envisaged under the Law of Succession Act and the Rules therein. In further support of this submission, the petitioners relied on the case of In re estate of Agnes Qqolas Akoth (Deceased) (2016) eKLR, urging the court to dismiss the objection as it was filed a year after the grant of letters of administration had been confirmed and as such is incompetent.
13. The petitioner urged the court to strike out both the objections.

Analysis & Determination

14. Upon considering the objection to making of a grant and the responses thereto, the following issues emerge for determination;
 1. Whether the objections are contrary to the provisions of law
 2. Whether the objections are merited
 3. Whether the objections are contrary to the provisions of law
15. As both the objections are similar, I shall consider them as one and the same. Objection to making of a grant is governed by section 68(1) of the Law of Succession Act provides as follows;
 - (1) Notice of any objection to an application for a grant of representation shall be lodged with the court, in such form as may be prescribed, within the period specified by such notice as aforesaid, or such longer period as the court may allow.
16. The period referred to by the above section is the period that the Gazette notice specifies. Rule 17 (1) (2) of the Probate and Administration Rules is very clear as to how objections, answers and applications ought to be initiated before court. It provides:-
 17. (1) Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person may do so by lodging within the period specified in the notice of the application published under rule 7 (4), or such longer period as the court may allow, either in the registry in which the pending application has been made or in the principal registry, an objection in Form 76 or 77 in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection.



- (2) A request by an intending objector for an extension under section 68 (1) of the Act of the period specified in the notice under rule 7 (4) shall be made to the registry at which the application for a grant was made or by which the notice was issued, as the case may be, by summons supported by an affidavit, if necessary, and upon notice to the applicant for the grant.
17. This cause was gazetted vide a gazette notice no. 975 which was published on 14th February 2014. The period provided on the said notice was thirty days from the publication of the notice. The objection was filed more than 30 days after the publication and further, there was no request by the objectors to file the notice out of time.
18. The Law of Succession has clearly set out provisions on how matters of succession cause can be dealt with. An aggrieved party cannot ignore the express provisions of the law and claim that he is doing so, so as to get substantive justice in respect of his claim. In the premises, the objections to making of the grant dated 3rd August 2015 and 12th October 2015 are hereby dismissed. Each party shall bear its own costs.
19. It is so ordered.

DELIVERED VIE E-MAIL DATED AND SIGNED AT ELDORET ON THIS 21ST SEPTEMBER 2023

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R. NYAKUNDI
JUDGE

