



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU.

SUCCESSION CAUSE NO. 7B OF 2003.

IN THE MATTER OF THE ESTATE OF THE LATE DANIEL KIPKOECH KAUTET.

JUNITER CHEMUTAI.....1ST PETITIONER/APPLICANT

PAULINE CHERUTICH SANG.....2ND PETITIONER

VERSUS

ANNE NENE KAUTET.....OBJECTOR/RESPONDENT

RULING.

1. By her Notice of Motion dated 11th June 2019 prays for the following reliefs;

a) The court does review and or set aside the ex-parte orders granted on 5th October 2018.

b) The court does rectify the certificate of confirmation of grant dated 27th July 2007 by removing plot B parcel no. 111 /Kirobon as part of the estate of Daniel Kipkoech Kautet (deceased).

2. The applicant prays also for the respondents to be condemned to pay costs.

3. The application is supported by the applicant's sworn affidavit dated the same day. The facts deponed are clear and straight forward. The three parties herein are the widows of the deceased herein. The grant was issued to them jointly on **27th July 2007**.

4. The respondents applied for rectification of grant which was done on **5th October 2018**. Thereafter the respondent's advocates wrote to her seeking to have the rectified grant implemented. The applicant after learning of this swung into action and thus the filing of this application.

5. The applicant has contended that she was not served with the application to have the grant rectified and there was no affidavit of service to that effect. More importantly the property namely **NAKURU /NJORO /NGATA BLOCK 2/47** did not form part of the estate herein. The same applied to land parcel number **MOLO SOUTH KERINGET BLOCK 2/577**. Both parcels of lands belonged to **KOSITANY ARAP TERES** (deceased) and **MARY CHEPKEMOI TERES** respectively.

6. In the premises even if the grant was to be rectified the same did not belong to the estate herein but different parties whose rights will be prejudiced. They pray that the same be reviewed and the grant so rectified be set aside.

7. The objector **Ann Nene Kautet** in her replying affidavit sworn on **9th July 2019** has opposed the application arguing that the court rightly allowed their application despite the absence of the applicant. That land parcel number **NAKURU /NJORO/NAGATA BLOCK 2/47** belonged to her father in law Kositany Teres and he had allotted to his children including the deceased. She admitted that the same is still registered in the name of the said father in law who is now deceased.

8. She went on to state that land parcel number **MOLO SOUTH KERINGET BLOCK 2/577** formerly **plot B NO. 11 KIROBON** is registered in the name of their mother in law and there are shops which were constructed by the deceased herein which are being used by the applicant exclusively. That they have the right of demanding their use as well.

9. The issues raised by the applicant seems to have been touched in the judgement of this court dated **27th July 2007**. However, the application to have the grant rectified was not served upon the applicant. This was not disputed by the respondents. Had she been served perhaps she would have raised issues which are now contained in her supporting affidavit especially the fact that the contested properties did not belong to the deceased but were in the names of his late father and mother respectively.

10. The court to the extent that the applicant was not aware of the application dated **17th July 2018** finds it a valid reason to review the orders granted on that date. The applicant should have been granted a chance to air her views over the same. In any case and as admitted by the respondent there was no affidavit of service on record.

11. All is not lost to either of the parties. They shall have the chance to ventilate their issues including the preliminary objection on record dated **28th October 2019** as well as the issues raised in their written submissions which the court for now would not want to spend much time analysing them. More significantly the question of whether the properties in dispute belonged to the deceased or other parties shall be determined in the main application and whether it accords with the court's judgement already on record. The applicant should as a matter of right and natural justice be given her day in court.

12. In the premises the application is allowed as follows;

a) The orders of this court dated 5th October 2018 are hereby reviewed and set aside together with all the attendant consequences.

b) The application dated 17th July 2018 is hereby set down for hearing inter-parties and the applicant is granted leave to file a replying affidavit, if any, and serve within 14 days from the date herein.

c) This matter shall be mentioned on 1st of July 2021 for further directions.

d) Costs shall be in the cause.

Dated signed and delivered via video link at Nakuru this 10th day of June 2021.

H K CHEMITEI

JUDGE.