



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

SUCCESSION CAUSE NO. 46 OF 2020

IN THE MATTER OF THE ESTATE OF JOSEPH TOROITICH CHERONO (DECEASED)

IN THE MATTER OF AN APPLICATION FOR PRESERVATION OF THE ESTATE OF THE DECEASED

BETWEEN

PATRICK TOROITICH CHERONO.....1ST PETITIONER

KENETH KIPTOO CHERONO.....2ND PETITIONER

AND

RUTH JERONO CHERONO.....OBJECTOR

RULING

[1] The application dated **5 February 2021** was filed herein by **Christopher K. Cheron** pursuant to **Section 45 and 47** of the **Law of Succession Act** and **Rule 73** of the **Probate & Administration Rules**. He also cited **Sections 1A, 1B, 3, 3A, 63 (e)** of the **Civil Procedure Act, Chapter 21** of the **Laws of Kenya**, seeking the following orders:

[a] Spent

[b] That there be an order directed to **Patrick Toroitich Cheron**, **Kenneth Kiptoo Cheron** and **Raymond Toroitich Cheron**, the sons of the deceased from the 1st house, and all their siblings, restraining them from wasting, intermeddling, selling, offering for sale, damaging, distributing, sharing out, cutting and selling trees, burning and selling charcoal, selling cows, harvesting and selling hardcore stones, demolishing houses and cowsheds, misusing tractors and machines and all other movable assets in the estate of the deceased be preserved pending the hearing and determination of this cause.

[c] That the Court be pleased to order that the estate account be opened in the name of **Patrick Toroitich Cheron** and **Christopher K. Cheron** at **Cooperative Bank of Kenya** for purposes of collecting the milk proceeds and any other income from the deceased's estate.

[d] That the Court be pleased to direct that **Patrick Toroitich Cheron**, **Kenneth Kiptoo Cheron** and **Raymond Toroitich Cheron** to account for the money for:

[i] The milk proceeds at Kaptagat Settlement Scheme Farm **Plot No. Kaptagat Settlement Scheme (Kaptich Farm) 228** as from **1 November 2019** to date and deposit the same in the estate account;

[ii] The sale of 3 cows at **Kaptagat Settlement Scheme Plot No. 228** and 4 cows sold at **Kabao Farm Muiyeng'wet** after demolishing the cowshed;

[iii] Money realized from the sale of cypress trees at **Kaptagat Settlement Scheme Farm Plot No. 228**, and 1 pine tree and 10 cypress trees sold at **Kaptich Farm**;

[iv] Money obtained from the sale of hardcore stones at **Kaptagat Settlement Scheme Farm Plot No. 228**;

[v] Money for the sale of 30 bags of charcoal from **Kaptagat Settlement Scheme Farm Plot No. 214;**

[vi] The inventory of the cows at **Kaptagat Settlement Scheme Plot No. 228 (Kaptich Farm)** and **Kabao Farm.**

[e] That **Patrick Toroitich Cheron, Kenneth Kiptoo Cheron** and **Raymond Toroitich Cheron** be restrained from ploughing and/or leasing the virgin land at **Kaptagat Settlement Scheme Plot No. 228, Kaptagat Settlement Scheme (Kaptich Farm) Plot No. 214** and **Kabao Farm,** respectively, pending the hearing and determination of this cause.

[f] That **Patrick Toroitich Cheron, Kenneth Kiptoo Cheron** and **Raymond Toroitich Cheron** be stopped from interfering with the unploughed and/or virgin land at **Kaptagat Settlement Scheme Plot No. 228** and **Kaptich Farm Plot No. 214** until the estate is distributed;

[g] That **Patrick Toroitich Cheron, Kenneth Kiptoo Cheron** and **Raymond Toroitich Cheron** be ordered to rebuild the staff quarters they demolished and the cattle shed in the **Kabao Farm/Muyieng'wet;**

[h] That **Patrick Toroitich Cheron, Kenneth Kiptoo Cheron** and **Raymond Toroitich Cheron** to stop the following activities in **Kabao Farm/Muyieng'wet:**

[i] Stop leasing out part of land especially to one **Pius Tum** until the estate is distributed;

[ii] Stop planting trees in the land and creating boundaries in the farm until the estate is distributed;

[iii] Stop the blockade of the access road to the cowshed;

[iv] Stop intimidating the inciting the applicant's workers;

[v] Stop ploughing and planting in the widow's farm measuring 5 acres.

[i] That **Kenneth Kiptoo Cheron** be restrained from partitioning **Road Block Plot (Kingong'o)** managed by **Ruth Cheron** (widow) and from inciting tenants and collecting rent from the tenants pending the distribution of the estate of the deceased.

[j] That **Christopher K. Cheron** and all other beneficiaries be given access to all the grazing fields in **Kaptagat Settlement Scheme Plot No. 228, Kaptagat Settlement Scheme (Kaptich Farm) Plot No. 214, Kabao Farm** and **Illula Farm Settlement Scheme Plot No. 001.**

[k] That the costs of the application be in the cause.

[2] The application was premised on the grounds that, although an order was made by consent on **27 July 2020** directing the applicant and **Patrick Toroitich Cheron** to jointly manage the estate of the deceased pending the issuance of Grant of Letters of Administration Intestate herein, **Patrick Toroitich Cheron** and his brothers have proceeded to make crucial decisions without involving the applicant. The applicant further complained that the said **Patrick Toroitich Cheron** and his siblings have been intermeddling with the estate of the deceased; and therefore need to be restrained in the interest of all the beneficiaries of the deceased.

[3] The applicant relied on his Supporting Affidavit, filed alongside his application; to which he annexed several documents to back up his averments. They include a copy of the Consent Order dated **27 July 2020** and a bundle of photographs exhibited as **Annexure B** in proof of the destruction adverted to at paragraphs 18 and 19 of the Supporting Affidavit.

[4] The 1st petitioner, **Patrick Toroitich Cheron,** denied the applicant's allegations. In his Replying Affidavit sworn on **26 February 2021,** the 1st petitioner denied that he and his brothers have been intermeddling with the estate of the deceased in the manner alleged by the applicant or at all. To the contrary, the 1st petitioner accused the applicant and members of the 2nd house of selling tractor **Registration No. KLR 148,** Harrow, Trailer, and Boom Spray, among other things, without consulting members of the 1st house. He responded to each of the allegations levelled against him by the applicant and endeavoured to demonstrate that, if anything, the intermeddling is attributable to members of the 2nd house.

[5] It was further the assertion of the 1st petitioner that all the beneficiaries of the deceased are entitled to plough their respective portions of the land left behind by the deceased; and therefore that it is not in the interest of justice to restrain him or his brothers from the 1st house from utilizing what is their entitlement. He added that he has been cultivating **Kabao Farm** from **2002** without any complaint. The 1st petitioner concluded his averments by stating, at paragraph 26 of his Replying Affidavit, that he and his brothers have no issue or objection to the proposed orders, with a view of preserving the estate of the deceased pending distribution.

[6] The applicant filed a Supplementary Affidavit in response to the assertions by the 1st petitioner. He denied having sold tractor **Registration No. KLR 148** as alleged by the 1st petitioner and stated that the said tractor has been in the garage in Merewet for over 10 years; having been taken there by the deceased himself. He similarly denied having sold other farm implements such as chisel, harrow, trailer and boom spray. He explained that the said implements are in Narok where the family used to undertake farming activities during the deceased's lifetime. The applicant further explained that 40 days after the death of the deceased, a family meeting was held in which it was resolved to have the farm produce in the store sold, namely, wheat, oats and maize, to pay off the liabilities owed by the deceased. Thus, the applicant responded to each of the assertions made by the 1st petitioner and urged that his application be allowed to ensure preservation of

the estate pending distribution.

[7] Counsel for the applicant, **Mr. Omwenga**, urged the application by way of written submissions, filed herein on **9 April 2021**. He proposed one broad issue for determination, namely, whether the applicant should be granted the orders sought in the application dated **5 February 2021**. He submitted that sufficient evidence has been placed before the Court to support the finding that the 1st petitioner and his siblings had intermeddled with the estate of the deceased for purposes of **Section 45** of the **Law of Succession Act**. He took the view that members of the 1st house have been acting with impunity and gone ahead to waste the estate, to the detriment of the other dependants of the deceased. Counsel relied on **Re Estate of R Y K (Deceased)** [2018] eKLR, **High Court Miscellaneous Application No. 21 of 2016: Re Estate of Njue Kamunde alia Njue Wa Kamunde (Deceased)** and **Re Estate of Isaac Kireru Njuguna (Deceased)** eKLR in urging the Court to grant the orders prayed for by the applicant; including an order awarding costs of the application to the applicant.

[8] **Mr. Miyiinda**, learned counsel for the 1st petitioner opted to file no submissions. He relied on the Replying Affidavit sworn by the 1st petitioner and the documents annexed thereto.

[9] I have given careful consideration to the application dated **5 February 2021**, the averments set out in the respective affidavits filed herein by the parties, as well as the written submissions filed by **Mr. Omwenga** on behalf of the applicant. A perusal of the court record shows that the deceased, **Joseph Toroitich Cheron**, died intestate on **18 December 2019**. He was married to two wives, the first of whom, **Rosebella Cheron**, predeceased the deceased herein, having had 7 children with the deceased. The 2nd wife, **Ruth Cheron**, survived the deceased along with her 9 children.

[10] The court record further shows that, on the **19 July 2020**, the 1st petitioner, jointly with his brother, **Kenneth Kiptoo Cheron**, filed this petition, seeking to be issued with Grant of Letters of Administration Intestate in respect of the estate of the deceased. Although they included members of the 2nd house in the petition as beneficiaries, it was not their intention to have them included in the administration of the estate. This apparent egocentrism was however ameliorated when the two houses ironed out a consent order to include the applicant, **Christopher Kiptarik Cheron**, as a co-petitioner in place of **Kenneth Kiptoo Cheron**. Thus, on **27 July 2020**, a consent order was recorded herein in the following terms:

[a] That the charcoal being burnt on property **LR No. Uasin Gishu/Illula/1** be arrested and managed by the two proposed petitioners, namely, **Patrick Toroitich Cheron** and **Christopher Kiptarik Cheron**; and that the same be sold and proceeds thereof be disbursed as follows:

[i] The 2 petitioners to pay the charcoal harvesting expenses;

[ii] Part of the proceeds be used to fence Parcels of land, namely, **Uasin Gishu/Illula/1** and **Tembeleo/Illula Block 1(Munyeng'wet) 74**;

[iii] Pay part of University or college fees for **Kevin Kibet Cheron** and **Cynthia Jeruto Cheron**;

[iv] The balance of the proceeds, if any, be held by the petitioners as part of the estate;

[b] Motor Vehicle **Registration No. KCF 646T**, Toyota Vanguard to remain in the hands of the widow, **Ruth Cheron**, for her use; and that she shall not sell or mortgage the same pending the distribution of the estate;

[c] Tractor **Registration No. KLF 984** do remain with **Raymond Cheron** pending distribution and the trailer be used by both families for transportation when the need arises.

[11] It appears that the 1st petitioner and members of the 1st house did not abide by the consent, for the applicant filed the instant application on **9 February 2021**, complaining of continued intermeddling by the members of the 1st house, and particularly by **Patrick Toroitich Cheron**, **Kenneth Kiptoo Cheron** and **Raymond Toroitich Cheron**. Whereas accusations and counter accusations were made by either side, there was agreement amongst the protagonists that the estate be preserved pending distribution. This is particularly evident in the Replying Affidavit sworn by the 1st petitioner at paragraph 26 where he stated that:

“THAT I and my brothers have no issue or any objection in having orders issued to preserve the estate of the deceased pending distribution and that the Court do give clear and express directions as against House 2 members as it is they that are the ones who are culpable in all the issues raised in their application.”

[12] By dint of **Section 47** of the **Law of Succession Act**; the Court has powers to make such orders as are necessary for the ends of justice herein. It provides that:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient...”

[13] Accordingly, further to the consent order of **27 July 2020**, and in the best interest of all the beneficiaries of the estate of the deceased, it is hereby ordered that:

[a] That **Patrick Toroitich Cheron**, **Kenneth Kiptoo Cheron** and **Raymond Toroitich Cheron**, the sons of the deceased from the 1st house, and all their siblings, be and are hereby restrained from wasting, intermeddling, selling, offering for sale, damaging,

distributing, sharing out, cutting and selling trees, burning and selling charcoal, selling cows, harvesting and selling hardcore stones, demolishing houses and cowsheds, misusing tractors and machines and all other movable assets in the estate of the deceased, pending the hearing and determination of this cause.

[b] That an account be opened in the joint names of **Patrick Toroitich Cherono** and **Christopher K. Cherono** at **Cooperative Bank of Kenya** for purposes of collecting the milk proceeds and any other income from the deceased's estate for the benefit of all the beneficiaries pending distribution.

[c] That **Patrick Toroitich Cherono, and Kenneth Kiptoo Cherono** do account for:

[i] The proceeds of milk from Kaptagat Settlement Scheme Farm **Plot No. Kaptagat Settlement Scheme (Kaptich Farm) 228** as from **1 November 2019** to date;

[ii] The proceeds of sale of the 3 cows at **Kaptagat Settlement Scheme Plot No. 228** and 4 cows sold at **Kabao Farm Muiyeng'wet** after demolishing the cowshed;

[iii] Proceeds of the sale of cypress trees at **Kaptagat Settlement Scheme Farm Plot No. 228**, and 1 pine tree and 10 cypress trees sold at **Kaptich Farm**;

[d] That the two proposed petitioners, namely **Patrick Toroitich Cherono** and **Christopher Kiptarik Cherono**, do furnish a joint list of a full and accurate List of Assets of the deceased, including an inventory of the cows at **Kaptagat Settlement Scheme Plot No. 228 (Kaptich Farm)** and **Kabao Farm**, as at **19 July 2020** when this petition was filed.

[e] That **Kenneth Kiptoo Cherono** be restrained from interfering with the management of **Road Block Plot (Kingong'o)** by **Ruth Cherono** (widow), and from inciting tenants or collecting rent from the tenants pending the distribution of the estate of the deceased.

[f] That **Patrick Toroitich Cherono**, the 1st petitioner herein, and the applicant, **Christopher Kiptarik Cherono**, do proceed to process the cause for gazettelement and issuance of Grant of Letters of Administration Intestate in respect of the deceased's estate in their joint names.

[g] That the costs of the application be in the cause.

[14] All the other prayers that in the application dated **5 February 2021** which have not been specifically allowed as aforementioned are to be treated as having been declined for now for the reason that they are premised on contested facts which are yet to be satisfactorily proved.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 12TH DAY OF JULY 2021

OLGA SEWE

JUDGE