



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KERICHO**

**SUCCESSION CAUSE NO. 91 OF 2009**

**IN THE MATTER OF THE ESTATE OF ELIJAH KIMILGO CHUMO (DECEASED)**

**ELIZABETH CHEPTONUI CHUMO.....1<sup>ST</sup> PETITIONER**

**LUCY CHELANGAT.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**ESTHER CHELANGAT MILGO.....1<sup>ST</sup> APPLICANT/1<sup>ST</sup> OBJECTOR**

**SARAH TAPRANDICH SANG.....2<sup>ND</sup> APPLICANT/2<sup>ND</sup> OBJECTOR**

**LILY CHEPKOECH.....3<sup>RD</sup> APPLICANT/3<sup>RD</sup> OBJECTOR**

**ZEDDY CHEPKOECH.....4<sup>TH</sup> APPLICANT/4<sup>TH</sup> OBJECTOR**

**DANNIS LANGAT KITUR.....5<sup>TH</sup> APPLICANT/5<sup>TH</sup> OBJECTOR**

**BETTY CHEPKOECH.....6<sup>TH</sup> APPLICANT/6<sup>TH</sup> OBJECTOR**

**RULING**

1. The Petitioners herein **ELIZABETH CHEPTONUI CHUMO** and **LUCY CHELANGAT** filed a Notice of Preliminary Objection (NOPO) dated 9/3/2021 against the summons for revocation of grant dated 22/2/2021 on the basis that there is a case pending at the Environment and Land Court being ELC. Case No. 43 of 2016 between the 1<sup>st</sup> Petitioner **ELIZABETH CHEPTONUI CHUMO** and the **CATHOLIC DIOCESE OF KERICHO**.

2. Further, that the issues raised in the said Application were determined in a Judgment delivered on 4/4/2019 and a ruling delivered by this Court on 29/1/2021.

3. The parties filed written submissions in the Notice of Preliminary Objection which I have duly considered. The Petitioner submitted that the issues raised in the application dated 22/2/2021 were raised and determined in the Judgment dated 4/4/2019 and a ruling dated 29/1/2021 and therefore the application dated 22/2/2021 should be struck out for reasons that it is res judicata.

4. Further, the Petitioner submitted that the firm of **MESSRS NYANGIRI and COMPANY ADVOCATES** represented the 1<sup>st</sup> Petitioner in a case at the ELC Court being ELC. Case No.43 of 2016 and therefore he is privy to information pertaining the case as the two cases relate to the same subject matter.

5. The Objectors opposed the Notice of Preliminary Objection and submitted that this matter has been pending in Court since 2009 and the Preliminary Objection is an attempt to further delay the matter.

6. Further, that the Consent of the beneficiaries were not sought before the petition was filed as required by the law.

7. The Objector relied on the case of **MUKISA BISCUIT MANUFACTURING COMPANY LIMITED VS. WEST END DISTRIBUTORS LIMITED [1969] EA 696** where Sir Charles Newbold stated as follows :-

**“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the**

*assumption that all the facts pleaded by the other side are correct. “*

8. The Objector denied that the firm of Nyangiri and Company Advocates acted for the 1<sup>st</sup> Petitioner in the ELC Court.

9. Further, that the ELC case involved fraudulent transactions with 3<sup>rd</sup> parties and the Land has now reverted back to the Estate and the current succession cause is dealing with distribution of the Estate to the beneficiaries.

10. The issues for determination in the Notice of Preliminary Objection are as follows:-

*(i) Whether the Application dated 22/2/2021 is res judicata.*

*(ii) Whether the firm of Nyangiri and Company Advocates should be barred from acting for the Objectors herein.*

11. On the issue as to whether the summons for revocation is res judicata. I find that the Judgment delivered on 4/4/2019 dismissed a similar Application for revocation.

12. The Court found that the 1<sup>st</sup> Objector **DAVID KITUR** transferred the Property to the **CATHOLIC CHURCH** and he could not be allowed to benefit from his wrong doing.

13. The 1<sup>st</sup> Objector **DAVID KITUR** was later joined by the current objector and they tried to renew the Protest by filing another Protest dated 27/8/2019 which was also dismissed on the grounds that the same is res judicata.

14. I find that the Application dated 22/2/2021 is seeking litigate on the same issue which this court has already determined in the Judgment dated 4/4/2019 and the ruling dated 29/1/2019.

15. The Application dated 22/2/2021 is therefore res judicata.

16. On the issue as to whether the firm of Nyangiri and company Advocates should be barred from acting for the Objectors herein, I find that there is no evidence that the said firm was acting for the 1<sup>st</sup> Petitioner in a similar matter and the said allegation has not been substantiated.

17. However, the Preliminary Objection is allowed on the basis that the Application dated 22/2/2021 is res judicata the same having been determined in the Judgment dated 4/4/2019 and the ruling dated 29/1/2021.

18. The court was told that there is a case pending at the Environment and Land Court being ELC. Case No. 43 of 2016 between the 1<sup>st</sup> Petitioner **ELIZABETH CHEPTONUI CHUMO** and the **CATHOLIC DIOCESE OF KERICHO**.

19. The parties to take a date for mention when the ELC case is concluded.

20. Each party to bear its own costs of the Preliminary Objection and the application dated 22/2/2021.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 1ST DAY OF OCTOBER, 2021.**

**A. N. ONGERI**

**JUDGE**