



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KABARNET

SUCCESSION CAUSE NO. 2 OF 2017

IN THE ESTATE OF JONATHAN KIPRUTO CHEMJOR (DECEASED)

SARAH WANJIRU GITICHI.....OBJECTOR/APPLICANT

VERSUS

TOM KIPTOO CHEMJOR.....1ST PETITIONER/RESPONDENT

KENNETH KIBET CHEMJOR.....2ND PETITIONER/RESPONDENT

JUDGEMENT

Procedural history

In this succession cause the petitioners/respondents filed an application for the confirmation of grant to which the objector raised an objection because the petitioners had left out some properties in the list of assets of the estate of their deceased brother.

The proceedings proceeded in the absence of the petitioners because they failed to attend the hearing notwithstanding that they were served with the notice of hearing. This is clear from the affidavit of service dated 11/3/2021.

It is only the objector who testified in support of her objection. Her counsel (Ms Nyongesa) filed written submissions in which she urged the court to uphold the objection.

Thereafter the petitioners through their counsel (Mr Oumo) joined the proceedings and formally applied to this court to stay the delivery of its judgement and to set aside the proceedings so that the same would start afresh (de novo). I rejected his application vide my ruling dated 11th November 2021.

The case for the objector/applicant

The objector testified as follows. She was a business lady who resides in Nakuru and after obtaining advice from her counsel she filed the instant objection because the petitioners had failed to disclose all the assets of the deceased; among them land parcel No Lembus/Kabimoi/305. They also did not consult her when they filed the succession cause at Eldama Ravine magistrate's court. It was also her evidence that the deceased had given to her the copies of the title deeds of his properties. She further testified that she knew the deceased.

Thereafter the objector adopted both her affidavit of protest dated 5/7/2019 and her further affidavit dated 22/1/2019 as her evidence.

In her affidavit of protest, the objector averred as follows. Had the court not intervened the money held by the Public Trustee in Eldoret would not have benefited the minor beneficiary in this cause; since they were not listed in the schedule of assets of the estate of the deceased. She also averred that by the time she learned of the succession cause close to shillings eight hundred thousand (shs 800,000/-) had been withdrawn. She also deposed that even after the court had intervened and had given directions on how the money for the maintenance of the minor beneficiary should be handled it became extremely difficult for the petitioners to consent to the release of the money during holidays; to which she has annexed the correspondence marked as annex "SWG1" as evidence of that position.

She further averred that land parcel No Lembus/Kabimoi/305 measuring about 5.63 HA had been conveniently left out from the list of assets of the deceased, to which the objector annexed a certificate of search marked "SWG2" to confirm the position. The objector has deposed that the petitioners benefited from the quarry on property reference No. Baringo/Perkera/-101/1125 of the deceased and have not accounted for the proceeds therefrom and only stopped when the issue was raised in court, in respect of which she has annexed photographs marked

“SWG3” as evidence thereof.

The objector has also deposed that owing to the challenges she has experienced it is important that the properties of the estate be held by the petitioners and herself in trust for the sole beneficiary until she attains the majority age of 18 years. She has also deposed that the proposal (by the petitioners) that the properties be held in trust by them until the minor beneficiary attains the age of 24 years is malicious and is not founded on any known principles of law. She has further deposed that she objects to the petitioners proposal that the shares in Baringo United be held in trust by them until the minor beneficiary attains 24 years; since Baringo United have transferred those shares to the minor beneficiary and the sum of shs 5,000/- is required to complete the purchase of those shares.

The objector has further deposed that the money held by the Public Trustee should be deposited in a joint interest earning account by both counsel on record to be utilized for school fees and maintenance of the minor beneficiary and the balance to be released to her upon attaining majority age of 18 years. The objector has also deposed that she objects to the proposal of the petitioners that they continue holding the benefits of the minor beneficiary until she attains 24 years and instead has deposed that the same be transferred to her upon the attainment of the majority age of 18 years.

The objector in her further affidavit of protest dated 22nd November 2019, has averred majorly as follows. After filing the said earlier affidavit of protest the objector learned of succession cause No 1626 of 1993 filed by the petitioners in the Nairobi High Court registry; in which they were issued with a grant a copy of which is an annex marked as “SWG1”. She has further deposed as follows. It is clear from that succession cause that it was in relation to their deceased father and the instant deceased person appears therein as beneficiary No. 2 and 3 in respect of the properties listed therein as forming part of the estate of their late father. It is also clear from that grant that land parcel No. Lembus/Kabimoi/305 measuring about 5.63 HA was hived from the mother title Lembus/Kabimoi/155; which had been allocated to the deceased in the instant cause. She has also learned that the 1st petitioner sold the hived parcel of parcel No. Lembus/Kabimoi/305 to one David Kipngeno, a matter in respect of which, she reported to the police at Eldama Ravine police station and was booked under OB number 37/21/11/2019.

Furthermore, the objector has deposed that it is not true that the said land parcel No. Lembus/Kabimoi/155; has not been sub-divided among the petitioners and the deceased as alleged by the petitioners in their further affidavit dated 14th October 2019. She has also deposed that Koibatek/Perkerra/land was divided among the petitioners and their siblings and there is no reason as to why Nancy Jepkemboi Chemjor entered into the house of the deceased.

The objector has deposed that the petitioners’ further affidavit dated 14th October 2019 is openly misleading.

Furthermore, the objector has deposed that her sole purpose is to protect the interests of the minor beneficiary.

Issues for determination

I have considered the affidavit of protest and the further affidavit of protest of the objector. I have already found vide my ruling dated 11th November 2021 that the petitioners although served with the hearing notice elected not to participate in the proceedings.

I find that the unopposed affidavit of protest and further affidavit of protest of the objector to be credible. I further find that the minor beneficiary (Ruth Jerono Kipruto) is the sole surviving beneficiary of the estate of her deceased father. I also find that she has now attained the majority age of 18 years.

Furthermore, I find that the objector’s interest is to protect the interests of the minor who now is no longer a minor. It therefore follows that she now does not need to be under the guardianship or trusteeship of the mother (the objector) or that of the petitioners or both of them. It also follows that the money now held by the office of the Public Trustee at Eldoret should be transferred to a reputable bank or financial institution in the name of the sole beneficiary of the estate of the deceased.

The upshot of the foregoing is that the objection succeeds with the result that Ruth Jerono Kipruto is the sole beneficiary of the estate of her deceased father and is entitled to the properties of his estate, except land reference No. Lembus/Kabimoi/305, which is not available for distribution. The resolution of the dispute over the ownership of the said parcel of land is a matter for the court exercising civil jurisdiction and not for a court sitting as a probate or succession court.

It is not the duty of this court to summon the land registrar to explain the circumstances that gave rise to the said title of land as deposed to by the objector in her affidavit of protest. This court has no jurisdiction to advise the objector or the sole beneficiary as to what should be done in respect of the said parcel of land; as this court is not vested with advisory jurisdiction.

I therefore find that the objection succeeds and I hereby uphold it.

JUDGEMENT SIGNED, DATED AND DELIVERED THROUGH VIDEO CONFERENCE AT NAIROBI THIS 11TH DAY OF NOVEMBER, 2021.

J. M. BWONWONG’A.

J U D G E

IN THE PRESENCE OF:

1. MS NYONGESA FOR THE OBJECTOR/APPLICANT

2. MR. OUMO FOR THE PETITIONERS/RESPONDENTS