



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

SUCCESSION CAUSE NO 24 OF 2018

IN THE MATTER OF THE ESTATE OF MICHAEL KIPKUTO CHEBII (DECEASED)

CLEMENT KIBET KUTOH.....PETITIONER/APPLICANT

VERSUS

KENNETH KIPYEGO KUTOH.....1ST RESPONDENT

THE LANDS REGISTRAR ELGYO MARAKWET COUNTY.....2ND RESPONDENT

RULING

1. What is before this court is the application dated 15th November 2018 seeking orders that the court issues a conservatory order restraining the Respondent from annexing, transferring or charging or parting with the interest in IRONG/ITEN/4015 measuring 2.0 Ha and IRONG/ITEN/4016. Further, that the court order a cancellation of the titles of the two properties registered in the name of the 1st Respondent. The Applicant also sought an inhibition against the 1st Respondent from making entries or dealing with the following parcels of land;

1. TEMBELEO/ELGEYO BORDER BLOCK 5 (EX-TOOLEY) 214
2. IRONG/ITEN 4015
3. IRONG/ITEN/4016
4. IRONG/ITEN/961
5. IRONG/ITEN/960
6. KESSUP 'B'/507
7. KESSUB 'B'/84
8. EM/KESSUP B/805
9. EM/KESSUP B/918
10. EM/KESSUP B/1875
11. EM/KESSUP B/1765
12. MOIBEN/KAPSUBERE BLOCK 4 (SESIA)/92

2. The Applicants also sought to have the 1st Respondent be compelled to provide an account of the abovementioned titles of land.

3. The application is expressed to be brought under sections 45,46 & 47 of the Succession Act, Rules 43,44,73 & 74 of the Probate and

Administration Rules.

4. The Applicant did not file any submission. The application is based on the grounds that none of the heirs of the deceased was involved in the transfer of;

1. IRONG/ITEN 4015
2. IRONG/ITEN/4016
3. IRONG/ITEN/961

5. The application is supported by an affidavit filed on the same date as the application, 15th November 2019. He depones that he is a beneficiary of the estate and he obtained interim administration orders of administration on 5th October 2018. He produced the same as CKK2 (a & b).

6. He deponed that the papers used by the administrators to change ownership were those of the estate of Kiprop Chirchir, Succession Cause No. 269 of 2015, an unrelated party. Further, that the 1st Respondent was in the process of leasing the parcels IRONG/ITEN/4015 and IRONG/ITEN /4016 without the consent of the administration.

The Response

7. The 1st Respondent filed a replying affidavit sworn by himself on 5/8/2019, stating that the Court had no jurisdiction to cancel the title to land as that is a preserve of the Environment and Land Court. Further, the Applicant is not a beneficiary of the deceased as he was given a portion of land during the lifetime of the deceased with the understanding that the Applicant will not have claim to the estate of the deceased after his demise. That portion was given to the Applicant and registered in his name, a fact which has not been disclosed.

8. The Respondent further deponed that an order may not be made against a person who is not a party to the suit without having been heard and the Applicant makes reference to third parties to whom the land has already been transferred to during the lifetime of the deceased who deserve to be heard as they will be bound by an order of the court.

9. The Respondent deponed that he had power of administration during the lifetime of the deceased and as a result some of the transfers began before the demise of the deceased. He annexed the power of attorney as annexure KKK-1. In succession cause no 24 of 2018 the manner in which the Applicant took out letters of administration is being channelled to have the grant revoked by the Respondent on the basis of the Applicants' suitability, competency, solvency among other reasons. Further, the application was defective for want of form as it had not been signed by a deputy registrar. The 1st respondent prayed that the application be dismissed with costs.

Determination

Upon consideration of the application and submissions filed by the parties I have identified the following issues for determination;

1. Whether the court should issue an order of cancellation of titles
2. Whether the court should issue an inhibition against the Respondents

Whether the Court should issue an order of cancellation of titles

11. In defence of his capacity to transact the said properties, the 1st Respondent produced a Power of Attorney as annexure KKK-1. The same was registered on 8th September 2011. The deceased passed away on 10th March 2015. The titles for IRONG/ITEN/4015 & 4016 were transferred to the 1st Respondent in 2018 as per annexures CKK2(a) & (b). The Applicant obtained a grant of letters of administration on 1st October 2018. From the chronological occurrence of events, the 1st Respondent did not have the capacity to transact the estate of the deceased as he did not have a grant of letters of administration.

12. Section 45 (1) of the Law of Succession Act, provides as follows:

(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person."

13. By transferring the parcels of land to himself the 1st Respondent was clearly intermeddling. Section 47 of the Law of Succession Act gives the High Court inherent powers to make appropriate orders in the interest of justice and for the preservation of the deceased persons' estate.

14. As pertains to parcels no. IRONG/ITEN 4015 and IRONG/ITEN/4016 there is no third party involved as they are registered in the names of the 1st Respondent and the same are cancelled. As for parcel no. IRONG/ITEN 961 there is no evidence that it has changed hands.

Whether the court should issue an inhibition against the respondents

15. Given that it has been established that the 1st Respondent illegally transferred parts of the estate to himself, there is a danger that he will continue to intermeddle. In the premises the order for inhibition is justified.

16. What is clear in this matter is that the 1st respondent has intermeddled with the estate of the deceased and this Court now issues orders as follows:

i) The 1st respondent shall surrender to this Court the following titles for inspection:

a) TEMBELEO/ELGEYO BORDER BLOCK 5 (EX-TOOLEY) 214

b) IRONG/ITEN 4015

c) IRONG/ITEN/4016

d) IRONG/ITEN/961

e) IRONG/ITEN/960

f) KESSUP 'B'/507

g) KESSUB 'B'/84

h) EM/KESSUP B/805

i) EM/KESSUP B/918

j) EM/KESSUP B/1875

k) EM/KESSUP B/1765

l) MOIBEN/KAPSUBERE BLOCK 4 (SESIA)/92

ii) An order for inhibition is issued against the 1st and 2nd respondents inhibiting any dealings in the titles in (i) above.

iii) The 1st respondent to provide a full account of how he has managed/intermeddled with titles in (i) above.

iv) This matter shall be mentioned on 7/3/2022 for further directions

DATED, SIGNED AND DELIVERED AT ELDORET THIS 6TH DAY OF DECEMBER 2021.

E. K. OGOLA

JUDGE