



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

PROBATE & ADMINISTRATION CAUSE NO. 256 OF 1996

ESTATE OF KIPLALANG KIPLANDUK

VINCENT BARTOO.....1ST OBJECTOR/APPLICANT

CORNELIUS KIPROTICH KIBOR.....2ND OBJECTOR/APPLICANT

LYDIA JEPTUM CHEMNO FOR AND ON

BEHALF OF 31 OTHER PURCHASERS.....3RD OBJECTOR/APPLICANT

VERSUS

MARY CHEMITEI KIPSEREM.....1ST DEFENDANT

JEROP MISOI.....2ND DEFENDANT

MARY CHEMITEI KIPSEREM.....3RD DEFENDANT

RULING

1. The application dated 17.04.2019 seeks that;

- a) The grant of letters of administration issued on 1st November, 2016 and subsequently confirmed on 26th Sept. 2011 be annulled and/or revoked.
- b) In the alternative the same be amended by apportioning the Objector/Applicants their respective portions of the land forming the assets of the estate.
- c) That any title deeds issued on the strength of the grant be cancelled, as the grant was obtained through misrepresentation, and non-disclosure of material facts regarding the beneficiaries.

2. The application is premised on grounds that the applicant had purchased respective portions comprising parcel known as LR .No.7914/2 and 8802 from some of the beneficiaries of the estate. The applicants were excluded as beneficiaries, and never even informed of the proceedings, until strangers started being brought to the suit land by the Respondents, with the intention of selling to them the land.

3. The applicants have been in use and occupation of their various portions comprised in the suit parcel for years, and have extensively developed the same. The Respondents are accused of concealing/misrepresenting material facts to the court, with the intention of disinheriting the applicants which would lead to a miscarriage of justice.

4. The objector's do not desire to have their respective land portions held in trust for them by the Respondents, as they wish to be issued with titles for their respective portions.

5. The background to this matter is that when **KIPLALANG KIPLANDUK** died on 22nd January 1996, his daughter **MARY JEMITEI KIPSEREM** and **JEROP MISOI**, alongside his son **JOHN MISOI** petitioned for grant of letters of administration which were granted on 22nd October 1997. They later sought and obtained confirmation of grant on 26.09.2011, listing 25 beneficiaries which included AIC church.

6. The applicants were not listed among the beneficiaries. In a supporting affidavit, they sought to rely on copies of sale agreements entered into between themselves and some of the beneficiaries in 2013.

There was no response to the application nor did the Respondents attend court to contest the application. The applicant's counsel urged this court to allow the prayers as there was no response.

The following issues arise for determination;

- a) Are the applicants beneficiaries of the deceased's estate within the meaning of Section 29 of the Law of Succession Act.
- b) Does this court have jurisdiction on the matter?

6. A beneficiary is the person who is set to benefit by receiving a gift/asset will or intestate from the estate of a deceased person. The Law of Succession uses the technical term Dependant to mean one who can inherit the property of a deceased person. Section 29 of the Law of Succession lists those persons, but obviously it may not be limited to just family members. It would for instance include one who falls in the category of liabilities, such as person who purchased property from the deceased. Do such persons qualify as beneficiaries?

There has been a two pronged approach – that if the purchaser bought the property from the deceased, and completed all transactions, except for transfer, then such persons qualify to be considered as beneficiaries.

7. Another school of thought is that the purchasers should sue the administrators of estate of the deceased for specific performance.

However in this instance, the transactions were not done with the deceased, infact the parties transacted long after the deceased had gone to the next world, in their evidence, and documentation presented the applicants transacted with the beneficiaries in the year 2013 – i.e after grant had been confirmed and the estate distributed. Their claim therefore cannot be against the estate of the deceased as beneficiaries. They were purchasers who dealt with individual beneficiaries in their capacity as such.

Does this court have jurisdiction

This is purely an issue regarding ownership of land arising out of transactions where as a result of purchase, the ownership of the property is contested. I do not think this is a probate issue and does not fall under the Law of Succession. The applicants are not inheriting property from the deceased, they are claiming ownership as purchasers.

Under Section 13 of the Environment and Land Court Act, jurisdiction is bestowed in the Environment and Land Court to hear and determine issues or disputes relating to title, tenure, land and contracts, and any other dispute relating to land. I am persuaded this is a matter which does not fall within the jurisdiction of this court and does not meet what is contemplated under Section 76 of the Law of succession Act as far as revocation and annulment of grant go.

The upshot is that the application lacks merit and is dismissed.

No orders on costs.

DATED, SIGNED and DELIVERED at ELDORET this 17th day of February 2020.

H. A. OMONDI

JUDGE