



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

SUCCESSION CAUSE NO. 4 OF 2017

IN THE MATTER OF THE ESTATE OF MARY JESEREM SANG (DECEASED)

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

BETWEEN

CORNELIUS CHERUIYOT BARNGETUNY.....APPLICANT

AND

REMY KIPKOECH SANG.....1ST RESPONDENT

THE LANDS REGISTRAR, UASIN GISHU COUNTY.....2ND RESPONDENT

RULING

[1] The application for determination is the one dated **20 February 2017**. It was filed herein by the Applicant, **Cornelius Cheruiyot Barngetuny**, pursuant to **Sections 45 and 47** of the **Law of Succession Act, Chapter 160 of the Laws of Kenya, Rule 73 of the Probate and Administration Rules**, and all other enabling provisions of the law. The applicant is thereby seeking the following orders:

[a] Spent

[b] That an interim injunction do issue against the 1st and 2nd Respondents barring them from subdividing, selling, transferring, leasing, registering, wasting and further disposing off land formerly known as **UASIN GISHU/SOSIANI SETTLEMENT SCHEME/69** and now unlawfully and illegally subdivided into **PARCEL NO. 139, 140, 141 and 142**, pending the hearing and determination of the application and thereafter pending the hearing and determination of the Succession Petition.

[c] That restraining orders do issue restraining the 1st Respondent, his servants, agents, employees, assigns or anyone acting on his behalf from subdividing, selling disposing or dealing with **UASIN GISHU/SOSIANI SETTLEMENT SCHEME/69** now unlawfully and illegally subdivided into **PARCEL NO. 139, 140, 141 and 142**, being part of the deceased's estate, pending the hearing and determination of the application and thereafter pending the hearing and determination of the Succession Petition.

[d] That the 1st Respondent by himself, his servants, agents, employees, or anyone acting on his behalf be restrained by way of temporary injunction from ploughing, erecting structures, cultivating, wasting, selling, leasing, transferring or otherwise dealing with **UASIN GISHU/SOSIANI SETTLEMENT SCHEME/69** now unlawfully and illegally subdivided into **PARCEL NO. 139, 140, 141 and 142**, pending the hearing and determination of the application and thereafter pending the hearing and determination of the Succession Petition.

[e] That costs of the application be provided for.

[2] The application was premised on the grounds that the Applicant is a son to the deceased, **Mary Jeserem Sang**, and the 1st Respondent herein; and is one of the proposed administrators of the estate of the deceased. It was further the contention of the Applicant that the 1st Respondent has, without any authority or consent from the Applicant or the other beneficiaries, forged the deceased's signatures, backdated mutation forms and thereafter registered mutation forms in respect of all that piece of land formerly known as **UASIN GISHU/SOSIANI SETTLEMENT SCHEME/69** now unlawfully and illegally subdivided into **PARCEL NO. 139, 140, 141 and 142**, and proceeded to sell some of them, to the detriment of the Applicant and the other beneficiaries of the estate of the deceased.

[3] In respect of the 2nd Respondent, the Applicant alleged collusion in connection with the approvals for subdivision and registration of the subdivisions. He feared that, in this manner, the Respondents may dispose of the entire estate in disregard of the provisions of **Section 45** of the **Law of Succession Act**, and without the consent or knowledge of the beneficiaries. In the premises, the Applicant prays that the Respondents be restrained pending the hearing and determination of the Petition.

[4] In the Supporting Affidavit sworn by the Applicant on **20 February 2017**, he averred that the 1st Respondent, who is now in his 90s, recently got married to a 25-year-old woman; and is now living the high life off the proceeds of the illegal sale of portions of the **Parcel No. UASIN GISHU/SOSIANI SETTLEMENT SCHEME/69**; and that he is poised to sell additional pieces unless restrained by the Court. He annexed to his affidavit copies of one of the Mutation Forms, and two of the Sale Agreements, among other documents.

[5] The court record shows that the Applicant was given interim restraining orders on **23 February 2017**, pending the hearing and determination of the application. Hence, what remains for consideration is whether the Applicant is deserving of temporary injunction pending the hearing and determination of the Petition. It is worth noting at this juncture that though served, the Respondents opted not to respond to the application. This is notwithstanding that the 1st Respondent appointed an Advocate to act for him herein way back in **November 2017**.

[6] As has been pointed out herein above, one of the enabling provisions for this application is **Section 47** of the **Law of Succession Act**; which 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...”

[7] Accordingly, and in the light of the foregoing, I have given consideration to the application; particularly the averments set out in the Applicant’s affidavit and the annexures in support of the assertions. I note that he is indeed one of the Petitioners for Grant of Letters of Administration Intestate in respect of the estate of the of the deceased. The Certificate of Death filed herein shows that the deceased died on **6 August 2011**. That being the case, the Sale Agreement dated **16 March 2012** is manifestly questionable; and is a demonstration of intermeddling for purposes of **Section 45** of the **Law of Succession Act**. That provision is explicit that:

“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.”

[8] In similar vein, the proviso to **Section 82** of the **Law of Succession Act** is clear that **“...no immovable property shall be sold before confirmation of grant...”** Consequently, I find merit in the application dated **20 February 2017**. It is hereby allowed and orders granted in the following terms:

[a] That a temporary injunction be and is hereby issued against the 1st and 2nd Respondents barring them from subdividing, selling, transferring, leasing, registering, wasting and further disposing off land formerly known as **UASIN GISHU/SOSIANI SETTLEMENT SCHEME/69** and now unlawfully and illegally subdivided into **PARCEL NO. 139, 140, 141 and 142**, pending the hearing and determination of the Petition.

[b] That a restraining order be and is hereby issued restraining the 1st Respondent, his servants, agents, employees, assigns or anyone acting on his behalf from subdividing, selling disposing or dealing with **UASIN GISHU/SOSIANI SETTLEMENT SCHEME/69** now unlawfully and illegally subdivided into **PARCEL NO. 139, 140, 141 and 142**, being part of the deceased’s estate, pending the hearing and determination of the Petition.

[c] That the 1st Respondent by himself, his servants, agents, employees, or anyone acting on his behalf be and is hereby restrained by way of temporary injunction from ploughing, erecting structures, cultivating, wasting, selling, leasing, transferring or otherwise dealing with **UASIN GISHU/SOSIANI SETTLEMENT SCHEME/69** now unlawfully and illegally subdivided into **PARCEL NO. 139, 140, 141 and 142**, pending the hearing and determination of the Petition.

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

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 13TH DAY OF FEBRUARY 2020

OLGA SEWE

JUDGE