



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

PROBATE & ADMINISTRATION CAUSE NO. 344 OF 2013

ESTATE OF KIPUNYUNY ARAP MISOI

KIPLAGAT ARAP BARAIYWO.....1ST PETITIONER/RESPONDENT

STEPHEN KIPKOECH KEBENEI.....2ND PETITIONER/RESPONDENT

VERSUS

JULIUS KIPKOECH CHEPKWONY (AS LEGAL REPRESENTATIVE OF

THE ESTATE OF SIGEI SAINA.....OBJECTOR/APPLICANT

RULING

1. The applicant (**JULIUS CHEPKWONY**) had filed summons for revocation dated 8.7.19 as the legal representative of the estate of the late (**SIGEI SAINA**) seeking injunctive orders against the petitioners (Respondents herein) namely **KIPLAGAT Arap BARAIYWO** and **STEPHEN KIPKOECH KEBENEI**, to restrain them from any adverse activities relating to land parcel No. **NANDI/KAPLAMAI/302** pending determination of revocation proceedings.

They also sought an order of inhibition to issue against any registration of any dealings such as transfer, charge etc, with regard to the said parcel.

2. The Respondents raised a preliminary objection dated 22nd July 2019 on grounds that the applicant's grant issued to him in Kapsabet PM Succ. Cause No. 57 of 2012 was revoked on 22nd Nov. 2018, and the same cannot be used to institute any suit or proceedings, so the application is incompetent.

3. Further that despite the applicant purporting to be a legal representative of the estate of the late **SIGEI SAINA**, he had no relations to the deceased in respect of whose estate these proceedings relate – the deceased being **KIPNYUNY Arap Misoi**.

4. Further, the decree on which the objection is based, was issued in the year 2001 and has never been registered against the title – 12 years have lapsed since its issuance and it is no longer capable of execution. It also stated that the issues arising herein amount to a claim to land, which is within the exclusive precision of the Environment and Land Court, not the High Court. That in any event, the 2nd Respondent is not a beneficiary of the estate of the deceased and his inclusion herein is improper and with no legal basis as he was an imminent purchaser for value.

5. The preliminary objection is supported by an affidavit sworn by **KIPLAGAT Arap BARAIYWO** which basically contends that the applicant has no locus standi to file the application either seeking revocation of grant, or for injunctive orders, as an award was issued by the **KILIBWONI** Land Disputes Tribunal against a deceased person, and with no legal representation of his estate. Further, the decree was never registered against the title, and it is no longer capable of being executed.

6. It is also contended that there had been an earlier case between the deceased herein, and the late **SIGEI SAINA in KAPSABET SRMCC NO. 10 of 1989** which was concluded in the year 1995, when both were still alive, and the court directed him to vacate the property. The deceased then assumed ownership and possession, planted tea bushes and lived herein for about 6 years until his death, No appeal was ever preferred against that decision.

7. That since it was established that **SIGEI Arap SAINA** had no legal claim to the property of the late **KIPNYUNY Arap Misoi**, the legal representation of the estate have no recognizable right or entitlement to participate in these proceedings which is the exclusive presence of the beneficiaries of the deceased herein.

8. It is further contended that the family of the late **SIGEI Arap SAINA** live in their own separate and distinct land, adjacent to suit

property, and have simply encroached on the one they claim, and have been illegally harvesting the tea crop and tiling part of the Respondent's land.

The Respondents had resolved to first take out succession proceedings before pursuing any other legal avenue so it was upon concluding the cause that they issued a notice to the objector's family.

9. Let me stop here and say, a preliminary objection ought to be an issue of law – the supporting affidavit is misplaced as it deals with facts- which would have necessitated hearing of evidence. I think it is prudent for Respondent's counsel to limit himself to the issue of law – ie whether the applicant has locus standi and whether this is a matter which falls within the jurisdiction of the Environment and Land Court.

10. In opposing the preliminary objection the applicant submits that the late Sigei Saina instituted a claim against the late Kibunyuny Misoi before the Kapsabet Dispute Tribunal being case No.16 of 2001. A decision was made in Sigei's favour and the land awarded to him.

The same was eventually adopted as judgment of the court in Kapsabet PMCC No.69 of 2001 and on 24th Jan. 2001, a decree was issued (which has never been applied against or set aside.

11. The applicant doubts that the grant was revoked as the proceedings purported to be from Kapsabet Court are not certified or do they bear the seal of the court or the name of the magistrate who issued the orders of revocation. Apparently the original court file from Kapsabet Law Courts is missing.

12. The applicant contends that the preliminary objection is thus not supported by an annexed certified court order confirming revocation of the grant.

13. As far as he knows, the late **SIGEI SAINA** is a creditor within the meaning of Section 66 of the Law of Succession Act, as the decree has never been overturned. The 2nd Respondent cannot purport to be an innocent purchaser for value, as he was aware of the dispute, and the applicant's family on the suit property.

14. It is also argued that the issues raised herein do not fall within the provision of the Environment and Land Court as the applicant holds a valid decree and must be deemed to be a creditor in relation to the assets and liabilities of the estate.

15. Was the grant which had been issued to the applicant revoked – because if it was then that would settle the issue regarding whether he has the necessary locus standi to pursue this matter. I need to peruse the Kapsabet file to confirm from the original record what was done, as the copies presented to this court are not certified.

I therefore direct the Deputy Registrar to urgently call for Kapsabet Succ. Cause No. 57 of 2012 to be availed within 7 days hereof for my perusal and to enable this court make a comprehensive conclusion of this matter. Mention on 11.02.2020

DATED, SIGNED and DELIVERED at ELDORET this 4th day of February 2020.

H. A. OMONDI

JUDGE