

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

MISCELLANEOUS CIVIL APPLICATION NO. 27 OF 2018

CHARLES K. MUTAI.....PLAINTIFF

VERSUS

JULIUS K. MUTAI.....1ST DEFENDANT

CHRISTOPHER K. MUTAI.....2ND DEFENDANT

RULING

1. This matter is in a title described as Bomet Civil Misc. Application No.27 of 2018 between Charles K. Mutai as plaintiff and Julius Mutai and Christopher K. Mutai as defendants, while actually it is a succession cause initially filed in Kericho High Court as Kericho High Court Miscellaneous P&A Application No.02 of 2014, before the file was sent to Bomet High Court.

2. This miscellaneous application was filed on the ground that the Senior Principal Magistrate, Bomet had no jurisdiction to determine the succession matter therein in the estate of Edwin Kimutai Tegerey and issue letters of administration in an estate of the value of more than Kshs.10,000,000/-.

3. I have so far not been availed the original file in which the Magistrate issued the said Letters of Administration, but a copy of the Certificate of Confirmation of Grant of Letters of Administration in the estate of Edwin Kimutai Tegerey was filed, which shows that the cause was in the High Court of Kenya at Bomet as Succession Cause No.77 of 2010 in which on 2nd November 2011, Hon. T. Okello, Senior Principal Magistrate signed the Certificate of Confirmed Grant, which included the mode of distribution of assets of the estate.

4. I note that after on 9th July 2014 Serгон J. ordered as follows-

(i) The grant issued in Bomet Succession Cause No.77 of 2010 be cancelled and the file be transferred to this court for hearing and determination.

(ii) A restriction be registered against L.R. Nos.Kericho/Kipsonoi/644/665 and 666 pending the hearing and determination of the cause.

5. It is not clear if the above orders were complied with and nobody has informed me what happened after the issuance of the above orders.

6. Thereafter, on 5th November 2019, the matter came before me at Bomet and Mr. Kipngetch held brief for Mr. Orina for the applicant/objector, while Mr. Koech appeared for the petitioner/respondent. Mr. Koech informed the court that they had prepared their proposed mode of distribution but had not filed the same. Mr. Kipngetch on his part informed the court that this matter had come to court severally for mention but Mr. Koech had merely been asking for more time to file his proposed mode of distribution.

7. From the above observations, it is clear that this matter has a substantial amount of confusion, and it is in doubt if the law has been followed. It is also not clear if we are dealing with the right file and the right documents. I am not able at this stage therefore to determine the mode of distribution for three (3) reasons. First, I have not been availed the file in Bomet Succession Cause No.77 of 2010, which Serгон J ordered it be availed to this court. This court cannot make substantive orders in a succession matter through files which are not probate and administration files. Secondly, what has been filed herein on the land asset of the estate is merely a copy of a mutation form for only the one land parcel, but there is no search in the land office to confirm the time of mutation, and who the owner of that land is. At the same time, there are several other plots (parcels of land) in the alleged will of the deceased whose copies of Land Registry documents to establish ownership have not been filed. Thirdly, the beneficiaries have not been listed nor have they signed a consent to the proposed mode of distribution of assets as required by law.

8. I will thus adjourn this matter and order that parties and their advocates regularize the above concerns before the issue of distribution of the assets in this estate can be addressed by this court, through a proper Probate and Administration court file.

Dated and delivered at Bomet this 3rd day of March 2020.

George Dulu

JUDGE