



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO.440 OF 2013

IN THE MATTER OF THE ESTATE OF CHEROTICH LANGO KIKWAI (DECEASED)

TAPKILI CHELANGAT KIPNGENY.....APPLICANT

-VERSUS-

ROBERT KIBII KIPNGENY.....1ST RESPONDENT

REUBEN KIPKEMOI KIPTINGOS.....2ND RESPONDENT

RULING

1. This a ruling on the plaintiff's application dated 5th June 2017 seeking the following prayers:

i. That grant of letters of administration issued to Robert Kibii Kipngeng and Reuben Kipkemoi Kiptingos by this honorable court on the 26th day of October 2015 be hereby revoked and/or annulled.

ii. Costs of the application be borne by the respondent.

2. Grounds on the face of the application is that the grant was obtained fraudulently by making of a false statement, forgery or by concealment from court of something material to the case; that the applicant is the only daughter to the deceased and was not consulted during filing of this succession cause; that the respondents masqueraded as beneficiaries of the deceased and she will suffer irreparably if the grant is not revoked.

3. The application is supported by affidavit sworn by the applicant on 6th June 2017. She averred that she is the only beneficiary of the estate of the deceased being his only daughter.

4. She reiterated her grounds as set out above and further stated that she is a Kipsigis and the respondents are Tugens and they cannot be related in any way whatsoever.

5. She averred that the respondents took advantage of her old age and illiteracy and assumed that she will not follow up the estate of her late mother; she stated that she does not know how the respondents obtained certificate of death in respect of the deceased.

6. The applicant further averred that the chief's letter in support of the succession cause is a forgery as she does not know the alleged **Chief J. K Koeh** and she does not hail from Makutano Location. She stated that the said location is in Eldama Ravine in Baringo County while her and the deceased hail from Rongai Location in Nakuru County.

7. She averred that she came to learn of the succession cause when she went to check on the deceased's parcel of land to wit Nakuru/Lengenet/564 and she was informed by land adjudication and settlement officer that the respondents had filed succession cause, served him with Kenya Gazette Notice and were claiming ownership of the land; that it is glaring that the grant was irregularly confirmed.

8. In response the 1st respondent filed affidavit dated 16th August 2017. He denied being a fraudster and stranger to the applicant.

9. He averred that when he was young, his parents took him together with his siblings to settle in property title no. **Nakuru/Lengenet/565** which belonged to a man called **Gichohi** who is deceased which borders parcel **No. Nakuru/Lengenet/564** which he understood belong to one **Cherotich Lango Kikwai** whom he never met as it was said she had died before his family moved to parcel 565.

10. He averred that when his family moved to parcel 565 parcel 564 was occupied by an old man called **Kimoso Arap Marisin** who had no wife or children but did odd jobs to fend for himself and when he became too old to fend for himself the 1st respondent's family took him in and catered for his needs.
11. He averred that the said Kimoso died on 10th December 2008 and he reported to the chief who did not know anyone who could organize for his burial. He attached burial permit. That after a meeting to discuss the late **Kimoso's** death, he was mandated to go and look for his clan and he managed to trace the **Tapkili Chelangat Langat** the applicant herein who is a sister to the said **Kimoso**. He attached copy of her identity card.
12. He averred that the applicant attended the burial of her brother and she addressed mourners telling them the death of **Kimoso** had left her as the only beneficiary of parcel number 564 which belonged to her mother.
13. He averred that the applicant also informed mourners that she was married in Ronda but was childless and she would leave her mother's property under the care and management of the 1st respondent.
14. He averred that the applicant also told the gathering that her late brother had visited her in Ronda and told her to give the 1st respondent 2 acres of land as gratitude for taking care of him in old age. He stated that the revelation took him by surprise as the late **Kimoso** had not told him about it.
15. 1st respondent averred that the applicant left the parcel after the burial. He stated that he occasionally visited the applicant in Ronda after the burial and in one occasion she informed him that parcel 564 was still on loan to settlement fund trustees and showed him a letter dated 9th March 2005. That later she handed him a letter dated 23rd August 2005 demanding kshs.13,146.00. He annexed both letters.
16. He further averred that she later informed him that he could not raise the money and asked him to look for a buyer to purchase part of parcel 564. He said that that the 2nd respondent who was introduced to him by a friend expressed interest to purchase the land and he organized for him to meet the applicant at chief's office Moricho on 9th March 2013 where they met with 2 village elders **Daniel Rotich Kipkulei** and **Joseph Chirchir**.
17. He averred that the applicant informed those present before Chief J.K Siele that she wanted to sell 2 acres of land from parcel 564; that they agreed on the price of 2 acres before them; they agreed at kshs.90,000 per acre totaling kshs 180,000.
18. He averred that the 2nd respondent paid the applicant kshs.180,000 which was counted by the chief before she received. He attached hand written agreement to confirm the payment. He further stated that the applicant told the gathering that she was also giving the 1st respondent 2 acres from parcel 564 as she had undertaken during the burial of her brother Kimoso. He averred that the transactions was not done in secrecy as it was in the chief's office on 9th February 2013 witnessed by those around plot 564.
19. 1st respondent averred that a few months later, he visited the applicant who told him that she wanted to sell 1 ½ acres as she had not paid settlement fund trustee and asked the 1st respondent to get him a buyer. He stated that he informed 2nd respondent who agreed to buy and on 27th June 2013 they went with two village elders **Daniel Rotich Kipkulei, Joseph Kipngetich Chirchir, Samson Kendagor** and **Keitany Kimuge** to **L. R. Kipsang & Co. Advocate** who asked the applicant to produce documents confirming her mother was deceased and land registration documents.
20. 1st respondent averred that on 15th January 2014 together with the 2nd respondent and applicant presented themselves to the assistant chief and informed him of the transactions of 2013; the chief wrote what they told him. He attached a copy of hand written document by the chief. He averred that when they were in the advocate's office on 27th June 2013, the advocate advised the applicant to commence succession but she declined and authorized the 2nd respondent to apply for grant of letters of administration as her sons to secure the land they had purchased from her.
21. He denied the allegation that the chief's letter in support of succession cause was issued in Eldama Ravine and stated that Lengenet Location is in Rongai Sub County; that the 2nd respondent and him jointly applied for grant of letters of administration with the knowledge, consent and awareness of the applicant; and after obtaining grant of letters of administration, they instructed a surveyor to carry out subdivision to separate interest acquired by them.
22. 1st respondent averred that his blood brother one **Charles Limo Kipngeny** who is occupying parcel No. 562 has encroached on parcel No. 564 fencing of 40 meters from it which has resulted in cutting off the road of access to other plots. That the said brother who has declined desist from the said trespass on parcel No.564 vowed to look for the applicant to ask her to apply for revocation grant issued to the respondents; and to fulfill the threat his brother **Charles** instructed the firm of **Maragia & Co. Advocates** who wrote a demand letter to the respondents on 5th May 2017. He attached the demand letter and letters written by the Advocate to Local Administration, District Settlements Officer and County Commissioner.
23. He averred that the applicant failed to disclose in the said letters vital information and her involvement with him and the 2nd respondent; that she failed to disclose the transactions that she voluntarily participated in from the year 2008 and 2014; that it is deceitful of the applicant to conceal vital information from court even if she has changed her mind concerning involvement with the respondents; that describing themselves as sons of the deceased in the succession cause was not in bad faith but was informed by transactions that had taken place between the applicant and them. He added that his brother is using the applicant to get at him as they are not in good terms. He urged the court to exercise its discretion judiciously in the circumstances.

24. Applicant filed further affidavit sworn on 5th November 2018. She denied giving the respondents instructions to file succession cause nor entering into any transactions for sale in respect to parcel No. Nakuru/Lengenet/564. She however admitted that on several occasions the respondents took her out of her home to several places and caused her to thumbprint documents.

25. Parties herein agreed to proceed by way of written submissions.

APPLICANT'S SUBMISSIONS

26. Applicant submitted that in affidavit filed by the 1st respondent he talked of 2nd respondent purchasing a total of 3 ½ acres, the question, where did the 6 acres' indication in the confirmation grant come from and why did he allocate himself 7 acres which he did mention in his affidavit.

27. Applicant further submitted that there is no mention of the applicant in the succession documents filed and further, she was not invited to court on the day of confirmation of grant; that the respondents are listed as the only beneficiaries; that the chief's letter also cited the respondents as the only beneficiaries of the deceased.

28. The applicant further submitted that there was no written consent presented to court during confirmation neither is the applicant mentioned anywhere in the pleadings.

29. Applicant prayed for revocation of grant issued to the respondents and grant be issued to the applicant who will then file summons for confirmation.

RESPONDENT'S SUBMISSIONS

30. As to whether the respondents and the applicant are total strangers, the respondents submitted that they transacted with the applicant over sale of **LR Nakuru/Lengenet Settlement Scheme/564**; that the applicant's argument that the respondents took her out of her home to several Government offices show that they are not strangers to each other.

31. The respondents submitted that the applicant has not disputed that **Kimoso** was her brother, that he died on 9th December 2008 and her mother died on 3rd April 1982 as it appears in the death certificate.

32. The respondent submitted that the applicant has not denied that the 1st respondent paid loan to Settlement Trustees and how could he do that if he had no connection with the applicant; further that the applicant has not availed an affidavit from the chief Lengenet to show that he did not sign the letter in support of succession.

33. That respondents submitted that they genuinely and voluntarily had transactions with the applicant; that from the sale agreement dated 27th June 2013, the applicant knew she was the one to apply for letters of administration but chose to voluntarily authorize the respondents to apply for Grant of letters of administration.; that the description of the respondents as sons instead of creditors was a genuine error/misunderstanding on part of the respondents.

34. Respondents further submitted that the applicant has not denied receiving the money being consideration for selling parcel 564; further that the applicant never reported to the chief or police that she was cheated into selling the land and that her claim is being triggered by third parties.

35. On whether the Grant should be revoked, they submitted that the respondents applied for grant as lay persons and that land registration number 564 is 7 1/2 acres and not 13 acres as reflected in confirmed grant; that the error is not a blow to the grant and prayed that correction be done on acreage.

ANALYSIS AND DETERMINATION

36. It is not also disputed that land parcel No. 564 belonged to the applicant's mother who is now deceased. From averments herein, there is no dispute that the applicant is the only surviving daughter of the deceased and that the deceased is the registered owner of land parcel number **Nakuru/Lengenet settlement scheme/564**.

37. What I wish to consider is whether the applicant authorized and consented to the respondent's filing of succession cause herein to obtain grant of letters of administration. The applicant averred that the respondents are strangers to her. She averred that they have no relationship at all. That the respondents are even from the Tugen sub tribe of the Kalenjin while she is a Kipsigis. On the other hand, the respondents have not alleged any blood relationship or relationship by marriage to the applicant. 1st respondent stated that their family land number 565 borders the land that belonged to the applicant's mother. He explained that he took care of the applicant's brother who was living in the land. There is no evidence adduced as to whether the applicant's brother had a family. From averments herein it appears he didn't have a family as the 1st respondent said they took care of him at old age when he was unable to take care of himself. 1st respondent also said when applicant's brother died the chief mandated him to look for his clan to participate in his burial and in the process found the applicant who was the only sibling.

38. It follows therefore that the closest relative to the deceased who was entitled to file succession and inherit the deceased's property is the applicant herein.

39. With respect to transaction concerning parcel No.564 that the respondents alleged to have engaged with the applicant, the alleged authorization by the applicant to the respondents has not been availed to court. There is also no explanation as to why the applicant was not invited to court during confirmation.

40. On the other hand, the applicant says she is the only surviving daughter of the deceased and also avers that she has siblings whom she could involve in the succession process. In my view the truth concerning alleged transactions will be ascertained if parties are allowed to adduce evidence to prove their claim. The chief mentioned and the other elders alleged to have been present at the time the applicant was paid have not sworn any affidavit.

41. The 1st respondent has enumerated transactions carried on between him applicant and 2nd respondent after the applicant's brother **Kimoso**.

FINAL ORDERS: -

- 1. Grant of letters of administration issued to the respondents is hereby revoked.**
- 2. The applicant to be issued with Grant of Letters of Administration.**
- 3. The application to file summons for confirmation to be filed within 45 days.**
- 4. Upon filing of Summons for Confirmation of Grant, the respondents to prove their claim as creditors for the court to make determination on distribution of the deceased's estate if they are not provided for by the administrator of the estate.**
- 5. Each party to bear own costs.**

Ruling dated, signed and delivered via email at Nakuru this 14th day of May, 2020

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RACHEL NGETICH

JUDGE

TO:

Maragia Ogaro & Co. Advocate Counsel for Applicant

Omwenyo & Co. Advocates Counsel for Respondent