



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**SUCCESSION CAUSE NO. 149 OF 1999**

**RE ESTATE OF KIPCHIRCHIR KOSGEI (DECEASED)**

**CHRISTINE JEPKEMEI KOSGEY.....APPLICANT**

**VERSUS**

**CHRISTOPHER KOSGEY.....RESPONDENT**

**RULING**

1. By an application dated 31<sup>st</sup> May 2016 made under **Rule 44** and 73 of the **P & A Rules**, the applicant **CHRISTINE KOSGEI** prays that the grant of letters of administration intestate issued to **CHRISTINE KOSGEI** and **CHRISTOPHER KOSGEI** on 25<sup>th</sup> October 1999 be annulled on grounds that:

1) The proceedings to obtain the grant were defective in substance and totally unlawful,

2) The grant was fraudulently obtained as the applicant did not execute any documents in support of the said petition nor did she appear before the court to prosecute the same,

3) The grant was obtained by concealment of material facts to with that **CHRISTOPHER KOSGEI** is not a heir to the deceased's estate nor did the deceased have two surviving children.

2. The court is urged to order that upon nullification of the said grant the **NANDI COUNTY LAND REGISTRAR** ordered to cancel the registration of **CHRISTINE JEPKEMEI KOSGEI** and **CHRISTOPHER KIBET KOSGEI** as proprietors of the parcel No. **NANDI/NDUBENETI/46**. Further that the said **CHRISTOPHER KOSGEI** be ordered to vacate the said parcel and deliver vacant possession to the applicant. That the said Respondent be condemned to pay costs of this application.

3. In the Supporting Affidavit, the applicant deposes that she was married to the deceased, **KIPCHIRCHIR KOSGEI**, and they had three children namely **ROMANA CHEPKWONY**, **PAULINA LELEI** and **ANGELINA MUREI**. When her late husband died on 1<sup>st</sup> July 1988, the applicant did not petition for grant of letters of administration.

4. In May 2016, she decided to Institute Succession proceedings in relation to her late husband's estate, and upon request for a search certificate from the Nandi County Land Registry she realized that the parcel was now transferred and registered in her name and that of the respondent vide Succession cause No. 149 of 1999 (**annexed as Ex. CK1**) She then obtained a certified application of the grant and copies of proceedings (**Ex CK 2(a) – (g)**) and realized that the Respondent had purported to make her a joint petitioner in the cause without her knowledge and caused an affidavit dated 22.06.1999 in support of the petitioner to be commenced before **F. OKINYO OMATA**. She denies ever applying before the said Commissioner for Oaths saying she is illiterate and can neither read nor write, and the purported signatures are a forgery. That in any event she never approved before the witnesses listed as **JOEL KENDUIYWA** and **MAGADLINE MUTAI**, pointing out that whereas in the Kenya Gazette Notice dated 27.08.1999, the deceased is purported to have died on 1<sup>st</sup> July 1998, as far as she knows (a fact supported by the death certificate) he died on 1<sup>st</sup> July 1988 – and the information was a further misrepresentation.

5. She denies applying for a temporary grant of letters of administration intestate on 28.09.1999 or before **ELIJAH MOMANYI** (Commissioner for Oaths) to swear the supporting affidavit.

She disowned the application dated 25<sup>th</sup> October 1999 which sought confirmation of the temporary grant of letters of administration before the Deputy Registrar **FRANCIS KADIMA** and maintains that all the depositions in the supporting affidavit were fraudulent and an outright abuse of the court process. It is also her contention that the said Deputy Registrar did not have jurisdiction under Section 48 then to preside over the matter as the subject matter of the cause exceeded Ksh.100,000/-.

6. “Apparently **CHRISTOPHER KOSGEI** is not her son, but the son of **KIMELI KOSORIO** (her brother in law) who lived with them so

as to be able to attend school within the area – the request having been made by his father who has land at **CHUIYAT FARM** in Uasin Gishu County. After completing his schooling, the Respondent failed to vacate the land and masqueraded as a son of the deceased.

7. In a replying affidavit opposing the application, the petitioner/respondent maintains that the deceased was survived by the applicant and himself. Further that the deceased had shown both of them portions they were to occupy being 10 acres for applicant and 8 acres for respondent, and the succession was properly done with the consent of the petitioner.

8. At the hearing, the respondent failed to attend court and the matter proceeded ex-parte.

9. This is a very curious situation where the applicant claims that the Petitioner/Respondent filed two petitions one in respect of the deceased's estate, and the other in respect of the estate of **MACHI MUTAI** and obtained grant.

Actually that is incorrect, from the annexed documents, the application in **Succ. Cause No. 148 of 99 relating** to the estate of **MACHI MUTAI** was filed by **MAGDALINE MUTAI** of **TULON** Location, **NANDI** district that the petitioner in the present matter was listed as her witness in the form **P & A 80**. They traded places so that in the present petition Magdaline became his witness.

10. It is not disputed that **CHRISTINE KOSGEI** was the deceased's widow – that much is acknowledged even by the Respondent. However the respondent is accused of misrepresenting himself as a son and therefore a beneficiary of the deceased.

The supplementary affidavits to the petition, including the death certificate reads 1988 as date of death and the entry in the Kenya Gazette publication is most likely a typing error, not a misrepresentation. Have any of the parties presented a letter from the area chief disclosing the names of the beneficiaries? Neither the petitioner nor the applicant have presented a chief's letter to confirm the names of the beneficiaries, so that it becomes difficult to determine whether;

- a) The petitioner was not the deceased's son,
- b) The deceased was survived by the persons named by the applicant.

Consequently both the positions remain mere claims which do not warrant this court's intervention.

Secondly it is stated that the estate was well over Ksh.100,000/- in value – that is correct as the affidavit in support of petition for letters of administration intestate sworn on 22<sup>nd</sup> June 1999 stated the value of the estate as Ksh.200,000 at the time under Section 48 of the Law of Succession Act, the magistrate's court's jurisdiction was limited to Ksh.100,000/- in Succession Causes – so the trial magistrate had no jurisdiction in the matter. Indeed as stated in the locus classicus case of *M V. Lillian S* – jurisdiction is everything – without it a court or tribunal has no business taking even an extra baby step and must down its pen immediately. It is this 2<sup>nd</sup> limb which has merit and renders the application for nullification of the grant warranted.

11. I order that the grant issued to **CHRISTINE KOSGEI** and **CHRISTOPHER KOSGEI** on **25<sup>th</sup> October 1999** be and is hereby nullified by way of revocation.

b) By this order Land Registrar of **NANDI** county is directed to rectify the register by cancelling the persons registered namely **CHRISTINE JEPKEMEI KOSGEI** and **CHRISTOPHER KIBET KOSGEI** and revert the same to the original registered proprietor **KIPCHIRCHIR KOSGEI** alias **KIPCHIRCHIR KIPKOSGEI** until proper succession is done.

c) The costs of this application shall borne by the Respondent.

**DATED AND SIGNED** at **ELDORET** this 20<sup>TH</sup> day of **DECEMBER 2018**

**H. A. OMONDI**

**JUDGE**

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 13<sup>TH</sup> DAY OF FEBRUARY 2019**

**O. A SEWE**

**JUDGE**