



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

SUCCESSION CAUSE NO. 255 of 2002

IN THE MATTER OF THE ESTATE OF KIMURIENY KIMAIYO (DECEASED)

AND

IN THE MATTER OF AN APPLICATION FOR REVOCATION AND/OR ANNULMENT OF GRANT

BETWEEN

CATHERINE JEROTICH.....APPLICANT

AND

SOLOMON KIBET KIMAIYO.....RESPONDENT

RULING

[1] Before the Court for determination is the Summons for Revocation of Grant dated **17 February 2004**. It was filed herein by **Catherine Jerotich** on **20 February 2004** pursuant to **Sections 47 and 76** of the **Law of Succession Act, Chapter 160** of the **Laws of Kenya**, and **Rules 44 and 73** of the **Probate and Administration Rules**. The Applicant sought orders that the Letters of Administration Intestate to the **Estate of Kimurieny Kimaiyo** (the Deceased) which was issued on **28 July 2003** to **Solomon Kibet Kimaiyo** (the Respondent) be revoked; and that the costs of the application be provided for.

[2] The application was premised on the grounds that the Grant of Letters of Administration Intestate to the Estate of the Deceased herein was obtained fraudulently by the Respondent; and that the Respondent fraudulently concealed from the Court the fact that the Applicant, as the only daughter and beneficiary of the Deceased, was the one entitled to inherit his Estate, as the Respondent is a stranger to the Estate. Hence it was the contention of the Applicant that since the Respondent is intent on the course he has chosen, he is poised to proceed with the distribution of the Estate to the detriment and prejudice of the Applicant unless the orders sought are granted. The application was supported by the Applicant's affidavit sworn on **12 February 2004**.

[3] The Affidavit of Service filed on **23 June 2004**, sworn by **Jackson Muthi Gaturu**, shows that the application was served on the Respondent, **Solomon Kibet Kimaiyo Barno** on the **14 June 2004**. He however opted not to defend the application, which was evidently filed one day after confirmation of the Grant. Subsequently, directions were given for the application to be heard by way of *viva voce* evidence. The Applicant proceeded to file Witness Statements along with a List and Bundle of Documents in readiness for the hearing.

[4] In the course of time, however, the Applicant became so ill that his son, **Ambrose Kipchirchir Kirwa**, was constrained to apply for leave to replace her in this matter. The application to that effect, dated **12 November 2018**, was granted by the Court on **22 November 2018**. Again the Respondent was duly served but opted not to participate in the hearing of that application. The Respondent, in similar fashion, failed to attend the hearing of the revocation application on **3 December 2018**, though notified thereof by way of a Hearing Notice dated **2 November 2018**. Accordingly, hearing proceeded *ex parte* in respect of the Applicant, **Ambrose Kipchirchir Kirwa, (AW1)** and his six witnesses.

[5] The Applicant adopted the Witness Statement dated **30 November 2015** which was filed herein on **3 December 2018**. His evidence was that the Deceased, **Elizabeth Jepkuto Kimurieny**, also known as **Jepkuto Kimurieny**, was his grandmother; and that she died on **13 February 2002** at the age of 90 years. He further stated that his grandfather, the husband of **Jepkuto Kimurieny** is also deceased, having died earlier on **12 October 1994**. He produced Certificates of Death in respect of his deceased grandparents as exhibits in support of his application.

[6] It was further the evidence of the Applicant that the late **Jepkuto Kimurieny** was the registered owner of all that piece of land known as

SERGOIT/KARUNA BLOCK 4/(KIRISWA) 11, which she distributed in her lifetime to her dependants. Hence, the said parcel of land was accordingly subdivided into five parcels, namely: SERGOIT/KARUNA BLOCK 4/(KIRISWA) 106; SERGOIT/KARUNA BLOCK 4/(KIRISWA) 107; SERGOIT/KARUNA BLOCK 4/(KIRISWA) 108; SERGOIT/KARUNA BLOCK 4/(KIRISWA) 109; SERGOIT/KARUNA BLOCK 4/(KIRISWA) 110. He added that while Parcel No. 106 was retained by the deceased, she gave Parcel No. 107 to his brother **Thomas Kipyego Korir**; while Parcel No. 108 was given to **Wilson Kipruto Korir**, a purchaser for value. Parcels Numbers 109 and 110 were given to **Regina Jemanyu**, his sister, and **Mary Chemisik Kiprop**, respectively. He explained that **Mary Chemisik Kiprop** is a sister to the deceased and that she purchased some 2.02 Ha from the deceased.

[7] The Applicant explained that the late **Jepkuto Kimurieny** and her husband were blessed with only one child, namely, **Catherine Jerotich Maiyo**, the initial Applicant and mother of the present Applicant. He thus denied any knowledge or relationship of any nature with the Administrator herein, namely **Solomon Kibet Barno** (the Respondent) or **Rosebella Chepkinyor Kimuryen**. He similarly denied any knowledge of or relationship with **Silvia Maiyo**, **James Kipkosgei** or **Joseph Kibet**; and stated that the matter of impersonation and forgery by them was reported to the Criminal Investigations Department and is the subject of an ongoing investigation.

[8] The Applicant further testified that, at some point in time, he sought the assistance of a non-governmental organization known as the **Centre for Human Rights & Democracy**. He produced a letter dated **20 January 2004** in proof thereof along with other pertinent documents to demonstrate that the current holder of Grant of Letters of Administration Intestate to the Estate of her deceased grandmother, **Jepkuto Kimurieny**, has no right at all to administer the Deceased's Estate or to inherit her property. The Applicant accordingly prayed for the revocation application to be allowed with costs.

[9] In support of the application, the Applicant called 6 other witnesses, namely: **Thomas Kipyego Korir (AW2)**, **Kiptoo Cheronji (AW3)**, **Regina Jemanyur Paulo (AW4)**, **Rosebella Jepkinyor Maiyo (AW5)**, **Joseph Kibet Rop (AW6)** and **Reuben Kipchirchir (AW7)**. **Thomas Kipyego Korir (AW2)** confirmed that he is one of the sons of the former Applicant, **Catherine Jerotich Maiyo**, and therefore a brother to the Applicant and a grandson of the Deceased. He similarly adopted his Witness Statement dated **29 November 2017** and further confirmed that the Deceased was the owner of the parcel of land known as **SERGOIT/KARUNA BLOCK 4/(KIRISWA)11**. He testified that the Deceased subdivided that piece of land into five and distributed them to his dependants; and that he was one of the beneficiaries. He made reference to the Minutes and Consent of the Land Control Board, which were produced before the Court by **AW1** to augment his evidence; and basically adopted the evidence of **AW1** in material respects.

[10] **Kiptoo Cheronji (AW3)** also adopted his witness statement dated **29 November 2017** in which he stated that he knew the Deceased, **Elizabeth Jepkuto Kimurieny**, as a neighbour; and that she died on **13 February 2002** at the age of 90 years. **AW3** added that it was within his knowledge that the Deceased was the proprietor of the property known as **SERGOIT/KARUNA BLOCK 4/(KIRISWA)11**; and that the Deceased and her husband, **Kimurieny Kimaiyo** were blessed with only one child, namely, **Catherine Jerotich Maiyo**. He similarly corroborated the evidence of **AW1** and **AW2** in material respects and reiterated that the rightful heir of the Deceased is her daughter **Catherine Jerotich Maiyo**.

[11] In her witness statement dated **29 November 2017**, which she adopted as part of her evidence, **Regina Jemanyur Paulo (AW4)** stated that she is one of the grandchildren of the Deceased and confirmed that the Deceased was the proprietor of the piece of land known as **SERGOIT/KARUNA BLOCK 4/(KIRISWA)11**, which she subdivided in her lifetime into 5 parcels and distributed to her dependants. She confirmed that she was given **Parcel No. SERGOIT/KARUNA BLOCK 4/(KIRISWA)109** by the Deceased. She further confirmed that the transfers were approved by the Land Control Board for the area. She reiterated the Applicant's contention that neither of the Administrators are entitled to administer or inherit the Estate of the Deceased.

[12] **Rosebella Jepkinyor Maiyo (AW5)** also disowned the Respondent. She adopted her Affidavit sworn on **22 June 2018**, wherein she averred that she was married to the Deceased under Nandi customs; and that the Deceased died on **13 February 2002**. She testified that the Respondent is not a son to the Deceased; and that though **James Kipkogei**, **Joseph Kibet Rop** and **Silvia Maiyo** are her children, they are not the grandchildren of the Deceased as purported in the court papers filed herein by the Respondent. She was categorical that she had no role to play in the filing of this Succession Cause and that she did not benefit from the Estate and does not wish to. She further confirmed that the Deceased only had one biological child who is **Catherine Jerotich Maiyo**.

[13] **Joseph Kibet Rop (AW6)** confirmed in his Affidavit sworn on **22 June 2018**, which he adopted as part of his evidence herein, that the Deceased married his mother, **Rosebella Jepkinyor Maiyo**, under Nandi customs; and that the Deceased died on **13 February 2002**. He further confirmed the evidence of his mother that he is not one of the grandsons of the Deceased as was alleged by the Respondent; and that when these proceedings were brought to his attention, he was surprised that the Respondent had listed him as one of the beneficiaries of the Deceased without his knowledge. He further confirmed that **James Kipkogei** and **Silvia Maiyo** are his siblings and added that the Respondent is not a son of the Deceased and therefore misled the Court into issuing a Grant of Letters of Administration in respect of the Estate of the Deceased to him.

[14] **Reuben Kipchirchir (AW7)** was the last witness to testify on behalf of the Applicant. He confirmed that **Rosebella Jepkinyor (AW5)** is his mother; and that **Joseph Kibet Rop (AW6)** and **Silvia Chepkosgey Maiyo** are his siblings. His evidence was in tandem with the evidence of **AW6**. He was also categorical that he is not a grandson of the Deceased and therefore is not one of the beneficiaries of her Estate. He was similarly surprised to learn that his name had been included as one of the beneficiaries of the Deceased in this Cause.

[15] Having perused the entire court record and considered the evidence presented herein by the Applicant and his witnesses, it is manifest that this Succession Cause was filed on the **23 December 2002** by the Respondent, **Solomon Kibet Barno**, in respect of the Estate of the Deceased, **Jepkuto Kimurieny**. The Respondent listed the assets comprising the Deceased's Estate to be three pieces of land known as **SIRGOIT/KARUNA BLOCK 4/KIRISWA(107)**, **SIRGOIT/KARUNA BLOCK 4/KIRISWA(108)** and **SIRGOIT/KARUNA BLOCK 4/KIRISWA(110)**. The Respondent averred, in the Petition for Letters of Administration Intestate, **Form P&A.80**, that he presented the petition in his capacity as the son of the Deceased. He further made representations to the effect that the deceased died intestate and left the following beneficiaries surviving him:

[a] **Rosebella Chepkinyor Kimuryeny - Daughter**

[b] **Solomon Kibet Barno - Son**

[c] **James Kipkosgei - Grandson (adult)**

[d] **Joseph Kibet - Grandson (adult)**

[e] **Silvia Maiyo - Granddaughter (adult)**

[16] On the basis of those representations, the Court issued a Grant of Letters of Administration Intestate in respect of the Estate of the Deceased to the Respondent. The Grant, which was issued on **27 June 2003**, was confirmed on **19 February 2004**, a day before the instant application was filed. And, as has been pointed out herein above, the Applicant has adduced credible evidence that is entirely uncontroverted to show that the Deceased had only one child, namely **Catherine Jerotich Maiyo**, who is the mother of the Applicant as well as **Thomas Kipyego Korir (AW2)** and **Regina Jemanyur Paulo (AW4)**. The Applicant further adduced evidence to show that the said **Catherine Jerotich Maiyo** was never included or involved in the Petition filed herein by the Respondent either as a co-petitioner or beneficiary; and that when she got to learn of the existence of this petition, she caused the matter to be reported to the CID for investigations; which are ongoing.

[17] There is therefore ample uncontroverted evidence to show that the Grant was obtained by false representations. Indeed, **Rosebella Jepkinyor Maiyo (AW5)** who was listed in the Petition as a daughter to the Deceased testified that she is not a daughter to the Deceased; but was married to her in accordance with Nandi customs. She further stated that she does not reside on the property and has no interest in having a share of the Deceased's Estate. Her two sons, **Joseph Kibet Rop (AW6)** and **Reuben Kipchirchir (AW7)** were of the same posturing. An affidavit was also filed herein sworn by their sister, **Silvia Chepkosgei Maiyo** to a similar effect. These are the very people that the Respondent listed in the Petition as sons and daughters of the Deceased, and therefore the beneficiaries of her Estate. It is manifest therefore that the Respondent obtained the Grant fraudulently.

[18] **Section 76 of the Law of Succession Act, Chapter 160 of the Laws of Kenya** is explicit that:

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion--

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(d) That the person to whom the grant was made has failed, after due notice and without reasonable cause either--

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow;

or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of Section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.

[19] In the premises, a good case has been made out by the Applicant for the revocation of the Grant of Letters of Administration Intestate, that was issued herein on **27 June 2003** in respect of the Estate of the Deceased, **Elizabeth Jepkuto Kimurieny** to the Respondent, **Solomon Kibet Barno**, and confirmed on **19 February 2004**. Accordingly, I find merit in the Application dated **17 February 2004** and would allow the same and order that:

[a] The said Grant of Letters of Administration issued herein on **27 June 2003** in respect of the Estate of the Deceased, **Elizabeth Jepkuto Kimurieny** to the Respondent, **Solomon Kibet Barno**, and the Certificate of Confirmation of that Grant issued on **19 February 2004** be and are hereby revoked;

[b] The costs of the application be in the Cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 12TH DAY OF FEBRUARY 2019

OLGA SEWE

JUDGE