



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 107 OF 2015**

**IN THE MATTER OF THE ESTATE OF THE LATE DAVID KIMAIYO BUSIENEI - DECEASED**

**RUTH CHELMO BUSIENEI.....PETITIONER**

**VERSUS**

**STEPHEN KIPKOECH MAIYO.....OBJECTOR**

**RULING**

1. By an application dated 26.09.2016, Mr Kigen on behalf of the applicant acknowledged that prayer (3) which sought preservation and conservation orders pending hearing of this application had been granted by Githua 'J' on 26.12.2017.
2. The application sought revocation and/or annulment of the grant of letters of administration issued to **RUTH CHELIMO BUSIENEI** on grounds that the proceedings leading to obtaining of the same were defective and the Petitioner (Ruth Chelimo Busienei) obtained the grant fraudulently through non-disclosure and concealment of material facts involving the deceased's estate.
3. That once the prayer for revocation is granted, then the grant of letters of administration be issued jointly to the said Ruth and the applicant.
4. It is premised on grounds that the deceased **KIMAIYO SAMOEI BUSIENEI** alias **DAVID KIMAIYO BUSIENEI** died on 23.08.2016, and thereafter the said **RUTH** has been intermeddling with his estate to the exclusion of the applicant and all the other lawful beneficiaries. They are apprehensive that they stand to suffer irreparable loss.
5. The Petitioner/Respondent is their mother, and according to the applicant, prior to the deceased's demise, he had sold part of the assets to **MARY JEPKOSGEI BIRECH** who has not been involved in these proceedings.

Further that she has omitted the names of her two daughters i.e **EDNA JERUTO** and **RAEL JEMELI**, instead only listing her grandsons **HARUN KIPKOECH** and **SAMMY KIPTANUI** who are minors.

6. In the supporting affidavit, the applicant deposes that the deceased is survived by;

**RUTH CHELIMO BUSIENEI – widow**

**EDNAH CHERUTO – Daughter (Deceased)**

**ELIZABETH JEPKORIR – Daughter**

**STEPHEN KIPKOECH – Son**

**RAEL JEMELI – Daughter**

**DORCAS JEPKURUI – Daughter**

**PERIS JEPKEMBOI – Daughter**

7. The applicant contends that the Respondent secretly and fraudulently filed the succession without his knowledge or consent yet he is the deceased's only son. That apart from the named **MARY JEPKOECH**, the deceased had sold parts of his land to several other people namely **MATHEW MARITIM KOGO**, **JULIUS KIPRANDICH BIWOTT** and **PHILIP MAIYO**, yet Respondent is now threatening to

evict them. Instead the Respondent has embarked on a spree of selling the land to other people and the applicants prays the assets be equally distributed only after paying of the liabilities.

8. In opposing the application, the Respondent by her Replying Affidavit deposes that the allegations by the applicant (who is her biological son) are untrue as she had approached her other children over succession of the estate and all agreed except applicant who refused to sign any document.

9. That **MARY JEPKOSGEI** is in the picture and was well informed of her rights in the estate, she contends that meetings were called ostensibly to pit her against her husband's relatives whose interest was to create a wedge between her and her siblings.

10. That the applicant has on numerous occasions threatened her with elimination and she even had made report to **Yamumbi Police Post**. She maintains that since she owned the property jointly with the deceased who had sold her half share of the acreage, then what remains is hers and the applicant cannot purport to demand 4 acres therefrom, denying his other siblings any share of their father's property.

11. She undertakes to take care of the children's share claimed by **MARY JEPKOSGEI BIRECH** and **JULIUS KIPRANDICH BIWOTT** who are entitled to ½ an acre each and the applicant has no genuine basis for his objection.

12. She explains that her deceased daughter **EDNA JERUTO** and **RAEL JEMELI** were unmarried single parents who have birth to the two named grandsons (both of whom have lived with her and the deceased had been providing for them, hence their inclusion in the distribution – they also fit in to take up the share that would have been for their respective mothers.

13. In terms of priority, the petitioner ranks first in the getting to the petition for and obtain grant of letters of administration.

14. The applicant's claim that the petitioner is misusing the estate has no leg on which to stand, he is crying louder than the bereaved – the purported purchasers have not raised any complaint that the petitioner has acknowledged their entitlement.

(2) The petitioner has given a satisfactory explanation as to why the daughters names do not appear – they are deceased and have been substituted with their sons as both were single parents, and the deceased had lived with and provided for them, thus qualifying them to be dependants.

15. Infact if the applicant is allowed to be a co-administrator nothing will move and from this stand he will make it very difficult to equating distribution the estate. I hold and find that his application for annulment has no basis whatsoever and is dismissed with costs to the Respondent.

16. The Respondent is at liberty to continue with distribution. Grant is issued to her. 1<sup>st</sup> grant do issue to petitioner.

**DATED, SIGNED AND DELIVERED THIS 9<sup>TH</sup> DAY OF MAY 2019 AT ELDORET.**

**H. A. OMONDI**

**JUDGE**