



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO 32 OF 2012**

**IN THE MATTER OF THE ESTATE OF THE LATE ELKANA EGO MARITIM**

**JOHN KIPKORIR EGO.....APPLICANT**

**VERSES**

**REUBEN NDINYA KHAMAD.....1<sup>ST</sup> RESPONDENT**

**AMINA MKAMUNDULU NDINYA.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. Vide his application dated 22<sup>nd</sup> August 2018 the Applicant who is the Administrator of the estate herein prayed for orders that an injunction be issued to restrain the Respondents from trespassing into the deceased parcel of land situate at Chepkaos Farm pending the rectification of the grant herein. He has also prayed that this court stays proceedings in Criminal Case No .2596/2018 pending before the Chief Magistrate Court here at Kitale.
2. The Applicants supporting affidavit sworn on the 17<sup>th</sup> August, 2018 shows that the alleged parcel of Land was not included in the properties forming part of the deceased estate herein. There is however an agreement dated 26<sup>th</sup> January, 2002 between one **Amos Kiprono Kerich** and the deceased herein in which he bought the 1 ½ acres of land for a total purchase consideration of Kshs.151, 500.
3. The applicant has equally attached an affidavit signed by one **Amos Kiprono Kerich** certifying that the deceased indeed bought the land from them and thus it forms part of his estate. There are also some other annexures which are minutes of various family meetings over the same land inter alia.
4. There is also the undated agreement between the 3<sup>rd</sup> Respondent and the 1<sup>st</sup> and 2<sup>nd</sup> Respondent in which she has sold the ½ acre of some land to them at a purchase consideration of kshs. 210,000. According to the sets of minutes attached to the Applicant's affidavit the land belonged to the estate and the deceased had expressed that the same should not be sold.
5. The replying affidavit dated 21<sup>st</sup> September, 2018 by the 2<sup>nd</sup> Respondent supports this line of argument that they bought land from the 3<sup>rd</sup> Respondent. He said however that it did not form part of the deceased estate herein but instead it belonged to one **Kipkerich A. Lagat** who has since died and that succession proceedings had not been done. He expects therefore that he shall be included in as beneficiary in the estate of the late Lagat.
6. The court has perused the submission on record by the two sides and it is evident that the deceased purchased land from the said Amos Kerich a beneficiary to the estate of Kipkerich Lagat. At the same time the 1<sup>st</sup> and 2<sup>nd</sup> Respondents purchased land from the 3<sup>rd</sup> Respondent. The question is whose land was the 3<sup>rd</sup> Respondent selling? It is admitted that the 3<sup>rd</sup> Respondent is a daughter in law to the deceased herein whose estate is being administered by the Applicant as per the confirmed grant on record.
7. If then that was the position did she have the authority to sell the land without the consent of the Applicant and for that matter this court? Absolutely not.
8. Assuming that the deceased did not purchased land from **Amos Kerich** whose land then was the 3<sup>rd</sup> Respondent selling? Apparently she did not swear any affidavit either in support or in opposition to the application. In my view she did not have the capacity to sell the land belonging at any rate to the late **Kipkerich Lagat** or the deceased herein.
9. The proper recourse for the respondents was to await the rectification of the grant application by the Applicant and advance their interest or at least lodge a claim in the estate of the late **Kipkerich Lagat** as the case may be.

10. For now I find that the applicant has a legal duty to collect the deceased estate and to ensure that there is no intermeddling over the same. As stated above all is not lost to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The only issue they have to surmount legally is whether the 3<sup>rd</sup> Respondent had the legal capacity to dispose the land to them whether it belonged to the estate of the late **Kerich** or the deceased herein.

11. The Applicant has also sought some orders to stop the criminal proceedings against him and others at the lower court. In view of the role undertaken by the Applicant and the fact that this is purely a civil matter unless proved to the contrary there is no reasons why the applicant should be charged in a criminal process when he his undertaking his duty of collecting the estate.

12. In the premises I find that the application is meritorious and it is allowed as follows;

**a. The Respondents jointly and severally are hereby restrained from trespassing on the Parcel of Land specifically the portion of land measuring 1 ½ Chepkaos Parcel No. 5 registered in the name of Kipkerich Lagat pending the filing and rectification of grant by the Applicant herein.**

**b. The Applicant is hereby ordered to apply for the above rectification within 60 days from the date herein.**

**c. The criminal proceedings namely Kitale Criminal Case No. 2596 of 2018 is hereby suspended and or stopped pending further orders and or directions from court.**

**d. Costs in the cause.**

**Dated signed and delivered in open court at Kitale this 11th day of June 2019.**

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**H K. CHEMITEI**

**JUDGE**

**11/6/19**

**In the presence of:-**

**Mr Barong for Respondent**

**None Appearance for the Applicant**

**Court Assistant – Kirong**

**Ruling read in open.**