



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

P&A NO.100 OF 2002

IN THE MATTER OF THE LAW OF SUCCESSION ACT (CAP 75) LAWS OF KENYA

AND

IN THE MATTER OF THE ESTATE OF KIPKOSKE A. TUIMISING (DECEASED)

BETWEEN

TECLA CHESANG TUIMISING.....APPLICANT/OBJECTOR

AND

HENRY KIPKIRUI ROTICHRESPONDENT

RULING

1. Before me is a Chamber Summons dated 1st February 2017 filed by the objector/applicant Tecla Chesang Rotich against Henry Kipkurui Rotich. The application was filed through counsel Bett & Co. Advocates.

2. The application was brought under Rule 73 of the Probate and Administration Rules and seeks the following orders-

a) That the court be pleased to order for revocation of titles in respect to LR NO.KERICHO/CHEMAGEL/3575, 3576, 3577 and 3578 being titles resulting from the subdivision of LR. NO. KERICHO/1328.

b) That any other necessary directions be made.

3. The application has grounds on the face of the Chamber Summons that the subdivision was done irregularly without due regard to the Probate and Succession process; that the resultant titles were null and void for illegality and that it was necessary to revoke the said titles and restore the original title number to pave way for final distribution of the estate of the deceased.

4. The application was filed with a supporting affidavit sworn by the objector/applicant on 1st February 2017 in which it was deponed that the grant of letters of administration was issued to Henry Rotich, Phillip Rotich and Richard Rotich on 12th June 2009 and that co-administrators caused the land sub-division, and when the applicant discovered this, She carried enquiries and found that the subdivision was done in the absence of the said letters of administration.

5. The affidavit supporting the application above annexed copies of the search certificates from the Lands Office as well as an order of the High Court dated 28th September 2004 directing the DCIO Bomet to open an enquiry file to investigate the circumstances under which LR KERICHO/CHEMAGEL/1328 was sub-divided and transferred in the absence of a Confirmed Letter of Administration and take appropriate action thereafter.

6. The objector/applicant also filed a further affidavit she swore on 7th December 2017, in which she reiterated the un-procedural manner in which the co-administrator subdivided the land and registered the same.

7. In response to the application, Henry Kipkirui Rotich filed a replying affidavit he swore on 25th April 2019 in which it was deponed that the land was subdivided and transferred after sanction by the Land Control Board was given, and that the objector/applicant was not entitled to share in parcel number KERICHO/CHEMAGEL/1328. He annexed a letter of 5th October 2004 from the Land Registrar, Bomet and copies of certificates of title.

8. In this matter, parties were represented by counsel who filed written submissions. Counsel for the objector/applicant Bett & Co. advocates filed submissions dated 10th December 2018, while counsel for the respondent J. K. Rono & Company filed written submissions dated 25th April 2019. On 26th April 2019- Mr. Mwita for the applicant was present in court to take a ruling date.

9. However, counsel for the respondent was absent, and Mr. Mwita asked the court to deliver its ruling on the basis of the written submissions filed.

10. I have considered the application, documents filed and submissions of counsel for the parties.

11. The facts of this matter are not in dispute. Kipkoskei arap Tuimising died and the petition for letters of administration filed. The latest Grant of Letters of Administration was issued on 12th June 2007 by Martha Koome J. as she then was. The grant of representation of letters of administration was issued to four people, that is Richard Rotich, Philip Rotich, Henry Kipkurui Rotich and Tecla Chesang Tuimising. The said letters of administration have not been confirmed to date.

12. Before that however, which none of the counsel on record has raised, letters of administration were issued on 22nd November 2002 to a single administrator Henry Kipkurui Rotich by Visram J., as he then was. This grant of letters of administration was also not confirmed, and was replaced by the later grant issued by Koome J., as she then was.

13. From the documents filed, it comes out that, after the initial grant of letters of administration was issued by Visram J. in 2002 to Henry Kipkurui Rotich, and before confirmation of grant and after a summons for revocation of grant was filed in 2003, on 4th December 2004, the said grant of letters of administration was presented by the said Henry Kipkurui rotich before the Land Registrar, and after consent of the Land Control Board Sotik was issued, the Land Registrar proceeded to subdivide the land and issue new numbers. After the Land Registrar became aware of the dispute however, he placed restrictions to the respective pieces of land and wrote a letter, in which the Land Registrar concluded as follows:-

“Lastly, the Court of Appeal has powers to give further orders to this office to either direct for further restrictions or nullification of the previous grant to reinstate the original owner (deceased) pending the determination of the rightful administrator or beneficiaries. “

14. In my view, since the property is land belonging to the deceased, the then sole administrator Henry Kipkirui Rotich (also called Kipkurui) had no authority to deal with or transfer the land without specific orders from this court, as any dealing with the land that was not authorized by the court translated to intermeddling with the deceased’s estate.

15. In this regard, section 45 of the Law of Succession Act provides as follows with regard to intermeddling-

“45 (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section

shall-

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration. “

16. Suffice to say that intermeddling is criminalized by the above section of the law. The section also makes the intermeddler liable to account. Henry Kipkirui Rotich has committed intermeddling in this estate. I note also that he registered himself as owner of the land, subdivided it and transferred it and transferred some of the plots to 3rd parties.

17. The application has merits. I allow the application and grant prayer (a). If there is any liability to the 3rd parties on the subject land, Henry Kipkirui Rotich who is also called Henry Kipkurui Rotich will bear that liability, as he is the intermeddler.

18. The costs of this application will however be in the cause as the Succession Cause herein is yet to be concluded.

Dated and delivered at Kericho this 15th day of July 2019.

George Dulu

JUDGE