



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

SUCCESSION CAUSE NO.142 OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE KIPSIELE

ARAP KORIR ALIAS KIPSIELE KORIR (DECEASED)

GEOFFREY CHERUIYOT KIRUL.....PETITIONER

VERSUS

DANIEL KIPKEMOI SIELE.....OBJECTOR

RULING

1. This matter relates to the estate of Kipsiele Arap Korir *alias* Kipsiele Korir (deceased) who died on the 3rd day of August 1992. An application for letters of administration intestate to his estate was filed on 6th November 2012 by the petitioner, Geoffrey Cheruyoit Kirui. A grant of letters of administration intestate was made on 5th November 2013. According to form P&A 5 filed with the application, the deceased was survived by the following beneficiaries:

- a. Recho Korir - Widow**
- b. Charles Kirui - Son**
- c. Jane Chepkemoi - Married Daughter**
- d. Lily Chepkorir - Married Daughter**
- e. Geoffrey Cheruiyot Kirui - Son**
- f. Emmy Cheron - Married Daughter**
- g. Victor Kirui - Son**
- h. Caroline Cherotich - Married Daughter**

2. The sole asset of the estate comprised L. R. No. Kericho/Chesoan/830. Form P&A 5 indicates that the estate had no liabilities.

3. By an application dated 2nd July 2014, the petitioner applied for confirmation of the grant. He proposed that the estate of the deceased, comprising 3.4 acres in Kericho/Chesoan/830, be distributed as follows:

“That the identification of shares of all persons beneficially entitled to the said estate have been ascertained and distributed as follows:

- a. Kericho/Chesoan/830 3.4 acres – Geoffrey Cheruiyot Kirui to jointly hold absolute the whole parcel.**

LIABILITIES

b. Kericho/Chesoan/830 1 acre – Paul Cheruiyot

c. Kericho/Chesoan/830 1 acre – John Kipkelong Kirui”

4. An application was then filed by the objector, Daniel Kipkemoi Siele, dated 21st August 2014. In the application, the objector sought an order for revocation of the grant issued to the petitioner. The application was based on the following grounds:

1. That the Grant of Letters of Administration was obtained fraudulently for the reason that the petitioner/respondent herein concealed to this Honourable Court the cogent material facts.

2. That the grant was obtained through untrue allegations of facts which were absolutely essential and/or what behoves the laws to justify issuing of grant specifically in anything to do with land parcel – title no. Kericho/Chesoan/830 which was owned by the said deceased person.

3. That the petitioner/respondent did knowingly and clandestinely and or secretly with his siblings and his mother wants to get fraudulently the property which they do not have any propriety interest since they are not related at all to the deceased owner. (sic)

5. In his affidavit sworn in support of the application, the objector averred that he is the son of the deceased, and that his father, the deceased, was not married to the grandmother of the petitioner, and that he had never heard of such an issue in the deceased's lifetime. He contends that the deceased's land, Kericho/Chesoan/830, was only to be shared between him and his siblings, and that he and his siblings are not related to the petitioner.

6. In an affidavit in reply sworn on 9th February 2015, the petitioner avers that the objector has conceded that the land belonging to the estate was the subject of a Land Disputes Tribunal decision in 2010, and that the Tribunal had resolved that the land, Kericho/Chesoan/830, belongs to the heirs of Elizabeth Korir, the grandmother of the petitioner and a wife of the deceased. According to the petitioner, the decision of the Tribunal had been adopted by the court in **Kericho Misc. Appl. No.104 of 2010**. The objector had then filed a judicial review application in respect of the decision, but had subsequently withdrawn it.

7. A second affidavit in opposition to the objection and in support of the petitioner's position was filed. In the said affidavit sworn on 21st March 2017, the deponent, John Kipyegon Ngeno, avers that he is a brother of the deceased. According to Ngeno, the deceased had two wives, Tapkokwa Korir, the mother of the objector, and Elizabeth Korir alias Obot Cheptanui, the grandmother of the petitioner. The house of Tapkokwa Korir, comprising the objector and his brother (deceased) had been allocated Kericho/Chesoan/822. The house of Elizabeth Korir, comprising the petitioner's mother, Recho Korir, and her sister, who it appears is married and has no interest in the estate, was entitled to Kericho/Chesoan/830.

8. At the crux of the objection is the contention that the petitioner's grandmother was not married to the deceased. From the available affidavit evidence, the grandmother of the petitioner was the second wife of the deceased. The petitioner is the son of the daughter of the deceased, one Recho Chelangat Korir. Interestingly, however, the petitioner names his mother, Recho Korir, as a widow of the deceased, and other persons, including himself, as sons or daughters of the deceased. Whether this was inadvertent or intended to mislead the court is not clear. However, it appears more likely to have been intended to deceive, for it is difficult to see how the petitioner can make a mistake regarding the relationship of his mother to the deceased.

9. In support of their respective cases, the parties filed written submissions which I have read and considered against their pleadings. The submissions of the objector reflect the position that he has taken in his affidavit in support of his application for revocation of grant. He maintains that the grandmother of the petitioner is not a wife or former wife of the deceased. On his part, the petitioner/respondent maintains that he is entitled to the land, and has applied in place of his mother, Recho Chelangat, who is mentally challenged.

10. I note from the pleadings that indeed there was a dispute before the Bomet Central Land Disputes Tribunal by the petitioner in 2010. The dispute over the land was placed before the Tribunal, was deliberated upon, and a decision made that the land title number Kericho/Chesoan/830 belonged to the heirs of the petitioner's grandmother, one Elizabeth Korir, who was apparently married to the deceased. That decision was placed before the magistrate's court in Misc. App. No.104 of 2010 and adopted as an order of the court. What was the effect of that adoption? In **Peter Ouma Mitai vs. John Nyarara Kisii HCCA No. 297 of 2005, Musinga, J** (as he then was) following the decision in **Zedekiah M Mwale vs. Bikeke Farm Directors & Another Kitale Civil Appeal No. 25 of 1998** stated as follows:

“The jurisdiction of the Land Disputes Tribunal is clearly set out in section 3 of the Land Disputes Tribunal Act. Once a Tribunal has determined a dispute, section 7(1) of the Act requires the Chairman to cause the decision to be filed in the magistrate's court together with any depositions or documents which have been taken or proved before the Tribunal....The provisions of section 7(2) of the Act are explicit as to what has to be done by the magistrate's court. That provision of the law does not leave any room for a magistrate to review, alter, amend or set aside the Tribunal's award. If any of the parties are aggrieved by the said award they can either prefer an appeal to the Appeals Committee as provided under section 8(1) of the Act or if there are reasonable grounds for challenging the decision by way of a judicial review application, proceed to institute such proceedings before the High Court and not otherwise.”

11. In the present case, the objector filed a judicial review application to challenge the decision of the Land Disputes Tribunal, being Judicial Review Application No.11 of 2011 then he withdrew it. I note that the petitioner/respondent followed the decision of the Tribunal that was adopted by the Magistrate's Court in filing the application for letters of administration intestate. Having not challenged the Tribunal decision, I do not believe that the objector can now challenge the decision by way of objection proceedings in this court. It would appear that he had decided to accept the decision, hence his withdrawal of the judicial review proceedings, then changed his mind and decided to

challenge it by way of this application for revocation of grant.

12. Whatever view one may take of the decision of the Land Disputes Tribunal, there was a process for challenging it. If it was not challenged by way of that process, I do not believe that I can properly go around it in these proceedings. Accordingly, it is my finding that the objector has not placed before the court grounds that would justify the revocation of the grant to the petitioner. The grant shall therefore be confirmed, but not as prayed by the petitioner.

13. From the material before me, the petitioner applied on behalf of his mother, Recho Chelangat Korir. She is the beneficiary of the estate of the deceased. I direct therefore that the property Kericho/Chesoan/830 shall be distributed to Recho Chelangat Korir. However, should there be proof that the said Recho Chelangat Korir is mentally challenged as alleged by the petitioner, which the petitioner must place before the court within 30 days hereof, then the property shall be held by the petitioner in trust for the said Recho Chelangat Korir.

14. There shall be no order as to costs.

Dated Delivered and Signed at Kericho this 7th day of March 2018.

MUMBI NGUGI

JUDGE