



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION NO.106 OF 2014

IN THE MATTER OF THE ESTATE OF AYUB KIPRONO CHEPKWONY (DECEASED)

STELLA CHEBET CHEPKWONY.....1ST APPLICANT

IRENE CHEPKWONY.....2ND APPLICANT

VERSUS

PAULINE CHEPCHIRCHIR CHEPKWONY.....1ST PETITIONER

JOSEPHINE C. CHEPKWONY.....2ND PETITIONER

RULING

1. By their application dated 12th May 2016 which is supported by an affidavit sworn on 12th May 2016 by the 1st applicant, Stella Chebet Chepkwony and Irene Chebet Chepkwony sought the following orders:

i) That the Honourable Court do hereby certify this application as of utmost urgency and service be dispensed with in the first instance.

ii) That the Honourable Court be pleased to issue an order of temporary injunction restraining the petitioners and in particular Josephine C. Chepkwony from constructing, fencing off, denying all the beneficiaries access, peaceful occupation, possession and use of land parcel no. Kericho/Kipkellion/Kipkellion North Block 1 (Blue Hills) 21 pending the hearing and determination of this application inter parties.

iii) That the Honourable Court be pleased to issue an order to the effect that the two proposed petitioners/administrators, Stella Chepkwony and Irene Chepkwony be included and added as administratrix of the estate of the late Hon. Ayub Kiprono Chepkwony.

iv) That the Honourable Court be pleased to issue an order of temporary injunction restraining the petitioners and in particular Josephine C. Chepkwony from constructing, fencing off, denying all the beneficiaries access, peaceful occupation, possession and use of land parcel No. Kericho/Kipkelion/Kipkelion North Block 1 (Blue Hills) 21 pending the hearing and determination of this succession cause and or confirmation of grant.

v) That the Honourable Court be pleased to issue an order preserving the estate of the deceased from any mismanagement and destruction by the two (2) petitioners Pauline Chepchirchir Chepkwony and Josephine Chemutai Chepkwony and all beneficiaries pending the hearing and determination of the succession cause.

vi) That the Honourable court be pleased to issue an order directing the two (2) petitioners Pauline Chepchirchir Chepkwony and Josephine Chemutai Chepkwony to table accounts and provide receipts, invoices and other documentary proof in relation to the income they have received from the properties and estate of the deceased and the expenditure of the said monies since his demise to date.

vii) That the Honourable Court be pleased to issue any other remedy and or order that is fit and just to grant.

viii) That costs of this application be provided for.

2. Pursuant to a consent entered into between the parties and filed in court on 11th November 2016 and the consent order recorded before the Deputy Registrar on the same date, the applicants were appointed additional administrators of the estate of the deceased, and the court

directed that the grant issued to the petitioners be rectified accordingly. What remained for determination were prayers 4, 5, 6, 7 and 8 of the application dated 12th May 2016, which was not opposed by the 1st Petitioner, Pauline Chepchirchir Chepkwony.

3. The 2nd petitioner, at whom the application is primarily directed, was not present in court, nor was her Advocate, when the matter came up before the court on 5th June 2018. A perusal of the court record indicates that there is no evidence that the hearing date of 5th June 2018, which was taken ex-parte by counsel for the 3rd and 4th administrators on 23rd April 2018, was served on counsel for the 2nd petitioner. However, the 2nd petitioner's Advocates on record, Messrs. E.N. Orina and Co. Advocates, had served a mention notice for the 5th of June 2018 on Counsel for the applicants and the 1st petitioner, so it would appear that they were aware of the hearing date for the application.

4. The application revolves around property number Kericho/Kipkelion/Kipkelion North Block 1 (Blue Hills) 21. The 3rd and 4th administrators allege that the said parcel of land, which is registered in the name of the 2nd administrator, Josephine Chemutai Chepkwony, is part of the estate of the deceased, Ayub Kiprono Chepkwony, and the 2nd administrator holds it in trust for other beneficiaries.

5. I have considered the submissions made by Mr. Koko, Learned Counsel for the 3rd and 4th administrator. Mr. Koech for the 1st administrator was not opposed to the application.

6. In his submissions, Mr. Koko noted that the property had been purchased for the deceased by former President Moi, and the family had agreed that it should be registered in the name of the 2nd administrator. Had it been an *inter vivos* gift to the 2nd administrator, then the property should have been registered in the lifetime of the deceased. Counsel urged the court to exercise powers under Rule 73 of the Probate and Administration Rules in the ends of justice and grant the orders sought by the applicants.

7. I note that in her affidavit sworn on 19th July 2016, the 2nd administrator avers that she is the registered owner of Kericho/Kipkelion/Kipkelion North Block 1 (Blue Hills) 21. She annexes to her affidavit a copy of a certificate of official search dated 1st February 2016. The certificate shows that the property was transferred to her on 17th April 2013, and a title deed issued.

8. At paragraph 4 of the said affidavit, she avers that “... ***I had been gifted with the same by my late father while he was still alive and he effected the transfer and I was registered as the legal proprietor. At no time did the applicants object to the same during his lifetime.***”

9. The only challenge that I see with the position taken by the 2nd administrator relates to the timing of the transfer. From the death certificate annexed to the application for letters of administration intestate, the deceased died on 7th November 2011. He could, therefore, not have transferred the subject parcel to the 2nd administrator on 17th April 2013. That such a transfer was effected almost one and a half years after the death of the deceased is a matter of concern, and suggests at a minimum intermeddling with the estate of the deceased.

10. I will therefore grant certain orders sought by the 3rd and 4th administrators with a view to preserving the estate of the deceased pending the determination of the issues that the respective positions of the protagonists in this matter raise. The orders that commend themselves to this end are as follows:

i) That an order be and is hereby issued restraining the 1st and 2nd petitioners and in particular Josephine C. Chepkwony from constructing, fencing off, denying all the beneficiaries access, peaceful occupation, possession and use of land parcel No. Kericho/Kipkelion/Kipkelion North Block 1 (Blue Hills) 21 pending the hearing and determination of this succession cause and or confirmation of grant.

ii) That an order be and is hereby issued preserving the estate of the deceased from any mismanagement and destruction by the two (2) petitioners Pauline Chepchirchir Chepkwony and Josephine Chemutai Chepkwony and all beneficiaries pending the hearing and determination of the succession cause.

iii) That the 1st and 2nd petitioner, namely Pauline Chepchirchir Chepkwony and Josephine Chemutai Chepkwony shall within 30 days hereof file in court the accounts, with the receipts, invoices and other documentary proof in relation to the income they have received from the properties and estate of the deceased and the expenditure of the said monies since his demise to date.

11. The issue of the 2nd administrator's entitlement to **Kericho/Kipkelion/Kipkelion North Block 1 (Blue Hills) 21** shall be determined by way of oral evidence on a date to be taken at the registry.

Dated Delivered and Signed at Kericho this 1st day of November 2018

MUMBI NGUGI

JUDGE