



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO.322 OF 2015

IN THE MATTER OF THE ESTATE OF THE LATE KIPSANG NANIWET (DECEASED)

RICHARD MITEL.....APPLICANT/OBJECTOR

VERSUS

JANE CHEBII TAPNYOLE.....RESPONDENT/PETITIONER

RULING

1. The deceased in this cause, Kipsang Naniwet, was married to Tapnyole Chepketer Naniwet. They had no children, so Tapnyole married the present administrator, Jane Chebii Tapnyole, in a woman to woman marriage under Kipsigis customary law. They were blessed with six (6) children.

2. Kipsang Naniwet died on 20th May 1977 while Tapnyole survived him for 20 years. She passed away on 26th August 1997 at the age of 96 years.

3. It appears from the documents on record that Kipsang Naniwet had an elder brother. This brother passed away leaving two sons, one of whom was Sinei Sang alias Simion Sinei Sang. Kipsang Naniwet and his nephew, Sinei Sang were registered as the proprietors of land parcel number Kericho/Ainamoi/333, measuring 4.4 hectares or 10.868 acres. It is this parcel of land that is at the centre of the objection proceedings before me.

4. The administrator, Jane Chebii Tapnyole, applied for letters of administration intestate to the estate of Kipsang Naniwet. The application was duly gazetted and, there being no objection, a grant of letters of administration intestate was made to her on 12th April 2016. However, the objector, Richard Mitei, filed an application dated 20th December 2016 in which he seeks the following orders:

1. That the Grant of letters of Administration granted to Jane Chebii Tapnyole on the 12th day of April be revoked and/or annulled.

2. That the resultant titles known as title No. Kericho/Ainamoi/333 be restored for fair and proper distribution by the Honourable Court since the said administratrix with her children are supposed to get 4 acres and the applicant/objector and his siblings are supposed to get 8 acres since the land in dispute belonged to the brother to the deceased one Simon Sang Sigei.

3. That the respondents be condemned to bear the costs of this application.

5. The application is based on the following grounds:

1. That the grant was obtained fraudulently in that the petitioners concealed to this Honourable Court cogent material facts.

2. That the grant was obtained by untrue allegations of facts which were absolutely essential.

3. That the petitioners/respondents and other beneficiaries and/or dependants did knowingly and clandestinely and/or secretly excluded the applicant/objector and his siblings when they came to court to apply for grant of letters of administration intestate.

4. That further the grant, was obtained by means of untrue allegations of facts and the same were meant to disinherit the applicant and his siblings since their father was the brother of the deceased and his children portion of his land since the deceased was landless.

6. In an undated affidavit filed on 26th December 2016, the objector states that he is one of the children of Simeon Sang Sigei, a brother of

the deceased in this cause. He avers that his late father owned the subject property with the deceased in this cause. He contends that his father was supposed to get 8 acres out of the land parcel, while the family of the deceased should get 4 acres. He contends that the petitioner cannot administer the estate properly and the grant to her should be revoked.

7. In her affidavit in reply sworn on 18th April 2017, the petitioner reiterates the facts relating to her marriage to the widow of the deceased in this case. She annexes to her affidavit a judgment in which the court found that the petitioner was entitled to half of the land registered in the name of the deceased and Sinei Sang. This is **Kericho HCCC No. 16 of 2010 – (OS) Jane Chebii Tapnyole – (suing as the personal representative) of administrator of the estate of Kipsang Naniwet vs Sinei Sang alias Simion Sinei Sang.**

8. The applicant filed a further affidavit sworn on 17th October 2017 in which he reiterates the contents of his earlier affidavit. He asserts that his late father had no intention of disinheriting the petitioner but that she had found the boundaries demarcating the respective parcels fixed in the late 1960s. It is not clear what this averment means.

9. I have considered the application for revocation of grant and the grounds on which the application is premised. I have also read the affidavit sworn by the applicant in support of his application, as well as his further affidavit and the submissions filed by Counsel. I have also considered the response of the petitioner. It is not in dispute that the petitioner was married to Tapnyole Chepketer Naniwet, who was the wife of the deceased in this cause. The said Tapnyole being deceased and there being no other beneficiaries challenging her application, the petitioner was properly issued with letters of administration intestate in this cause.

10. The question that the application before me raises is whether the petitioner obtained the grant fraudulently by the concealment of material facts that would justify its revocation.

11. From the judgment of Waithaka J in **HCCC No. 16 of 2010 (O.S)**, the petitioner had sued Sinei Sang for a declaration that he was registered in trust, for the beneficiaries of Kipsang Naniwet. The judgment indicates at page 2 that the respondent entered appearance through the firm of C. K. Korir & Co. Advocates but thereafter failed to file an affidavit in reply. The court heard the petitioner and her three witnesses and came to the conclusion already alluded to. Order 2 of the judgment directs that the applicant, the present petitioner, should move to the 'Family Division' and file a Succession Cause that will deal with the distribution of the estate of Kipsang Naniwet.

12. Given the above facts and noting that no appeal was ever preferred against the decision of the Environment and Land Court, I am constrained to find that the application dated 20th December 2016 is without merit. The applicant is not a beneficiary of the estate of Kipsang Naniwet. The High Court had already issued orders that the petitioner was entitled to half of title number Kericho/Ainamoi/333. The said property should accordingly be divided equally between the estate of Kipsang Naniwet and Sinei Sang, with each getting 2.2 hectares. The share of Kipsang Naniwet would then be distributed in this cause as agreed between the beneficiaries of the estate of Kipsang Naniwet.

13. The application dated 26th December 2016 is therefore hereby dismissed but with no order as to costs.

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

MUMBI NGUGI

JUDGE

Ruling read in the presence of:

Kenei: Court Assistant

Mr. Koko for petitioner

NA for objector