



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.12 OF 2011**

**IN THE MATTER OF THE ESTATE OF KIPTONUI CHEMURBII *alias* KIPSOI CHEMURBII (DECEASED)**

**JOSHUA KIPRONO SOI.....PETITIONER**

**VERSUS**

**PAUL SOI.....1<sup>ST</sup> OBJECTOR**

**DAVID KIPLANGAT SOI.....2<sup>ND</sup> OBJECTOR**

**RULING**

1. The present dispute relates to the estate of the deceased herein, who died intestate on 15<sup>th</sup> May 1998 according to the death certificate on record. An application for letters of administration intestate was made by the petitioner, Joshua Kipromo Soi. A grant of letters of administration intestate was made on 13<sup>th</sup> November 2014. It indicates that the deceased died on 15<sup>th</sup> May 1998, the date indicated on the death certificate serial number 1199 of 24/11/2010.

2. The petitioner indicated in the said application that the estate comprised two properties:

**a) Kericho/Litein/543 measuring 14.5 acres**

**b) Kericho/Litein/501 measuring 5.5 acres.**

3. Attached to the application is a consent purported to have been signed or thumb printed by all the 16 beneficiaries of the estate.

4. By an application dated 12<sup>th</sup> February 2014, Paul Soi and David Kiplangat Soi sought revocation of the grant to Joshua Kiprono Soi. The application was based on three grounds. First, that the petitioner forged the signatures of the objectors and other beneficiaries. Secondly, that the consent of the objectors was not sought before the petition was lodged. The third reason was that the petitioner forged the death certificate of the deceased.

5. In the affidavit in support of the application for revocation, the applicants further state that the petitioner left out one asset of the deceased, being property number Nakuru/Ogilgei/100.

6. The deponent, Paul Soi states that the original death certificate, which has the correct date of death of the deceased, is in his possession. He did not annex a copy of the death certificate or indicate the correct date of death of the deceased. He did not also include evidence of ownership by the deceased of the property allegedly left out, Nakuru/Ogilgei/100, to show that it is registered in the name of the deceased and forms part of his estate.

7. In an affidavit in response sworn on 31<sup>st</sup> March 2017, the petitioner, Joshua Kiprono Soi, maintains that the deceased died on 15<sup>th</sup> May 1998 at his residence in Ngesumin location. He states that he has annexed a copy of the death certificate to his affidavit, but none is annexed. He denies that the death certificate was forged, noting that the objectors have not produced any document to prove the allegation of forgery. He also denies that the application for grant was commenced without the knowledge or consent of all the beneficiaries, or that their signatures to the consent were forged. He avers that before the application was made, the Chief of Ngesumin location had summoned all the beneficiaries of the estate to a meeting at his office. He states that he has annexed the letter from the Chief, with respect to the meeting, presumably, but no documents at all are exhibited in his affidavit.

8. The petitioner alleges that all the beneficiaries visited the offices of C. K. Kerir Advocate (who is now deceased) on their own time and all signed the consent in the Advocate's presence.

9. The petitioner concedes that he did not include title number Nakuru/Ogilgei/100. This is because the deceased had transferred the property to his second wife, Grace Chemurbii, and it was registered in her name.

10. The parties have filed written submissions which essentially reiterate their averments set out above. I have considered the written submissions and the pleadings against the law relating to distribution of the estate of a person who dies intestate, and I take the following view of the matter.

11. Section 76 of the Law of Succession Act provides as follows:

***A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—***

***(a) that the proceedings to obtain the grant were defective in substance;***

***(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;***

***(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;***

***(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—***

***(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or***

***(ii) to proceed diligently with the administration of the estate; or***

***(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or***

***(e) that the grant has become useless and inoperative through subsequent circumstances.***

12. It is interesting that the parties are unable to agree on even so basic a point as the date of death of their father. The objectors have annexed to their written submissions a certificate of death which shows that the deceased died on 29<sup>th</sup> April 1998. It bears repeating that parties are not supposed to include documents which are essentially evidence and had not been annexed to their affidavits in their submissions. Doing this denies the opposite party a chance to reply to the contents of such documents.

13. As matters stand, the court cannot tell the date of death of the deceased. Did he die on 15<sup>th</sup> May 1998, or 29<sup>th</sup> April 1998? The objectors allege the latter date, while the petitioner maintains he died on 15<sup>th</sup> May 1998. He submits that the death certificate that he annexed to the application for letters of administration intestate was issued by the District Assistant Registrar Bureti, and if it was a forgery the objectors have a duty to prove such forgery.

14. The petitioner further maintains that the consent annexed to his application for letters of administration intestate was signed in the presence of an Advocate, C. K. Korir, who is now deceased. This clearly makes it difficult to verify the truth or otherwise of the petitioner's claim.

15. However, the state of the consent is disturbing. It has a jumble of untidy thumb prints and signatures, all of which seem strangely similar. The court notes that the 1<sup>st</sup> objector, Paul Soi, avers that he signs but does not thumb print documents, yet the consent indicates that he put his thumb print to signify his consent. The authenticity of the said consent is therefore in great doubt, and the court is not satisfied that the beneficiaries of the estate of the deceased actually signed the document that is intended to signify their consent to the petitioner applying for the letters of administration intestate.

16. The applicants submit that the petitioner cannot be trusted to administer the estate of the deceased as he has failed to honestly and timely proceed with the administration. They pray that the grant be revoked and another be issued in the names of the petitioner, Joshua Kiprono Soi and Paul Soi.

17. This, in my view, is the prudent course to follow. However, noting from form P & A 5 that the petitioner and Paul Soi are from the same house, I deem it necessary to include the 2<sup>nd</sup> objector, David Soi, as an administrator.

18. Accordingly, the grant issued to the petitioner, Joshua Soi, is hereby revoked. A fresh grant shall issue to Paul Soi, Joshua Soi and David Soi as the administrators of the estate of the deceased.

19. Given that the initial grant was issued in 2014, the parties may proceed to apply for confirmation of grant notwithstanding that 6 months will not have elapsed since the issuance of the fresh grant.

20. In doing so, they must ensure that all the assets of the estate of the deceased, with supporting documents, have been included.

21. They must also endeavour to obtain and file in court a certificate of death of the deceased that contains the proper information with respect to his death.

22. There shall be no order as to costs.

**Dated Delivered and Signed at Kericho this 1<sup>st</sup> day of November 2018**

**MUMBI NGUGI**

**JUDGE**

Ruling delivered in the presence of:

Kenei: Court Assistant

Mr. Migiro for objectors

NA for administrator