



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BOMET
SUCCESSION CAUSE NO. 43 OF 2016

IN THE MATTER OF THE ESTATE OF TAPKESOS CHEMUTAI (DECEASED)

AND

AGNES CHEPKORIR NGERECHI.....PETITIONER

VERSUS

ANNA CHEPKOECH KETIENYA.....1ST OBJECTOR

ELIZABETH TAPLEGOI TURGUT.....2ND OBJECTOR

RULING

On the 23rd day of February 2011 the objectors filed objection to the making of the grant before the lower court.

The grounds being that:- (1) The petitioner was not the beneficiary of the estate of TAPKISOS CHEMUTAI ORWASA (Deceased).

(2) That the petitioner filed this succession cause without the consent of the beneficiaries as provided for under the law of succession Act.

(3) That the petitioner concealed other beneficiaries of the estate.

(4) That the petitioner, fraudulently obtained death certificate of TAPKISOS CHEMUTAI ORWASA (Deceased) secretly and used the same to file this succession cause.

(5) The lower court proceeded to issue certificate of confirmation of grant dated 28th November 2012 without issuing grant of letters of administration.

These objection proceedings were to be heard by way of *Viva voce* evidence but counsel later by consent agreed to dispose off the matter by way of written submission within seven days. The objectors did comply but the petitioner did not promising to file them the following day.

As I write this ruling there are no written submission by the petitioner. However, perusal of the affidavit in reply to answer to the petition for grant the petitioner depones that she had filed the petition on 23rd day of December 2010 and included the objectors as beneficiaries. She further deponed to have married the late Tapkisos Chemutai in 1971 in a woman to woman marriage under Kipsigis customary law in order to sire children for her as she had no sons but daughters including the 2nd objector Elizabeth.

(7) That the Deceased was also married to the 1st objector under Kipsigis customary law.

(8) That the objectors applied for a death certificate and concealed that fact by failing to inform her and the area chief.

(9) That on 25.4.2011 traditional elders awarded her a portion of the estate of the Deceased and the second objector was instructed to return to her husband.

(10) It is not in dispute that two death certificates were issued in respect of the Deceased Tapkisos Chemutai Orwasa.

The first one was issued on 4th March 96 to the objectors.

The second one was obtained by the petitioner on 29th January 2007 ostensibly for filing of this petition for grant of letters of administration.

The obtaining of the second death certificate of the same deceased person as in the circumstances of this case must have been through fraudulent means.

It is also not in dispute that after the publication Kenya Gazette dated 4.2.2011 the objectors duly lodged objection proceedings.

Before the objection was heard and determined the learned trial magistrate proceeded to issue certificate of confirmation of grant dated 28.11.2012.

I find that there are good grounds to revoke the confirmed grant dated 28th November 2012 and I hereby do so. This being a family dispute ideally each party should bear its own costs but there was fraud on the part of the petitioner. She is to pay costs of the application.

Ruling delivered dated and signed this 9th day of March 2017 in open court and in the presence of learned counsel for the objectors. Mr. Onguso holding brief Koske. Learned counsel for the petitioner Mr. Koech. Court assistant Mr. Rotich.

M. MUYA

JUDGE

9/3/2017