



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**MISC.APPL. NO.63 OF 2009**  
**IN THE MATTER OF THE ESTATE OF**  
**KIPSUGUT ARAP CHELULE (DECEASED)**  
**AND**  
**IN THE MATTER OF SUCCESSION CAUSE NO.85 OF 1988**  
**IN THE SENIOR RESIDENT MAGISTRATE'S COURT AT KERICHO**  
**AND**  
**KIPKORIR A. BALIACH - APPLICANT**  
**VERSUS**  
**ZAKAYO MALAKWEN NGELECH - RESPONDENT**  
**JUDGMENT**

Kipkorir Arap Baliach, the Applicant herein took out the summons dated 22<sup>nd</sup> June 2009, in which he sought for the grant of letters of administration intestate given to Zakayo Malakwen Ngelech, Kipkorir Arap Baliach and Kinabu Baliach in respect of the Estate of Kipsugut Arap Chelule, deceased on 1<sup>st</sup> November 1989 and confirmed on 14<sup>th</sup> April 1992 to be revoked and or annulled. The applicant put forward the following grounds:

- a. That the grant was obtained fraudulently by concealment from court of material facts to the case.
- b. That the respondent, a co-administrator of the estate failed to disclose all the assets of the deceased for distribution.
- c. That the respondent, a co-administrator of the estate failed to proceed diligently with the administration of the estate even after confirmation of grant.
- d. That the letters of administration were obtained by making untrue allegations of facts, essential in point of law.
- e. That the grant has been rendered useless and inoperative through subsequent circumstances set out in the supporting affidavit.

The Applicant swore an affidavit in support of the summons. Zakayo Malakwen Ngelech, the

Respondent, filed grounds of opposition to oppose the summons. When the summons came up for hearing, learned counsels appearing in this cause recorded a consent order to have the summons disposed of by affidavit evidence and written submissions.

I have considered the grounds set out on the fact of the summons and the facts deponed in the Applicant's support Affidavit. I have also considered the Respondent's grounds of opposition and rival written submissions.

Mr. Nyaingiri, learned advocate of the Applicant urged this court to revoke the grant and thereafter cancel the resultant titles arising from the execution of the grant for the following reasons: First, it is argued that though the grant was issued in the names of the three beneficiaries, the Respondent solely arrogated himself the power to execute the grant. In other words he without consulting the Applicant and the other brother, proceeded to distribute the estate yet it was obvious from the grant that distribution of the estate was to be decided by the parties. It is also argued by the Applicant that the Respondent did not fully disclose the assets of the estate but nevertheless went ahead to use the grant to distribute those properties.

The Applicant further complained that the Respondent distributed the estate in a skewed manner to the detriment of the other beneficiaries. It is proposed that since the deceased was a polygamous man, the estate should have been distributed equally between the houses. In short, the Applicant argued that the Respondent in collusion with his younger brother, Kinabu Baliach did not diligently administer the estate. Mr. Orina, learned advocate for the Respondent and his client did not file any affidavit in reply to controvert the facts deponed in the affidavit of the Applicant. The Respondent merely filed grounds of opposition which generally denied the Applicant's assertion. The facts as deponed by the Applicant therefore remain unchallenged. It is the submission of the Respondent that the Applicant has been party to all the transactions pertaining to the Succession Cause hence the Applicant has simply brought the current application in bad faith. Mr. Orina further argued that the issue touching on cancellation of titles should be referred to the Environment and Land Court.

I have already stated that the Respondent did not contest the factual basis of the application. It is obvious from the certificate of the confirmed grant that the schedule of distribution was not given to the trial court. In fact the schedule of distribution specified the names of the beneficiaries but left the identification of the share due to each beneficiary to be open ended. It strictly stated that parties were to agree on how to share out the estate. The Respondent has not shown when the beneficiaries met and agreed on the mode of distribution. The certificate of the confirmed grant only mentions L.R. No.Kericho/Chemaner/699 as the only estate asset available for distribution. It has now been stated that the Respondent did not disclose that four other parcels of land existed yet they were within the Respondent's knowledge. Those parcels are:

- i. L.R. No.Narok/Cis-Mara/Ilmotiok/566
- ii. L.R. No.Narok/Cis-Mara/Ilmotiok/567
- iii.L.R. No.Kericho/Chemaner/856
- iv.L.R. No.Kericho/Chemaner/1105

Again, the Respondent did not controvert the allegation that he failed to disclose the aforesaid assets. It is the submission of the Applicant that the Respondent used the open-ended certificate of confirmed grant to sub-divide and disproportionately distribute and transmit the aforesaid parcels to the beneficiaries. Again the Respondent did not contest the aforesaid allegations.

In the end I am convinced that the Applicant on a balance of probabilities proved that the Respondent did not consult his co-administrators to diligently administer the estate. It would appear the Applicant took advantage of the open ended schedule of distribution to share out the estate. The Applicant and his brothers did not give the estimated value of the deceased's Estate. I can only infer that the Petitioners did not want to disclose the value of the estate in order for the trial court to gain the pecuniary jurisdiction to hear and determine cause. Under Section 48(1) of the Law of Succession Act, the pecuniary jurisdiction of the Magistrate's Court is limited to Ksh.100,000/=. It would appear from the pleadings that the Magistrate's Court may not have had the pecuniary jurisdiction in this cause. I hereby

order that the grant issued in the joint names of Zakayo Baliach, Kipkorir Arap Baliach and Kinabu Baliach is revoked. I have been urged to cancel all the titles issued pursuant to the aforesaid grant. I have looked at the official searches presented to this court by the Applicant and find that the same do not disclose the history of how the titles were transferred or transmitted from one owner to another. It is therefore difficult to ascertain whether or not the Respondent used the now impugned certificate of confirmed grant to effect the transfers. In this respect I hereby make the following orders:

a. I hereby order that restrictions be placed on the following titles:

- i. L.R. No. Kericho/Chemaner/699
- ii. L.R. No. Kericho/Chemaner/1231
- iii. L.R. No. Kericho/Chemaner/1232
- iv. L.R. No. Kericho/Chemaner/1233
- v. L.R. No. Kericho/Chemaner/1234
- vi. L.R. Narok/Cis-Mara/Ilmotiok/566
- vii. L.R. Narok/Cis-Mara/Ilmotiok/567
- viii. L.R. No. Kericho/Chemaner/856
- ix. L.R. No. Kericho/Chemaner/1105

For the avoidance of doubt, it should be made clear that those restrictions mean that no dealings will be done on those titles until further orders from this court.

b. The District Land Registrar, Bomet is directed to avail to this court within 15 days from today, copies of the registers *i.e.* the green cards in respect of:

1. L.R. No. Kericho/Chemaner/699
2. L.R. No. Kericho/Chemaner/1231
3. L.R. No. Kericho/Chemaner/1233
4. L.R. No. Kericho/Chemaner/1234
5. L.R. No. Kericho/Chemaner/856
5. L.R. No. Kericho/Chemaner/1105

(c) The District Land Registrar, Narok, to avail to this court within 15 days from today copies of the register *i.e.* the green cards in respect of:

- i. L.R. Narok/Cis-Mara/Ilmotiok/566
- ii. L.R. Narok/Cis-Mara/Ilmotiok/567

d. This cause to be mentioned on 25<sup>th</sup> July 2014 for further orders and directions.

Dated, signed and delivered in open court this 11<sup>th</sup> day of July 2014

J. K. SERGON

JUDGE

In the presence of:

- Motanya holding brief for Nyaingiri for Applicant
- K. Bett holding brief for Orina for Respondent