



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

SUCCESSION CAUSE NO. 269 OF 2010

IN THE MATTER OF THE ESTATE OF KIPKENEI ARAP BETT (DECEASED)

BETWEEN

PAULO KIMAIYO A. TENAI 1ST PETITIONER

STEPHEN KIPLAGAT TOO 2ND PETITIONER

CLEOPHAS KIPYEGO BUNEI 3RD PETITIONER

VERSUS

JOSEPH KIBUNEI TENAI OBJECTOR

RULING

The Petitioners in this cause are the sons of the deceased one Kiptenai Arap Bett. The Objector on the other hand is the first born son of the deceased. He filed the objection to the Grant of Letters of Administration claiming that the Petitioners did not disclose to the court that some of the assets of the deceased had already been sold at the time of the deceased's death.

He also claimed that he did not sign the consent accompanying the application for the grant of letters of administration, namely Form number 38. His case was that the signature on that form was not his but a forgery.

He further asserted that the succession proceedings were commenced without his involvement.

In addition, the Objector filed a Cross-Petition which the Petitioners opposed.

The Petitioners' case on the other hand is that the conduct of the Objector does not qualify him to be an administrator. They state that the Objector did not in fact sign form 38 and his (Objector) assertion that his signature was forged is without basis.

Petitioners further claim that the Objector has already inherited shares of the estate of the deceased without going through the process of acquiring the Grant of Letters of Administration.

They also contend that they named all the beneficiaries in the Petition for the Grant of Letters of Administration.

The Objection was thus to the making of the Grant and the same was filed on 4th March, 2011. Parties were to give viva voce evidence. The hearing date was given in court for 17th June, 2013 in

the presence of counsel for both parties. However, on the hearing date neither the Objector nor his counsel appeared.

The Petitioner called three (3) witnesses.

PW1 Cleophas Kipyego Bunei, the 3rd Petitioner stated that he did not exclude anyone as a beneficiary of the deceased's estate. He said that, being a grand child of the deceased, he did not include himself as a beneficiary thereof and that his interest was merely to ensure that every beneficiary got a share of the assets.

He denied that any piece of land had been sold to anyone and no sale agreement in this regard had been executed. He testified that the deceased, together with other family members had asked him to be in charge of the estate and in particular handle all land issues. He produced minutes of the family meetings that gave him the power to be in charge of the deceased's estate as P. Exhibits 2(a), 2(b), 2(c) and 2(d) respectively.

He further testified that before the Petition was filed, himself and the co-Petitioners through their Lawyer wrote to the bank inquiring the status of the deceased's bank shares. He produced a letter dated 10th October, 2011 as exhibit 3 in this regard.

He said that, to their surprise, the bank (Kenya Commercial) responded vide letters dated 14th August, 2012 and 9th June, 2011 (P. Exhibits 4(a) and 4(b) respectively) stating that a total of 350 shares had been transferred into the name of the Objector. That by an email dated 29th April, 2013 (P. Exhibit 4(c)), the Standard Chartered Bank also wrote that some of the deceased's dividends had been paid out to the Objector.

The Kenya Commercial Bank's letter dated 28th March, 2011 outlined the exact amount of shares paid out to the Objector.

According to PW1, none of the beneficiaries had sanctioned the transfer of the shares and payments of the dividends.

PW1 also exhibited a Power of Attorney dated 20th April, 2007 (P. Exhibit) which mandated him to take charge of the deceased's estate. He said that he used the Power of Attorney to sue one Francis Kiptoo Lagat in Kapsabet Principal Magistrate's Court Civil Case No. 116 of 2008 as an intruder into one of the parcels of land of the deceased.

PW1 also stated that when the deceased died, the Objector took his finger prints which he presented to the bank with a view of withdrawing money from his (deceased's) bank account, but the bank noted that the finger were not properly taken and declined to make any payments to the Objector.

In summary, PW1 said that the conduct of the Objector demonstrates that he cannot be entrusted to administer the estate of the deceased and Grant of Letters of Administration should not be issued to him.

PW2, Amos Kipchirchir a son of the Objector corroborated the evidence of PW1. He reiterated the depositions in his Statutory Declaration Affidavit filed in court on 15th September, 2011. According to him he assisted his father, to get the deceased's finger prints which he impressed on the bank documents with a view to withdrawing money from the deceased's bank account, purportedly to meet the hospital bill. He said that the Objector had warned him to keep this act a top secret from other persons.

PW3 Magdalene Boit Chepngei stated that the Objector was her uncle and that the Petitioners were elected by the family to be family representatives in administration of the deceased's estate. She described the Objector as a man who could not be trusted to manage the deceased estate.

From the foregoing I find the issue of determination to be whether the Objector has a valid case and to whom the Letters of Administration should issue.

From the evidence on record, it is clear that the Objector is a person of questionable character. He has so far conducted himself in a dishonest and sinister manner. The fact that he transferred bank shares and dividends to himself and further took finger prints of a deceased person demonstrates that he cannot be trusted to manage even the least assets of the estate. His conduct no doubt amounts to intermeddling with and/or alienating part of the estate for which at the time of its distribution he should be called upon to account.

I also find that his assertion that some land of the deceased was sold to be untrue. No evidence of sale has this far been filed in court.

Again no one forged his signature as indeed Form 38 has not been signed by him.

The Objector's objection in my view is without basis and without a shred of doubts, going by his conduct, is actuated by greed and lack of good faith. The court cannot therefore rule in his favour.

It must however be born in mind that, under Section 66 of the Law of Succession Act, the court has the ultimate discretion as to the person or persons to whom a grant of Letters of Administration should issue. Court in this regard must look at the best interest of all persons concerned and ensure that no person beneficiary entitled to the estate is prejudiced.

In this respect, the Objector has already been named by the Petitioners as a beneficiary. There is no other complaint raised by any other beneficiary that would cast doubts that the Petitioners cannot properly administer the estate. The interest of the Objector and other beneficiaries is clearly taken care of.

Therefore, given the untrustworthy conduct of the Objector, I would only rule in favour of the Petitioners. I accordingly hold that the Grant of Letters of Administration shall issue to the Petitioners exclusively. The Cross-Petition is thus dismissed with no orders as to costs.

Each party shall also bear its own costs to the objection proceedings.

DATED and DELIVERED at ELDORET this 2nd day of October, 2013.

G. W. NGENYE - MACHARIA

JUDGE

In the presence of:

Miss Adhiambo holding brief for Wafula for Petitioners

Mr. Songok for Objector