



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT NAKURU

CIVIL SUIT 212 OF 2011

MARTIN CHERUIYOT KIPTOO PLAINTIFF

VERSUS

JENIFFER CHEPKEMOI1ST DEFENDANT

STEPHEN GITHINJI NDERITU 2ND DEFENDANT

JUDGMENT

MARTIN CHERUIYOT KIPTOO (the plaintiff) has filed this suit against **JENIFFER CHEPKEMOI** (the 1st defendant and **STEPHEN GITHINJI NDERITU** (2nd defendant). The plaintiff prays for:

- (a) A declaration that 1st Defendant did not have and does not have the capacity to enter into transactions for sale or otherwise of the suit property.
- (b) A permanent injunction restraining the defendants by themselves, their agents, representatives and/or any of their authorised agents from disposing off, selling, transferring and/or in any manner dealing with the said suit property.
- (c) Costs of the suit.

The background to these prayers is that the plaintiff is the legal administrator and/or beneficiary of the estate of **PHILIP KIPROP KIPTOO** who was the registered proprietor of the suit land. He lodged a Succession Cause being Eldoret High Court Succession Cause **No.289 of 2007** and he was issued with grant of letters of administration. The 1st defendant objected to the said cause but failed to pursue the same instead she lodged a parallel **Cause No.316 of 2009**, and the plaintiff doubts that any grant was issued.

It is the plaintiff's contention that the deceased was his biological father and prior to his demise, had introduced him to the suit property and asked him to clear the rent and rate arrears as the said property had been bequeathed to him. Plaintiff says he obliged and fulfilled the pledges in respect of the suit property. The plaintiff purports that 1st Defendant has clandestinely sold the suit property to the 2nd defendant on an undisclosed date without informing him. The 2nd defendant has embarked on developing the said plot despite having knowledge that the property is subject to a dispute on ownership.

The defendants entered appearance but failed to file any statements of defence, so the matter proceeded on formal proof. At the hearing, **MARTIN** (the plaintiff) told this court that he conducted an official search in respect of the said property and the same confirmed that it belonged to his late father, **PHILIP**

KIPTOO, and there is a restriction entered on **4/09/2009** showing that the owner is deceased.

He confirms that there are on-going proceedings in Eldoret in **Succession Cause No.289 of 2007** where he has petitioned to be issued with grant of letters of administration. The 1st defendant objected and also filed a separate **Succession Cause No.316 of 2009** with one Daniel Bii – that cause is also pending.

The plaintiff obtained temporary grant on **26/07/2011** for purposes of preserving his late father's estate. One day, after he had fenced the property, he realised that building materials had been deposited on the suit property. He clarified that he is not seeking ownership, but only preservation of the suit property pending.

It is apparent that there are two Succession Cause filed in Eldoret by members of the family of Philip Kiptoo. I wonder why the plaintiff or his counsel have not found it prudent to draw the attention of the Resident Judge to this state of affairs so as to harmonise the two petitions and avoid giving conflicting orders.

Secondly since no grant has been confirmed in favour of either party, then what the 1st defendant is alleged to be doing is intermeddling with the suit property which constitutes an offence under **Section 147** of the **Law of Succession**. However the plaintiff has not led any evidence to prove that the property has been sold to 2nd defendant.

Certainly the 1st defendant at this stage does not have the legal capacity to dispose off any assets belonging to the late PHILIP KIPTOO's estate before the two causes are determined.

Since there is no proof that the 1st defendant has sold the property to the 2nd defendant and the search document still shows the property belongs to the estate of the deceased, then my view is that appropriate application ought to be made in the Succession Cause filed in Eldoret to avoid confusion and multiplicity of suits.

Secondly the plaintiff should make use of the provisions of **Section 45(1) and (2)** of the **Law of Succession Act**.

Delivered and dated this 11th day of September, 2012 at Nakuru.

H.A. OMONDI
JUDGE