



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ENVIRONMENT & LAND CAUSE NO. 64 OF 2018 (O.S)

IN THE MATTER OF THE ESTATE OF CHUMO ARAP CHABAS ALIAS CHUMO CHEBAS (DECEASED)

AND

IN THE MATTER OF THE ESTATE OF MARIKO KOTIT BOLDO (DECEASED)

AND

IN THE MATTER OF PLOT NO. 1 (CHEPSIR)

BETWEEN

FRANCIS KIPLANGAT CHABAS.....1ST APPLICANT

STEPHEN KIBIEGON CHUMO.....2ND APPLICANT

JOHNSTONEKIPKOECH ROTICH.....3RD APPLICANT

DAVID KIPNGETICH ROTICH.....4TH APPLICANT

AND

WILLY KIPKURUI A. RONO.....1ST RESPONDENT

JOHN KIPKEMOI CHABAS.....2ND RESPONDENT

PAUL KIPTONUI NGENO.....3RD RESPONDENT

WILLIAM KIPTERER BIL.....4TH RESPONDENT

JUDGMENT

Introduction

1. The Applicants commenced this suit by way of Originating Summons filed in Court on 20th August, 2018 brought under Order 37 Rule 1 (a), (b) and (g) and Rule 2 (b) and (c) of the Civil Procedure Rules, 2010 and Section 3A and 63 (e) of the Civil Procedure Act, Cap 21 Laws of Kenya. The Applicants seeks a determination of the following questions:

(a) Whether there exists a trust relationship between the Applicants and the Respondents in respect of the property known as PLOT NO. 1 (CHEPSIR).

(b) If the answer to (1) above is in the affirmative, whether there has been breach of trust by the Respondents in their dealings in respect of the property PLOT NO. 1 (CHEPSIR).

(c) Whether the trust between Applicants and the Respondents ought to be determined.

(d) Whether the Applicants and the dependants of CHUMO ARAP CHABAS alias CHUMO CHEBAS (DECEASED) cited in the

Certificate of Confirmation of Grant dated 16th July, 2013, are entitled to portions of PLOT NO. 1 (CHEPSIR), by virtue of trust, if any.

(e) Whether the Applicants are entitled to costs of the suit.

2. The Originating Summons is supported by the Affidavit of the 2nd Applicant sworn on his behalf and on behalf of the 1st, 3rd and 4th Applicants. The Respondents did not file any response to the Originating summons.

3. The suit was canvassed by way of viva voce evidence and only the 2nd Applicant testified and was cross-examined by the 1st Respondent. Thereafter the Applicants and the 1st Respondent filed their submissions which I have considered.

Applicant's case

4. It was the 2nd Applicant's testimony that the 1st Applicant and the 2nd, 3rd and 4th Respondents are his brothers while the 2nd, 3rd and 4th Applicants are his late brothers' sons.

5. He stated that the Respondents are the administrators of the estate of their late father Chumo Arap Chabas - Deceased and had been issued with a Grant of Letters of Administration vide Kericho HC Succession Cause No. 157 of 2003. According to the Certificate of Confirmation of Grant dated 16.7.2013, plot no. 1 Chepsir measuring 450 acres was to be held in trust for the beneficiaries of the estate of the deceased. His testimony was that the beneficiaries had failed to discharge their duties as trustees by dividing the suit property among the beneficiaries.

6. Upon cross-examination, the 2nd Applicant denied that the suit property was purchased by the deceased jointly with someone else. He stated that this position had been confirmed by the elders at a meeting held before the succession case was filed. He stated that all the other assets had been divided in accordance with the Certificate of confirmation of grant.

Issues for determination

7. The following issues arise for determination:

a) Whether this court has jurisdiction to hear and determine this case.

b) Whether the 3rd and 4th Applicants have locus standi to bring this suit.

c) Whether a trust exists in the name of the Respondents with respect to the property known as land plot no. 1 Chepsir.

d) If the answer to c) is in the affirmative, whether there has been a breach of trust by the Respondents in their dealings in respect of the suit property.

e) Whether the trust between the Applicants and the Respondents ought to be determined.

f) Whether the Applicants and the dependants of Chumo Arap Chabas-Deceased cited in the Certificate of Confirmation of Grant are entitled to portions of plot no. 1 Chepsir by virtue of the trust if any.

g) Who should bear the costs of this suit.

Analysis and Determination

8. I will first deal with the issue of jurisdiction as this will determine whether or not I need to address all the other issues raised in the submissions.

9. As was stated by Court of Appeal in the celebrated case of; **The Owners of Motor Vessel Lillian "S" V Caltex Oil Kenya Limited 1989 KLR 1653:**

"Jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it has no jurisdiction"

10. In his submissions the 1st Respondent has raised the point that this court has no jurisdiction to hear and determine this matter as it falls within the jurisdiction of the Probate Court which is the High Court. It is his submission that the administration of the estate of Chumo Arap Chabas is not yet complete as the administrators have not yet produced an inventory or account of administration of the estate as required by section 83 of the Law of Succession Act Cap 160 of the Laws of Kenya. He has submitted that there is no trust registered in the names of the Respondents and all there is is a declaration by the Probate Court that the Respondents who are the administrators of the estate shall hold plot no. 1 Chepsir in trust for the beneficiaries of the late Chumo Arap Chabas who are listed in the Certificate of Confirmation of Grant. In his view the applicants are inviting this court to redistribute the estate of the deceased which is premature. It is his submission that if the applicants are dissatisfied with the manner in which the respondents are managing the estate they ought to move the High Court under the provisions of sections 76 and 83 of the Law of Succession Act to invite the administrators to produce an inventory or true account of

administration of the estate or have the grant revoked. The applicants hold a contrary view as they maintain that there is a trust in existence and that the Respondents have abdicated their role as trustees by refusing to manage the property in an equitable and sustainable manner.

11. I have looked at the provisions of **Order 37** under which the suit has been filed and it states as follows:

“The executors or administrators of a deceased person, or any of them and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, heir or legal representative of a deceased person, or as cestui que trust under the terms of any deed or instrument, or as claiming by assignment or otherwise, under any such creditor or other person as aforesaid may take out as of course, an originating summons, returnable before a judge sitting in chambers for such relief of the nature or kind following as may by the summons be specified, and administration of the estate or trust of any of the following questions-

a) Any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir or cestui que trust;

b) The ascertainment of any class of creditors, devisees, legatees, heirs or others;

c) The determination of any question arising directly out of the administration of the estate

2. Any of the persons named in rule 1 may in like manner apply for and obtain an order for-

b. The administration of the real estate of the deceased

c. the administration of the trust.

12. It is clear that order 37 applies to a situation where there is trust deed or instrument. In the instant case no trust deed or instrument has been registered and it would be premature for this court to intervene as the issues complained of arise purely out of administration of the estate rather than ownership of the suit property. The Environment and Land Court has original jurisdiction to hear and determine matters touching on land and environment. Under article 162 (2) (b) of the Constitution the court shall have power to hear and determine disputes relating to environment and the use and occupation of and title to land. The jurisdiction of this court is further elaborated in section 13 of the Environment and Land Court Act.

13. The crux of dispute herein can be discerned from paragraphs 5, 6, 7 and 8 of the the 2nd applicant’s affidavit. In particular, at paragraphs 7 and of the said affidavit he states as follows;

Paragraph 7.

“That it is within my knowledge that the Respondents have abdicated their roles as our trustees as they have refused and/or neglected to manage the property in an equitable and sustainable manner”

Paragraph 8.

“That I know for a fact that the Respondents have failed to direct proper utilization of the property resulting in endless squabbles between the beneficiaries over the utilization of the said property”

14. Section 83 of the Law of Succession Act sets out the duties of personal representatives as follows:

83. *“Personal representatives have the following duties:*

(g) Within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts and produce to the court a full and accurate account of the completed administration

(h) To produce to court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith upto the date of the account.

(i) To complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to court a full and accurate account of the completed administration”

15. The squabbles alluded to by the Applicants have to do with the manner in which the Respondents are dealings with one of the assets of the deceased and therefore falls within the jurisdiction of the High Court. The Applicants therefore have a right to make an application within the Succession Cause for the administrators to demonstrate to the court how they have been dealing with the suit property.

16. In view of the foregoing, this court lacks jurisdiction to determine this suit. Accordingly, I have no option but to down my tools. The suit is therefore dismissed.

17. As the suit involves members of the same family, each party shall bear their own costs.

Dated, signed and delivered at Kericho this 16th day of April, 2019.

J.M ONYANGO

JUDGE

In the presence of :

1. Mr. C. Koech for the Applicants
2. All Respondents present in person
3. Court Assistant: Rotich