



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICO**

**SUCCESSION CAUSE NO. 45 OF 1993**

**IN THE MATTER OF THE ESTATE OF SAMWEL KIPLANGAT CHESIMET (DECEASED)**

**ISAAC KIPRONO BUSIENEI.....1<sup>ST</sup> PETITIONER**

**PHILIPH KIPNGENO KIRUI.....2<sup>ND</sup> PETITIONER**

**ERICK KIPROTICH LANGAT.....3<sup>RD</sup> PETITIONER**

**ANDREW KIPCHIRCHIR LANGAT.....4<sup>TH</sup> PETITIONER**

**AND**

**EUNICE CHEPTORUS CHELULE.....OBJECTOR**

**RULING**

1. Before me is a Summons for Confirmation of Grant dated 17<sup>th</sup> March 2014 filed by Ms Migiro & Company Advocates on behalf of the 1<sup>st</sup> petitioner Isaac Kiprono Busienei, in this matter where the petitioners are four in number. It was brought under section 71 of the Law of Succession Act (cap.160).
2. The application is supported by an affidavit sworn by the 1<sup>st</sup> petitioner Isaac Kiprono Busienei on 17<sup>th</sup> March 2014. The application was also filed with an affidavit on the proposed mode of distribution of the assets signed by Isaac Kiprono Busienei, Philip Kipngeno Kirui and Erick Kiprotich Langat, three of the petitioners proposing the mode of distribution of the assets among four (4) household, as the deceased appears to have had 4 wives. Andrew Kipchirchir Langat the 4<sup>th</sup> petitioner, and the beneficiaries did not sign this affidavit on the proposed mode of distribution.
3. The 4<sup>th</sup> petitioner Andrew Kipchirchir Langat in response to the above proposed mode of distribution of the assets filed an affidavit of protest against Confirmation of Grant which he swore on 19<sup>th</sup> March 2014 claiming that some assets listed by his co-petitioners did not belong to the deceased and also challenged the mode of distribution proposed by the other petitioners and proposed a different mode of distribution. None of the first three (3) petitioners or the 4<sup>th</sup> petitioner however, filed copies of searches or title documents of assets to their proposed mode of distribution of the assets.
4. Eunice Cheptorus Chelule the protestor filed an affidavit of protest claiming to be a wife of a nephew of the deceased claiming 10 acres of land which according to her were allocated to her late husband.
5. Counsel for the petitioners filed written submission and on the hearing date which was 8<sup>th</sup> May 2019, Mr. Migiro for the 1<sup>st</sup> Petitioner, Mr. Mwitwa for 2<sup>nd</sup> petitioner and Ms Sitati for the 4<sup>th</sup> petitioner elected not to highlight the written submissions filed and left it to the court to make its ruling on the Summons for Confirmation of Grant. The protestor neither filed written submissions nor attended court.
6. In my view, even though all counsel who appeared before me asked the court to give its decision on the Summons for Confirmation of Grant, the said Summons is not ripe for a ruling. The first reason is with regard to the contents of the proposed mode of distribution.
7. The proposed two modes of distribution were opposed by an affidavit of protest sworn on 11<sup>th</sup> July 2014 and filed by Eunice Cheptorus Chelule claiming that the deceased was her uncle, and that she was entitled to inherit part of the three (3) land assets. The same Eunice Cheptorus Chelule filed another affidavit of protest she swore on 9<sup>th</sup> July 2015 through Koech J. K. & Company Advocates, but it is not clear whether she or her advocates knew that ruling was now being sought.
8. Again though by consent, parties' counsel filed written submissions in the application, the surviving beneficiaries who are required to sign

the consents on the proposed mode of distribution did not sign, instead only petitioner signed. Such is not a function of only the appointed petitioners, and since no such consent to the various modes of distribution was signed by the beneficiaries this court cannot determine the Summons for Confirmation of Grant as it is.

9. The second reason is that there has been raised a dispute as to ownership of the land assets of the estate, by the 4<sup>th</sup> petitioner and Eunice Cheptorus. It was thus imperative for title documents or search certificates in respect of the land assets to be filed which was not done. Thus this court cannot proceed to determine the Summons for Confirmation of Grant.

10. The third reason is that this court cannot give its decision without knowing the position with regard to the 3<sup>rd</sup> petitioner and Eunice Cheptorus Chelule the protestor, who does not appear to be aware of the progress of proceedings so far.

11. In my view, the above omissions must be addressed before the court can be asked to give a ruling on the Summons for Confirmation of Grant herein.

12. I thus order that the matter will be mentioned on a date I will fix hereafter, to confirm regularisation of the matters raised in paragraph 7 to 10 8 herein above, and for any further orders or directions.

Dated and delivered at Kericho this 9<sup>th</sup> December 2019.

**George Dulu**

**JUDGE**