



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO. 7B OF 2003.**

**IN THE MATTER OF THE ESTATE OF THE LATE DANIEL KIPKOECH KAUTET**

**JUNITHER CHEMUTAL.....1<sup>ST</sup> PETITIONER/RESPONDENT**

**PAULINE CHEROTICH SANG.....2<sup>ND</sup> PETITIONER/RESPONDENT**

**VERSUS**

**ANNE NENE KAUTET.....OBJECTOR/APPLICANT**

**RULING.**

1. The objector /applicant herein has filed summons for rectification of grant dated 17<sup>th</sup> July 2018 in which she has sought to have the confirmation of grant issued on **27<sup>th</sup> July 2007** be rectified and property number **NJORO /NGATA BLOCK 2/47 KIROBON** measuring 2 acres be divided among the three petitioners.

2. In her supporting affidavit dated the same day she deponed that the same was left out when the grant was being confirmed which was not intentional.

3. The 2<sup>nd</sup> respondent in her further replying affidavit has objected to the same on the grounds that the property does not form part of the deceased estate but instead it belongs to their father in law the late **Kositany Teres**. None of the beneficiaries has filed any succession proceedings in respect to his estate.

4. That the property is currently occupied by their mother in law and dealing with the same in this estate will amount to intermeddling with deceased estate. She went on to state that the said parcel is now christened **MOLO/SOUTH KERINGET 2/57** and she takes care of it.

5. She has also filed a supplementary affidavit indicating that the said parcel as per the records of Kirobon Farmers limited belongs to the late Mr Kositany Teresa and he has been indicated as member number 111. There are also attached purchase receipts some dating as far as 1978.

6. The objector has also filed a preliminary objection on a point of law dated 28<sup>th</sup> October 2019 seeking to have the application dismissed for the reason that this court does not have jurisdiction to entertain this application as it offends the provisions of **Section 13 of the Environment and Land Court Act no 19 of 2011**.

7. The court directed the parties to file written submissions which they did and having perused the same the court does not wish to reproduce them here.

8. What is germane however is whether in light of the affidavit evidence on record this court can still adjudicate over the same parcel of land. In other words, does this parcel form part of the deceased estate"

9. The court has perused the judgement dated 27<sup>th</sup> July 2007 by Hon Justice Martha Koome (as she then was) which suggest that plot no. **B PARCEL NO.111/KIROBON** ought to be shared out in the ratio suggested.

10. This court is not sure whether it is the same parcel being litigated upon as it appears that title by then had not been issued. The records from Kirobon farmers limited as well indicates that the parcel belongs to one Kositany Teres, the deceased father and father in law to the parties herein.

11. On the face of it therefore it is clear that the land whether registered or not does not belong to the deceased in this case. If that is the case, then the proper forum would be to litigate under the banner of the estate of Kositany Teres or if it has been registered as the 2<sup>nd</sup> respondent claims under whoever is the current registered owner.

12. The last suggestion would thus fortify the preliminary objection by the respondent that this court does not have the necessary jurisdiction to entertain the matter. The parties should approach the Land and Environment Court.

13. In the premises, this court declines the application for the reason that the land *prima facie* is not in the name of the deceased herein but in the name of his deceased father. At the same time should it have been registered as stated by the 2<sup>nd</sup> respondent then the parties ought to litigate in a proper forum and not this court.

14. The application is otherwise dismissed with no order as to costs.

**DATED SIGNED AND DELIVERED AT NAKURU THIS 24TH DAY OF MARCH 2022.**

**H K CHEMITEL.**

**JUDGE**



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