



**In re Estate of Javan Chebai Kuto (Deceased) (Probate & Administration
410 of 2009) [2024] KEHC 9188 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9188 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
PROBATE & ADMINISTRATION 410 OF 2009**

DK KEMEL, J

JULY 26, 2024

IN THE MATTER OF THE ESTATE OF THE LATE JAVAN CHEBAI KUTO (DECEASED)

BETWEEN

WYCLIFFEE SOITA CHABAYI PETITIONER

AND

EMMANUEL WALUCHO CHEBAI PROTESTOR

RULING

1. Emmanuel Walucho Chebai, the Protestor herein filed an affidavit of protest sworn on 15th February 2024, opposing the against confirmation of grant dated 18th March 2010.
2. He stated that he is one of the dependents in the estate of the late Javan Chebai Kuto (deceased), who died domiciled in Kenya on 24th December 2004, and who died intestate and that the deceased had five (5) wives inter alai; the 1st house with six (6) children (one deceased); the 2nd house with seven (7) children (two deceased); the 3rd house with six (6) children; the 4th house with two (2) children (one deceased) and 5th house with two (2) children. He averred that the deceased left land parcels: KIM/KIM/110, KIM/KIM/830, KIM/KIM/920 and KIM/KIM/1038.
3. The Protestor/Objector further averred that the Petitioner commenced a fraudulent process of succession without involving all the beneficiaries and that he is opposing the proposed mode of distribution dated 23rd March 2023, since according to the clan chairman of Bachebukwa, his share ought to be 1 Ha and not 0.03 Ha as indicated in the mode of distribution. He avers that land parcel KIM/KIM/902 was purchased by his deceased's mother, Joan Chebai, during her days as a civil servant (nurse) and that the said parcel ought to be strictly distributed amongst her children. According to him, his sister Adelaide Milka Chebai was allocated 50 ft by 100ft (0.05 Ha) long ago by the clan members but on the mode of distribution, she has been allocated 0.03Ha. Further, their 1st born Kennedy Nyongesa Chebai, now deceased, was survived by two children who are also entitled to his



- share as per Section 29 (a) of the *Law of Succession Act*. He insisted that the Petitioner did not distribute equal shares to all beneficiaries as he only favoured his blood siblings by giving them larger portions and that was the reason for his refusal to sign the consent.
4. The protest was vehemently opposed by the Petitioner who swore a replying affidavit dated 12.2.2024 wherein he deponed inter alia; the mother to the Protestor had initially been married by one Inspector Sammy Sikolia who were blessed with two children namely Kennedy Nyongesa and Uerra Kadogo who are both deceased and who were not catered for in the distribution as they were not children of the deceased; that parcel number KIM/KIM/902 had been purchased by the deceased herein from one Peter Mayeku in his presence and that it is not true that it had been bought by the protestor's mother; that the claim by the protestor that one of the female children had been given a lesser share is false since the said beneficiary appeared in court and okayed the distribution; that the deceased left nine cows which are in possession of the protestor who should hand over the same for distribution; that he had been nominated by the family to take up the letters of grant.
 5. In response to the Petitioner's replying affidavit, the Objector swore a further affidavit on 13th March 2024 wherein he averred inter alia; that he was not aware of the present succession proceedings and only found out about the same when he was summoned to attend Court for confirmation of grant proceedings; that he never came across any surveyor on the deceased's estate and that he has no knowledge concerning the surveying of the said land; that the two deceased children of the deceased should be catered for in the distribution; that the Petitioner has given his family half of the estate while the rest of the houses have been compelled to share the remaining half; that he is unaware of any animals as he does not have any in my homestead; that the legitimate administrator of the estate should be Job Mulati and not the Petitioner herein; That the Petitioner is not an honest person who is out to frustrate other beneficiaries of the estate; that the estate should be shared equally among all the beneficiaries.
 6. The Protest was canvassed by way of viva voce evidence.
 7. OB-PW1 was Emmanuel Alucho Chebai who testified that he is the Protestor herein and that the deceased herein was his father. The averments as contained in his affidavit of Protest dated 15th January 2024 was adopted as his evidence in chief. On cross-examination, he testified that his father was survived by five wives and that his mother was the 2nd wife. He told the Court that he was born in 1982 and that he failed to capture one child under the 2nd house as he had listed seven children. He told the Court that he could not tell whether his mother was married to another man before his father and that he is the last born from the 2nd house. He testified that he read the replying affidavit by the Petitioner but he could not tell when his mother was married to his deceased father. He maintained that Kennedy and Uerra were the children of the deceased but did not avail any evidence. He told the Court that his mother died in 2016 and that there was only one family meeting over the distribution of the estate of the deceased. He told the Court that he had no sale agreement indicating that his mother bought parcel KIM/KIM/902 as he alleged and that he does not know why his elder sister Adelaide Chebai consented to the mode of distribution. He told the Court that he availed no minutes to attest to his allegations that the clan chairman distributed land as he had averred. He told the court that he is not satisfied with the $\frac{3}{4}$ acre he was given as he is entitled to one acre. He confirmed that he is the only one who has filed an affidavit of protest while the others have not.
 8. The Petitioner testified as PET-PW1 (Wycliffe Soita Chebai), who testified that he is the Petitioner herein and adopted the contents of his replying affidavit dated 12th February 2024 as his evidence in chief. On cross-examination, he told the Court that Kennedy and Uerra Chebai were not the biological children of the deceased herein and further that it was not correct that the 1st house occupied more land than the rest of the houses. He testified that clan elders visited the land.



9. At the end of the hearing, parties were directed to file and exchange their respective written submissions. Both parties complied with the Court directions.
10. I have considered the written submissions, viva voce evidence and the pleadings as filed by the parties herein. It is noted that all the five houses have agreed on the mode of distribution and that all the beneficiaries except the Protestor herein have appeared in court and okayed the distribution of the estate. It seems it is only the Protestor who has a contrary view as regards the distribution of the estate and which depicts him as a renegade. Since the majority of the family members who comprise of all the five houses of the deceased have consented to the distribution, the protest by the Protestor must be rejected. It is surprising that the Protestor made a claim that one of the beneficiaries namely Adelaide Milcah Chebai had been given a smaller share yet the said beneficiary appeared in court and indicated that she was satisfied with her share. This thus depicted the Protestor as an untruthful person. The Protestor also did not avail a sale agreement to the effect that his mother had bought parcel number KIM/KIM/902 so as to isolate it from the distribution. The Protestor also failed to avail evidence that his two brothers Kennedy Nyongesa and Uerra Kadogo were biological children of the deceased. I found the Protestor to be untruthful and that the protest was meant to frustrate the Petitioner and the rest of the beneficiaries from concluding this old matter so that they can get their rightful shares under the estate. It is clear that the averments by the Protestor/Objector herein are nothing but mere allegations with no substantive evidence to substantiate the same.
11. In the result, it is my finding that the affidavit of protest lacks merit. The same is dismissed. The summons for confirmation of grant dated 14.3.2023 are allowed as prayed. The Grant of Letters of Administration as issued on 18th March 2010 is hereby confirmed. The estate shall be distributed as proposed vide paragraph 5 of the affidavit filed in support of the summons for confirmation of grant and the annexed schedule of distribution. A certificate of confirmation of grant is to issue forthwith. As the matter involves family members, i make no order as to costs.

It is so ordered.

DATED AND DELIVERED AT BUNGOMA THIS 26TH DAY OF JULY 2024.

D. Kemei

Judge

In the presence of:

Masengeli for Petitioner

Emmanuel Walucho for Protestor

Kizito Court Assistant

