



REPUBLIC OF KENYA



In re Estate of the Late John Kipkemoi Laboso (Deceased) (Succession Cause 161 of 2008) [2023] KEHC 18294 (KLR) (30 May 2023) (Judgment)

Neutral citation: [2023] KEHC 18294 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 161 OF 2008**

JK SERGON, J

MAY 30, 2023

BETWEEN

KENNETH CHERUIYOT OBJECTOR

AND

HELLEN CHEPNGENO LABOSO 1ST PETITIONER

WESLEY KIPLANGAT KIRUI 2ND PETITIONER

JUDGMENT

1. The subject matter of this Confirmation of Grant dated July 23, 2010 and the summons for Rectification of Grant dated 2011 – plus the Objection taken out by Kenneth Cheruiyot. The main issue which arose for determination is the distribution of the Estate of John Kipkemoi Laboso, deceased.
2. The dispute was referred to court Annexed Mediation which process returned a partial Settlement Agreement dated January 6, 2023. What was left undetermined by the court Annexed Mediation is the distribution of two parcels of Land Namely:
 - i. L.R No. Kericho/Kimulot/304 and
 - ii. LR. No. Kericho/Londiani/Kedowa/Block.2 (Tegunot).
3. The hearing on the dispute over the distribution of the aforesaid parcels of Land proceeded before this court. The following beneficiaries Namely:- Wesley Kiplangat Kirui, Hellen Chepngeno laboso, Elvis Kipyegon Kirui, Ronny Kipkorir Kirui and Victor Kirui appeared and testified in support of the mode of distribution proposed by Wesley Kiplangat Kirui (PW.1).
4. The objector namely Kenneth Cheruiyot did not attend court for hearing despite having been served with a hearing notice by the petitioners. The Succession Cause therefore proceeded for hearing



- without the objector's participation though the court is bound to consider his written proposal on the distribution of the aforesaid two parcels.
5. The first to take the witness stand is the 2nd petitioner Wesley Kiplangat Kirui (PW.1, who urged this court to adopt the partial Mediation Settlement Agreement dated January 6, 2023. PW.1 told this court that the two parcels of land i.e. L.R. No. Kericho/Kimulot/304 and L.R. No. Kericho/Londiani/Kedowa Block 2 (Tegunot) were not similar in fertility and arability and therefore he proposed for the two parcels to be distributed equally between all the beneficiaries.
 6. PW.1 proposed that the beneficiaries namely:-Kenneth Cheruiyot and Emmanuel Kibet Cheruiyot (representing the Estate of Charles Cheruiyot Kirui, Deceased)Wesley Kiplangat KiruiHellen Chepngeno LabosoElvis Kipyegon KiruiBetsy Cherono LabosoCollins Kipngetich KiruiRonny Kipkorir KiruiVictor Kipkoech KiruiJudy Chemutai LabosoShould each get two (2) Acres from L.R. No.Kericho/Londiani/Kedowa/Block 2 (Tegunot)
 7. PW.1 also proposed that the following beneficiaries
 - (i) Kenneth Cheruiyot and Emmanuel Kibet Cheruiyot (representing the Estate of Charles Cheruiyot Kirui, Deceased)
 - (ii) Wesley Kiplangat Kirui
 - iii. Hellen Chepngeno Laboso
 - iv. Elvis Kipyegon Kirui
 - v. Betsy Cherono Laboso and
 - vi. Collins Kipngetich KiruiShould each get one (1) acre to be excised from L.R. Kericho/Kimulot/304.
 8. PW.1 opposed the proposal by Kenneth Cheruiyot claiming that the same is untenable because those parcels of land are not all arable not fertile in equal measure.
 9. The other witnesses who testified namely:-
 - (i) Hellen Chepngeno Laboso (PW.2),
 - (ii) Elvis Kipyegon Kirui (PW.3)
 - (iii) Ronny Kiprotich Kirui (PW.4) and
 - (iv) Victor Kipkoech Kirui (PW.5). all adopted the evidence and proposal of PW.1. They all urged this Court to dismiss the proposal by Kenneth Cheruiyot.
 10. Having considered the evidence tendered by PW.1, PW.2, PW.3, PW.4 and PW.5, I am convinced that their proposed mode of distribution is fair and is in accordance with the *Law of succession Act*. I find the proposal by Kenneth Cheruiyot to be unreasonable and unfair because the proposal does not take into account the fertility and arability of each parcel.
 11. In the end, this court makes the following orders:-
 - (i) The partial mediation settlement agreement dated 6/1/2023 is adopted as the decision of this Court.



- a. That the sub-division be done whereby each beneficiary will get 3 Acres of land.
 - b. That sub-divisions will be done horizontally in the case of Kimulot – 304 piece of land.
 - c. That they will make a new road to be used by all the beneficiaries.
 - d. That the other nine beneficiaries will plant new seedlings on the empty land belonging to the objector (Kenneth Cheruiyot) including any such empty land without tea.
 - e. That the Objector (Kenneth Cheruiyot) will be plucking tea assigned to him at the moment until the expiry of seven years after that the Objector will move to the new Tea Plantation in exchange.
 - f. That the empty land for the Objector will be measured to determine the size given to him from the old Tea Plantation to be plucking.
 - g. That the commencement of planting the new Tea starts on April 1, 2023.
- (ii) The Summons for Confirmation of Grant and Summons for rectification of Grant are allowed and distribution be done as proposed in the partial mediation settlement dated 6/1/2023.
 - (iii) The two parcels of land be distributed as follows:-
 - a. L.R. No. Kericho/Kimulot/304:- The following beneficiaries to each have one Acre to be excised from the aforesaid parcel:-Kenneth Cheruiyotand Emmanuel Kibet Cheruiyot (Representing the Estate of Charles Cheruiyot Kirui, deceased),Wesley Kiplangat Kirui,Hellen Chepngeno Laboso,Elvis Kipyegon Kirui,Betzy Cherono andCollins Kipngetch Kirui
 - b. L.R. Kericho/Londiani/Kedowa/Block 2 (Tegunot): The following beneficiaries to each have 2 Acres to be excised from the aforesaid Parcel:-Kenneth Cheruiyot & Emmanuel Kibet Cheruiyot (representing the Estate of Charles Cheruiyot Kirui, deceased)Wesley Kiplangat KiruiHellen Chepngeno Laboso,Elvis Kipyegon Kirui,Betzy Cherono Laboso,Collins Kipngetch Kirui,Ronny Kipkorir Kirui,Judy Chemutai Laboso,Dennis Kimutai Laboso andVictor Kipkoech Kirui.
 - (iv) Each party to meet its own costs.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 30TH DAY OF MAY, 2023.

J.K. SERGON

JUDGE

In the presence of:

C/Assistant - Rutoh

Wesley Kiplangat Kirui – Present in Person

Hellen Chepngeno Laboso – Present in Person

No Appearance for the other beneficiaries

