



**In re Estate of Kipsang Rochi (Deceased) (Succession Cause
37 of 2000) [2023] KEHC 21020 (KLR) (31 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21020 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 37 OF 2000**

JK SERGON, J

JULY 31, 2023

BETWEEN

EZEKIEL TOWETT ARAP SANG PETITIONER

AND

JOEL KIPKEMOI CHEPKWONY 1ST PROTESTOR

RICHARD KIPKORIR KOSKEY 2ND PROTESTOR

JUDGMENT

1. Ezekiel Towett Arap Sang the personal representative and/or administrator of the estate of the deceased filed summons for confirmation of grant seeking to have the grant of letters of administration issued to Ezekiel Towett Arap Sang and Esther Chemutai Maritim on February 28, 2002 be confirmed.
2. He filed an affidavit in support of the Summons for confirmation of grant and stated that the deceased died intestate and left the following dependents;
 - i. Ezekiel Towerr Arap Sang
 - ii. Esther Chemutai Maritim
 - iii. Maritim Arap Sang
 - iv. Kipemoi Maritim
 - v. Anna Chepkoech Maritim
3. He avers that the deceased was the sole owner and proprietor of the land parcel number Kericho/ kibwstuiyo/399 and that identification and distribution of shares beneficially entitled to the estate of the deceased ascertained and determined as follows;
 - i. Ezekiel Towett Arap Sang – 2.38 Ha



- ii. Alexander K Maritim – 1.19 Ha
 - iii. Esther Chemutai Maritim – 0.59 Ha
 - iv. Anna Chepkoech Maritim – 0.59 Ha
 - v. St, Mary Catholic Church – Chelibo – 0.10 Ha
4. He therefore prayed to have the court allow the application in terms of the mode of distribution in paragraph 5 of the affidavit in support of confirmation of grant in accordance with section 71 and 40 of the probate and administration rules.
 5. Joel Kipkemoi Chepkwony and Richard Kipkorir Koskey filed an affidavit of protest and stated that they are grandchildren of the deceased from the 2nd and 1st households of the deceased respectively and that the petitioner is the son of the deceased from the 3rd household.
 6. The protestors stated that on August 12, 2021 they filed succession proceedings in Kericho Chief Magistrates Court being succession Cause Number E156 OF 2021 and the Grant was confirmed on August 10, 2022 attached and marked as JKC 1 (a) and (b) are certified copies of letters of administration and certificate of confirmation of grant respectively.
 7. The protestors stated that after confirmation of grant they requested the petitioner herein to sign the transfer documents and to surrender the original title deed to the Lands Office Kericho but he failed and/or neglected to do so.
 8. The protestors stated that on November 17, 2022 they realized that the petitioner had filed a succession cause in Kericho High Court and the same was scheduled for confirmation on November 30, 2022.
 9. The protestors were not agreeable with the mode of distribution of the estate property proposed in paragraph 5 of the affidavit filed in support of the summons for confirmation as the petitioner had not divulged all the beneficiaries of the deceased and that the mode of distribution proposed by the petitioner was made without consultation and further that the petitioner had not obtained consent from the beneficiaries on how the estate land should be distributed.
 10. The protestors stated that their preferred mode of distribution was equitable based on the fact that the deceased was polygamous and had married three wives hence there are three households to share in the deceased's estate contrary to the petitioner's mode of distribution which was not a reflection of the three households.
 11. The protestors preferred mode of distribution is as follows:
 - Kericho/kibwstuiyo/399 -12. 0 Acres
 - i. Richard Koskey Chepkwony.....4 Acres (to hold in trust and on behalf of all beneficiaries form the first house)
 - ii. Joel Kipkemoi Chepkwony, Augustine Kibet Chepkwony..... 2 Acres (second house)
 - iii. Ezekiel Sang.....4 Acres (third house)
 12. The parties canvassed the application *viva voce* evidence.
 13. Joel Kipkemoi Chepkwony the protestor testified on his own behalf. During examination in chief, he stated that he filed the affidavit of protest as he opposed the mode of distribution in the summons for



- confirmation by the Ezekiel Arap Sang the petitioner herein and proposed the mode of distribution as set out in paragraph 10 of the affidavit of protest. He further stated that Esther and Anna were supposed to inherit and that the family did not approve the church transaction. He therefore prayed for judgment as prayed in the protest.
14. On cross examination he stated that the petitioner demolished his mother's house in Chelibo which forced them to migrate to Maasai Land.
 15. Ezekiel Towett Arap the petitioner herein testified on his own behalf. During examination in chief he stated the he would rely on the affidavit filed in support of the summons for confirmation of grant and further that their father had distributed his land while he was alive as follows;
 - i. Esther Maritim – 0.59 Ha
 - ii. Anna Maritim – 0.59 Ha
 - iii. Ezekiel Sang – 2.8 Ha
 - iv. Alexander Maritim – 1.9 Ha
 16. He stated that their father gave land to two of her sons Ezekiel Arap Sang and Maritim Arap Sang and the portion belonging to Maritim shared out to Estger, Anna and Alexander. He further stated that he and his late brother contributed a portion to the church. He stated that his mother is called Taplelei. He stated that he did not demolish the protestor's mother's house. He maintained that the protestor mother was married by their father second as his wife, his father took her to Chepalungu where she settled and the protestor used to live in Chepalungu where their father had land and that the protestor subsequently sold the land. He stated that their father passed on and was buried in Transmara and that he attended the burial.
 17. He further testified that he had seen the schedule of distribution as proposed by the protestor and was opposed to it in that it did not reflect the wishes of their deceased father. He stated that their elder brother called Sawe Arap Sang had land in Chepalungu that was given to him as a settlement.
 18. On cross-examination he stated that the land in Chepalungu was allocated to Sawe Arap Sang, the protestor mother was given 6 acres in Transmara and they were given titles and that their father distributed the land without summoning the entire family, there was no sharing of livestock or assets each family kept the animals they had.
 19. On re-examination he stated that the family held a meeting on January 15, 2001 to discuss the land in dispute, which was attended by 50 members of the clan. He produced a copy of the minutes as PExh.1. He therefore prayed to have the land distributed as proposed in his schedule of distribution.
 20. I have considered the applications and the *viva voce* evidence submitted in court and I find the petitioner had moved court and obtained a grant of representation in the estate of the deceased on February 28, 2002, however, he did not follow through with the confirmation of the said grant until aOccyober 17, 2022 when he filed the summons for confirmation of grant, in the intervening period the protestors perhaps being unaware of the state of affairs in the estate, filed a succession cause in respect to the estate of the deceased in Succession Cause No. 156 of 2021 in Kericho Chief Magistrate's Court and the same confirmed in August 10, 2022 with a different preferred mode of distribution than that which the petitioner proposed.
 21. The petitioner maintains his mode of distribution was as per the wishes of the deceased and relied on the minutes of a meeting held on February 15, 2000 and I find that the resolutions therein are not sufficient to guide the court in the resolution of this matter.



22. The protestor on the other hand filed his preferred mode of distribution in his affidavit of protest. I find that the protestor's preferred mode of distribution is equitable as it takes cognizance of the fact that the deceased had three households which fact is supported by the letter of chief dated May 11, 2021: Additionally, there is no evidence to show that that the second wife of the deceased was resettled elsewhere. I therefore find that the protest is merited. In the circumstances, the Grant is hereby confirmed and the certificate of confirmation of grant, the distribution of the estate be done as proposed in the Affidavit of Protest.
23. This being a family dispute, a fair order on costs is order which I hereby do that each party meets their own costs.

DATED, SIGNED AND DELIVERED THIS 31ST DAY OF JULY, 2023

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J.K. SERGON

JUDGE

