



REPUBLIC OF KENYA



**In re Estate of the Late Peter Chebiego Kurumei (Miscellaneous Application
2 of 2023) [2023] KEHC 21641 (KLR) (7 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21641 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS APPLICATION 2 OF 2023
RN NYAKUNDI, J
AUGUST 7, 2023**

**IN THE MATTER OF THE ESTATE OF THE LATE PETER CHEBIEGO
KURUMEI**

BETWEEN

PHILLIP K KURUMEI PETITIONER

AND

MARY SUMBEIYWO OBJECTOR

JUDGMENT

1. The matter herein involves the estate of the late Peter Chebiego Kurumei who died on February 2, 1995. The deceased herein was a polygamous man having married two wives.
2. The deceased was survived by the following persons:
 1. 1st House
 1. Tecla Kobilu Karumei – 1st widow
 2. William Kurumei – son
 3. Philip Kurumei – son
 4. Philomena Kurumei – daughter
 5. Faustine Kurumei – daughter
 6. Mary Kurumei – daughter
 7. Benedette – daughter
 8. Josphine Kurumei – daughter



2. 2nd House
 1. Aileen Kurumei – 2nd widow
 2. Rose Chepkoech – daughter
 3. Mary Sumbeiywo – daughter
 4. Esther Too – daughter
 5. Mike Kurumei – son
 6. Silas Kurumei – son
 7. Ann Kurumei – daughter
3. The only issue that is pending before this Court is the distribution of the estate herein.

The Petitioner's Case

4. The Petitioner proposes that that deceased's parcel of land known as Irong/Iten/1475 measuring approximately 2.02 Ha remains with the 1st widow as the said land is her matrimonial home. The Petitioner maintains that the 2nd widow was allocated land on parcel of land known as Sergoit/Elgeyo Border Block 1 (Beliomo)/3.
5. The Petitioner maintains that parcel of land known as Sergoit/Elgeyo Border Block 1 (Beliomo)/5 is no longer part of the estate herein as the same was transferred to one Johnson Kibet Sirma (Deceased) on June 3, 1991 and thus no longer available for distribution. The Petitioner further maintains that the transfer herein was done (4) years prior to the demise on the deceased. The Petitioner deposed that the subject land is currently registered in the name of Philomena Cherotich Sirma who acquired title to it on December 22, 2014, after the demise of the deceased.
6. With regard to parcel of land known as Iten/Township/8 measuring approximately 0.0604 Ha, the Petitioner deposed that the subject land was acquired by the deceased, Chepkurui Kurumeo Kirorio and Alois Cheron Kimengich as tenants in common. The Petitioner maintains that the sale of the said property would require the consent of the rest of the co-owners and thus selling it would be unachievable. The Petitioner proposes that the 1/3 share of the said property belonging to the deceased to be distributed amongst the 15 units with each beneficiary getting a share. Further that the units can then retreat to their individual houses and decided whether to combine their shares of the property as the said property is located within the Central Business District of Iten Town and would thus be a good source of rental income for the said houses.
7. With regard to parcel of land known as Elgeyo/Marakwet/Kessup B/81 measuring 0.7Ha, the Petitioner proposes that the title over the said property be revoked and the said land reverts to the estate herein. Upon reversion the property should be shared equally amongst all the beneficiaries of the deceased.
8. Finally, the Petitioner deposes that parcel of land known as Elgeyo Marakwet/Kessup B/64 measuring 0.33Ha initially belonged to the deceased herein at that vide Iten P &A Cause No 4 of 2000 it was transferred to one William Kibet Kurumei, a son of deceased who was issued with a Certificate of Title on December 15, 1996. Subsequently, in October 18, 1998 the said property was transferred to Aileen Sanieko Kurumei the 2nd widow herein who in turn transferred it to her grandson one Evans Kiplagat Sumbeiywo. The Petitioner maintains that the property herein has switched hands between house A and B on different occasions despite the defect in title resulting from a defective succession process.



The Petitioner proposes that said title be revoked and the said land reverts to the deceased's estate for equally distribution.

The Objector's Case

9. The Objector on the other hand proposes that title to property known as Irong/Iten/1475 measuring approximately 2.02 Ha be revoked and the same be distributed equally amongst all the beneficiaries of the deceased. The Objector contends that the said property changed ownership from the deceased to the Petitioner herein in unclear circumstances. The Objector further deposed that at the time of the said transfer was being made the deceased herein had already died.
10. The Objector proposes that the title to parcel of land known as Sergoit/Elgeyo Border Block 1 (Beliomo)/5 be revoked and or cancelled and the same be distributed equally amongst the beneficiaries of the deceased. The Objector contends that said property was initially registered in the name of the deceased but changed ownership to one Johnson Kibet Sirma who is a son-in-law to the deceased having married one of the daughters of the deceased.
11. With regard to parcel of land known as Iten/Township/8 measuring approximately 0.0604 Ha, the Objector proposes that 1/3 of the share of the deceased to be sold and the proceeds therein to be shared equally amongst the beneficiaries of the deceased.
12. With regard to parcel of land known as Elgeyo/Marakwet/Kessup B/81 measuring 0.7Ha, the Objector proposes that the title over the said property be revoked and the said land reverts to the estate herein. Upon reversion the property should be shared equally amongst all the beneficiaries of the deceased.

Analysis and Determination

13. In situations where by the deceased was polygamous the law that guides this Court in such matters is Section 40 of the *Law of Succession Act* which primarily provides as follows;
 - (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate, shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.
 - (2) The distribution of the personal and household effects and the residue of the net interest within each house shall then be in accordance with the rules set out in sections 35 to 38”
14. The Court *in Re Estate Of John Musambayi Katumanga – Deceased* [2014] eKLR held as follows:

The spirit of Part V, especially Sections 35, 38 and 40, is equal distribution, of the intestate estate amongst the children of the deceased. There have been debates on whether the distribution should be equal or equitable. My reading of these provisions is that they envisage equal distribution for the word used in Sections 35(5) and 38 is ‘equally’ as opposed to ‘equitably’. This is the plain language of the provisions. The provisions are in mandatory terms – the property “shall ... be equally divided among the surviving children.” Equal distribution is envisaged regardless of the ages, gender and financial status of the children.”
15. Further, *In the Matter of the Estate of Nelson Kimotho Mbiti (Deceased)* HCSC NO 169 of 2000, Koome J, directed that the estate of a polygamist be divided in accordance with the provisions of Section 40 of the Act. The estate was divided into units according to the number of children in each house with the widows being added as additional units. The same reasoning was also applied by Judge Ali Roni *in the Estate of Ainea Masinde Walubengo (Deceased)* (2017) eKLR stating that “I am of the



view that Section 40 of the Law of Succession Act will apply to the circumstances of this Case. Meaning that the Court will distribute the estate of the deceased according to each house taking into account the number of children in each unit including the surviving widow.”

16. At this juncture it worth pointing out that Article 27 of the Constitution 2010 provides that every person is equal in the eyes of the law and before the law; and the Article goes further to state that there should be no discrimination on any ground including gender which encompasses marital status; The Constitution does not allow discriminatory rules and customs in matters of personal law, including inheritance.
17. There ought to be no classification into categories of male, female, married or unmarried; there ought to be no discrimination against the male or female children of a deceased person; nor discrimination between the married daughters and unmarried daughters of a deceased person.
18. I have, considered the law applicable in this matter and all the proposals on the mode of distribution of the estate that have been placed before me. For the reasons set out above and for equity to be achieved it is my considered view that the mode of distribution that does commend itself to the circumstances of this cause and which I hereby order is as set out below:
 - a. The parcel of land known as Irong/Iten/1475 measuring approximately 2.02 Ha shall be distributed between the 1st House and the 2nd House in equal shares. Although the Petitioner submitted that said parcel of land is the matrimonial home of Tecla Kobilo Kurumei, no evidence whatsoever was tendered to that effect. From the evidence adduced it is clear that the subject land belonged to the deceased was only transferred to Philip Kipkoech Karumei on December 16, 1996 after the demise of the deceased. With that said, the title registered in the name in the name of Philip Kipkoech Karumei that was issued on December 16, 1996 be and is hereby revoked.
 - b. With regard to parcel of land known as Sergoit/Elgeyo Border Block 1 (Beliomo)/5. It is clear that the same is no longer part of the estate herein as it was transferred to one Johnson Kibet Sirma (Deceased) on June 3, 1991 and thus no longer available for distribution. The transfer as evidence by the documents on record was done on 3/6/1991, (4) years prior to the demise on the deceased. The subject land is currently registered in the name of Philomena Cherotich Sirma who acquired title to it on December 22, 2014, after the demise of husband and thus not available for distribution.
 - c. With regard to parcel of land known as Iten/Township/8 measuring approximately 0.0604Ha it evident that the subject land was acquired by the deceased, Chepkurui Kurumeo Kirorio and Alois Cheron Kimengich as tenants in common. Parties cannot agree on best mode of how the said parcel shall be devolved. The 1/3 share belonging to the deceased shall be distributed between the 1st House and the 2nd House in equal shares. Thereafter any party who wishes to dispose their share therein shall proceed to do so.
 - d. With regard to parcel of land known as Elgeyo/Marakwet/Kessup “B”/81 measuring 0.7Ha, the title over the said property in name of Philip Kipkoech Karumei that was issued on December 18, 1996 be and is hereby revoked and the said land reverts to the estate herein. Upon reversion the property shall be distributed between the 1st House and the 2nd House in equal shares.
 - e. With regard to parcel of land known as Elgeyo Marakwet/Kessup “B”/64 measuring 0.33Ha it is clear from the evidence on record that the said parcel of land belonged to the estate of the deceased herein and was in fact transferred after the demise of the deceased. The land was



transferred to one William Kibet Kurumei on December 18, 1996 and subsequently to Aileen Sanieko Kurumei on October 18, 2008 who then transferred to one Evans Kiplagat Sumbeiyo on November 20, 2008. The title issued to one Evans Kiplagat Sumbeiyo on November 20, 2008 be and is hereby revoked. The said land shall revert to the estate herein and upon reversion it shall be distributed between the 1st House and the 2nd House in equal shares.

19. Consequently, I hereby order distribution of the assets of the deceased as follows:

- i. The parcel of land known as Irong/Iten/1475 measuring approximately 2.02Ha shall be distributed between the 1st House and the 2nd House in equal shares. The title registered in the name in the name of Philip Kipkoech Karumei that was issued on December 16, 1996 be and is hereby revoked.
- ii. The 1/3 share of the deceased in parcel of land known as Iten/Township/8 measuring approximately 0.0604 Ha shall be distributed between the 1st House and the 2nd House in equal shares.
- iii. The parcel of land known as Elgeyo/Marakwet/Kessup “B”/81 measuring 0.7Ha shall be distributed between the 1st House and the 2nd House in equal shares. The title registered in the name in the name of Philip Kipkoech Karumei that was issued on December 18, 1996 be and is hereby revoked.
- iv. The parcel of land known as Elgeyo Marakwet/Kessup “B” /64 measuring 0.33Ha shall be distributed between the 1st House and the 2nd House in equal shares. The title registered in the name in the name of Evans Kiplagat Sumbeiyo on November 20, 2008 be and is hereby revoked.
- v. Practical realities in addition to the above is for the equal share model in this intestate estate do take into account the interest of each house on the coverage area in which the respective matrimonial house has been built.
- vi. That the survey boundaries of the property do include the acquired matrimonial house during the marriage of each spouse as a reference point of allocation of subsequent equal shares as proposed in this ruling.
- vii. As the law of Succession recognizes the Deputy Registrar do issue a certificate of confirmed grant for transmission of the estate to the beneficiaries and thereafter a probate account be filed within six months from today’s orders.
- viii. Each party to bear their own cost.

DATED SIGNED AND DELIVERED AT ELDORET ON THIS 7TH DAY OF AUGUST 2023

In the Presence of

.....

R. NYAKUNDI

JUDGE

kimarukiplagat@yahoo.com

bulbulchamber@gmail.com

