



REPUBLIC OF KENYA

HIGH COURT OF KENYA

AT KERICHO

SUCCESSION CAUSE NO.305 OF 2015

ESTATE OF THE LATE MARY TAPLELEI KILE Alias TAPLELEI W/O KILEL (DECEASED)

ESTHER C. KISIARA.....1ST PETITIONER/APPLICANT

VERSUS

CHARLES CHEPKWONY.....2ND PETITIONER/1ST RESPONDENT

BEATRICE CHELANGAT.....3rd RESPONDENT

JUDGMENT

1. The deceased herein MARY TAPLELEI KILEL alia TAPLELEI W/O KILEL died intestate on 28/4/2015.
2. Upon the demise of the deceased, the 1st Petitioner/Applicant filed Succession Cause No.307 of 2015 and attached a letter from the Chief from Kiplokyi Location stating that she is the sole beneficiary of the Estate of the Deceased and that she is entitled to the entire Estate.
3. The three Respondents filed succession Cause No.305 of 2015 stating that they are beneficiaries of the Estate of the deceased having been adopted by the deceased.
4. The Court directed that the hearing proceeds by way of viva voce evidence for the Court to determine whether the three Respondents CHARLES CHEPKWONY, FRANCIS CHEPKWONY and BEATRICE CHELANGAT were adopted children of the deceased.
5. The 1st Petitioner (PW.1) said she was the only child of the deceased and that when her mother (the deceased) died on 28/4/2015, the funeral programme was intercepted by FRANCIS CHEPKWONY, CHARLES CHEPKWONY, ROBERT BETT and DAVID BETT.
6. PW.1 further testified that in the year, 2009, she took BEATRICE CHELANGAT to work for the deceased and further that she hired CHARLES CHEPKWONY as a driver.
7. PW.1 also said there is no adoption under Kipsigis Customary Culture and what normally happens is that a woman who does not have children marries another woman. She said she was the only child of the deceased.
8. PW.1 said in 2015 she realized the three Respondents were living in one of the parcels of the deceased but she denied that they were adopted by the deceased.
9. The 1st Petitioner called her daughter-in-law JOYCE LANGAT (PW.2) as a witness. PW.2 said she was married to the son of PW.1. PW.2 said BEATRICE CHELANGAT was working for the deceased herein as a maid and CHARLES CHEPKWONY was also employed as a driver. PW.2 said the deceased did not adopt any children.
10. The 1st Petitioner also called WILLIAM ARAP ROTICH (PW.3) as a witness. He said he used to live with the deceased and he knew the deceased only had one child who is the 1st Petitioner in this case.
11. PW.4, ELIJAH ARAP KISIARA who is the husband to the 1st Petitioner said he knew BEATRICE CHELANGAT and CHARLES CHEPKWONY. He said he knew BEATRICE in 2009 when she was hired to help the deceased who was elderly. He denied the adoption of BEATRICE and CHARLES. PW.4 said he did not know FRANCIS CHEPKWONY. He said only children under the age of 18 years could be adopted.

12. CHARLES KIPROTICH CHEPKWONY testified as DW.1. He said the deceased was his mother. He said the deceased adopted him with his sister BEATRICE CHELANGAT when they were living with their Aunt, MARY MOSONIK at NGOINA. He said they had lost their biological mother when the deceased went for them and that the deceased talked to his Aunt MARY MOSONIK and her husband PETER MOSONIK before Kalenjin adoption rituals were performed. He said they were taken to the deceased's home at Roret at a place called Reresik where he attended Reresik Primary School and then proceeded to Roret Mixed School where he schooled upto Form 2. He went to Mombasa where he trained as a driver and returned to Roret where he stayed upto 2012 when he got a job as a driver in Molo. He said upon adoption, he was given the name CHEPKWONY which means a child without a father.
13. DW.1 said in 2013, the deceased told him to go to Londiani where he build a house. He said he moved out of the deceased's land in 2016 after he was chased by the 1st Petitioner.
14. FRANCIS CHEPKWONY testified as DW.2. He said was adopted by the deceased in 1987 at the age of 29 years while working at Kebeneti Dispensary and the Kalenjin Customary adoption was performed by one Arap Bat was a brother to the deceased. He said CHARLES and BEATRICE were adopted in 1992.
15. DW.2 said in 2008 he used his adoption to obtain a Kenyan Identity Card. He said he did not know his biological parents. DW.2 said he comes from Rwanda.
16. DW.3 MARY MOSONIK said she was a sister to the grandmother of CHARLES and BEATRICE and that she stayed with the two before they were adopted by the deceased. She said the deceased paid money and a cow for them. The mother of CHARLES and BEATRICE was called JANE CHESANG. She said that she stayed with the two children after their mother died and their grandmother was too old.
17. DW.4 THOMAS CHERUIYOT said the Kalenjin adoption process involved slaughtering a ram. The adopter puts part of the fat of the ram called "Sundet" on the neck of the child being adopted. He said traditional brew is used during the ceremony and a shrine called "Mabwaita" is erected outside. A ring called "Tamokiet" is put on the finger of the adopted child and the child is given a name.
18. DW.4 said even adults could be adopted. He said he was a neighbor of the deceased and he knew the deceased had adopted the Respondents but he was not present during the adoption.
19. The parties filed written submissions which I have duly considered.
20. The 1st Petitioner/Applicant submitted that she was not aware of any adoption by the deceased and neither did she witness any adoption ceremony.
21. The 1st Petitioner/Applicant submitted that the account of events offered by the respondents witnesses on the adoption ceremonies of Charles Chepkwony, Beatrice Chelangat and Francis Chepkwony did not satisfy the ingredients of adoption under Kipsigis customary law.
22. The 1st Petitioner/Applicant submitted those who allegedly performed the adoption ceremonies and/or received dowry were never called as witnesses, yet they were crucial witnesses.
23. The 1st Petitioner/Applicant submitted that Charles Chepkwony, Beatrice Chelangat and Francis Chepkwony were not adopted by the deceased or maintained by the deceased prior to her death, they were strangers to the estate and therefore could not lay claim to the deceased's estate.
24. The Respondents submitted that the Probate and Administration Forms (P&A Form 5) in Succession Cause No. 305 of 2015 filed by the 2nd Petitioner and Succession Cause No. 307 of 2015 filed by the 1st Petitioner listed them as beneficiaries of the estate.
25. The Respondents submitted that there were two consents filed in the instant succession cause, one on 24th September, 2015 and the other on 28th January, 2018 one consolidating the two succession causes and other appointing Esther Cherotich Kisiara and Charles Chepkwony to manage the estate pending hearing and determination of the succession cause.
26. The Respondents submitted that they were recognized by the deceased as her children through customary adoption under Kipsigis customary law, the deceased had assumed permanent responsibility over them. Further to this, the Respondents submitted that the 2nd Petitioner and the witnesses had proven their case on a balance of probability.
27. The issues for determination in this Judgment are as follows:-
- (i) Whether the deceased adopted FRANCIS CHEPKWONY, CHARLES CHEPKWONY and BEATRICE CHELANGAT.**
 - (ii) Subsequently whether the three Respondents have a right to share in the Estate of the deceased herein.**
 - (iii) How the Estate should be shared.**
28. On the issue as to whether the deceased adopted the three Respondents, I find that the three Respondents' evidence on how they were adopted has not been challenged by the 1st Petitioner.

29. DW.1 CHARLES CHEPKWONY said he was adopted at the home of DW.3, MARY MOSONIK by the deceased, DW.3 confirmed that the ceremony was performed.

30. DW.2 FRANCIS CHEPKWONY also said the deceased adopted him at the age of 29 when he was working at Kebenet Dispensary and the adoption ceremony was done at the home of one Bati who is now deceased. DW.4 confirmed that even an adult could be adopted under Kipsigis Customary Law.

31. The 1st Petitioner who was the only daughter of the deceased admitted that the Respondents were staying at a property belonging to the deceased. There is evidence that the Respondents attended the funeral of the deceased and were recognized as the adopted children of the deceased.

32. I accordingly find that the three Respondents have established on a balance of probabilities that they were adopted by the deceased.

33. On the issue as to whether the Respondents are entitled to share in the Estate of the deceased, I find that the answer is in the affirmative. Adopted children have a right to inherit the property of their adoptive parents.

34. Section 3 (2) of the Law of Succession Act defined children as follows

“References in this Act to “child” or “children” shall include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, any child born to her out of wedlock, and, in relation to a male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility. “

35. On the issue as to how the Estate should be share, the law is clear that the children should share the estate equally.

36. I accordingly direct that the Estate be shared Equally amongst the following:-

(1) **ESTHER CHEROTICH KISIARA**

(2) **FRANCIS CHEPKWONY**

(3) **CHARLES CHEPKWONY**

(4) **BEATRICE CHELANGAT**

37. The portion sold by the 1st Petitioner ESTHER CHEROTICH KISIARA to be deducted from her share of the inheritance.

38. The three Petitioners to be issued with a grant of representation as follows:-

(1) **ESTHER CHEROTICH KISIARA**

(2) **FRANCIS CHEPKWONY**

(3) **CHARLES CHEPKWONY**

39. The three Petitioners to file summons for confirmation within 30 days of this date.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 25TH DAY OF MARCH, 2022.

A. N. ONGERI

JUDGE