



REPUBLIC OF KENYA

HIGH COURT OF KENYA

AT KERICHO

SUCCESSION CAUSE NO.141 OF 2008

IN THE MATTER OF THE ESTATE OF THE LATE KIPROTICH

ARAP KIMETO alias CHERUIYOT KIMETO (DECEASED)

KENDUIYWO KIPKIRUI.....PETITIONER

VERSUS

RUTH ROTICH.....OBJECTOR

JUDGMENT

1. The deceased herein KIPROTICH ARAP KIMETO alias CHERUIYOT KIMETO died intestate on 30/5/2007. The Chief's letter identified the following beneficiaries:-

1ST HOUSE

- (1) Recho Chepkorir Kimeto - Widow (Deceased)
- (2) David Rotich - Son (Deceased)
- (3) Samuel Rotich - Son (Deceased)
- (4) Paul Kenduiwa - Son
- (5) Robert Kiprono Rotich - Son
- (6) Joel Rotich - Son and
- (7) Ann Cherop - Daughter

2ND HOUSE

- (1) Rusi Chepkurui Kimeto - Widow (Deceased)
- (2) Richard Rotich - Son
- (3) Kenduiywo Kipkirui - Son
- (4) Kenduiwa Kipsang Simion - Son
- (5) John Kenduyiwa - Son and
- (6) Charles Kenduiywo - Son

2. The deceased left one Parcel of Land KERICHO/KIMULOT/562 measuring 15.5 Ha.
3. The grant of letters of Administration was first issued to RECHO CHEPKORIR KIMETO and KENDUIYWO KIPKIRUI on 26/1/2010.
4. The Petition was dismissed on 15/10/2018 for want of prosecution and upon Application dated 30/1/2020, the same was reinstated and the 2nd Petitioner applied for confirmation of grant. The 1st Petitioner who is now deceased was replaced by PAUL KENDUIYWO.
5. When the matter was listed for confirmation of grant, the parties agreed to share the property as follows:-

NAME PROPERTY SHARE OF HEIR

(a) KENDUIYWO KIPKIRUI KERICHO/KIMULOT/562 - 3.8 ACRES

(b) PAUL KENDUIYWO KERICHO/KIMULOT/562 - 3.8 ACRES

(c) ROBERT K. ROTICH KERICHO/KIMULOT/562 - 3.8 ACRES

(d) JOEL K. ROTICH KERICHO/KIMULOT/562 - 3.8 ACRES

(e) ANNA CHEROP KERICHO/KIMULOT/562 - NIL

(f) RICHARD K. ROTICH KERICHO/KIMULOT/562 - 3.8 ACRES

(g) KENDUIYWO KIPSANG

SIMION KERICHO/KIMULOT/562 - 3.8 ACRES

(h) JOHN KENDUIYWO KERICHO/KIMULOT/562 - 3.8 ACRES

(i) CHARLES KENDUIYWO KERICHO/KIMULOT/562 - 3.8 ACRES

(j) JANE CHEPKEMOI KERICHO/KIMULOT.562 - NIL

(k) ALICE BIRIR KERICHO/KIMULOT/562 - NIL

(l) MARY MELILET KERICHO/KIMULOT/562 - NIL

(m) STELLAH RUTO KERICHO/KIMULOT/562 - NIL

(n) EVERLINE CHERONO KERICHO/KIMULOT/562 - NIL

(o) LEAH ROTICH KERICHO/KIMULOT/562 - 1.9 ACRES

(p) RUTH ROTICH KERICHO/KIMULOT/562 - 1.9 ACRES

(q) HELLEN ROTICH KERICHO/KIMULOT/562 - 3.8 ACRES

6. The Petitioner proposed to share the 3.8 Acres allocated to DAVID ROTICH (Deceased) between his two widows Leah Rotich and Ruth Rotich but a dispute arose as to whether Ruth was the wife of David Rotich (Deceased).

7. The Court directed that the hearing of the objection proceeds by viva voce evidence.

8. Ruth (the Objector) called the following witnesses, Andrew Kipkoech Ngeno, Samwel Kimeto, Simion Kipngetch Too and Richard Rotich.

9. The Objector and her witnesses said the Objector was married to David Rotich (Deceased) under Kipsigis Customary Law in 1996 at the home of Samwel Kimeto.

10. The Respondent Leah Rotich also called Paul Kenduiywo, Elijah Rono and Joel Rotich as her witnesses. They said they did not know the Objector and they denied that the deceased David Rotich was married to the Objector.

11. The sole issue for determination in this objection is ***whether or not the Objector was married to the deceased David Rotich.***

12. The law requires that he who alleges a fact is duty bound to prove the same. **Section 107** of the Evidence Act provides that:-

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

13. The high court in *Mourine Mukonyo v Embu Water and Sanitation Company [2020] eKLR*, stated as follows: - ***“It is thus trite that in civil cases, a party who wishes the court to give a judgment or to declare any legal right dependent on a particular fact or sets of facts, that party has a legal obligation to provide evidence that will best facilitate the proof of the existence of those facts. The party must present to the court all the evidence reasonably available on a litigated factual issue.”***

14. In the current case, the Objector Ruth Rotich said the deceased David Rotich married her under Kipsigis Customary Law at the home of Samuel Kimeto

15. There is no evidence to show how the ceremony was performed and there is no indication whether dowry was paid to the Objector’s parents.

16. I find that the Uncle to the deceased David who testified as RW.3 by name Elijah Rono and two real brothers of the deceased David Rotich (RW.2 and RW.4) by name PAUL KENDUYWO and JOSEL ROTICH said the deceased David Rotich only had one wife and that is LEAH ROTICH. If the deceased DAVID ROTICH had married RUTH, his family would have known.

17. I find that there is no evidence that David Rotich was married to Ruth Chepkoech. She has failed to prove her case to the required standard and I rule that she is not entitled to a share in the Estate of David Rotich.

18. The share of 3.8 Acres to be registered in the name of LEAH ROTICH as the widow of David Rotich.

19. The certificate of confirmation to issue accordingly and a fresh grant to be issued to PAUL KENDUIYWO and KENDUIYWO KIPKIRUI to distribute the Estate.

Delivered, dated and signed at Kericho this 25th day of March, 2022.

A. N. ONGERI

JUDGE