



REPUBLIC OF KENYA



**Salome Chemwei v Gladys Sabai Maritim & another (Probate & Administration
196 of 2015) [2022] KEHC 12451 (KLR) (24 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12451 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 196 OF 2015
RN NYAKUNDI, J
AUGUST 24, 2022**

BETWEEN

SALOME CHEMWEI PROTESTOR

AND

GLADYS SABAI MARITIM 1ST RESPONDENT

BENJAMIN KIMURSI LAMAI 2ND RESPONDENT

RULING

1. This matter relates to the estate of Maritim Kitui Mariko, who died on 14th December 2008. Representation to his estate was issued by the lower court on 10th March 2020 to Salome Chemwei, the protestor herein, and Gladys Sabai Maritim and Benjamin Kimursi Lamai the respondents herein.
2. The three administrators Salome Chemwei, Gladys Sabai Maritim and Benjamin Kimursi Lamai subsequently filed for summons for confirmation of the grant on 17th August 2021, but before the said summons could be heard, the 1st administrator, Salome Chemwei moved this Court through affidavit of protest against confirmation of the said grant.

The Summons for confirmation of Grant

3. Vide the summons for confirmation of grants dated 17th August 2021, the administrators sought for confirmation of the grant of letters of administration made to them on 10th March 2020. A consent to the mode of distribution was also filed which consent was signed all the beneficiaries. A perusal of the said consent shows that provisions were also made for the purchasers.

The Protestor's case

4. The protestor filed her affidavit of protest against confirmation of grant sworn on 20th September 2021 where she avers that the summons for confirmation of Grant and the mode of distribution is contrary



to her instructions. According to the protestor, the application was hurriedly presented to her for endorsement but after her advocate on record read to her the said application in detail, she contests the same as from the 94.175 acres, they agreed as co administrators to have the same shared equally amongst the 3 houses of the deceased. It was her contention that the 1st house where she represent has 3 issues of the marriage being; Abdi Mutai Maritim, Leah Chengal and Hosea Kiprotich Maritim who is represented by his widow Emily Chepkoech. The protestor was categorical that before the demise of her husband, there were only two purchasers from her share being Tuigoi Primary School who bought 3 acres and Joyce Mmbone who bought 1 acre. She contended that the alleged purchasers as listed on her supposed house are all false save for Tuigoi Peimary School and Joyce Mmbone and that the supposed 94.175 acres ought to be distributed into 3 houses in the ration of 31 acres per each of the three houses. She maintained that from her supposed share of 31 acres in the suit land TurboWest/ Osorongai Block 1(Chepterwa)4 measuring 94.175 acres, the same ought to be distributed as follows;

- a. Tuigoi Primary School 3 acres
 - b. Joyce Mmbone Oyiyo 1 acre
 - c. Abdi Mutai Maritim 8 acres
 - d. Emily Cheokoech Maritim 8 acres
 - e. Leah Changal 8 acres
 - f. Salome Chemwai(remainder) 3 acres
5. The protestor stated that the other purchasers listed on the pat of the first house are all introduced by Abdi Mutai Maritim and Emily Chepkoech Maritim who have been selling portions of the deceased estate before succession was done. The protestor revealed that the purchasers namely; Daniel Kipkemboi Mutai, Henry Kipwambok Mutai, Eliud Kipchichir Rotich and Paul Sitienei Kiorop are all children of Abdi Mutai Maritim who is a beneficiary and as such should benefit from Abdi Mutai's share.
 6. It was the protestor's contention that the remainder purchasers were all introduced by Abdi and Emily who should get their supposed portion and shares from the people they purchased from.
 7. Pursuant to those directions, the co-administrator filed an affidavit on 6th May 2022 where he concedes to the protestor's averment that indeed each of the deceased 3 houses was to get 31 acres out of the 94.175 acres of parcel of land known as Turbo West/ Osorongai Block 1 (Chepterwai)4.
 8. Mr Benjamin Kimursi Lamai further confirms that indeed the 3 houses have sold their parcels of land to the many purchasers listed in the consent to the mode of distribution as per the breakdown in the affidavit.
 9. In the end, Mr Lamai contended that the issues of House 1 as protested should not be visited upon the 2 other houses as the purchasers therein have already taken possession and they are all living together in peace. The court was then urged to confirm the grant.

Determination

10. After going through the pleadings and the affidavits on record, I find that the only issue for determination is whether the protest is merited.
11. From the affidavit of protest and the affidavit filed by Mr Benjamin Kimursi Lamai, it would appear that the trouble in paradise is only with regard to House No. 1. It is not disputed that each of the houses was allocated 31 acres from the deceased estate.



12. From the affidavit of protest, the protestor has alleged that her son Abdi Mutai and daughter in law Emily Chepkoech Maritim have been selling land to the purchasers listed in the consent to the mode of distribution from her house share of 31 acres.
13. This position has not been disputed. In fact, from the affidavit of Benjamin Lamai, I have perused the land sale agreements which were annexed and I find that indeed the two beneficiaries sold some parcels of land to third parties.
14. I have taken cognizance of the fact that the house 1 got 31 acres and from the proposed mode of distribution the protestor is amenable to 3 acres, the three beneficiaries namely Abdi Mutai, Emily Chepkoech and Leah Changal are all entitled to 8 acres each while the two purchasers Tuigoi Primary school and Joyce Mmbone are entitled to 3 acres and 1 acre respectively.
15. Having said that I find that the two beneficiaries namely Abdi Mutai and Emily Chepkoech will share their portions of 8 acres each with the respective buyers they sold their portions to in the following terms;
 - a. Henry Ikhesi Athanga 0.2 acres
 - b. David Tum Kemboi 1.6 acres
 - c. Shadrack Kipsang Rotich 0.2 acres
 - d. Roda Odero Kageha 0.5 acres
 - e. Julius Kiptoo Chirchir 1 acre
 - f. Richard Y Oviyo 1 acre
 - g. Livingstone Kipyegon Ruto 0.1 acre
 - h. Tuigoi Primary School 2 acres
 - i. Daniel Mutai s/o Abdi sold to Ismael Simiyu 0.2 ¼ acres

Remainder 1.175 acres to ABDI MUTAI MARITIM

Land sold to third parties by Emily Chepkoech Maritim

- a. Mark Malova Induri 0.3 acres
- b. John Siekisa Misiko 0.4 acres
- c. Paul Kiprop Sitienei 1 acre
- d. Nemia Kipkosgei Birgen 1 acre
- e. Veronika Jematia Lagat 1.6 acres
- f. David Kipruto Meli 0.125 acres

Remainder of 3.575 acres to Emily Chepkoech Maritim

As a consequence, having considered the affidavit of protest and material evidence as instructive of this succession cause I am satisfied that section 38,40, 41 & 42 of the Act provides the anchor upon which the distribution of the intestate estate should be modeled by this court. the only rider being the amendment as regards to house No.1 as outlined elsewhere in this ruling. I accordingly allow for confirmation of grant so issued to the administrators with ensuing amendments.

DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 24TH DAY OF AUGUST, 2022.



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R. NYAKUNDI
JUDGE

