



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CIVIL APPEAL NO. 30 OF 2008

PRICILA CHEBET SANG.....APPELLANT

V E R S U S

KIPKURUI ARAP MILGO (Sued as the Legal Representative of the

Estate of the Late MOROGO CHEBASI.....RESPONDENT

(Being an Appeal from the Ruling delivered on 15/12/2017 by HON. LIMO BII BENJAMIN (RM) in Kericho CM Succession Cause No.58 of 2016 in the Estate of Morogo Chebasi (Deceased)

JUDGEMENT

1. The Trial Court ordered on 15th December, 2017 that the Appellant be included as a beneficiary of the Estate of the Deceased and the Estate be distributed as follows:-

- | | |
|----------------------------|-----------------------------------|
| (a) Kipkurui Arap Milgo | -Kericho/Kiptere/1641-10.6 Acres |
| (b) Kipkorir Arap Milgo | -Kericho/Kiptere/1641-13 Acres |
| (c) Stanley Kipyegon Milgo | -Kericho/Kiptere/1641-7.70 Acres |
| (d) William Kipkemoi Milgo | -Kericho/Kiptere/1641-11 Acres |
| (e)Kaptingei Arap Chabas | -Kericho/Kapleartet/404-0.4 Ha. |
| (f) Pricila Chebet Sang | -Kericho/Kapleartet/404-0.4 Ha. |
| (g) Daniel Kipkoech Kirui | -Kericho/Kapleartet/404-9.7 Acres |

2. The Appellant filed this appeal against the said order. The parties were directed to proceed through written submissions.

3. The parties filed their written submissions which I have duly considered.

4. The Appellant in her submissions claims that land parcel KERICHO/KAPLELARTET/404 does not constitute the deceased's estate. The Appellant has not furnished the court with evidence to support this claim.

5. The Appellant further claims that she will be prejudiced if KERICHO/KAPLARTET/1641 is not redistributed equally among her and her brothers.

6. The Appellant further claims that no consensus was arrived at by the parties on the mode of distribution.

7. The Respondent in his submissions claims that the Appellant failed to file her proposed mode of distribution and the Trial Court relied on the Respondent's proposed mode, which took into account the interests of the Appellant.

8. I hereby find that the mode of distribution was discriminatory towards the Appellant who was allocated 0.4 hectares of

KERICHO/KAPLELARTET/404, the failure of the Appellant to file her preferred mode of distribution at the Trial Court, did not warrant unequal and/or discriminatory distribution of the deceased's estate.

9. It is not clear what criteria was used given all the beneficiaries are entitled to equal distribution of the deceased's estate.

10. The petitioner to file a summons for rectification to share the estate equally.

11. The matter to be heard by any other court other than the court that confirmed the grant.

12. All beneficiaries including the married daughter to appear in court to confirm if she has relinquished her right to the estate.

13. The Appeal is allowed. However, this being a family matter each party to bear its own costs.

Delivered, signed and dated at Kericho this 22nd day of March, 2021.

A. N. ONGERI

JUDGE