

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NO. 194 OF 2004

IN THE MATTER OF THE ESTATE OF TAPOYO ARIMUK SILAURE (DECEASED)

JAMES MUSA TAPOYO.....PETITIONER/RESPONDENT

VERSUS

JOYCE KIMOMWOR TAPOYO.....APPLICANT/OBJECTOR

RULING

Joyce Kimomwor Tapoyo is the daughter of the deceased, **Tapoyo Arimuk Silaure**. She is married. The deceased had two wives and two parcels of land. It is not in dispute that each widow and her children are entitled to inherit. The 1st wife and her children are entitled to inherit **LR No. West Pokot/Keringet "A"/2428** measuring **5.26 Hectares** while the 2nd wife and her children are entitled to inherit **LR No. West Pokot/Siyoi "A"/4244**. There is no dispute in respect of the inheritance due to the 1st wife and her children. There is a dispute in relation to the inheritance of the land that the children of the 2nd wife were to distribute. From the pleadings filed in court, it was clear that the Applicant, as the daughter of the deceased was excluded from benefiting from the estate of her deceased father. The reason given by the Petitioner/Respondent is that she is married and therefore entitled to benefit from her husband.

Section 40 of the Law of Succession Act recognise all the children of the deceased, including sons and daughters as beneficiaries of the estate of the deceased. This is more so where the deceased was polygamous. In the present application, it is clear that there was no basis for the exclusion of the Applicant as a beneficiary of the estate of the deceased. She is a dependant of the deceased as envisioned under **Section 29 of the Law of Succession Act**. It does not matter her marital status. She has not renounce her right to be considered as a beneficiary of the estate of her deceased's father's estate. The deceased died intestate and did not leave behind any Will. The properties that comprise his estate shall be distributed in accordance with the provisions of the **Law of Succession Act**.

In the premises therefore, the proposed distribution contained in the Rectified Certificate of Confirmation of Grant issued by this court on **23/7/2020** is hereby set aside as it relates to the property known as **West Pokot/Asiyoi "A"/4244**. Any survey or subdivision done is hereby declared null and void. If any registration has been done the same is hereby ordered cancelled.

The Petitioner is ordered to present another application for Confirmation of Grant in respect of parcel of land **No. West Pokot/Siyoi "A"/4244** to the court where the Applicant shall be included as a beneficiary and her share clearly specified. The Applicant shall be at liberty to file an affidavit in court giving her proposal on what her share should be. The Petitioner shall file and serve the said application within **(14) days**. The Applicant shall file the affidavit referred to above within seven **(7) days** of being served. Mention on **20/7/2021** to confirm compliance.

It is so ordered.

Dated at Kitale this 21st day of April, 2021.

L. KIMARU

JUDGE

20/4/2021