



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**SUCCESSION CAUSE NO. 14 OF 2014**

**IN THE MATTER OF THE ESTATE OF THE LATE SAMWEL MARITIM**

**CHUMEK alias MARITIMA ARAP CHUMEK (DECEASED)**

STEPHEN KIPRONO MARITIM.....1<sup>ST</sup> PETITIONER

STANLEY SANG.....2<sup>ND</sup> PETITIONER

ONESMUS KIPKIRUI ARAP MARITIM.....3<sup>RD</sup> PETITIONER

**VERSUS**

RAEL CHEROTICH CHUMEK.....PROTESTOR (DECEASED)

**J U D G M E N T**

1. The Deceased herein **SAMUEL MARTIM CHUMEK** alias MARITIM ARAP CHUMEK (hereafter referred to as the Deceased) died on 7<sup>th</sup> April, 1979 at SIGOR Location leaving behind several beneficiaries comprising of three houses.

2. The deceased had the following properties:-

(i) KERICHO/KYOGONG/238 (23.0 HA)

(ii) KERICHO/TUMOI/547 (10.2 HA)

(iii) KERICHO/TUMOI/2 (5.0 HA)

3. The grant of letters of Administration was issued on 26/5/2014 to the following Petitioners

(i) STEPHEN KIPRONO MARITIM

(ii) STANLEY SANG

(iii) ONESMUS KIPKIRUI ARAP MARITIM

4. When the three Petitioners filed a summons for confirmation dated 23/3/2015, they proposed that the Estate be shared equally. RAELI CHEROTICH CHUMEK (now deceased) who was the 3<sup>rd</sup> widow of the deceased filed a protest to the summons for confirmation dated 17/9/2015.

5. The Court directed that the Protest be heard by way of viva voce evidence. The Protestor died after she had given evidence and the Petitioners applied to Court to dismiss her protest.

6. The Court directed in its ruling dated 20/5/2020 that the protest be determined by the Court on the basis of the evidence on record.

7. I have considered the evidence on record in this case together with submissions filed by the parties dated 22/5/2018 and 19/2/2021 respectively.

8. The Protestor said she got married to the deceased in 1944 and they were blessed with eleven (11) children (8 daughters and 3 sons.)
9. The Protestor who was the 3<sup>rd</sup> wife of the deceased said she always resided at Tulwetab musonik. She said the 1<sup>st</sup> wife had 7 children and she resided at Kipsegon before she died. The 2<sup>nd</sup> wife lived at Cheronget. She also said the deceased had settled and had distributed his property to all his three wives.
10. The Petitioners also said the deceased sold cows and bought Land for FENICHA who is a son of the 1<sup>st</sup> wife and WILLIAM – a son of the 2<sup>nd</sup> wife. The Protestor wanted the property to be distributed the way the deceased had distributed it.
11. The Protestor called ERASTUS MARITIM KOMASGOI JOEL as her witness. He adopted his statement filed in Court in which he stated that he is the first born of the deceased and the Protestor. He stated in the statement that the deceased had made his last wishes known to JEREMIAH KIBET KOSGE who was their herdsman.
12. He stated in his statement that in 1979 when his father's health deteriorated, he was called home and he stayed with his father for two weeks before his demise.
13. He wrote that after the deceased was buried, there was a family meeting in which the last wishes of their father were read to them and some specific bequests of some cattle given to specific members. They were told to stay where they were living and they have been settled for 35 years.
14. The Petitioners witnesses were as follows:-
- (i) SAMUEL KOSONEY CHUMEK
  - (ii) LIZA MARITIM
  - (iii) WILLIAM KIPTONUI MARITIM
  - (iv) STEPHEN KIPRONO MARITIM and
  - (v) ONESMUS KIPKIRUI MARITIM
15. The gist Petitioners' evidence was that the Estate should be shared equally, the 3<sup>rd</sup> Petitioner ONESMUS KIPKIRUI MARITIM who is also the son of the Protestor said they had a meeting on 12/8/2011 in which they agreed on how to distribute the properties.
16. I have considered the submissions filed by the parties. The issues for determination in this case are as follows:-
- (i) Whether the deceased left an Oral Will.
  - (ii) Whether the Law of Succession Act is applicable in this case.
  - (iii) Whether the deceased had distributed his property.
17. On the issue as to whether the deceased left an Oral Will, the Protestor and her witness in their statements said the deceased called witnesses and expressed how the property should be distributed.
18. However, the said witnesses were not called to testify in this case and I find that there is no evidence that the deceased left a Will – Oral or Written.
19. On the issue as to whether the Law of Succession Act is applicable in this case, I find that there is no dispute that the deceased died in 1979 before the Law of Succession Act came into operation and for that reason, the Law of Succession Act is not applicable.
20. I accordingly find that the Law of Succession Act does not apply by dint of Section 2 of the Law of Succession Act which states as follows:-
- “2. Application of Act**
- (1).....**
- (2) The Estate of Person dying before the commencement of this Act are subject to the written Laws and Customs applying at the time of death”.**
21. I find that the deceased had distributed his property and settled his family and that could be the reason the succession cause was not filed for 35 years from 1979 when the deceased died until 2014 when this suit was filed.

22. I accordingly uphold the Protest and direct that the property be distributed in accordance with Kipsigis Customary Law.

23. Although the administration of the Estate was sought after the Law of Succession Cause came into operation, the distribution should be governed by the law applicable before the Law of Succession Act came into operation.

24. This being a family dispute, each party to bear it's own costs of the Application. Leave to appeal 28 days granted.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 16<sup>TH</sup> DAY OF APRIL, 2021.**

**A. N. ONGERI**

**JUDGE**