



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NO. 191 OF 2006

IN THE MATTER OF THE ESTATE OF KIPERENGE PAPAREWA MIAPAEN – DECEASED

BENSON CHAMPU KEBERWO.....PETITIONER

JUDGMENT

The deceased to whose estate these proceedings relates, Kiperenge Paparewa Miapaen died on 24th December 2000. He left behind four beneficiaries namely Benson (Benson) Champu Kaberwo (son) , Rebecca (Rebecca) Chepkuto, (daughter), Alice (Alice) Chesang (daughter) and Dorcas (Dorcas) Chepkemoi (daughter).

Rebecca and Alice are married, though, according to the evidence adduced, they have both returned to their parents’ home. Their return was after the death of the deceased. Dorcas is not married though she has children.

There is no dispute that all the beneficiaries reside on the parcel of land known as LR No. West Pokot/Siyoi”A”/xxx measuring 20.7 acres.

A dispute has arisen on how the said property that comprise the only asset of the deceased’s Estate should be distributed to the beneficiaries.

Benson proposes that he gets 13.7 acres while Rebecca and Alice should get 2 acres each. He attributes the above proposal to the fact that the two are married and have land elsewhere. As for Dorcas, he proposes that she gets 3 acres. On her part, Rebecca proposes that each daughter gets 6 acres while Benson should inherit 3 acres.

This court is heartened that the parties to these proceedings recognize that daughters, irrespective of their marital status are dependants within the meaning of **Section 29(a)** of the **Law of Succession Act**. The Section talks of “children of the deceased” and not sons or daughters. It appears from the evidence adduced that the reason Rebeca gave the proposal that she did was because she is of the view that since Benson is possessed of a 2 ½ acre parcel of land that he inherited from the deceased at a place called Kabolet, then he deserves the acreage that she has proposed. However, it was apparent that the particular parcel of land is not listed as a property that comprise the estate of the deceased, nor is it registered.

In the circumstances therefore, this court shall exclude it for consideration in the distribution.

Under **Section 38** of the **Law of Succession Act**, the net intestate of the deceased, where no spouse survived the deceased, shall be equally divided among the surviving children. In distribution the net Intestate estate of the deceased, the court shall take into account the provisions of **Section 28** of the **Law of Succession Act** which, *interalia*, requires the court take into account the nature and amount of the deceased property and the general circumstances of the case including the existing and future needs of each beneficiary.

In the present case, it was clear to the court that Benson and Dorcas, having resided on the suit parcel of land all their lives will get bigger shares compared to Rebecca and Alice who, by virtue of their marriage , have other parcels of land. Evidence was adduced that confirmed that Rebecca and Alice moved back to the suit parcel of Land many years after the death of the deceased to whose estate these proceedings relate, presumably to lay a claim for a bigger share from the net intestate estate. The court is mandated to consider the equitable distribution to the beneficiaries so that each beneficiary has a fair inheritance from their deceased’s parent.

In the premises therefore, the net intestate estate sole property that comprise the estate of the deceased being L.R. No. West Pokot/Siyoi ‘A’/275 shall be distributed as hereunder:

- 1) Benson Champu Kaperewo 8 Acres
- 2) Rebecca Chepkuto Kaparewo 3.85 Acres

3) Alice Chesang3.85 Acres

4) Dorcas Chepkemoi 5 Acres.

For the avoidance of doubt, Rebecca and Benson shall inherit the portion of land (on the ground) that they are said to have sold to third parties. Each of them shall adopt their respective purchasers in the distribution scheme.

This court further orders and directs that the County Surveyor, West Pokot County shall, within 60 days, survey and subdivide the suit parcel of land so that each beneficiary (together with the purchasers) under whom they claim title from the particular beneficiary) can access his/her inheritance. The public utilities such as roads shall be obtained prorata from each beneficiary's parcel of land.

The cost of the survey and sub division shall be borne by the beneficiaries prorata to their respective acreages. There shall be no orders as to costs as this is a family dispute.

DATED AT KITALE THIS 19TH DAY MAY 2021.

L. KIMARU

JUDGE