



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 9 OF 2019**

**IN THE MATTER OF THE ESTATE OF THE LATE MOSES CHESONDIN YATOR – DECEASED**

**SAMUEL KIPKOSGEI YATOR.....1<sup>ST</sup> PETITIONER**

**ALICE ADHIAMBO YATOR.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**ESTHER NANDUTU.....1<sup>ST</sup> OBJECTOR**

**EDWIN KIPCHUMBA CHESONDIN.....-2<sup>ND</sup> OBJECTOR**

**ESTHER NJERI MUNGAL.....3<sup>RD</sup> OBJECTOR**

**RULING**

Moses Chesondin Yator, the deceased to whose estate these proceedings relate served this country with distinction as an officer in the Kenya Defence Forces. His military service spanned a period of over thirty (30) years by which time he had risen through the ranks to the final rank of Brigadier – General at the time of his retirement in 2006. A part of his military service was served as a defence Attaché at the Kenya Embassy in Washington, United States of America. At the time of his untimely death, on 3<sup>rd</sup> March 2018 he was undertaking farming activities in Trans- Nzoia County.

A year after his death, Samuel Kipkosgei Yator (the deceased's step brother) and Alice Adhiambo Yator (the deceased's widow) petitioned the court to be issued with a grant of letters of administration intestate to administer the estate of the deceased. The deceased died intestate. The administration of the estate of the deceased has been frustrated by various claims which have been filed by persons seeking to be recognized as beneficiaries of the estate of the deceased, and others seeking to be provided from the estate pending the distribution of the properties that comprise the estate of the deceased to be beneficiaries. A substantial part of these applications have been disposed off.

As regards who the beneficiaries of the estate of the deceased are, the only issue that remains for determination is whether the 1<sup>st</sup> Petitioner, Samuel Kipkosgei Yator is a beneficiary of the estate of the deceased. In determining this question, this court heard viva voce evidence from the contesting parties.

From the oral and documentary evidence adduced, the following is the case of the 1<sup>st</sup> Petitioner;

The 1st Petitioner testified that he was a step brother of the deceased. He was employed by the deceased in 1983 as his farm manager. This was the period that the deceased was serving in the military. The 1<sup>st</sup> petitioner told the court that he worked for the deceased until the time of his death. He explained that during the period of service, he was not remunerated. Instead, the deceased promised that he would compensate him in kind in the year 2025. The deceased did not indicate what form of or kind the compensation would take but the 1st Petitioner understood the compensation would be in form of land, specifically five (5) acres of land at Kapomboi. The 1<sup>st</sup> Petitioner told the court that during the deceased's lifetime he resided on the land until the year 2019 when a son of the deceased by the name Kipchumba evicted him from the land.

It was the 1<sup>st</sup> Petitioner's case that although there was no document witnessing this understanding between himself and the deceased, the deceased's widow, the 2nd Petitioner was privy to this information. The 2<sup>nd</sup> Petitioner, in her evidence, told the court that the deceased had informed her that he would compensate the 1<sup>st</sup> Petitioner by giving him a portion of land measuring five (5) acres at Kapomboi in Trans - Nzoia County. She corroborated the 1<sup>st</sup> Petitioner's testimony by stating that during the entire period that the 1<sup>st</sup> Petitioner was in the deceased's employment, he was not paid. She however admitted that the deceased gave the 1<sup>st</sup> Petitioner part of the land to cultivate so that he could support his family from the harvested produce. The 2<sup>nd</sup> Petitioner conceded that since she relocated to the United States of America

in 2005, he has been away from Kenya for a period of twenty since (26) years. Her communication with the deceased during this period was via mobile telephony. She confirmed that there is nothing written in form of email communication that supports her testimony as to the deceased's intention to compensate the 1<sup>st</sup> Petitioner with a five (5) acre piece of land. The 1<sup>st</sup> Petitioner testified that after his expulsion from the suit parcel of land, he now resides on a two acre parcel of land neighbouring the said parcel of land belonging to his sister Rosalind Yator. He conceded that he is entitled to an inheritance of land from his late father at Chepkorio – Keiyo and also in Kipsangui, uasin Gishu County.

The Objectors called two witnesses in opposition to the 1<sup>st</sup> Petitioner's case. The two witnesses are Edwin Chesondin (the deceased's son) and Esther Kimaiyo (the deceased's sister). It was their case that indeed the deceased employed the 1<sup>st</sup> Petitioner as a farm manager between the years 1983 and 1999. The deceased paid the 1<sup>st</sup> Petitioner for his services. Upon his return from the United States of America, he employed one Christopher Kangogo as his farm manager. They testified that indeed the deceased recognized the services that the 1<sup>st</sup> Petitioner had rendered to him during his absence. In that regard, the deceased bought the 1<sup>st</sup> Petitioner a ten (10) acre parcel of land which the 1<sup>st</sup> Petitioner later sold.

When this issue of the purchase of the ten (10) acres of land was put the 1<sup>st</sup> Petitioner, he admitted that indeed the deceased had purchased for him the said parcel of land. He however explained that the particular parcel of land was bought using his potato sale proceeds which he gave to the deceased to purchase the land on his behalf. The 1<sup>st</sup> Petitioner did not however present to court any documentary evidence to support his assertion that he had given the purchase consideration of the said ten (10) acre piece of land to the deceased.

The Objectors asserted that the 1<sup>st</sup> Petitioner was adequately compensated by the deceased when he bought the 1<sup>st</sup> Petitioner the ten (10) acre piece of land. The Objectors were not impressed by the 2<sup>nd</sup> Petitioner's support of the 1<sup>st</sup> Petitioner's claim. They were of view that the 1<sup>st</sup> Petitioner is entitled to inherit land from his late father at Chepkorio in Keiyo and Kipsangui in Uasin Gishu County. The 1<sup>st</sup> Petitioner had no claim whatsoever the properties that comprise the estate of the deceased and should not therefore be considered as a beneficiary. In essence, it is the objectors' case that the 1<sup>st</sup> Petitioner is not entitled to any of the properties that comprise the estate of the deceased.

This court has carefully evaluated the evidence adduced by the parties to the case. This court takes the following view of the matter:

1) It was not disputed that the deceased at one time employed the 1<sup>st</sup> Petitioner. Both Petitioners and Objectors are in agreement that the 1<sup>st</sup> Petitioner worked for the deceased in the capacity of farm manager between 1983 and 1999.

2) Where they diverge is the 1<sup>st</sup> Petitioner's claim that he worked for the deceased upto the time of his death in 2018. On their part, the Objectors' are emphatic that upon his return from the United States of America in 1999, the deceased employed one Christopher Kangogo as his farm manager. This was in the year 2000.

This court's assessment of the evidence, to the evidential standard of proof on a balance of probabilities, leads it to the conclusion that it was more likely than not that the deceased took over the management of his farming activities when he returned from the United States of America. There was no reason for the deceased to maintain the 1<sup>st</sup> petitioner in his employment when he decided to employ a farm manager by the name Christopher Kangogo. The 1<sup>st</sup> Petitioner did not controvert the Objector's evidence that indeed the deceased had employed a farm manager in the year 2000, a year after his return from the United States of America. This court holds that the deceased took over the management of his affairs upon his return to the Country in 1999. Further, upon his retirement in 2006, he spent all his time at the farm obviating the need to rely on the 1<sup>st</sup> Petitioner as his eyes and ears in the farm.

3) The 1<sup>st</sup> Petitioner claimed that during the entire period that he was in the employment of the deceased he was not paid. The Objectors disputed this fact. A closer consideration of the Petitioners' testimony in this regard was contradictory; on the one hand, the 1<sup>st</sup> Petitioner said he was not paid but on the other hand it is his case that he was allowed to cultivate part of the deceased's parcel of Land to enable him earn an income to support his family. This court finds it incredible that the 1<sup>st</sup> Petitioner would have worked for a period of sixteen (16) years without some form of remuneration. The more likely scenario, on assessment of the evidence, is that the 1<sup>st</sup> Petitioner was remunerated by the deceased but with the caveat that he would be recognized for taking care of the deceased's properties when he worked out of the country in the United States of America.

4) The other issue is whether the deceased compensated the 1<sup>st</sup> Petitioner following the recognition of the role that he (the 1<sup>st</sup> petitioner) played when the deceased was out of the country. On evaluation of the evidence, it is clear to this court that indeed the deceased compensated the 1<sup>st</sup> Petitioner by purchasing for him a ten (10) acre parcel of land in Trans-Nzoia County. The 1<sup>st</sup> Petitioner does not dispute this fact. He confirmed that the deceased purchased the said ten (10) acres from his neighbour one Charles Kimutai Chebore and had it transferred to him. However, it is the 1<sup>st</sup> Petitioners' case that he gave the deceased money from the proceeds of his potato harvest to purchase this land. What was the more likely situation? This court is not persuaded that the 1<sup>st</sup> petitioner had that kind of money that would have enabled him to purchase the said parcel of land. It is more likely than not that the deceased purchased the said parcel of land for the 1st Petitioner in fulfilment of his promise to recognize what he had done when he took care of his properties when he was out of the country. It is also instructive that the 1<sup>st</sup> petitioner sold the said parcel of land in 2018 then started laying claim on the deceased's parcel of land at Kapomboi. This court found it incredible that the 1<sup>st</sup> Petitioner would sell his ten (10) acre piece of land and then chose to reside on his sister's parcel of land. This court therefore holds that the 1<sup>st</sup> Petitioner has no claim over the properties that comprise the estate of the deceased. If there was any claim, the same was settled when the deceased purchased for the 1st Petitioner the ten (10) acre piece of land. The 2<sup>nd</sup> Petitioner's evidence in that regard is discounted since she was out of the country the entire time the transaction took place. She could therefore not be privy to the going ons at the time.

Having so found, what are the orders that commend itself to the court in order to resolve this case?

i) The court having held that the 1<sup>st</sup> Petitioner has no claim over the properties that comprise the estate of the deceased, holds that he is not one of the deceased's beneficiaries as provided under Section 29(b) of the Law of Succession Act. The court proceeds to remove him as a party to these proceedings.

ii) Under Section 66 of the Law of Succession Act, the persons who have priority in petitioning the court to administer the estate of a deceased are the following;

- a) A spouse
- b) Other beneficiaries entitled on intestacy (i.e. children of the deceased)
- c) Public Trustee
- d) Creditors

iii) Since the 1<sup>st</sup> Petitioner petitioned the court partly as a creditor, and since the court has held that the estate of the deceased does not owe him anything, he ceases to be recognized as such.

iv) To enable the conclusion of the administration of the estate of the deceased, this court appoints the following to be the administrators of the estate of the deceased;

- a) Alice Adhiambo Yator (widow)
- b) Edwin Kipchumba Chesondin (son)
- c) Two other beneficiaries to be agreed by the family or if not to be appointed by the court.
- d) There shall be no orders as to costs because this was a family dispute.

It is so ordered.

**DATED AT KITALE THIS 26TH DAY OF OCTOBER 2021.**

**L. KIMARU**

**JUDGE**