



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KERICHO

SUCCESSION CAUSE NO.148 OF 2014

IN THE MATTER OF THE ESTATE OF SOFIA CHIRCHIR ARAP TINA Alias SOFIA CHEPKOECH CHIRCHIR - (Deceased)

BORNES CHELANGATPETITIONER

VERSUS

SARAH CHEPKEMOI KIRUI.....OBJECTOR

JUDGMENT

1. The deceased herein **SOFIA CHEPKOECH CHIRCHIR** (deceased) died on 26/9/2006.
2. The deceased was a woman “husband” to two women, **ESTHER TAPLELEI (now deceased)** and **SARAH CHEPKEMOI KIRUI (the protestor)**, Both were “married” under Kipsigis Customary Law.
3. **ESTHER TAPLELEI** (deceased) also “Married” **BORNES CHELANGAT** under Kipsigis Customary Law.
4. **BORNES CHELANGAT** petitioned for letters of Administration and was issued a grant dated 13/11/2014.
5. The petitioner **BORNES CHELANGAT** filed a summons for confirmation dated 18/6/2015. **SARAH CHEPKEMOI KIRUI** objected to the confirmation of grant on the basis that **BORNES CHELAGAT** who was “married” to **ESTHER TAPLELEI** (deceased) and not **SOFIA CHEPKOECH CHIRCHIR** (deceased herein) and was therefore not directly related to the deceased herein **SOFIA CHEPKOECH CHIRCHIR** (deceased).
6. On 6/3/2018 the grant of letters of Administration was amended and the same was issued to **BORNES CHELANGAT** and **SARAH CHEPKEMOI KIRUI** jointly.
7. The protest proceeded by viva voce evidence. I find that there is evidence which is not disputed that the deceased herein “married” **SARAH CHEPKEMOI KIRUI** and **ESTHER TAPLELEI** (deceased) who gave birth to two daughters namely;
 - i. **FAITH CHEPNGENO and**
 - ii. **CAROLINE CHEBET**
8. **SARAH CHEPKEMOI KIRUI** gave birth to the following children;
 - a. **REUBEN CHEPKWONY**
 - b. **SAMWEL CHEPKWONY**
 - c. **ALFRED CHEPKWONY**
 - d. **NANCY CHEROTICH**
 - e. **EDNA CHELANGAT**

f. DAISY CHEPKURUI

9. ESTHER TAPLELEI (deceased) also “married” **BORNES CHELANGAT** while the deceased herein was still alive. **BORNES CHELANGAT** gave birth to the following children;

a. ALEX KIMUTA

b. ENOCK KIPKOECH

c. FAITH CHEPKEMOI

d. IAN KIPROTICH and

e. IMMANUEL KIPKEMOI

10. The issues for determination in the protest filed by **SARAH CHEPKEMOI KIRUI** dated 16/2/2016 are as follows;

i. Whether BORNES CHELANGAT is a beneficiary of the Estate of the deceased herein SOFIA CHEPKOECH CHIRCHIR (deceased).

ii. How the Estate of SOFIA CHEPKOECH CHIRCHIR (deceased herein) should be shared.

11. On the issue as to whether **BORNES CHELANGAT** is a beneficiary of the Estate of **SOFIA CHEPKOECH CHIRCHIR** (deceased herein), I find that there is evidence which is not disputed that **BORNES** was “married” to **ESTHER TAPLELEI** (deceased) under Kipsigis Customary Law. **ESTHER TAPLELEI** (deceased) was also married to **SOFIA CHEPKOECH CHIRCHIR** (the deceased herein).

12. ESTHER TAPLELEI (deceased) “married” **BORNES** because she gave birth to two daughters and she was looking for a male child to inherit her.

13. Upon the demise of **ESTHER TAPLELEI** (deceased), **BORNES** was entitled to inherit her woman husband’s share of the Estate of **SOFIA CHEPKOECH CHIRCHIR** (the deceased herein).

14. Justice J.B Ojwang’ (as he then was) in *Monica Jesang Katam versus Jackson Chepkwony & another (2011) eKLR*, while acknowledging the validity of the woman-to-woman marriages and the inheritance rights of the parties to such arrangements held as follows: *“I have concluded that the consistency in the testimonies of the petitioner’s witnesses shows the evidence to be truthful. The research-material referred to, shows this to have been the typical condition in which a woman-to-woman marriage takes place; and the testimonies show such a marriage to have taken place on 16th October, 2006. It is, therefore, not true as the objectors say, that the petitioner was only a servant; on the contrary, she was a “wife”, and, by the operative customary law, she and her sons belonged to the household of the deceased, and were entitled to inheritance rights, prior to anyone else. This custom, I hold, is to be read into the scheme of s. 29 of the Law of Succession Act (Cap. 160), placing the petitioner and her children in the first line of inheritance: the petitioner herself for being “wife of the deceased”, and her children for being the children of the deceased. The conclusion is to be drawn that the petitioner herein is entitled to the grant of letters of representation.”*

15. I accordingly find that **BORNES CHELANGAT** is a beneficiary of the Estate of **SOFIA CHEPKOECH CHIRCHIR** (the deceased herein) by virtue of having been “married” to the deceased herein.

16. The daughters of **ESTHER TAPLELEI** (deceased) are also entitled to inherit unless they renounce their share.

17. On the issue as to how the Estate should be shared, I have perused the record and I find that the initial summons for confirmation filed by **BORNES CHELANGAT** dated 18/6/2015 proposed to share the Estate equally.

18. The protest filed by **SARAH CHEPKEMOI KIRUI** lacks in merit and the same is dismissed.

19. I direct that the Estate be shared equally between **BORNES CHELANGAT** and **SARAH CHEPKOECH KIRUI**.

20. I further direct that this case be mentioned within 30 days of this date for confirmation of grant.

21. All the beneficiaries of the Estate to appear in court for confirmation of grant including the daughters of **ESTHER TAPLELEI** (deceased) to intimate whether or not they wish to have a share of the Estate.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 19TH DAY OF NOVEMBER, 2021

A. N. ONGERI

JUDGE