



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KERICHO**

**SUCCESSION CAUSE NO.378 OF 2015**

**IN THE MATTER OF THE ESTATE OF THE LATE CHERUIYOT ARAP TOO (DECEASED)**

**SUSAN CHEMELI CHERUIYOT.....1<sup>ST</sup> PETITIONER**

**GRACE CHEPTOO CHERUIYOT.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**LEAH TOO.....OBJECTOR**

**JUDGMENT**

1. The objector herein, **LEAH TOO** filed a summons for revocation dated 6/9/2016 seeking to revoke the grant of letters of Administration issued to **SUSANA CHEMELI CHERUIYOT** and **GRACE CHEPTOO CHERUIYOT**, the two petitioners herein.
2. The two petitioners were issued with a grant of letters of Administration intestate dated 22/6/2016 to the Estate of the deceased herein **CHERUIYOT ARAP TOO** (deceased) who died on 12/9/1970.
3. The reason for seeking revocation of the grant was that the objector's name was omitted from the list of beneficiaries.
4. The petitioners opposed the summons for revocation with a Replying Affidavit sworn by the 1<sup>st</sup> petitioner in which she deposed that the objector does not belong to the family of the deceased herein **CHERUIYOT ARAP TOO** (deceased).
5. The hearing of the case proceeded by viva voce evidence. The objector adopted her written witness statement dated 20/07/2017 as her evidence in chief.
6. The objector has stated in that statement that she was "married" to the family of the late **CHERUIYOT ARAP TOO** (the deceased herein) in 1968 by one **TABAR SANG** (deceased) under the woman to woman marriage under Kipsigis Customary Law since **TABAR SANG** had no sons.
7. The objector also stated in the statement that her woman "husband" **TABAR SANG** (deceased) was the 2<sup>nd</sup> wife of the late **ARAP TABUNEI** (deceased) who was the father of the deceased herein **CHERUIYOT ARAP TOO**.
8. The mother of the deceased herein was the 1<sup>st</sup> wife of **ARAP TABUNEI** and the deceased herein was her only son.
9. The objector stated in her statement that when the deceased herein died he left his mother and his 2<sup>nd</sup> wife occupying **KERICHO/KIPTERE/580** while the objector and his step mother were occupying **KERICHO/KIPTERE/584**.
10. She further stated that in 2010 the sons of the deceased decided to share the properties and she was left out. She called the village elders who said she should be given 9 Acres.
11. She said the matter went to court and the Area chief gave a resolution that she should get 3.0 Acres which she is now seeking.
12. In cross-examination the objector said the land was registered in the name of the deceased who was the only son of **ARAP TABUNEI** (deceased)
13. The objector called two witnesses, **ZEPHANIAH CHUMO** and **PHILIP KIPRONO** who said she was married to the step mother of the deceased herein and further that the father of the deceased died before the land was demarcated.

14. The petitioner called four witnesses together with the Area Chief. They all said the objector was married to the step mother of the deceased herein and further that she was given 3 Acres by the family where she has been staying for over 30 years.

15. The parties filed written submissions which I have duly considered. The objector submitted that she was married to the step mother of the deceased under the woman-to-woman marriage and that she together with her woman husband were maintained by the deceased, and that when her woman husband died, the deceased continued maintaining her until his demise.

16. The objector further submitted that she has been living with the deceased and the petitioners for a period of 40years, and she has been occupying 3.0 acres of land which is yet to be transferred to her and as such she should be included in the list of beneficiaries.

17. The petitioners on the other hand, submitted that the objector was not maintained by the deceased, and that the parcel of land given to her was on humanitarian grounds only and not on the basis that the objector was a dependent of the deceased and as such she is not entitled to benefit from the estate of the deceased.

18. The petitioners further submitted that the process of obtaining grant of letters of administration was as per the laid down procedure under the Law of Succession act and that the entire process was legal, open and transparent and all the rightful beneficiaries surviving the deceased were included in the list of beneficiaries.

19. I find that the objector has established on a balance of probabilities that she is beneficiary of the Estate of the deceased herein.

20. It is not clear why her name was omitted from the list of beneficiaries when she has been given a portion of land where she has been staying for over 30 years.

21. I find that revocation of the grant would not serve the interest of justice. I instead direct that the petitioners do include the objector in the list of beneficiaries and to allocate her the portion of land she has been occupying.

22. I further direct that the parties appear in court within 30 days of this date for confirmation of grant.

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

**A. N. ONGERI**

**JUDGE**