



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NO. 27 OF 2019

IN THE MATTER OF THE ESTATE OF THE LATE CHEROP KIBOWEN Alias ARAP KIBOWEN – DECEASED

EMMANUEL CHEBII CHEROP.....1ST PETITIONER

RAEL J. KIPLELI.....2ND PETITIONER

VERSUS

JOHN YATOR KIPROP.....1ST OBJECTOR

BENARD KIPKOSGEI K. P.....2ND OBJECTOR

WILLIAM KIMUTAI KIPROP3RD OBJECTOR

JUDGMENT

Cherop Kibowen alias Arap Kibowen, the deceased to whose estate these proceedings relate, died on 13th October 2000. A petition for the administration of the estate of the deceased was filed in court on 23rd September 2019. In the Petition, it was indicated that the beneficiaries of the estate of the deceased were as follows:

- i. Emmanuel Chebii Cherop - Son
- ii. Elizabeth K. Kiptoo - Daughter
- iii. John Yator Kiprop - Son
- iv. Rael J. Kiplel - Daughter
- v. Bernard Kipkosgei Kiprop - Son
- vi. William Kimutai Kiprop - Son
- vii. Salina Kangogo Kiprop - Daughter

All the beneficiaries of the estate of the deceased are adults. All the beneficiaries are married and have their respective families.

A dispute arose in regard to how one of the properties that comprise the estate of the deceased should be distributed. By common consensus, it is agreed by the parties that the property known as **Lelan/Kaptalamwa/170** measures **91 acres**. Again it was agreed by the parties that a portion of land measuring 0.3 acres should be transferred to the Seventh Day Adventist (SOA) church. It was further agreed that 3 acres of the said parcel of land be surrendered for public utility purposes. The dispute is in regard to how the remaining 88 acres is to be distributed among the beneficiaries.

Whereas Emmanuel Chebii Cherop and the daughters have proposed that 15 acres out of the 88 acres be inherited by the daughters, William Kimutai Kiprop and John Kiprop Yator were adamant that since the three daughters were married and well settled with their husbands, they should not inherit anything from the estate of their deceased father. Bernard Koskei, the other brother, while generally agreed with William and John, conceded that the daughters may get land, albeit 2 acres each instead of five (5) acres.

The dispute before the court is the classic case where culture clashes with the written law, in this case the **Law of Succession Act**. In the present case, it was clear that the sons of the deceased, other than Emmanuel, based their claim on Marakwet customary law that dictates that only sons can inherit land from their deceased fathers. This is especially so where the daughters of the deceased are married. **Section 29** of the **Law of Succession Act** recognizes all Children of the deceased, whether sons or daughter, married or unmarried as dependants of the deceased. They are therefore entitled to benefit from the properties that comprise the estate of the deceased.

Further **Section 38** of the **Law of Succession Act** provides that:

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provision of Section 41 and 42, devolve upon the surviving child, and if there be only one, or be equally divided among the surviving children.”

The key word in both **Section 29** and **38** of the **Law of Succession Act** is “children.”

In fact, it is instructive that the entire **Law of Succession Act** does not refer to any beneficiary as a “son” or “daughter” but “children” of the deceased.

In the present case, it was clear that the three sons sought to discriminate against their married sisters from inheriting their father’s property on the basis of their marital status. This is specifically prohibited under **Article 27** of the **Constitution, 2010**. **Article 27(5)** of the **Constitution** prohibits discrimination of any person on the grounds of inter alia, culture, sex or marital status. This court therefore holds that the objection by the three sons to their three sisters inheriting the land that belongs to the estate of their deceased father is without merit.

In the premises therefore, this court orders that the parcel of land known as **Lelan/Kaptalamwa/170** shall be distributed to the beneficiaries as follows:-

1. Emmanuel Chebii Cherop - 18.175 acres
2. John Yator Kiprop - 18.175 acres
3. Bernard Kipkosgei Kiprop - 18.175 Acres
4. William Kimutai Kiprop - 18.175 Acres
5. Elizabeth K. Kiptoo - 5 Acres
6. Rael J. Kiplel - 5 Acres
7. Salina Kangogo Kiprop - 5 Acres
8. Public Utilities, such as roads etc - 3 Acres
9. Seventh Day Adventist (SDA) Church - 0.3 Acres

The County Surveyor, Elgeyo Marakwet County shall cause the above parcel of land to be surveyed and demarcated so that each beneficiary may inherit his portion of land. The cost of the Survey shall be borne by each beneficiary, pro-rata his or her share. Since there was no dispute regarding the distributing of the other properties that comprised the estate of the deceased, that’s the final order of the court. There shall be no orders as to costs as this was a family dispute. It is so ordered.

DATED AT KITALE THIS 16TH DAY OF DECEMBER, 2021

L. KIMARU

JUDGE