



REPUBLIC OF KENYA

IN THE HIGH COURT AT BOMET

SUCCESSION CAUSE NO.55 OF 2016

IN THE MATTER OF THE ESTATE OF CHEPKWONY ARAP SIGIRA alias CHEPWONY SIGIRA (Deceased)

JOHN KIPLANGAT NGENO &

KIBET NGENO SAMMY.....APPLICANTS

VERSUS

LILIAN CHEPKORIR LANGAT SIGIRA.....RESPONDENT

RULING

1. The Application coming for consideration in this ruling is the one dated 11/6/2019 filed under certificate of urgency by JOHN KIPLANGAT NGENO and KIBET NGENO SAMMY seeking the following orders:

- i) THAT the grant of letters of Administration issued to LILIAN CHEPKORIR LANGAT SIGIRA and CHEPKETER GRACE SIGIRA on 15.11.2017 be removed or annulled.**
- ii) THAT the proceedings to obtain the grant were defective in substance and therefore unenforceable/unexecutable.**
- iii) THAT legal and constitutional rights of the Applicants, their mother and siblings were never taken into account.**
- iv) THAT the Applicants, their mother and siblings have been discriminated in the manner in which the Estate has been distributed.**
- v) THAT the Respondent LILIAN CHEPKORIR LANGAT is not entitled to a share of the Estate.**

2. The Application is supported by the Affidavit of the 1st protestor JOHN KIPLANGAT NGENO also dated 11/6/2018 in which he has deposed as follows:

- i) THAT he is the firstborn son of the deceased herein CHEPWONY ARAP SIGIRA (deceased) who died intestate on 9/04/2007**
- ii) THAT his mother and siblings are opposed to the manner in which the Estate of the deceased was distributed in the confirmed grant dated 15/11/2017 and they have authorized him to swear this Affidavit.**
- iii) THAT the rights of the Applicants were not substantially considered when the objection by their mother was heard.**
- iv) THAT the confirmed grant is not enforceable and it cannot be executed.**

3. The Respondent filed Grounds of Opposition dated 22/10/2018 in opposition to the Application dated 11/6/2018 in which she stated that the Applicants are the sons of CHEPKETER GRACE SIGIRA who is her Co-Administrator and further that they have no capacity to make such an application.

4. The Respondent further stated that the Application is res judicata since the issues here raised in the Application dated 5/4/2018 which has been determined.

5. The parties filed written submissions in the Application dated 11/6/2019. The Application filed submissions dated 3/12/2018 in which they stated the Applicants parents acquired the land parcel No Kericho/Bingwa/295 long before the adjudication period which was a period over 70 years and the Respondent LILIAN CHEPKORIR LANGAT joined the family on 11 years before the deceased died and therefore the property cannot be shared equally as that would amount to discrimination.
6. The Applicants also submitted that the current distribution has violated their rights and further that minors cannot legally own land.
7. The Respondent filed written submissions dated 21/3/2019 in which she stated that no valid grounds have been given to warrant revocation of grant and no rights have been particularized as having been infringed.
8. It was further submitted that the Applicants are the sons of CHEPKETER GRACE SIGIRA who is a co-Administrator of the Estate of the deceased and the Application is res judicata as the court had rendered itself on the said issues and if the 2nd Administrator was dissatisfied with the said ruling she should have filed an appeal.
9. The Respondent further submitted that no reason has been given Why the Respondent should not benefit from the Estate of the deceased who was her husband.
10. On the issue of minors holding property the Respondent submitted that section 41 of the Law of Succession Act provides the minor's share shall be held in trust for the minor.
11. I have considered the rival submissions filed herein. I find that the court delivered a ruling in application dated 5/4/2016 where CHEPKETER GRACE SIGIRA who is the mother to the protestors was the Applicant.
12. The issues for determination in this Application are as follows;
 - (i) **Whether the Application dated 11/6/2019 application is res judicata.**
 - (ii) **Whether the grant of letters of Administration issued to LILIAN CHEPKORIR LANGAT SIGIRA and CHEPKETER GRACE SIGIRA on 15.11.2017 should be revoked or annulled.**
 - (iii) **Whether the proceedings to obtain the grant were defective in substance and therefore unenforceable/unexecutable.**
 - (iv) **Whether the legal and constitutional rights of the Applicants, their mother and siblings were taken into account.**
 - (v) **Whether the Applicants, their mother and siblings have been discriminated against in the manner in which the Estate has been distributed.**
 - (vi) **Whether the Respondent LILIAN CHEPKORIR LANGAT is entitled to a share of the Estate.**
13. On the issue as to whether the Application dated 11/6/2019 is res judicata, the legal provisions in relation to the issue of res judicata is Section 7 of the civil procedure Act which provides as follows: -

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them can claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”
14. I find The court delivered its ruling on 15/11/2017 and stated that the Estate should be shared equally. The court upheld the current mode of distribution in the said ruling.
15. I find that the current application is res judicata as it is raising issues that were dealt with in the Application dated 5/4/2016.
16. I find that the grant of letters of Administration issued to LILIAN CHEPKORIR LANGAT SIGIRA and CHEPKETER GRACE SIGIRA on 15.11.2017 was upheld by the court as proper.
17. There is no evidence that the proceedings to obtain the grant were defective in substance since the issue of the period LILIAN CHEPKORIR LANGAT SIGIRA was married to the deceased was canvassed
18. I find that the legal and constitutional rights of the Applicants, their mother and siblings were taken into account.
19. The Applicants, their mother and siblings have not been discriminated against in the manner in which the Estate has been distributed.
20. I find that he Respondent LILIAN CHEPKORIR LANGAT is entitled to a share of the Estate as the second wife of the deceased.
21. The property is in the name of the deceased and the Applicant's allegations that it was acquired long before the Respondent got married to the deceased was considered and the court ruled that if the property was acquired by the Applicant's mother when the deceased was in jail,

“there would have been no hindrance in registering the land in the name of the protestor”

22. I find that the issue was raised and the court said that the children of the Respondent have greater needs than those of the Applicant’s mother (the protestor in that Application) who are settled in life. The law provides that the estate be shared equally.

23. The said issue was raised and the sentiments of the court were that it was the children of the Respondent who were disadvantaged and not the Applicant who is a child of the protestor in the Application dated 5/4/2016.

24. In the case of **RE ESTATE OF JOHN MUSAMBAYI KATUMANGA (DECEASED)[2014] eKLR MUSYOKA J** stated as follows on the issue of equal distribution of the Estate:

“Equal distribution is envisaged regardless of the ages, gender and financial status of the children.

Equal distribution does not always work justice, especially in polygamous situations, where the youngest child of the deceased may be one (1) year old, while the eldest may be over fifty (50) years of age. The infant no doubt would have far greater needs than the fifty year old, who would generally have received education and has probably been settled in life by the deceased. There cannot be justice in equal distribution in such case. The fortunes of one child may be better those that of the other – one could end up in a lowly job, say a driver or office messenger or nurse or nursery school teacher, with the other becoming a commercial pilot or the Chief Executive Officer of a blue-chip company. There would be no fairness in equal distribution in such a case. The law as currently framed does not do justice in such circumstance. Ideally, equal distribution should be the principle, with some discretion left to the court to consider the circumstances of each case”.

25. I accordingly dismiss the Application dated 11/6/2019 with no orders as to costs. I find that the same is res judicata as the Applicant’s mother had the opportunity to raise the issues the Applicant is now raising and indeed the said issues were raised and the court rendered itself on the same.

26. The only recourse for the Applicants is to file an appeal against the ruling delivered on 15/11/2017.

27. Any party aggrieved by this ruling has a right of Appeal within 28 days of this date.

Delivered, dated and signed at Bomet this 4th day of August 2020.

A. N. ONGERI

JUDGE