



REPUBLIC OF KENYA

IN THE HIGH COURT AT BOMET

SUCCESSION CAUSE NO. 203 OF 2015

IN THE MATTER OF THE ESTATE OF TAPLELEI W/O KOROMICHA(DECEASED)

JONAH KIPKOECH CHEPKWONY.....1STPETITIONER

ALICE CHERONO.....2ND PETITIONER

AND

STEPHEN KIPNGETICH TONUL.....1ST PROTESTOR

EDWIN KIPNGETICH TONUL.....2ND PROTESTOR

JUDGMENT

1. The deceased in this case, TAPLELEI W/O KOROMICHA (hereafter referred to as the deceased, died intestate on 21/11/1995 leaving the following beneficiaries
 - i) Alice Cheronno - Widow
 - ii) Jonah Kipkoech Chepkwony - Son
 - iii) Joyce Chepngetich - Daughter
 - iv) Jackline Chepngeno - Daughter
 - v) Amos – Cheruiyot - Son
 - vi) Carren Chelangat - Daughter
 - vii) Gideon Kipngetich – Son
 - viii) Caroline Chepngeno - Daughter
2. The deceased had the following assets held with her co-wife Taputany W/O Koromicha;
 - i) Land parcel Kericho/Kapkimolwo/1589.
 - ii) Land parcel Kericho/Kapkimolwo/606.
3. The petitioners JONAH KIPKOECH CHEPKWONY and ALICE CHERONO applied for grant of letters of Administration and they were issued on 29/3/2016.
4. The petitioner applied for confirmation of grant on 17/5/2016 and the certificate of confirmation was issued on 21/6/2016.
5. The objector filed a summons for revocation dated 20/7/2016 on the following grounds;
 - i) THAT the petitioners are strangers who secretly and fraudulently filed this petition without the consent of the objectors.

ii) THAT the petitioners have no relationship with the deceased and they have settled on the land parcels Kericho/Kapkimolwa/589 and Kericho/Kapkimolwa/606 illegally.

iii) THAT the Estate of the deceased is in danger of being wasted if the petitioners are allowed to administer the Estate in that the beneficiaries are likely to be evicted.

6. The case proceeded by way of viva voce evidence. The objector STEPHEN KIPNGETICH TONUUI said the petitioners are not related to him. He said the deceased herein who was his step mother had no children. His mother is the second wife of the deceased. He said the petitioners were granted temporary stay but they have stayed at the land parcels for long. He said the land parcels are registered in the two names of the wives of his father who are the deceased and his mother.

7. The objector called his mother and brother Tapletgoi and brother Tapletgoi w/o Komicha and Samori Chepgeno Koromicha who also said the deceased had no children and they denied that the deceased married ALICE CHERONO under Kipsigis Customary Law.

8. The petitioner called five witnesses. The 1st witness Alice Cheronno said the deceased married her under Kipsigis Customary Law and paid 4 heads of cattle. She had two children and later she got seven children.

9. The 1st petitioner JONAH KIPKOECH and the Senior Chief of Kapkimolwa location PAUL LANGAT also testified. They also said ALICE CHERONO was married to the deceased under Kipsigis Customary Law.

10. The 4th and 5th witnesses for the petitioner who are the nephew of deceased and a cousin said they knew the 2nd petitioner was married to the deceased under Kipsigis Customary Law and the deceased who had no children paid the dowry.

11. The parties filed written submissions which I have duly considered. The issues for determination in this case are as follows;

i) Whether petitioners obtained the grant of letters of administration fraudulently.

ii) Whether the 2nd petitioner was married to the deceased under Kipsigis Customary Law.

iii) Whether the grant of letters of administration and the certificate of confirmation should be revoked.

12. On the issue as to whether the grant herein was issued fraudulently, I find that the petitioners disclosed in their petition that they are only seeking the half share belonging to the deceased.

13. The objector is not a beneficiary of the deceased and therefore the petitioners were not obliged to include him in the petition.

14. On the issue as to whether the 2nd petitioner was married to the deceased under Kipsigis Customary Law, I find that the petitioner's testimony was corroborated by that of the three witnesses who said they knew about her marriage to the deceased.

15. The witnesses said the deceased paid cows and she married the 2nd petitioner in accordance to Kipsigis customary law.

16. I find that there is evidence that the 2nd petitioner and her children lived with the deceased before her demise.

17. I do not believe the testimony of the objector that the petitioners are strangers to them. There is evidence of existence of a woman to woman marriage between the 2nd petitioner Alice Cheronno and the deceased herein. I find that the petitioners have established on a balance of probabilities that the deceased was married to the deceased under Kipsigis Customary Law. The objector's mother is entitled to half share of the two properties.

18. Finally I find no basis for revoking the grant of letters of Administration and certificate of confirmation issued to the petitioners. The same were legally and validly issued.

19. I find that the summons for revocation dated 20/7/2016 be and is hereby dismissed for want of merit.

20. I direct that each party to bear its own costs of this suit.

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

A. N. ONGERI

JUDGE