



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

P&A CASE NO. 376 OF 2013

IN THE MATTER OF THE ESTATE OF THE LATE KIBIEGO CHEMAKAR (DECEASED)

IN THE MATTER OF ANNAH BOTISHOI NGELECHEI.....PETITIONER

VERSUS

JULIUS KIPRUTO YEGO.....1ST OBJECTOR

SAMUEL KIPYEGO KOGO.....2ND OBJECTOR

RULING

The deceased herein, one *Kibiego Chemakar Kibet*, died on 2nd May, 2000. He was married to 3 wives namely *Esther Chepkemboi Ngelechei*, *Annah Botishoi Ngelechei* (Petitioner) and *Pauline Chepkorir*. The first wife had 3 children, inclusive of *Julius Kipruto Yego* (2nd Applicant). The petitioner has 11 children, inclusive of *Samuel Kipyego Kogo* (1st Applicant). The 3rd wife had left the deceased many years back, leaving him with two children. The other two wives are deceased, save for the petitioner herein. The deceased Estate comprise of only one parcel of land, Uasin Gishu/Chepsaita/84. The petitioner obtained letters of administration for the sake of sub dividing the Estate amongst the deceased's children. The six sons are to get each 13 acres. The rest are girls. None is left out but sons have currently more than 13 acres and that is what she wishes to correct. She wishes to favour no one.

The objection was initially by three sons. However one by the name of *Reuben Kiptum Yego*, later on pulled out. The said objection is based on the grounds that:-

1. Application for grant was made against the deceased's will.
2. The list of beneficiaries by the chief Mr. Johana Kisorio and affidavit sworn by Mr. Anthony Sitienei and Edwin Maiyo, were forged.
3. Mr. Joseph Yego Ngelechei, indicated as a beneficiary is not, while the late Mr. Joseph Chemakar Ngelechei and the 3rd wife Paulina Chepkorir were left out.
4. The petitioner was illegally declared as the only next of kin.

I have gone through the application and the evidence adduced. In reality there are no weighty issues in it. The petitioner is the only surviving wife to the deceased. All the beneficiaries have been included and considered save for some miswriting of some names in some of the forms. The petitioner has demonstrated good will in administration of the Estate for the equal benefit of all the beneficiaries. Rescinding the process at this stage won't be at interest of justice. Such a process will lead to inordinate delay in determination of the matter and therefore to an injustice. Out of 12 beneficiaries only two have issues. As a court we have now embraced court annexed mediation. I find this a suitable case where the actual issue in dispute is of distribution, though was disguised on other grounds, can be deliberated and agreed upon. Family members irrespective of the dispute and at the end of it all, remains family members. The status quo on the file and the ground should be maintained, and the matter be mentioned before the Deputy Registrar for instructions on the mediation process.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 28th day of March, 2019.

In the presence of:-

2nd objector

Mr. Mwelem- Court clerk

And in the absence of Petitioner