



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

IN THE MATTER OF THE ESTATE OF THE LATE

KIPRUTO ARAP CHEMGORO (DECEASED)

SUCCESSION CAUSE NO 59 OF 2013

JANET CHELANGAT.....PETITIONER

AND

PAUL KIPTONUI KETER.....PROTESTOR

JUDGMENT

1. This matter relates to the estate of Kipruto arap Chemguoro who died intestate on 6th November 2002. His estate comprised one property, Kericho/Kimulot/566 comprising 8.6 hectares or 21.251 acres. He was survived by the following beneficiaries according to the letter from the Chief of Chebangang location dated 25th April 2013:

1. **Joseph K. Keter- (Deceased)(sic)**
2. **Paul K. Keter – son**
3. **Mary C. Koskey – daughter**
4. **William K. Keter – Son**
5. **Richard K. Keter-son**
6. **Ann C. Koros – daughter**
7. **Joshua Keter – son**
8. **Chelangat Janeth – daughter**

2. An application for letters of administration intestate was filed on 30th April 2013 by Janet Chelangat. She sets out the beneficiaries of the deceased as set out above, and the assets as comprising Kericho/Kimulot/566, 3 cows and 4 goats.

3. Prior to filing the application for letters of administration intestate, she had, in Citation Cause No 3 of 2009, cited her siblings requiring them to apply for the letters of administration. They had failed to do so after the expiry of the 30 days given to them by the court. In an order dated 16th April 2013, Mutava J (as he then was) had authorized her to apply for letters of administration intestate.

4. No objection was filed to the petitioner's application, and letters of administration intestate were issued to her on 24th September 2013.

5. The beneficiaries of the estate are now gridlocked at the point of distribution of the estate. The petitioner filed an application for confirmation of grant dated 1st February 2017. An affidavit in support sworn by the petitioner did not indicate the mode of distribution proposed, except with respect to herself, that she should get 4 acres. A consent filed with the application is signed by the female beneficiaries of the estate – the petitioner and her two sisters, Mary C. Koskei and Ann C. Koros, but not by their brothers, the sons of the deceased.

6. On 1st March 2018, when the parties appeared in court and the petitioner's brothers indicated their opposition to the confirmation of grant as proposed by the petitioner, the court directed the parties to file their respective proposals on how the estate should be distributed. The petitioner filed an affidavit sworn on 16th March 2018 and filed in court on 4th May 2018 in which she proposed that the beneficiaries of the estate should each get 2.5 acres, except that she should get 4 acres as she had solely carried the burden of filing and financing the succession proceedings. She filed a subsequent affidavit sworn on 7th May 2018 in which she indicated that one of the beneficiaries, Ann C Koros, had died. She therefore revised the proposed distribution so that each of the beneficiaries, including one Joyce Keter, the widow of a son of the deceased, would get 2.9 acres. The petitioner's share was to remain as 4 acres.

7. In an affidavit of protest sworn on 3rd October 2018, Paul Keter averred on behalf of his brothers that they had had a meeting on 1st May 2018 and resolved that Kericho/Kimulot/566 should be distributed as follows:

- a) Joyce Cherop Keter 3.96 acres
- b) Paul Kiptonui Keter 3.96 acres
- c) William Kibet Keter 3.96 acres
- d) Richard Kipyegon Keter 3.96 acres
- e) Joshua Kipngeno Keter 3.96 acres
- f) Ann Koros- renounced her share in favour of her brothers
- g) Mary Chemutai Koskei renounced her share in favour of her brothers

8. He alleged that during her lifetime, their deceased sister, Ann C Koros, had renounced her interest and he annexes an affidavit on the basis of which he alleges that she had renounced her interest. The affidavit is sworn by one Paulo Koros Kipngeno, Ann Koros' Widower, who deposes that Ann Koros had written a letter before her brothers renouncing her interest in the estate. The letter referred to is not annexed to the affidavit.

9. The protestor further avers that Mary Chemutai Koskei had also renounced her interest. He annexes an affidavit sworn by the said Mary Chemutai Koskei renouncing her interest in favour of her brothers.

10. With respect to the petitioner, Paul Kiptonui Keter avers that she is duly married to one Joseph Kiplangat Sang and they have a matrimonial home in Kaitui. He annexes an affidavit sworn by the said Sang on 27th September 2018 in which he deposes that he married the petitioner in April 1996 under Kipsigis customary law; that they have been married for 22 years, have never undergone any divorce proceedings and **'to the best of my knowledge the marriage is still valid.'**

11. He further avers that he has no interest in his deceased father in law's property in Kimulot, and has not authorised the petitioner to claim any land from her home.

11. The petitioner filed an affidavit in reply in which she terms the proposal and the affidavit by her brothers unfair. She asks that the property of the deceased be distributed equally among the beneficiaries interested in the estate so that each gets 3.58 acres as follows:

Kericho/Kimulot/566 (measuring approximately 21.5 acres)

- a) **Joyce Cherop Keter 3.58 Acres**
- b) **Paul Kiptonui Keter 3.58 Acres**
- c) **William Kibet Keter 3.58 Acres**
- d) **Richard Kipyegon Keter 3.58 Acres**
- e) **Joshua Kipngeno Keter 3.58 Acres**
- f) **Janeth Chelangat 3.58 Acres**

12. In written submissions dated 26th November 2018 filed by their Advocates on record, Onesmus Langat & Co Advocates, the protesters submit that the petitioner filed the present proceedings without involving the other beneficiaries or obtaining their consent. They insist that a family meeting resolved that the sons (and one daughter in law) each get 3.96 acres out of Kericho/Kimulot/566 while the petitioner gets 1.0 acre and 0.5 acres in **Ker/Kaptebe/527** (sic) both of which have mature tea. It is not clear to whom this (or these) these properties belong (the averment seems to suggest two parcels of land). The protesters note that their other sisters renounced their interests in favour of their brothers and ask the court to accept their proposed mode of distribution.

13. They dismiss the petitioner's proposal for distribution noting that the acreage she mentions is incorrect. They allege that she has left out a

property Ker/Kaptebe/527 “that was specifically acquired for her to build a matrimonial home when they (sic) had differences with her husband”. They submit that she is married to the said Joseph Kiplangat Sang and they have a home in Kaitui. That Kipsigis customary law recognizes that a married woman has a share of land in her matrimonial home and does not provide for her in the distribution of family land. It is their submission that this is why their other sisters renounced their interest.

14. It is their submission further that the family members had considered the petitioner and had allotted her one acre with mature tea bushes and 0.5 acres in a separate land, Ker/Kaptebe/527 in order to bring family harmony. They ask the court to accept their proposal.

15. In her submissions, the petitioner submits that the protestors have delayed the present proceedings since the death of the deceased. She states that the Constitution has granted every sibling an equal share of inheritance of family property irrespective of gender. She asks the court to adopt the mode of distribution that she proposes.

16. I have considered the record of the court, the pleadings and submissions of the parties, and the law with regard to the sole issue before me – whether the petitioner is entitled to a share of her father’s estate on the same terms as her brothers.

17. The petitioner is correct that the Constitution prohibits discrimination on the basis of gender, indeed, on any basis. This is what Article 27 states:

27. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4). (Emphasis added)

18. It is not possible therefore to argue, as the protestors do, that the petitioner is not entitled to a share of her father’s estate because she is a woman and she is married. It is interesting that they rope in her husband who, from all appearances, is estranged from her. He has the temerity to swear on oath that he has not ‘authorised’ the petitioner to claim land from her home. It bears repeating that women are free agents under the law and really do not need to be ‘authorised’ by anyone to claim what they are legally entitled to.

19. Under section 38 of the Law of Succession Act, where both spouses are deceased, the estate of the deceased devolves to the children equally.

It provides that:

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

20. From the letter of the Chief and the affidavits filed in court, it appears that the deceased was not survived by his spouse, but by 7 of his 8 children. From the documents before me, I am satisfied that one child, Mary C. Koskei, renounced her interest in the estate as she clearly states so in her affidavit. I am not satisfied that the second daughter, now deceased, renounced her interest as there is no document as her widower avers to indicate such renunciation. However, as the person who has priority as her personal representative has no interest in the estate, then her renunciation is accepted.

21. This leaves 6 beneficiaries entitled to the estate of the deceased, and in accordance with the provisions of section 38, they are entitled to an equal share.

22. The protestors allege that their sisters had renounced their interests in their favour, and that a meeting had resolved that the petitioner should get 1 acre and 0.5 acres out of a parcel of land they refer to as Ker/Kaptebe/527. I note however that the two sisters had earlier on executed a consent to the mode of distribution initially proposed by the petitioner, in which she had proposed that she should get 4 acres out of Kericho/Kimulot /566. I am not satisfied therefore that there was an intention to renounce their interests to the detriment of the petitioner.

23. As for the alleged parcel number Ker/Kaptebe/527, no search documents were presented before the court to show that it exists, or that it belongs to the deceased and was subject to distribution as part of his estate.

24. Accordingly, I direct that land parcel number Kericho/Kimulot/566 which measures 21.251 shall be shared equally between the following beneficiaries:

i. Joyce Cherop Keter - 3.54 acres

- ii. **Paul Kiptonui Keter** - 3.54 acres
- iii. **William Kibet Keter** - 3.54 acres
- iv. **Richard Kipyegon Keter** - 3.54 acres
- v. **Joshua Kipngeno Keter** - 3.54 acres
- vi. **Janeth Chelangat**- 3.54 acres

25. I further direct that each party bears their own costs of the protest.

Dated and Signed this 10th day of May 2019

MUMBI NGUGI

JUDGE

Dated Delivered and Signed at Kericho this 29th day of May 2019

GEORGE DULU

JUDGE