



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NO. 99 OF 2010

ESTATE OF THE LATE JOSEPH K. A. CHEBII (DECEASED)

ANNAH CHEPKOSKEI CHEBII.....RESPONDENT

VERSES

DANIEL K TABUT.....APPLICANT

RULING

1. Vide his chamber summons dated 24th October, 2018, the Applicant prays that this court reviews the grant confirmed on the 20th May, 2018 by allowing the Applicant to have 25 acres out of Land Parcel number **Cherangani/Nzoia Block 4 Mwaita /42**. He said that the rest of his siblings and other beneficiaries should then jointly share 55.1 acres thereof.
2. In his supporting affidavit he stated that his father the deceased had two wives, his mother and the Respondent. He was the only child born from his household and apparently his mother has since passed on. He said that all along and during the life of the deceased he was utilising the portion he desires to have and that the deceased had permitted him. He concluded that the Respondent's house will not be prejudiced as they shall have the 55 acres which was still a large share.
3. The Respondent through her replying affidavit dated 2nd April, 2019 has deponed that she was the remaining widow and she had seven children with the deceased. The applicant was born alone by her deceased mother. She argued that it would disadvantage her house if the grant is reviewed as it will mean that she would get a small share together with her siblings.
4. Having read the application, it is true that the court can review its orders under the provisions of Section 63 of the Succession Act which mandates this court to apply the provisions of Order 45 of the Civil Procedure Rules.
5. Does the applicant merits the prayers he has requested? It is apparent that the deceased was a polygamous man and the applicant was from the first house and was born alone. She has no problem with the rest of his beneficiaries save to state that he should have been given 25 acres out of the suit land and not the 8.9 acres given to each of the deceased son.
6. The spirit and the letter of Sections 35, 38, and 40 of the Succession Act is on equal distribution to the beneficiaries. The applicant in the first instance has not told this court why he conceded to the grant being confirmed and then he now wants it reviewed. What is new and important fact that was not within his knowledge during the time of confirmation?
7. Looking at the record all through, there is no error apparent on the face of record and neither is there any new discovered fact or evidence which was not within his knowledge.
8. The provision of Section 35, 38 and 40 of the Act cited above envisages equal distribution to all the children. Why does the Applicant desire more share than his siblings? If the deceased permitted him to utilise the said 25 acres during his lifetime, then that was then. Perhaps the deceased should have expressed himself that after his demise the Applicant should continue utilising and even inheriting the same.
9. This court in the absence of any other proof shall go by the requirements of the law, namely, equal distribution. The law does not discriminate and in fact in such polygamous set up it is expected that the estate is distributed to the children in equal shares. There is nothing to persuade this court to treat the Applicant favourably and better than the rest.
10. The application is otherwise dismissed with costs.

Dated signed and delivered in open court at Kitale this 23rd day of July, 2019.

H K CHEMITEI

JUDGE

23/7/19

In the presence of:-

Parties Absent

Court Assistant - Kirong

Matter delivered in their absence.