

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAPENGURIA

PROBATE AND ADMINISTRATION CAUSE NO. 2 OF 2018

IN THE MATTER OF THE ESTATE OF TALAPCHON KAMEIKIN DECEASED)

AND

SUSAN CHEBET KAMEKIN.....APPLICANT/ADMINISTRATOR

VERSUS

ANDREW ROTICH.....1ST RESPONDENT

JOSEPH LIOPOT.....2ND RESPONDENT

RULING

This is a Succession Cause that is pending determination. There are three families involved. The first two families of the respondents resides in land parcel number West Pokot/Kishaunet/283 measuring 69 acres, while the 3rd family of the applicant lives in land parcel West Pokot/Siyoi A/146 measuring 14 acres. These two parcels of lands are 13 kilometres apart. The first respondent had been utilizing about 6 acres in land parcel number West Pokot/Siyoi A/146 where he even has a food store. Currently there is disagreement between the 1st and 2nd families (respondents) on one side and the 3rd family (applicant) on the other side.

The issue before this court is whether the first respondent should continue utilizing the 6 acres in land parcel West Pokot/Siyoi A/146 pending hearing and determination of this succession cause. The applicant does not want the first respondent to continue farming in the said portion of land as there is now bad blood which is likely to give rise to chaos. She argues that the land at Kishaunet is bigger in size even if divided by two than the Siyoi land and the respondents can adequately utilize that land pending hearing and determination of the matter. This is disputed by the respondents who argue that the land at Kishaunet is rocky and less productive than Siyoi land and hence the need to continue utilizing the 6 acres in Siyoi. To be fair in determining this matter the court sought assistance of Agricultural Extension Officer on productivity of the two parcels of land. He availed a lengthy detailed report where he even had the soils from both parcels analyzed. Virgin land productivity per acre in Kishaunet is 3 bags of maize and Siyoi 4.7 bags. For the farm land Kishaunet can produce 10 bags of maize per acre and Siyoi 13.9 bags. His conclusion is that Kishaunet farm in general is slightly less productive compared to Siyoi Farm. The land at Kishaunet is 60% arable while the land at Siyoi is 99% arable. However the 40% of Kishaunet land that is not arable is pasturable. Half of what is arable in Kishaunet is much bigger in area range than the land in Siyoi and if well utilized in farming can therefore produce more per family living therein than what the applicant can produce in Siyoi.

The land in Kishaunet is almost 5 times bigger in size than the land in Siyoi while productivity difference between the two parcels of land is minimal. It should be understood that when the relationship is blissful in a family the benefits each enjoy may vary when there is animosity like in this case. It is logical and sensible given the circumstances that the respondents should live and utilize the land in Kishaunet while the applicant should live and utilize the land in Siyoi pending hearing and determination of this succession cause. This court so orders.

COURT

Ruling read and signed in presence of both parties this 13th day of April, 2018.

Ms Chebet holding brief for Mr. Barongo for the applicant.

Mr. Changorok holding brief for Lowasikou for the respondent.

S. M. GITHINJI

JUDGE

13.4.2018