



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO. 355 OF 2015

IN THE MATTER OF THE ESTATE OF KIPLAIGONG ARAP KORIO Alias KIPLAIGONG KORIO (DECEASED)

ANNAH CHEROTICH KOROS.....PETITIONER

VERSUS

LUDIA KOROS.....OBJECTOR

RULING

1. According to a death certificate placed before the court by the petitioner, Kiplaigong arap Korio alias Kiplaigong Korio (deceased) died on 21st March 1973 at the age of 77 years. He owned one asset, L. R. No. Kericho/Tebesonik/32 measuring 29.5 acres.

2. No application for grant of representation to his estate was made until November, 2015, when Annah Cherotich Koros petitioned for letters of administration intestate in this cause on 12th November 2015.

3. The applicant indicated in what is taken to be the P&A 5 form that the deceased had two houses. Both widows, Taprire Korio and Teresia Chepkemoi Koryo, were deceased. The two sons of the deceased from the 1st house, Christopher Koros and Stanley Koros were also deceased. They were, however, survived by their widows, Ludia Koros and Alice Koros.

4. The 2nd house, according to the applicant, had two surviving children, namely Anna Cherotich Koros (the applicant) and one Peter Chepkwony, a son. The beneficiaries of the estate of the deceased were therefore the following:

1. Ludia Koros (widow of Christopher Koros)

2. Alice Koros (widow of Stanley Koros)

3. Anna Cherotich Koros-a daughter of the deceased

4. Peter Chepkwony-a son of the deceased.

5. Before the grant of letters of administration intestate was issued, however, an application by way of cross-petition was filed by Ludia Koros on 20th January 2016. Ludia Koros annexed a death certificate indicating that the deceased, Kiplaigong Korio, died on 6th November 1977 at the age of 100. She further alleged that the petitioner, Annah Cherotich Koros, had used a forged death certificate in the application and had 'neglected' (sic) the chief's letter dated 30th July 2015 which showed the rightful beneficiaries of the estate. According to Ludia in her cross-petition, these beneficiaries were:

i. Ludia Koros

ii. Alice Koros

iii. Annah Cherotich Koros.

6. According to Ludia Koros, Peter Chepkwony who is indicated in the letter from the Chief of Tebesonik Location, Victor Koech, dated 7th April 2015 as a son of the deceased, was not in fact a son of the deceased, but a son of the applicant, Annah Cherotich Koros.

7. Interestingly, the same Chief of Tebesonik Location, Victor Koech, wrote the letter relied upon by Ludia Koros. The letter, which is dated 30/7/2015, excluded Peter Chepkwony as a beneficiary of the state of the deceased.

8. Ludia Koros further observes that the petitioner had not filed a consent to her application from other beneficiaries. Further, Ludia avers that the petitioner was the widow (from a woman to woman marriage) of the 2nd widow of the deceased, Teresia Chepkemoi Koryo. Consequently, Ludia contends that she had a prior claim to administration of the estate as she was a daughter in law of the deceased.

9. The issue of who should be appointed administrator was settled, however, by a consent between the parties dated 11th May 2016. The parties agreed that both the applicant, Annah Cherotich Koros and Ludia Koros be appointed joint administrators of the estate. In terms of their consent, and following gazettelement of their application on 3rd February 2017, a grant was issued to them on 23rd March 2017.

10. By an application dated 30th June 2017, through the firm of Migiro and Co. Advocates, the 2nd administrator, Ludia Koros, filed an application for confirmation of grant. She proposed at paragraph 5 of the application that the estate of the deceased, comprising 29.5 acres in Kericho/Tebesoni/32, should be distributed as follows:

a. Ludia Koros -11.5 acres

b. Alice Koros-11.5 acres

c. Annah Koros – 6 acres.

11. No consent was filed with the application to signify that the beneficiaries were satisfied with the mode of distribution proposed by the 2nd administrator.

12. Not to be outdone, and with no reference to the application filed by her co-administrator, Annah Cherotich Koros filed an application dated 11th October 2017, through the firm of Mutai J. K. & Co. Advocates. She, too, did not annex a consent to the mode of distribution that she proposed. Further, she now omitted Peter Chepkwony, who had been indicated in her application as a son of the deceased, and introduced a daughter, one Tapkili Cherotich Korio, from the 2nd house. She proposed that the estate of the deceased be distributed as follows:

a. Annah Cherotich Koros-7.35 acres

b. Ludia Koros – 7.38 acres

c. Tapkili Cherotich Korir (sic) -7.38 acres

d. Alice Koros-7.35 acres.

13. This court had directed the parties to file written submissions with respect to the distribution of the estate, and both parties have complied.

14. Having read carefully the pleadings of the parties and the respective submissions, the court is left at a loss with respect to where the truth lies in these pleadings, and is left with several questions:

1. What is the exact date of the death of the deceased? Is it 21/3/1973 at the age of 73 years? Or is it 6/11/1977, at the age of 100 years? A curious, but not material question is, did he die from **'sudden death'** as indicated in the death certificate issued to the applicant (1st administrator) on 14th March 2006, or from **'belly ache, with diarrhea'** as set out in the death certificate issued to the objector (2nd administrator) on 14th December 2006?

2. Who, exactly, are the beneficiaries of the estate? Is it only **Ludia Koros, Alice Koros and Annah Cherotich Koros** or should one **Peter Chepkwony** and one **Tapkili Cherotich Koros** (alleged by Annah Cherotich Koros to be a married daughter of the deceased) also be included?

3. Who is Annah Cherotich Koros, the 1st administrator? Is she a daughter, as she alleges, or is she a wife (widow) of the deceased's second wife. (who is deceased) Teresia Chepkemoi Koryo), through a woman to woman marriage?

15. The first of the above questions regarding the date and cause of death of the deceased does not really impact the mode of distribution, save in so far, as submitted by the advocate for the 1st petitioner, that an argument may be made that his estate should be distributed in accordance with Kipsigis customary law. However, the discrepancies point to a deplorable – perhaps not dishonesty-but lack of attention to detail, in those charged with the responsibility of issuing official records-that is truly unacceptable.

16. The latter questions, however, go to the root of the task before the court. The court is required, under the Law of Succession Act, to distribute the estate of the deceased in accordance with clear rules that require clarity in the relationship with the deceased of those who stake a claim to his estate. How is the court to distribute a deceased person's estate if it cannot tell from the proceedings who the beneficiaries are? Of what value is a letter from the Chief if the same Chief writes two letters within the space of less than three (3) months showing two sets of beneficiaries for the same estate?

17. A third lament must be addressed to the Advocates representing the parties in this matter. How can they not, as officers of the court and with a responsibility to their clients, note and assist in clarifying the glaring disparities in the documents? I note that the submissions filed by

the firm of Migiro & Co. Advocates on behalf of the 2nd administrator contain matters of fact, which ought to be set out in affidavits. The 2nd petitioner had argued that the 1st petitioner was not a daughter of the deceased, but a widow of the deceased in a woman to woman marriage. The submissions filed on her behalf by Mr. Migiro purport to elaborate this fact.

18. Further, while one Tapkili Koros appears only in the affidavit in support of the application for confirmation of grant by the 1st petitioner, the court learns from the submissions of the 2nd petitioner that indeed the deceased did have such a daughter, but that she is married 100 kilometres away.

19. This court would like to do justice to the parties in this and all matters before it. It can only do so with full, truthful and accurate information. It does not have that in this case. This could be due to inadvertence on the part of the Counsel on record, deliberate concealment of information by the parties, or inattention on the part of Counsel to what they place before the court.

20. In order to assist the court to reach a just decision in this matter I direct that the parties file before this court within the next 30 days, by way of affidavits that I emphasise must be accurate and truthful:

1. The correct certificate of death of the deceased.

2. A truthful letter from the Chief of Tebesonik Location showing the beneficiaries of the deceased and their relationship (if any) to the deceased.

21. The parties must also place before the court the correct relationship of Annah Cherotich Koros to the deceased.

22. Thereafter, the parties shall take a date for mention of the matter to confirm compliance and take a date for ruling on distribution of the estate of the deceased.

Dated Delivered and Signed at Kericho this 31st day of October 2018

MUMBI NGUGI

JUDGE