



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**SUCCESSION CAUSE NO. 279 OF 1999**

**IN THE MATTER OF THE ESTATE OF CHERAMGOI ARAP NGERECHI (DECEASED)**

**MARY NGERECHI.....PETITIONER**

**VERSUS**

**LINAH CHELANGAT KOECH.....OBJECTOR**

**RULING**

1. The application dated 13<sup>th</sup> March, 2014 and which is expressed to be brought under Rules 44(1) and 73 of the Probate and Administration Rules seeks for orders for the revocation of a grant of letters of administration made to **Simion Cheramgoi**.
2. The grounds are that the grant was obtained fraudulently and by concealment of material facts.
3. That the proceedings to obtain the grant were defective in that form P6 A5 failed to include, all names of the beneficiaries and further failed to state all the deceased assets.
4. In her supporting affidavit the Objector depones that the deceased who was her father had two wives, namely Mary Ngerechi (1<sup>st</sup> wife) and Rebecca Chepkorir (2<sup>nd</sup> wife) who was her mother.
5. It is her contention that the deceased was the registered owner of land parcels:
  - i. Kericho/Kipsonoi S.S/322 measuring 15.5 hectares.
  - ii. Kericho/Cheplelwa S.S/53 measuring 11.6 hectares.
  - iii. Kericho/Kongotik/405 measuring 26.6 hectares.
6. Two commercial plots no. 6 and 36 at Longisa market each measuring 50 x 100 feet. Commercial plot no. 11 at Kapkimolwo market.
7. It is further deponed that her mother Rebecca Chepkorir Ngerechi died on 01/09/2010. Before that she had filed succession cause in the lower court being no. 25 of 1989 in respect of land parcel Kericho/Kongotik/405 which she had been awarded by the deceased.
8. That land parcel no. Kericho/Kipsonoi S.S/322, Kericho/Cheplelwa S.S/53 and commercial plot no. 6 situated at Longisa had been awarded to the first wife Mary Ngerechi while parcel no. Kericho/Kongotik/405 and commercial plot no. 38 situated at Longisa had been awarded to Rebecca Chepkorir Ngerechi.
9. It is further conceded that on the 25<sup>th</sup> day of October, 1992 the petitioner's mother Mary Ngerechi was issued with a court order restraining her from occupying land parcel no. Kericho/Kongotik/405 but she continued cultivating the said parcel of land.
10. That the Petitioner had used a fake death certificate purporting that Rebecca Chepkorir Ngerechi (deceased) died on 18/9/2011 vide death certificate no. 296209 that the exact date of death was 01/09/2010 as per death certificate no.071710.
11. It is further her contention that on 2/2/1990 elders under the chairmanship of the former District Commissioner Kericho arbitrated over the estate of the deceased and came to a verdict in line with the deceased wishes.
12. The petitioner in his replying affidavit depones that he is the older step brother of Linah Chelangat the Objector. That together with

Elijah Kiplangat Towett they are from the first house. That parcel no. Kericho/Cheplelwa S.S/53 is registered in the name of the said Elijah.

13. It is his contention that the Objectors application dated 13<sup>th</sup> March, 2014 is in bad faith since the deceased Cheramgoi Ngerechi had only one property namely Kericho/Kongotik/405 which was to be subdivided equally between the two houses.

14. That Elijah Kiplangat Towett and the Petitioner bought parcels of land in the year 1964 and had then registered in their names. They bought these parcels through salaries as they were employed as teachers at the time. That this brother's parcel of land is Kericho/Cheplelwa S.S/53 measuring 11.6 hectares.

15. It is further contended that the only parcel of land to be shared equally is parcel no. Kericho/Kongotik/405.

16. That the deceased did not own property known as Kericho/Kipsonoi S.S/322 and at no time had he given the said parcel of land no. 322 and Kericho/Cheplelwa S.S/53 to Mary Chepkemai Ngerechi and a plot at Longisa no. 6.

17. That it is not true that the deceased had given parcel of land no. Kericho/Kongotik/405 and plot no. 38 situated at Longisa market to Rebecca Chepkorir Ngerechi.

18. The Petitioner denies forging a death certificate of the late Rebecca Chepkorir Ngerechi. It is his contention that he could not have done that and still include Stephen Kiplangat Towett (Objector's brother) to be co-administrator.

19. The issue of forgery of the death certificate no.071710 issued on 30<sup>th</sup> September, 2010 and the one no. 296209 issued on 30<sup>th</sup> September, 2011 was dealt with by my sister Judge Ongudi who on 8/12/2014 proceeded to expunge from the record certificate no. 296209 which she found was issued through confusion at the Registry of births and death.

14. In this application it was incumbent upon the Protestor to identify the parcels of land which belonged to the deceased and which were not included in the succession as she alleged.

15. In her affidavit dated 13<sup>th</sup> March, 2014 at paragraph 4 she depones that her father (the deceased) was the registered owner of land parcels Kericho/Kipsonoi S.S/322 measuring 15.5 hectares, Kericho/Cheplelwa S.S/53 measuring 11.6 hectares and Kericho/Kongotik/405 measuring 26.6 hectares plus two commercial plots no. 6 and 38 at Longisa market.

16. The court made directions that the application be heard by way of viva voce evidence. The petitioner was given ample time to allow for consultations with a view to withdrawing the application or arriving at a consent. Later the matter proceeded to hearing, the court did require of her to produce documents to the effect that the parcels of land she had alluded to in her affidavit in support of her application belonged or were the property of the deceased. She was unable to avail such evidence.

17. The Petitioner did produce a list of documents in respect to parcel of land L.R Kericho/Sotik/322.

- i. Letter dated 20<sup>th</sup> July, 1963 addressed to Simeon A. Cheramiyot.
- ii. Receipt from department of lands dated 16/12/93
- iii. Discharge of charge meant for title Kericho/SotikEast/322 dated 2/12/93.
- iv. Receipt from SFI
- v. Land certificate of Kericho/Sotik S.S/322

vi. Certificate of search of Kericho/Sotik/322 all in the names of Simion A. Cheramgoi.

18. In respect of parcel of land Kericho/Cheplelwa SS/53.

- i. There is a letter dated 4<sup>th</sup> January, 1963 from the Senior Settlement Officer Kericho addressed to Elijah Arap Towet in regard to application for a plot.
- ii. A letter dated 4/9/1963 in regard to the said plot.
- iii. Land title Kericho/Cheplelwa S.S/53 in the name of Elijah Kiplangat Towet.
- iv. Certificate of official search for title no. Kericho/Cheplelwa S.S/53

19. In respect of title no. Kericho/Kongotik/405 the petitioner has listed the title deed itself which bears the name of Cheramgoi Ngerechi.

20. Search certificate also bearing the name of Cheramgoi A. Ngerechi.

21. The brother of the Objector one Stephen Kiplangat Towett did testify in court that he is from the 2<sup>nd</sup> house and that his father the (deceased) was the owner of LR Kericho/Kongotik/405 which parcel of land was subject to the succession proceedings. It was his evidence that L.R Kericho/Sotik East/322 belongs to Simeon A. Cheramgoi whereas L.R Kericho/Cheplelwa SS/53 belonged to Elijah Kiplangat Towett. That the only property subject to the succession was LR Kericho/Kongotik/405 and that according to the mode of distribution it was to be subdivided equally amongst the two houses.

22. I have perused the affidavit on the mode of distribution dated 13<sup>th</sup> July, 2014. It has particularised the beneficiaries from the 1<sup>st</sup> house as six (6) and from the 2<sup>nd</sup> house as seven (7).

23. Same gives the acreage of parcel of land no. Kericho/Kongotik/405 as 26.5 hectares. Each of the two houses together 12.254 hectares. It is noted that the Objector Linah Chelangat Koech was not included on the list of the beneficiaries for the 2<sup>nd</sup> house.

### **CONCLUSION**

24. From the evidence adduced in court the Objector has not demonstrated that the deceased owned LR Kericho/Kipsonoi/322 which is registered in the name of Simion Kimutai Cherangoi and LR Kericho/Kiplelwa SS/53 registered in the name of Elijah Kiplangat Towett. The only land which is subject to the succession is Kericho/Kongotik/405.

25. This parcel of land to be subdivided into two equal portions for the two houses.

26. The Objector is from the 2<sup>nd</sup> house. She is at liberty to pursue her rights as against the administrator for the 2<sup>nd</sup> house.

27. This application for revocation has no merit and its dismissed. Each party to bear his/her own costs this being a family dispute.

**DELIVERED, SIGNED AND DATED THIS 28TH DAY OF NOVEMBER, 2018.**

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**M. MUYA**

**JUDGE**

**In the presence of:**

1. Mr. Kitur h/b for Mr. Ngetich for the Respondent
2. The Applicant/Objector present in person
3. Court assistant – Wambany