



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 249 OF 2014

IN THE ESTATE OF SAWE NYAPAT PTASI ALIAS SOWE ARAP NYEPET – DECEASED

HELLEN CHEMAIYO SOWE.....1ST PETITIONER

HENRY BIWOTT SOWE.....2ND PETITIONER

AND

SALINA SOWE.....OBJECTOR

J U D G M E N T

1. The deceased herein died on 2/10/1997 leaving behind the following;

1. Hellen Chemaiyo Sowe – Widow
2. Jackson Kiptanui – Son
3. Dinah Chepkore – Daughter
4. Veronica Cherotich – Daughter
5. Titus Kiprono – Son
6. Priscah Chepyator – Daughter
7. Esther Chepkemei – Daughter
- 8 Henry Biwott Sowe – Son

2. He left behind land parcel **No. West Pokot/Siyoi/511 measuring 60 acres** or thereabouts.

3. By the application dated 18/2/1016, the joint administrators herein Hellen Chemaiyo Sowe and Henry Biwott Sowe applied for the grant issued to them on 2/3/2015 to be confirmed. The supporting affidavit indicates that the only available property to be distributed was the aforementioned parcel of land. The same was to be divided as follows;-

- a) Jackson Kiptanui – 16.25 acres
- b) Henry Biwott Sowe – 16.25 Acres
- c) Hellen Chemaiyo Sowe - 30 acres.

From the record, Hellen Chemaiyo Sowe was the surviving widow. The mother to Jackson and Henry had since passed on.

4. When the matter came up for confirmation, it was easy to determine Hellen's share as she would carry the burden of her children or her house.

5. The portion due to Jackson Kiptanui was equally not contested as he gave Rosa one acre out of his share.

6. The objector herein Salina Sowe accordingly was to get a share from Henry as was agreed by the family. Henry refused and this forced the court to determine Salina's entitlement by way of oral evidence.

7. **Salina who was PW1** stated that she was a sister to Henry and that she had gotten married but due to her matrimonial problem she came back home. The deceased then showed her a place to build and that is where she had been staying with her 7 children ever since. All that she asked was a portion of the 16.25 acres given to Henry just like her sister Rosa had been given by Jackson.

8. Her witness **Jackson Kiptanui** and a brother to Henry maintained that position. He said that Hellen had children out of Wedlock and have been staying ever since on that land. Infact Henry came to the suit land way after Hellen had settled there. According to him Henry is supposed to give Hellen a portion thereof.

9. **PW2 Richard Cheruiyot Cheboi** testified that the deceased told him to demarcate the suit land to his wife and children albeit temporarily. He said that by the time Henry came to the land her sister was already in occupation.

10. The administrator Henry testified and stated that indeed the land was divided and he was given 16 ¼ acres. He said that the same was done according to the deceased wishes. She said that the objector was the eldest in their house. She said she was married but differed with her husband and came home in 1999. He showed her where to build and has been there todate. She said that she has her land elsewhere.

11. **DW2 Joel Terer** is a step brother to DW1. He confirmed the the deceased divided his land into 3. He said that the objector was married to Chemelyong and they are still asking for dowry. He did not know where the objector was staying.

12. **DW3 Peter Karuoi Piwott** is the son to Henry. He said that his father showed the objector where to build in 1999. she has been staying there todate.

Analysis and Determination

13. Having heard all the parties who were apparently not represented, what is not in dispute is that the two brother and sister. Henry and Salina are staying on the suit land. Her stay was made possible by their deceased father. Infact it appears that the rest of the family members were well aware of her stay and they did dispute. Infact they assisted in the construction of her house.

14. Their other brother Jackson testified and it was not disputed that he had given land measuring 1 acre to her sister Rosa. The main objection by Henry is that the objector was married and therefore had her share where she had been married.

15. There is no doubt also that the objector has children and they appear to have been brought up on the same parcel of land.

16. I am therefore satisfied that based on the evidence on record, the objector has been on the land for a long time. She has even build on the land and the rest of the family members including Henry attest to this. Her son DW3 confirmed the same.

17. What then is the legal position. Under Section 29 of the Succession Act Cap 160 Laws of Kenya regardless of whether she was married or not the objector for all intent and purposes is entitled to her father's estate. True she was married to Chebelyong, but it appears the said married developed some problems that is why she came home.

18. The rest of the land measuring 60 acres was well divided on the first instance without any complication. The objector lays no claim on the rest of the land. It seems therefore, that, all that she wants is a portion from Henry's side just as Jackson gave a piece to her sister Rosa. Henry would have none of this.

19. In my view even if Henry was to refuse, which he had done vide his oral evidence, her sister would have been entitled to the same. The 16 ¼ acres he holds was and has never been his. The same belonged to the deceased who was their father. Part of the said land is occupied by the objector and she had done so for along time. Infact Henry did not raise any complaint regarding her occupation or at all. There is obviously bad blood between them.

20. Henry has not demonstrated any evidence to show that her sister has land where she got married. The 6 acres he alleges are mere hearsay. Even if her children whom she got out of wedlock have been given somewhere to settle by the father's the same does not negate the fact that her mother was entitled to her father's estate.

21. In the premises I find that the formula adopted by the family was appropriate and would promote coexistence just as Jackson ceded 1 acre to Rosa , It would be appropriate that a portion be ceded to the objector by Henry.

22. The place of the objector is special taking into account, that she has been in occupation of that portion for a long time as confirmed by the witnesses.

23. In the premise I do order that she be given 2 acres out of the 16 ¼ acres inherited by Henry. The portion to be given shall be on the spot where she has her homestead at the moment.

24. In the final analysis I do allow the application dated 18/2/2016 as follows;

Land parcel Number West Pokot /Siyoi/511 be shared as follows;

a) Hellen Chemaiyo Sowe – 30 acres

b) Jackson Kiptanui – 15.25 acres

c) Henry Biwott Sowe – 14.25 Acres

d) Salina Sowe – 2 Acres

d) Rosa Sowe – 1 Acre

25. This being a family matter, each party shall meet their respective costs.

Delivered, signed and dated at Kitale on this 26th day of November, 2018

H.K. CHEMITEI

JUDGE

26/11/18

In the presence of:

Salina Sowe - Objector present

Henry Sowe – 2nd Petitioner present

Court Assistant – Kirong

Judgment read in open court.