



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.32 OF 2014**

**IN THE MATTER OF THE ESTATE OF KIPKOSKE ARAP MINEI ALIAS KIPKOSKE ARAP  
MINE-DECEASED**

**JANET CHEPKEMOI.....APPLICANT**

**VERSUS**

**JOEL KIPTANUI ARAP KOROS.....RESPONDENT**

**JUDGMENT**

1. This dispute may well be described as the battle of the grandchildren. It pits the petitioner/respondent **Joel Kiptanui Arap Koros** (hereafter **Joel**) against the objector, Janet Chepkemoi. Joel is the grandson of the deceased, **Kipkoske Arap Mine alias Kipkoske arap Minei**, who passed away on 14<sup>th</sup> May 1985, to whose estate these proceedings relate. The objector, Janet, describes herself as the grand daughter-in-law of the deceased. She states that she is the widow of **John Kipruto Arap Koros**, a grandson of the deceased and a younger brother of Joel's. John Kipruto Arap Koros is deceased, having passed away on 17<sup>th</sup> June 2009.

2. The dispute revolves around the right to inherit a share of the land registered in the name of the deceased, Kipkoske Arap Mine, being title number Kericho/Ainamoi/165. According to Joel, he and his brother, John Kipruto Arap Koros, were entitled to a share of their father's share of the said land, being 2.2 acres. Their father was Kipkoros Koske, a son of the deceased in this matter. He has two sisters, Jane Chelangat and Susan Rotich.

3. By an application dated 3<sup>rd</sup> March 2014 and filed in court on 4<sup>th</sup> March 2014, Joel applied for letters of administration intestate to the estate of his grandfather. In form P&A 5, he named the following as the beneficiaries of the estate:

- a. Jane Chelangat - Granddaughter**
- b. Susan Cherop - Granddaughter**
- c. Joel Kiptanui Koros - Grandson**
- d. John Kipruto Koros - Grandson**
- e. Sarah Chepngetich - Granddaughter**
- f. Paul Kipngetich - Grand son**

- g. Rusi Langok - Daughter**
- h. Esther Cheronu Koske - Daughter in law**
- i. David Kimutai Koske - Son**
- j. Ann Chelangat - Daughter in law**

4. He annexed to his application an order obtained in **Kericho High Court Miscellaneous Application No. 10 of 2012- In the matter of the estate of the Late Kipkosgei Arap Mene (sic) (Deceased) and Joel Koros** in which the court directed the registry staff to accept the petition for letters of administration intestate without the introductory letter from the area chief. A grant was issued to him on 26<sup>th</sup> May 2014.

5. By an application dated 11<sup>th</sup> January 2015 and filed in court on 19<sup>th</sup> January 2015, Joel sought confirmation of the letters of administration intestate issued to him on 26<sup>th</sup> May 2014. The grounds for the application were that, *inter alia*, the administrator and all the beneficiaries had consented to the application and had no objection to it. Further, that all the dependants of the estate had agreed to the confirmation for the best interest of all beneficiaries including purchasers of some parcels of the estate.

6. In the affidavit in support of the summons for confirmation of grant, Joel indicates the following as the beneficiaries of the estate:

- a. Jane Chelangat - Granddaughter**
- b. Susan Cherop - Granddaughter**
- c. Sarah Chepngetich - Granddaughter**
- d. Paul Kipngetich - Grandson**
- e. Rusi Langok - Daughter**
- f. Ester Cheronu Koske - Daughter in law**
- g. David Kimutai Koske - Son**
- h. Ann Chelangat - Daughter in law**

7. A consent annexed to the application indicates the sole asset of the deceased, being land parcel number Kericho/Ainamoi/165 measuring 6.9 acres, which was to be inherited as follows:

**0.8 acres to Joel Kiptanui Arap Koros**

**2.5 acres to David Kimutai Koskei**

**1.1 acres to Michael Chepkwony Sigei**

**½ acre to Simon Kipkurui Bett**

**½ acre to Robert Kipsiele Kirui**

**1. acres to Peter Kipyegon Cheruiyot**

**0.3 acres to Jane Chelangat**

8. The grant was confirmed and a certificate issued on 18<sup>th</sup> June 2015.

9. Five months later, on 3<sup>rd</sup> November 2015, the grand daughter in law Janet, entered the scene. She filed an application of the said date seeking orders to restrain the Land Registrar, Kericho from registering any dealings with Kericho/Ainamoi/165, issuing any title deeds in respect of entries made, or in any way implementing the certificate of confirmation of grant issued to the petitioner pending the hearing and determination of her application. She also sought orders for the annulment of the grant and entries made against the title, her inclusion as a beneficiary of the estate, that the petitioner be punished for excluding her, as well as the costs of the application.

10. In her affidavit in support of the application, she averred that she is the only surviving widow of John Kipruto Koros, the petitioner's brother and a grandson of the deceased. That she had four children with the deceased grandson, with whom she lived in the land, Kericho/Ainamoi/165; that Joel, her brother in law, had on many occasions threatened to disinherit her and had made good his threat to disinherit her by taking out letters of administration without her knowledge or consent. She had only learnt of the succession cause when she visited the lands office. She claimed 1.1 acres out of the said land and accused the petitioner of intermeddling with the estate and selling it to strangers and including them as beneficiaries of the estate.

11. In his affidavit in reply sworn on 12<sup>th</sup> February 2016, Joel denied that he obtained the grant of letters of administration to the estate of the deceased fraudulently or that he deliberately omitted the applicant's name and included names of strangers as heirs. He confirmed that the late John Kipruto Arap Koros (deceased) was his brother but asserted that he was not aware that he had ever married the applicant. He further asserts that as far as he is aware, his brother had one wife, one Lucy Njeri Koros (deceased) whom he had married in 1993 and with whom he had two children, Saraphina Chepchumba Koros and Kevin Kipchirchir Koros. It is his averment that these are the only known family/dependants of the late John Kipruto Arap Koros that he is aware of.

12. Joel further deposes that before he applied for the grant of letters of administration intestate of the estate of the late Kipkoske Arap Minei *alias* Kipkoske Arap Mine, he had made every effort to ensure that all his beneficiaries were included. He had requested the area chief to write an introduction letter stating all the beneficiaries of the late Kipkoske Arap Minei but he had refused, prompting Joel to make an application to court to dispense with the chief's letter.

13. Joel further avers that the family of the deceased had resolved that his property, Kericho/Ainamoi/165 measuring about 6.9 acres should be divided amongst the deceased's children's families. His father's family was entitled to 2.2 acres. He and his sisters, Jane Chelangat and Susan Cherop, had agreed that the portion of land, being 2.2 acres reserved for their late father be divided as follows:

**i. 0.8 acres Joel**

**ii. 0.8 acres to the late John Koros**

**iii. 0.3 acres to Jane Chelangat**

**iv. 0.3 acres to Susan Cherop**

14. He and his sister, Susan Cherop, had sold their respective shares of Kericho/Ainamoi/165 to Michael Sigei, and he had acquired a title to the said parcel.

15. According to Joel, the parcel intended for his deceased brother, John Kipruto Koros, measuring 0.8 acres is intact. It is his averment that he holds it in trust for his brother's known family, that is his children, Saraphina Chepchumba Koros and Kevin Kipchirchir Koros. Joel asserts that he has no knowledge of the applicant ever being married to his late brother, and she is not therefore a beneficiary of his estate.

16. He further avers that all the beneficiaries of the estate of the deceased have got their respective shares of the estate, that title number Kericho/Ainamoi/165 has been subdivided and individual title issued, and it will be highly prejudicial and unjust to the respective owners if the application is allowed.

### **Analysis and determination**

17. Directions had initially been issued that this matter proceeds by way of oral evidence. However, when the matter came up for hearing on 1<sup>st</sup> December 2016, Counsel for the parties elected to vary the directions and proceed by way of written submissions, which they filed and asked the court to rely on in rendering its decision. This decision is therefore based on the affidavit, evidence and submissions.

18. I believe that four issues arise for determination in this matter:

*i. Whether the applicant is a beneficiary of the estate of the deceased and entitled to a share of his estate;*

*ii. Whether the respondent was entitled to subdivide and dispose of land title number/Kericho/Ainamoi/165;*

*iii. Whether the titles resulting from such subdivision were valid;*

*iv. What orders should issue in the circumstances of this case.*

### **Whether the applicant is a beneficiary of the estate of the deceased**

19. I have considered the averments of the parties and the submissions filed on their behalf. In particular, I have noted the contents of the applicant's affidavit sworn on 3<sup>rd</sup> November 2015, her supplementary affidavit sworn on 24<sup>th</sup> February 2016, and the witness statements by Daniel Kiprotich Bore and Kikwai Rono arap Kirui.

20. What emerges from these documents is that the applicant, Janet Chepkemoi, was married to Joel's brother, John Kipruto Koros, and has been living on land parcel number Kericho/Ainamoi 165. From the death certificate annexed to the affidavit of Janet Chepkemoi sworn on 3<sup>rd</sup> November 2015 in support of the application, the said John Kipruto Koros died on 11<sup>th</sup> June 2009 aged 40. The birth certificates attached to the said affidavit show that the applicant and Joel's deceased brother had three children, Ivy Chepkurui born on 14<sup>th</sup> July 1994, Delvin Cheronon born on 22<sup>nd</sup> July 1999, and Cynthia Chelangat born on 21<sup>st</sup> May 2005.

21. The birth certificates in respect of these three children show the applicant, Janet Chepkemoi, and Joel's deceased brother, John Kipruto arap Koros, as the mother and father of the children respectively. The fourth birth certificate is in respect of a child born on 28<sup>th</sup> June 2013, after the demise of Joel's brother. From the applicant's evidence therefore, which the respondent elected not to test through cross-examination, I am satisfied that she was married to Joel's brother, and had three children with him.

22. I have already set out the averments by Joel in response to the application. His position is supported by his sister, Jane Chelangat who, in a statement dated 29<sup>th</sup> March 2016, echoes her brother's averments. In submissions filed on his behalf dated 28<sup>th</sup> March 2017, Joel asserts that the applicant is not the widow of the late John Kipruto Koros as she has not been able to provide evidence that dowry was paid for her. He further submits that the marriage is not valid as it was not registered under section 6(1) and 12 of the Marriage Act. He contends, further, that the mere fact that she lives on the family land does not make her a part of the deceased's family but a trespasser. In his view, his brother lived with the applicant in a state of concubinage.

23. With respect, I find no merit in these arguments by Joel. First, the deceased died in 2009, long before

the enactment of the Marriage Act. There can therefore be no basis for challenging the status of the applicant as a widow of John Kipruto Koros on the basis of the Marriage Act. The respondent tacitly concedes that the applicant has been living on the land Kericho/Ainamoi/165. His explanation is that she has been living there as a trespasser. However, it is hard to see how a “trespasser”, with children whose father is shown to be the respondent’s brother, just emerged on the land, settled down and asserted a claim as a member of the family of the deceased. A more plausible explanation is that she is indeed who she says she is: the widow of John Kipruto Koros and a granddaughter in law of the deceased.

24. Joel has alleged that the only wife of the deceased that he is aware of is one Lucy Njeri who is deceased and who had two children, Saraphina Chepchumba Koros and Kevin Kipchirchir Koros with his deceased brother. However, it is instructive that while he asserts that these children were entitled to a share of their father’s estate, nowhere does he name them in his documents filed in court until the present application was filed. His assertion now is that he holds 0.8 acres in trust for them. There is no basis for believing this claim by the respondent.

**Whether the respondent was entitled to subdivide and dispose of land title number/Kericho/Ainamoi/165**

25. I will deal with this issue together with the third issue, namely, whether the titles resulting from such subdivision was valid. I have considered the respective positions of the parties on this issue. I must say that one gets the distinct impression that the respondent, Joel, is not a person worthy of credit, and was out to benefit solely out of his father’s share of the deceased’s estate. This is evident from the documents annexed to his own affidavit sworn on 12<sup>th</sup> February 2016.

26. It is noteworthy, for instance, that the sale agreement with Michael Chepkwony Sigei for the sale of 1.1 acres of land to be excised from Kericho/Ainamo/165 was entered into in 2012. He did not, at this point in time, have any lawful authority to sell any part of the deceased’s land. His actions amounted to intermeddling with the estate of the deceased. In **Gitau and two others -vs- Wandai and five others (1989) KLR 231**, it was held that entering into an agreement to sell estate property before getting a grant or without such a grant is intermeddling. Section 45 of the Law of Succession Act provides that:

***“Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”***

27. Under section 45(2), such intermeddling is a criminal offence and anyone found guilty of intermeddling is liable to imprisonment for a term not exceeding one year. Clearly, any titles that resulted from an illegality, the intermeddling with the estate of a deceased person contrary to section 45 of the Law of Succession Act, are not valid.

28. Further, under sections 55 and 82 of the Law of Section Act, the respondent was prohibited from selling the deceased’s property before the grant was confirmed. In this case, as is evident from the agreement for sale annexed to his affidavit, he purported to sell the property of the deceased in 2012, long before he applied for letters of administration intestate.

29. The documents of title annexed to the said affidavit reveal the following with respect to the 2.2 acres that should have gone to Joel and his brothers and sisters:

**i. Michael Chepkwony Sigei holds 0.45 ha out of Kericho Ainamoi/165. A title, Kericho/Ainamoi/1334 was issued to him;**

**ii. Robert Kipsiele Kirui-0.20 ha. title number Kericho/Ainamoi/1339 was issued to him;**

**iii. Joel Kiptanui arap Koros 0.32 ha. He holds title number Kericho/Ainamoi/1336;**

**iv. Jane Chelangat 0.12 ha. She holds title number Kericho/Ainamoi/1335;**

**v. Peter Kipyegon Cheruiyot 0.49 ha. He holds Kericho/Ainamoi/1338.**

30. Which begs the question: where is the 0.8 acres that the respondent asserts his deceased brother was entitled to? Further, the acreage set out in the titles simply does not add up to the 2.2 acres due to the respondent and his deceased brother.

31. Having obtained the grant and confirmation thereof in violation of the Law of Succession Act by failing to disclose all the beneficiaries of the deceased, and in particular, leaving out the applicant and her children whom, as I have found, were beneficiaries of the estate of the deceased by virtue of being the widow and children of the deceased, the grant obtained by the respondent and the confirmation thereof was obtained fraudulently by the making of a false statement or by concealment from the court of something material to the case. . It cannot be allowed to stand as it is, at least in relation to the portion of the property of the deceased to which the respondent and his siblings were entitled to.

32. The respondent has argued that the estate of his brother, John Kipruto Koros, was entitled to 0.8 of an acre. He alleges that he holds this portion in trust though, as is evident from the analysis above, no such portion exists. Which brings me to the last issue in this matter.

**What orders should issue in the circumstances of this case**

33. The applicant had prayed for the following in her application dated 3<sup>rd</sup> November 2015:

***3. That the grant of letters of administration to Joel Kiptanui Arap Koros made on the 26<sup>th</sup> day of May 2014 and confirmed on 18th June 2015, be annulled and entries already made against the title No.Kericho/Ainamoi/165 be reversed.***

***4. That this Honourable Court be pleased to include the applicant herein as a beneficiary of the estate.***

34. Rule 73 of the Probate and Administration Rules saves the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Accordingly, I direct as follows:

***i. That title numbers Kericho/Ainamoi/1334, Kericho/Ainamoi/1335, Kericho/Ainamoi/1336 and Kericho/Ainamoi/1339 be and are hereby cancelled.***

***ii. That the portion of the land of the deceased, Kericho/Ainamoi/165, that devolves to the respondent and his siblings, amounting to 2.2 acres, shall be shared equally between:***

**a. Joel Kiptanui arap Koros**

**b. Janet Chepkemai as the widow of John Kipruto Koros**

**c. Jane Chelangat and**

**d. Sarah Cherop.**

35. The respondent shall bear the costs of this application.

**Dated, delivered and signed at Kericho this 24<sup>th</sup> day of July 2017.**

**MUMBI NGUGI**

**JUDGE**