



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

**SUCCESSION CAUSE NO.297 OF 2015**

**IN THE MATTER OF THE ESTATE OF THE LATE JOEL CHERUYOIT KORIR -  
(DECEASED)**

**JOSHUA KIPRONO CHERUIYOT .....PETITIONER**

**VERSUS**

**RACHEL CHEROTICH KORIR.....PROTESTOR**

**JUDGMENT**

1. The proceedings in this case relate to the estate of **Joel Cheruiyot Korir**, who died intestate on the 20<sup>th</sup> day of June 2012. According to the letter form the Chief of Cheborgei Location dated 19<sup>th</sup> May 2015, the deceased was survived by the following beneficiaries:

- a) **Samuel Cheruiyot, aged 76**
- b) **Sarah Rotich, a daughter aged 73**
- c) **Rachel Korir, a daughter aged 71**
- d) **Alice Korir, a daughter aged 69**
- e) **Joshua Cheruiyot, a son aged 67**
- f) **Elizabeth Sang, a daughter aged 63**
- g) **Jane Ruto, a daughter 65**
- h) **Esther Korir, a daughter aged 61.**

2. An application for letters of administration intestate to the estate of the deceased was made by Joshua Cheruiyot on 13<sup>th</sup> July 2015. In Form P&5 dated 23<sup>rd</sup> May 2015, Mr. Cheruiyot set out the beneficiaries above. He indicated the assets of the estate as comprising one property, Kericho/Cheborgei/486 measuring 17 hectares which was valued at Ksh.10,000,000. The liabilities of the estate were indicated as one purchaser, Jackson C. Sigei, who had purchased one acre from the deceased. Letters of administration intestate were duly issued to Joshua Kiprono Cheruiyot on 14<sup>th</sup> October 2015.

3. By an application dated 7<sup>th</sup> March 2016, Mr. Cheruiyot applied for confirmation of the grant of letters of administration intestate. The affidavit sworn by the administrator on the mode of distribution indicated

that the estate would be distributed as follows:

***“L.R. No. Kericho/Cheborge/486 be shared between Samwel Kiplangat Cheruiyot and Joshua Kiprono Cheruiyot each getting 8 acres and 1 acre be given to Jackson C. Sigei”.***

4. It is to be noted that the certificate of official search of the property annexed to the application for letters of administration intestate which is dated 15<sup>th</sup> June 2015 indicates that Kericho/Cheborge/486 registered in the name of Joel Korir Cheruiyot measures approximately 42 (four two decimal zero) acres.

5. In his affidavit sworn on 23<sup>rd</sup> June 2016 however, Joshua Kiprono Cheruiyot produced what he stated to be the original will of the deceased, in accordance with which the estate of the deceased was to be shared equally between Samwel Kiplangat Cheruiyot and Joshua Kiprono Cheruiyot.

6. Thereafter, by an affidavit of protest sworn on 19<sup>th</sup> September 2016, Rachel Cherotich Korir, with the authority of her siblings, Alice Chemutai Korir and Esther Chepkorir, protested at the mode of distribution set out in the affidavit of Joshua Kiprono Cheruiyot. She alleged that the administrator had not involved his siblings, other than Samwel Kiplangat Cheruiyot, and had forged her signature. She had not signed any documents with respect to the succession. Further, that she had been residing on the said property since 1984, had constructed a house there, and was now on the verge of being evicted by her brothers. She further deposed that the will relied on by the administrator tended to disinherit her and her siblings, and was discriminatory against them.

7. It was also her contention that at the time the deceased was alleged to have written the will, he was infirm and senile and incapable of understanding the action of distributing his estate. She proposes that the property of the deceased be distributed equally among the beneficiaries of the estate.

8. In his affidavit in reply to the protest sworn on 24<sup>th</sup> November 2016, Joshua Kiprono Cheruiyot avers that all the beneficiaries of the estate consented to the confirmation of grant as he had proposed. He also asserts that his father had made a will during his lifetime which he had relied on to distribute the estate. He has annexed to the affidavit a copy of what he alleges is his father's will.

9. It is also his averment that on 29<sup>th</sup> September 2016, a meeting had been held with clan elders at which it was resolved that the assets of the deceased be distributed in accordance with the deceased's will. He has annexed to his affidavit the minutes of the said meeting. He terms the protest by his sister as frivolous, vexatious and an abuse of the court process that should be dismissed.

10. I have considered the averments of the petitioner and the protestor and the record of the court. I note that the administrator filed an application for letters of administration intestate and did not seek probate of the will of the deceased. The first time he placed the alleged will before the court was in his affidavit sworn on 23<sup>rd</sup> June 2016.

11. I have also considered the minutes of the clan meeting allegedly held on 29<sup>th</sup> September 2016. I note that this meeting was held after the filing of the protest before me, which was filed on 19<sup>th</sup> September 2016. It is noted in the minutes, Min.4/16, that the daughters of the deceased neglected the call of the elders. The minutes that follow emphasize that girls have no clans till they are married, have no right to inherit property from parents once they are married, and it would be, under Kipsigis culture, trespass for the daughters and (their) children to be on the land.

12. The minutes state at Min.7/16 that all the clan members resolved that no land would be allocated to the married daughters or sisters as their land is in their individual matrimonial homes, in accordance with Kipsigis culture. In Min 8/16, it is stated that 'Recho' the protestor, had been given land by her father to cultivate maize but had called the police when her father's cows unintentionally went to the farm, and he and Samwel had been arrested. This is termed as a bad and disrespectful show by the protestor, as a result of which a 'curse' was pronounced on her. No mention is made of the alleged will by the deceased.

13. With the greatest respect to the petitioner and his strong belief in custom, one cannot help but notice that the alleged clan meeting, if it took place at all, was convened with the sole purpose of condemning the protestor for having the effrontery to lay a claim to her father's estate. Further, it was intended to buttress the petitioner's position that only he and his brother had a right to inherit from their father. Interestingly, no mention of the will allegedly left by the deceased was made at this clan meeting. Indeed, no effort has been made to prove the alleged will as required in law.

14. The arguments advanced by the petitioner and his clan, assuming that such a meeting did take place, and their reliance on Kipsigis custom which essentially seems to be that daughters (women) belong nowhere until they are married must fail in light of the provisions of the Constitution and the law. Article 27 prohibits discrimination on any basis such as race, colour, ethnic origin or sex. Section 38 of the Law of Succession Act provides that where an intestate has left a surviving child or children but no spouse, the net intestate estate shall devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

15. In his submissions on behalf of the petitioner, Learned Counsel, Mr. Migiro, conceded that the position taken by the petitioner is "*out of step with modern thinking and the law*". He agreed with the petitioner, however, that if the estate was distributed equally, there would be injustice in the distribution of the estate. He did not elaborate but urged the court to be guided by the Court of Appeal decision in **Rono vs Rono & Another 2008(I) KLR**.

16. The case of **Rono vs Rono**, particularly the decision of Waki J, underscored the non-discrimination principle in international law that is now captured expressly in our 2010 Constitution. There is no basis in law for discriminating against the children of a deceased person on the basis of their sex on their marital status.

17. The petitioner alleges that the protestor had once had the deceased arrested and detained at Litein Police Station, and Mr. Migiro submits that this is a factor that should be taken into consideration in the distribution of the estate as provided under section 28 of the Act.

18. Section 28 is found in Part III of the Law of Succession Act, which is titled "Provision for Dependants". It would appear that the provision that Mr. Migiro has in mind is section 28 (e), which requires the court to take into account, in determining whether provision should be made for a dependant out of the estate of a deceased person, "*the conduct of the dependant in relation to the deceased*".

19. In this case, it seems to me that the reliance on this provision is rather self-serving on the part of the petitioner. The production of the will late in the day, combined with the minutes of the clan meeting allegedly held to discuss the estate of the deceased after the filing of the protest, all indicate an intention on the part of the petitioner to disinherit his sisters in general, but the protestor in particular, by any means necessary. This is really negotiable, especially given the age of the protestor, who is 71 and has been living on her father's land. One wonders where she is expected to go.

20. However, the law is not on his side. It demands that there should be no discrimination on the basis of sex or marital status

21. Accordingly, I find that the protest in this case is merited. The estate of the deceased, comprising land title number Kericho/Cheborge/486 measuring 42 acres, less one acre due to Jackson C. Sigei that was listed as a liability on the estate, having been sold to the purchaser by the deceased, shall be distributed equally among the eight children of the deceased.

22. It is so ordered.

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

**MUMBI NGUGI**

**JUDGE**