



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BOMET**

**SUCCESSION CAUSE NO. 113 OF 2015**

**IN THE MATTER OF THE ESTATE OF**

**KIPKOSKEY SERONEY.....(DECEASED)**

**-AND-**

**PAULINA CHEPKURUI CHESENGENY.....PETITIONER**

**-VERSUS-**

**RAELI CHESANG SERONEI.....OBJECTOR**

**RULING**

1. The petitioner was issued with a grant of letters of administration on 25/8/2014.
2. The objector filed an affidavit in support of summons for revocation of grant on 23/12/2014.
3. The grounds being that the applicant was a daughter of the late Kipkoros Seroney (Deceased) who died and left the following beneficiaries.
  - (a) Rebecca Chepkirui Seroney – aged 59 years old daughter
  - (b) Rael Chesany – 59 years daughter
  - (c) Wesley Kipngeno Bosuben – 38 years grandson.
4. It is the contention by the objector that the petitioner is a stranger to the entire family.
5. That their father died on 28<sup>th</sup> July 1999 but the petitioner presented a death certificate which was fraudulently obtained, showing the death to have occurred on 12/2/1999.
6. It is contented that the two objectors are unmarried daughters of the Deceased Kipkoske Seroney and are the true dependants and entitled to the estate of the Deceased being LR No. Kericho/Tegat/67 and LR No. Kericho/Tegat/907.
7. That on 16<sup>th</sup> April, 2014 the area chief issued them with a letter confirming that they were the genuine dependants and beneficiaries of the Estate of the Deceased.
8. It is the contention by the objector that the petitioner concealed the true facts by presenting herself as one of the wives of the Deceased whereas she got married to the Deceased in the year 1972 and stayed with him for three months only.
9. That the petitioner got married to the deceased in the year 1971 when she had one child by the name of Kipkoech born out of wedlock and she left the matrimonial home three months later not to return 40 years later.
10. The objector/protestor further contends that the petitioner and the local chief colluded in the issuance of a letter recognizing her as a beneficiary.

11. That the petitioner in the succession cause obtained grant of letters of administration in secrecy and that she forged death certificate which bore the date of death as 12/2/1999 instead of 28/7/99.

12. It is the objectors prayer that the grant of letters of administration issued to the petitioner be revoked and or annulled and the estate be distributed to the beneficiaries excluding the petitioner.

13. It is the petitioners contention that before filing the succession cause the family had agreed that she be appointed as an administratrix.

14. That the Deceased was married to two wives and the beneficiaries listed were

- (a) Herself as the 2<sup>nd</sup> wife.
- (b) Her son Paul Kipkoech Koske
- (c) Dominic Kipyegon Koskei – her son
- (d) Rael Chesany Seronei – Daughter of the first wife. (Deceased).
- (e) Rebecca Chepkirui Seroney – Daughter of the first wife.

15. It is the petitioners contention that the two objectors were included as beneficiaries in the succession cause – paragraph 3 of the affidavit to support of the summons for confirmation of grant.

### **Analysis and conclusion**

16. It is not in dispute that Pauline Chepkirui Chesengeny (the petitioner) was married to Kipkoske Seroney (the Deceased) under Kipsigis customary law. She was a second wife whereas the two objectors

- (1) Raeli Chesang
- (2) Rebecca Chepkirui

Are daughter of the Deceased's first wife who were instructed not to marry under Kipsigis customary law so as to sire sons for their mother.

17. The objectors case is that the petitioner deserted their father, refused to consummate the marriage and did not take care of him when he lay bedridden due to sickness.

18. That the Deceased left a will disinheriting the petitioner from all his properties.

19. It's abundantly clear that after the deceased married the petitioner under Kipsigis customary law there was no divorce between the two till he passed on.

20. The objectors case is that there was no consummation of the marriage. This is an issue between the deceased and his wife and the daughters are not properly placed to testify on this.

21. On the issue of desertion, the petitioner contends that her house was set on fire by people she did not know which act was meant to chase her away from the matrimonial home.

22. On the issue of the alleged will, none was produced before the court. There is a document dated 8/6/98 purported to have been authored by Assistant chief Kaporuso and whereby the Deceased Kipkoske Arap Seroney is shown to have signed showing that Pauline Chesengeny should not be given a share of his property and that she must be divorced. The author of these alleged minutes denied them. Subsequently that evidence is not of much evidentiary value.

23. In conclusion it's my considered view that the Deceased was married under Kipsigis customary law to two wives. The first wife had two daughters who are the objectors in this case. The second wife is the petitioner. These two houses should share the Deceased estate equally. It is so ordered.

This being a family dispute each party to bear its own costs.

Ruling delivered dated and signed this 29<sup>th</sup> day of November 2017 in open court and in the presence of learned counsel for petitioner Bii absent. Learned counsel for objector Mr. Koech.

**M. MUYA**

**JUDGE**

**29/11/2017**

**Court** – Certified copies of proceeding to be furnished to counsels.

**M. MUYA**

**JUDGE**

**29/11/2017**