



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

SUCCESSION CAUSE NO. 67 OF 2016

IN THE MATTER OF THE ESTATE OF KOROMICHA CHESAINA (DECEASED)

-AND-

JULIUS KIPKURUI YEGON.....PETITIONER

-VERSUS-

SIMON KIPKOSGEI KOROMINCHA.....1ST OBJECTOR

PAUL KIMUTAI KOROMICHA.....2ND OBJECTOR

RULING

1. The two objectors Simon Kipkoskei Koromicha and Paul Kimutai Koromicha filed an objection to the grant of letters of administration on the 3rd day of May 2012.

The grounds are:-

- a. The petitioner in this succession cause is not a beneficiary since he has sold his share in the estate of the deceased.
- b. The petitioner filed this succession fraudulently and without consent from the other beneficiaries.
- c. The petitioner lied in court by stating that he was one of the beneficiaries.

2. In his affidavit in support of the objection the 1st objector depones that his father (the Deceased) owned 25 acres of land at Tegat Location before the year 1968 when land adjudication was being conducted.

3. The said piece of land was subdivided among his three sons as follows

- i. Chepkwony Koromicha – 9 acres
- ii. Simion Kipkoskei Koromicha – 8 acres
- iii. Paul Kimutai Koromicha – 8 acres

4. That Chepkwony Koromicha was the father of Julius Kipkirui Yegon.

5. It is contended that the said Chepkwony Koromicha (now deceased) sold his 9 acres of land to Chepkwony Chesimet in the year 1966 before land adjudication was conducted and used the proceeds of the sale to purchase land at Narok South.

6. That as the two objectors were under 18 years in the year 1968 the remaining portion of land could not be registered in their names but in the name of their father Koromicha Arap Chesaina. Which was LR Kericho/Tegat/454 measuring 6.4 hectares (16 acres).

7. It is their contention that their late brother Chepkwony Koromicha was not a beneficiary of the estate of the Deceased and the petitioner is

not entitled to a share in the estate of the Deceased.

8. In his replying affidavit the petitioner depones that the Deceased was his grandfather and had sired three sons namely:-

a. Chepkwony Arap Komicha(his deceased father)

b. Simion Kipkosgei Koromicha (objector)

c. Paul Kimutai Koromicha (Objector)

9. The petitioner denies the contention by the objectors that his late grandfather had acquired 25 acres of land in 1968 and had distributed the same among his three sons.

10. That the Deceased was allocated 6.4 hectares (16 acres) at Tegat which was subsequently registered in his names under title No. Kericho/Tegat/454.

11. That since that time his father the petitioner and the objectors were in occupation of the said land in equal portions of approximately 5.3 acres till when this cause was instituted in the year 2012.

12. The petitioner's father through his own moneys bought his own land in 1997 at Olosogon in Narok south measuring 3 acres which is not subject of these proceedings.

13. That thereafter the objectors filed objection proceedings purporting that one Chepkwony Chesimet had bought a portion of land from his father.

14. The matter was referred to the Divisional officer at Longisa by the lower court whereby it was found that there was no such purchaser.

15. That the purported purchaser is not in occupation of Kericho/Tegat/454

16. That from the official search and the green cards, the Deceased Koromicha Arap Chesaina is the absolute and registered owner of all that parcel of land known as Kericho/Tegat/454 measuring 6.4 hectares.

17. The main issue in these objection proceedings is whether the Deceased had acquired 25 acres of land at Tegat and whether he had subdivided them amongst his three sons with the first son getting 9 acres which he sold to one Chepkwony Chesimet and proceeded to buy another piece of land at Narok south.

18. Chepkwony Chesimet testified to have bought land from Chepkwony Koromicha in the year 1966. He testified to have bought 9 acres. There was no written agreement at the time but there were elders present. He bought the 9 acres for Kshs.800/= and the grass thatched house therein for Kshs.35/=. Chepkwony Koromicha then went and bought land at Narok. The Deceased had subdivided his land into three portions amongst his three sons.

19. Later Chepkwony returned claiming that there was a portion of land which was remaining. The witness maintained to have bought LR Kericho/Tergat/399.

20. There is a letter dated 21/3/2012 allegedly signed by the chief of Tegat location wherein one Kipyegon Arap Komicha was complaining to have sold his land to Chepkwony Chesimet in the year 1966 for Kshs.800/= and in the year 1977 sold $\frac{3}{4}$ of an acre for Kshs.937/=.

He was claiming that a portion of seven acres remained unpaid. Upon deliberation the elders were of the view that there was no other portion of land remaining for Kipyagong Arap Komicha who had not returned to the area for more than 43 years.

21. There is another letter dated 25/10/2011 signed by the Assistant chief of Kipyosit sub location which was to the effect that Kipyanyong Arap Koromicha was complaining that he had sold land to Chepkwony Chesimet in the year 1967 and another portion in the year 1977. That he had returned some 44 and 34 years respectively later complaining that there was another portion remaining. Elders had deliberated on the matter and were of the view that all the land belonging to Kipyangon was sold to Chepkwony and later registered in his name.

22. Objectors witness NO. 4 one Chepkwony Chepsenei did testify that he did attend meetings over the dispute between Chepkwony Chesimet and Chepkwony Koromicha. He did aver that Chepkwony Koromicha had sold land to Chepkwony Chesimet and went and bought land and settled in Narok South.

23. William Kilele corroborated this evidence.

Analysis and Conclusion

24. Upon hearing the evidence of both the objectors and the petitioner and their witnesses, I am satisfied that one Chepkwony Chesimet did buy land from Chepkwony Koromicha the father of the petitioner in the year 1966 which was before adjudication and issuance of title deeds of Tergat area of Kericho.

25. Chepkwony Chesimet land was registered as LR Kericho/Tergat/399 and that of the deceased estate LR Kericho/Tergat/454.

26. Chepkwony Koromicha himself did present complainants before the area assistant chief and the chief, who returned a verdict to the effect that he indeed did sell his land at Tergat to Chepkwony Chesimet. He was alleging that he had only sold a portion.

27. The panel of elders did observe that Chepkwony was bringing the complaint after more than three decades after he had relocated and bought some other piece of land elsewhere.

28. From the map presented before the court LR/Kericho/Tergat/454 is adjacent to LR Kericho/Tergat/399. This goes to show that the two lands were initially the same portion of land.

29. I am satisfied that the petitioners father had sold his own portion of land and cannot stand to benefit from LR Kericho/Tergat/454.

30. These objection proceedings have merit and they succeed accordingly.

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

Ruling delivered dated and signed this 29/11/2017 in open court and in the presence of Mr. Kenduiwa for the objectors.

Mr. Orina holding brief Koske.

M. MUYA

JUDGE

27/11/2017