



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 55 OF 2016**

**IN THE MATTER OF THE ESTATE OF CHEPKWONY ARAP SIGIRA**

**alias CHEPKWONY SIGIRA.....DECEASED**

**-AND-**

**LILIAN CHEPKORIR LANGAT SIGIRA.....1<sup>ST</sup> PETITIONER**

**STANLEY KIPTONUI LANGAT.....2<sup>ND</sup> PETITIONER**

**-VERSUS-**

**CHEPKETER GRACE SIGIRA.....OBJECTOR**

**RULING**

1. The objector Chepketer Grace Sigira filed an affidavit of protest dated 5/4/2016.
2. The grounds are that the subject parcel of land number Kericho/Bengwa/295 belongs to her though it was registered in the name of her late husband Chepkwony Arap Sigira. That she acquired it when her husband was serving jail term and in the line with Kipsigis customs, she conceded to have the said parcel registered in the name of her husband.
3. It is her contention that she has lived and occupied the land in question for more than fifty years whereas Lilian joined her eleven years ago.
4. The deceased Chepkwony Arap Sigira died on 9/4/2007 without leaving a will (intestate). The petitioner together with Stanley Kiptonui Langat filed a succession cause and obtained grant of letters of administration on 25/8/2014. Subsequently there has been rectification which is to the effect that Lilian is the first petitioner and the objector is the second petitioner.
5. It is submitted that the grant was obtained fraudulently by concealment from court of some material facts, which are:
  - (a) That the objector is the first wife and her name is not Tabsabei Sigira.
  - (b) That the certificate of death presented to the court by Lilian was obtained through fraud. The genuine one was the one produced by the objector.
6. The protestor has filed an affidavit detailing her preferred mode of distribution where all the beneficiaries share the 9.6 hectares equally in terms of 1.825 acres each.
7. The first petitioner did file an affidavit on the mode of distribution dated 22<sup>nd</sup> September 2016 wherein all beneficiaries apportioned 1.4826 acres each.
8. It is the submission by the protestor that though LR Kericho/Bingwa/295 was acquired by her, the same can be referred to a matrimonial property that was acquired during the subsistence of the marriage between the protestor and her late husband.
9. The bone of contention is whether Section 40 of the Law of Succession Act is applicable in the present case.
10. It is the contention by the protestor that Section 40 of the Law of Succession is not applicable as it is discriminatory as it denies the

protestor her constitutional rights and it's not in sync with the spirit and letter of the matrimonial property act of 2013.

11. Section 40 of the Law of Succession provides:

“Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate shall, in the first instance, be divided among the houses according to the number of the children in each house but also adding any wife serving him as an additional unit to the number of children”.

12. The protestors contention is that she has lived in the land in question for more than 50 years whereas the 1<sup>st</sup> petitioner has only lived there for eleven years. Further that she is the one who acquired it when her husband was serving a jail sentence. This explains why she objects to the petitioner being allocated a share in LR Kericho/Bengwa/295.

13. Apart from her allegations, there is nothing to show that she is the one who acquired the suit property and that at the time she acquired it her husband was in jail, if this was the case then there would have been no hindrance in registering the land in the name of protestor.

14. As to the application of Section 40 of the Law of Succession in this present cause, it is argued that it's discriminatory on its provisions.

My sister Mumbi J in the Kericho case Succession Cause No.16 of 2010 2017 eKLR had this to observe”. The provisions of Section 40 of the law of succession act and their implication for the first wife of a deceased person have been considered in various decisions of the High Court of Kenya. What has been the consensus is that they are unfair to a wife married decades or more before a second or third wife, yet she is required to share the estate of the deceased equally with subsequent wives as well as the children of the deceased. This is regardless of whether or not she had contributed to the acquisition of the property comprising the estate”.

15. The contention by the 1<sup>st</sup> petitioner is that the provision of Section 40 of the Law of succession are in mandatory terms. “Its unfortunate that this protest was not heard by way of viva voce evidence. This would have brought forth the contribution of the petitioner and the protestor to the acquisition of the property at issue. This would help guide the court as to the entitlement of each.

16. It is noted that in the protestors affidavit on mode of distribution she has not allocated the 1<sup>st</sup> petitioner any shares herself but only 1.825 acres to hold in trust for her children whereas the children of the protestor each is allocated 1.825 acres.

That would be unfair distribution taking into account that the children of the 1<sup>st</sup> petitioner are quite young, the oldest being 14 years and the youngest 9 years whereas those of the first house the oldest is 36 years and the youngest is 29 years.

17. LR No. Kericho/Bengwa/295 appears to be the only matrimonial property acquired by the Deceased.

Section 41 of the Law of Succession provides: where reference is made in this Act to the net intestate, or the resident thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who being female, marry under that age, and for all or an of the issue of any child of the intestate who predeceased him and who attain that age or so marry, in which case the issue shall take through degrees in equal shares, the share which their parent would have taken had he not predeceased the intestate”.

I am of the considered view that the petitioners children are very young and they will have greater needs than those of the protestor who are already all adults and probably settled well in life. I find the mode of distribution proposed by the petitioner to be fair in the circumstances of this case.

The grant of letters of administration and rectified is hereby confirmed. Certificate to issue.

**Ruling delivered dated and signed this 15<sup>th</sup> day of November 2017 in the presence of learned counsel for 1<sup>st</sup> and 3<sup>rd</sup> administrators. Mrs Kirui Advocate learned counsel for objector Mr. Sigira absent.**

**Court assistant – Rotich**

**M. MUYA**

**JUDGE**

**15/11/17**