



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.311 OF 2007**

*IN THE MATTER OF THE ESTATE OF THE LATE KIBET ARAP KIRUI alias KIBET KIRUI –  
(DECEASED)*

**SYLVESTER MARITIM KIRUI & 2  
OTHERS.....PETITIONERS/RESPONDENTS**

**VRS**

**HILLARY KIPROTICH TIROP**

**EDWIN CHERUIYOT**

**KIRUI.....APPLICANTS**

**RULING**

1. This is the application for rectification of grant dated 28<sup>th</sup> May 2014. It has been filed by (i) Edwin Cheruiyot Kirui and (ii) Hillary Kiprotich Tirop who are grand children of the deceased – Kibet Arap Kirui.
2. The main ground is that the confirmed grant did not indicate the names of the beneficiaries for whom the administrators were holding the land in trust.
3. I have perused the file and do not see any response filed by the administrators.
4. Counsel for both parties filed written submissions. I have read the record, affidavits and submissions and find the issue for determination to be whether the applicants are entitled to a share of the deceased's estate.
5. A grant herein was issued on 27<sup>th</sup> July 2010 jointly to Tabelga Chelangat Kirui, Silvester Maritim Kirui, Edwin Cheruyoit Kirui and Hillary Kiprotich Tirop.
6. On 24<sup>th</sup> September 2013 the grant was confirmed and the 1<sup>st</sup> administrator was to hold the land (Kericho/Kipchimchim/238) measuring 17.0 Hectares in trust for the beneficiaries but their respective shares were not indicated in the schedule.
7. What prompted this application is the fact that the Applicants are being threatened with eviction from the said land.

8. There is no dispute that the applicants are grand children to the deceased. Their grand mother who was the 1<sup>st</sup> Applicant is now deceased. Their mother was a daughter to the deceased. She too is deceased.

9. The Applicants have made a proposal which is at paragraph 5 of the supporting affidavit of the 1<sup>st</sup> Applicant Edwin Cheruiyot Kirui. It is as follows:

- a. *Silvester Maritim Kirui* - 4.5 acres
- b. *Christine Bett* - 4.5 acres
- c. *Francis Kipkorir Bett* - 4.5 acres
- d. *Edwin Cheruyoit Kirui* - 2.25 acres
- e. *Hillary Kiprotich Tirop* - 2.25 acres

10. The administrators have made the following proposal :

**KERICHO/KIPCHIMCHIM/238 (17) ACRES**

- i. *Silvester Marimi Kirui (son)* - 5 acres
- ii. *Christine Bett (daughter in law)* - 5 acres
- iii. *Jane Cheboo Langat (married daughter )* - nil
- iv. *Francis Kipkorir Bett (son)* - 5 acres
- v. *Edwin Cheruyoit Kirui (nephew)* - 1 acre
- vi. *Hillary Kiprotich Tirop (nephew)* - 1 acre

11. M/s Kirui for the Respondents have given some explanation to the mode of distribution. This really are facts which none of the administrators has told the court. As indicated earlier, there was no response filed in respect of this application. Counsel cannot therefore purport to give evidence on behalf of his client.

12. M/s Kirui insist that the estate had been subdivided by the deceased. If that was the position then why was the late Tabelga Chelangat Kirui made to hold the land in trust for the beneficiaries who were adults and knew their shares?

13. It is true that section 29 of the Law of Succession defines who a Dependant is and the hierarchal order to be followed in the distribution of a deceased person's estate. Section 39 expands more on this.

14. In the instant case the Applicants are not claiming for a share from the deceased's estate *per se*. They are claiming their deceased mother's share. Their mother was not married and so lived with her parents. Even if she was married and still wanted a share, she would as per the law be entitled to a share.

15. What the administrators are saying is that their father who is the deceased did not make any provision for the mother of the deceased had it not been for their good gesture of giving them 0.9 acres while their grand mother's share of one (1) acre went to them.

16. There was no good gesture they were doing for the applicants. The applicants are entitled to inherit the lawful share of their deceased mother. Section 41 of the Law of Succession Act provides:

*“Where reference is made in this Act to the "net intestate estate", or the residue 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 any of the issue of any child of the intestate who predecease 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.”*

17. Had their mother been alive she would have laid a claim on her share, in her father's estate. These

applicants are simply claiming what their mother would have claimed as of right. A reading of the Law of Succession Act in particular sections 35, 38, 40, 41, and 42 show that the Act never intended to make any distinction between male and female children. The Act mentions a child/children; grandchild/grandchildren. The Constitution which is the supreme law of this land forbids discrimination of any kind. Article 27 (3) provides:

*“ Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres”*

18. The Applicants are being handled differently by the administrators because they are children of a daughter and not a son of the deceased. It is true that wishes of a deceased person have to be respected, but if they repugnant to justice and morality and are contrary to the law they can be challenged. As I have stated above, had the deceased made any wishes that, should have come up when the grant came up for confirmation on 24<sup>th</sup> September 2013. Instead the administrators took a short cut to cover up their intentions.

19. I have therefore come to the conclusion that the proposed mode of distribution by the applicants is the most appropriate as it is in conformity with the law.

20. The application for rectification is allowed. The certificate of confirmation shall be amended in terms of paragraph 5 of the supporting affidavit of Edwin Cheruiyot Kirui sworn 28<sup>th</sup> may 2014. A certificate to issue to that effect.

21. The grant issued on 27<sup>th</sup> July 2010 to be amended by removing the name of the late Tabelga Chelangat Kirui.

22. This being a family matter I make no order as to costs.

**Signed, dated and delivered this 24th day of March, 2016.**

.....

**H. I. ONG'UDI**

**JUDGE**