



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO.237 OF 2004

IN THE MATTER OF THE ESTATE OF THE LATE KIPSOI NYAMWEIBI – (DECEASED)

ESTHER CHEBET SOI:.....:APPLICANT

VRS

PATRICK ALI SOY:.....:PETITIONER

JUDGMENT

1. The Petitioner herein Patrick Ali Soy is one of the sons of the deceased – Kipsoi Nyamweibi, who died on 19th July 2002.
2. The deceased had three (3) wives. Only one of the wives (Leah Nyamweibi) is alive. She testified as DW2.
3. The Petitioner was appointed administrator of the deceased's estate on 7th March, 2005. The grant has not been confirmed.
4. The only asset indicated as due for distribution in Form P&A 5 is **Kericho/Kabwastuiyo/83**.
5. On 28th March 2014, the Petitioner filed summons for confirmation of grant. He set out the mode of distribution of the deceased's only asset.
6. On 3rd March 2015, the Protestor, **Esther Chebet Soi** filed an objection to the confirmation. The said Protestor is one of the wives to the late Joseph Soi who was a son of the deceased from his 1st house.
7. She wants the court to distribute land belonging to the late Joseph Soi (namely Block Plot No.83 and Block 2 Plot 197) each into two equal portions to cater for his two wives.
8. The reason is that one of the parcels which is the portion where she lives is hilly, rocky and swampy.
9. When the Protest came for hearing, it was the Protestor's evidence that the deceased who is her father-in-law distributed shares to his family. She and her co-wife were each given land on behalf of their deceased husband. She now claims that the portion she got is small and not fertile. She even has title to her portion. She however, wants to share this portion equally with her co-wife and at the same time equally share her co-wife's portion.
10. In cross examination, she said her husband died in the 2nd year of their marriage leaving her with one child. She had land in Kaptien which was big but her mother moved her to Fort Ternun.

11. PW2 - PW4 supported the Protestor's case. PW2 is her brother in-law while PW3 and PW4 are her sons.
12. In response, the Petitioner has stated that the Protestor was relocated to Fort Ternun while her co-wife Borness remained at home. The Protestor has title to the land in Fort Ternun. He further stated that the deceased shared out his land among the three (3) houses. His three (3) witnesses confirmed that the deceased shared out his land according to the 3 houses.
13. The record shows that the husband of the Protestor pre-deceased his father who is the deceased herein. Her husband died in the 60s leaving her with one child. The deceased herein died on 19th July 2002.
14. He relocated the Protestor to Fort Termen. She even has title to that land which measures four (4) acres.
15. She claims that her co-wife Borness got a bigger share of five point four (5.4) acres. All the time during the life time of the deceased the Protestor never raised this issue.
16. Furthermore, Section 40 of the Law of Succession Act provides for the mode of distribution of the estate of one who has died intestate.
17. The Protestor's husband belonged to the 1st house of the deceased. In this case, the 1st house of the deceased has got more land than the others and they should not be heard to complain.
18. The Protestor with her one (1) child make two (2) units. They got four (4) acres. The Protestor's co-wife Borness appears to have died and she left five (5) children i.e five (5) units. They have got 5.4 acres to share.
19. Mathematics shows that the Protestor and her child have each got two (2) acres, whereas her co-wife's sons have each got 1.25 acres. So who has benefited more? Section 40 of the Law of Succession Act is about houses and the children in each house. The Protestor cannot claim to get an equal share with Borness's children who are more in number.
20. Finally the matter before this court is in respect of the estate of the late Kipsoi Nyamwebi and **not** Samwel Soi. I would have no reason to interfere with the Protestor's genuinely acquired title to the land in Fort Ternun when there is no good reason for such interference.
21. In any event if they agree as a family to do so they are at liberty to make those arrangements.
22. I therefore find no merit in the protest by Esther Chebet Soi and I dismiss it.
23. The **grant** issued herein on 7th March 2005 is hereby confirmed in terms of paragraph 5 of the supporting affidavit, of the summons for confirmation of grant.
24. A certificate to issue to that effect. Each party to bear his/her own costs.

Signed, dated and delivered this 16th day of March, 2016.

H. I. ONG'UDI

JUDGE