



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 80 OF 2007**

**IN THE MATTER OF THE ESTATE OF TABOWON LOMERINGOLE TULGO (DECEASED)**

**PKUKAT LOMERINGOLE.....PETITIONER**

**VERSUS**

**CHEPASIAKOU LOMERINGOLE TULGO**

**JOHNSTONE PYATICH LOMERINGOLE.....APPELLANTS**

**JUDGMENT**

1. The deceased, **Tobowon Lomeringole** died intestate on **3/4/2006**. A grant of letters of administration was issued to a son from the 2nd house of the deceased, **Pkukat Lomeringole** but two other administrators were later brought on board. That is **Chepasiakou Lomeringole** the 3rd wife of the deceased and **Johnstone Tulgo** from the 1st house of the deceased.

2. The 1st administrator, **Pkukat Lomeringore** filed a summons for the confirmation of the grant. He listed the persons who survived the deceased as four wives and eight children. His proposed mode of distribution is a follows:-

**(a) 1st House - Chepochemosoi Lomering'ole (deceased)**

- **West Pokot/Siyoi "A" 4565 - (11 acres) already transferred t0 Johnstone Pyatich**
- **West Pokot/Siyoi "A" 4559 - (11 acres) already transferred t0 Rotich Korinyang**
- **West Pokot/Siyoi "A" 4557 - (9.3 acres) already transferred t0 Johnstone Pyatich**

**(b) 2nd House - Pkukat Lomering'ole**

- **West Pokot/Siyoi "A" 4561 - (11 acres) to be transferred t0 Pkukat Lomeringole.**
- **West Pokot/Siyoi "A" 4563 - (11 acres) to betransferred t0 Pkukat Lomeringole**
- **West Pokot/Siyoi "A" 4557 - (9.3 acres) to betransferred t0 Pkukat**

**Lomering'ole**

**(c) 3rd House - Chepasiakoi Tulgo**

- **West Pokot/Siyoi "A" 4562 - (15 acres) already transferred to Chepasiakou Tulgo**
- **West Pokot/Siyoi "A" 4560 - (11 acres) already transferred to John Lotough Lomering'ole**
- **West Pokot/Siyoi "A" 4557 - (9.3 acres) to be transferred to Chepasiakou Tulgo.**

**(d) 4th House - Ann Lomeringole**

- **West Pokot/Siyoi "A" - (6 acres) to be transferred to Christine Cheyech and**

**Gladys Chesang Lomering'ole**

3. The grant was confirmed on **11/12/2014**. Subsequently, the application dated 31/3/2015 was filed seeking orders that:-

**(i) That the confirmation order of 11/12/2014 of the grant of letters of administration issued on 30/7/2009 be reviewed and set aside.**

**(ii) That the mode of distribution of the estate of the deceased filed by Pkukat Lomeringole dated 17/10/2014 be set aside.**

**(iii) The applicants be granted leave to file their affidavits to protest the mode of distribution.**

4. On 9/11/2015, a consent was filed in respect of the application dated 31/3/2015 as follows:-

**(1) By consent the confirmation order of 11/12/2015 of the grant of letters of administration issued on 30/7/2009 is hereby reviewed and set aside.**

**(2) Mode of distribution of the estate of deceased filed by Pkukat Lomeringole on 17/10/2014 be set aside.**

**(3) Applicants be granted leave to file their affidavits of protest and mode of distribution.**

**(4) The matter be set down for hearing of the distribution of the estate of the deceased.**

5. An affidavit of protest was filed by the **2nd Chepasiakou Lomeringole Tulgo** and 3rd administrators, **Johnstone Pyatich Lomeringole**. According to the affidavit of protest sworn on 10/11/2015 by **Chepasiakou Lomeringole**, it was the wish of the deceased that each son was to get eleven (11) acres of arable land. That the deceased had already effected the transfer of eleven (11) acres each to some of his sons prior to the death of the deceased. That due to financial constraints some of the sons had not had the transfers effected. They opposed the proposal by the 1st administrator **Pkukat Lomeringole** to get land parcel No. **West Pokot/Siyoi/ "A" 4563** given to him as the same was allocated to one of the other sons of the deceased, **Dickson Dungoreng Psinen**.

6. The following mode of distribution was proposed:-

**(a) 1st House - Chepochemosoi Lomering'ole (deceased)**

- **West Pokot/Siyoi "A" 4565 - (11 acres) already transferred to Johnstone Pyatich**
- **West Pokot/Siyoi "A" 4559 - (15.5 acres) already transferred to Rotich Korinyang**
- **West Pokot/Siyoi "A" 4557 - (39 acres) Johnstone Pyatich to get share of 9.3 acres**

**(b) 2nd House - Pkukat Lomering'ole**

- **West Pokot/Siyoi "A" 4561 - (11 acres) to be transferred to Pkukat Lomeringole.**
- **West Pokot/Siyoi "A" 4557 - (39 acres) Pkukat Lomering'ole to get share of 20.3 acres**

**(c) 3rd House - Chepasiakoi Tulgo**

- **West Pokot/Siyoi "A" 4562 - (15 acres) already transferred to Chepasiakou Tulgo**
- **West Pokot/Siyoi "A" 4563 - (11 acres) to be transferred to Dickson Omeringole *alias* Dickson Dungoreng Psinen**
- **West Pokot/Siyoi "A" 4560 - (11 acres) already transferred to John Lotough Lomeringole**
- **West Pokot/Siyoi "A" 4557 - (39 acres) Chepasiakou Tulgo to get share of 9.3 acres**
- **West Pokot/Siyoi "A" 4558 - (6 Acres) To be transferred to Christine Cheyech and Chesang Lomeringole**
- **Each beneficiary/party to provide land for paths, access etc where applicable. Further each beneficiary to bear his/her own costs/fee of survey and/or transfer where applicable.**

**7. DW1 Dickson Lomeringole *alias* Dickson Dungoreng Psinen** gave evidence which essentially supports the mode of distribution proposed by the 2nd and 3rd administrators. He further stated that the deceased had signed the application for the consent of the Land Control Board for the transfer of the land and the consent was subsequently obtained.

**8. DW2 Gladys Chesang Tulgo and DW3 Christine Cheyech** the daughters of the deceased with the late **Achila Chopowbonya Tulgo** who they described as the fourth wife of the deceased are against the aforesaid proposed methods of distribution. They proposed that they be given six (6) acres of arable land each. That is a total of twelve (12) acres of arable land between both of them as more specifically deponed in the affidavit of protest sworn on 19/2/2016 by **Gladys Chesang Tulgo**.

**9. Pkukat Lomeringole** testified in support of his proposed mode of distribution. He stated that the mode of distribution he has proposed distributes the property of the deceased equally between the three houses of the deceased and stated that the deceased did not leave behind four houses. He testified that what is reflected as house number four consists of two daughters of the deceased who can be given six acres of land from land parcel No. **West Pokot/Siyoi "A"/4558** as proposed by the other protesters. He clarified that the 1st and 2nd wives of the deceased passed away and further stated that the equal distribution between the houses was as per the wishes of their late father. He is the only child from the

2nd house.

10. I have considered the evidence in support of each of the three proposed modes of distribution. It is common ground that some of the beneficiaries have already benefited from the estate of the deceased as follows:-

- **Johnstone Pyatich - West Pokot/Siyoi "A"/4565 - 11 acres**
- **Rotich Korinyang West Pokot/Siyoi "A"/4559- 15.5 acres**
- **Chepasiakou Tulgo- West Pokot/Siyoi "A"/4562 - 11 acres**
- **John Lotough Lomeringole - West Pokot/Siyoi "A"/4560 - 11 acres.**

11. The transfer of eleven (11) acres of land to each of the three sons aforesaid supports the evidence that it was the wish of the deceased to give each of the sons eleven(11) acres of arable land. The proposal that **West Pokot/ Siyoi "A"/4561** which is eleven (11) acres be transferred to **Pkukat Lomeringole** and **West Pokot/Siyoi "A"/4563** which is eleven (11) acres be transferred to **Dickson Lomeringole** is therefore reasonable.

12. The deceased died in the year 2006. The *Law of Succession Act Cap 160 Laws of Kenya* is therefore applicable. In regard to polygamous marriage, *S.40(1) of the Law of Succession Act Cap 160 Laws of Kenya* proves as follows:-

**“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 estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children”.**

13. The daughters of the deceased, **Christine Cheyech** and **Chesang Lomeringole** have proposed that they be given twelve (12) acres between the two of them. Taking into account that the others have gotten about double that size of arable land, the proposal is not unreasonable. The 1st, 2nd and 3rd administrators are all in agreement that the two daughters be given land parcel **West Pokot/Siyoi "A"/4558** which is reflected as six (6) acres. It is not clear from the evidence on record whether the said six (6) acres consist of arable land or not. The two daughters can get the said six (6) acres and then another six (6) acres of arable land from land parcel **West Pokot/Siyoi "A"/4557** which is said to be 39 acres. If land parcel No. **West Pokot/Siyoi "A"/4557** is not arable, then the two daughters of the deceased to get six (6) acres each from land parcel No. **West Pokot/Siyoi "A"/4557**. The two daughters should be given priority in getting their six or twelve acres of land from land parcel No. **West Pokot/Siyoi "A"/4557** whichever is possible. The remainder of LR. No. **West Pokot/Siyoi "A"/4557** can then be distributed between the rest of the beneficiaries equally while taking into account the value of what they have already been given above.

Orders accordingly. This being a family matter, each party to meet own costs.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Kitale this 26th day of May, 2016.**

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**B. THURANIRA JADEN**

**JUDGE**