



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO. 168 OF 2000

IN THE MATTER OF THE ESTATE OF THE LATE ZAKAYO KIMUTAI KOTUT (Deceased).

KIMUTAI A NGETICH.....1ST PETITIONER

VERSUS

ESTHER CHEPKOSKEI KOTUTU.....2ND PETITIONER

DIRECTIONS

1. This matter was coming for judgment on 30th October 2013 on the main issue of distribution of the estate of the deceased Zakayo Kimutai Kotutu.
2. Mr. Kimutai A. Ngetich filed an affidavit of protest on 24th September 2014 as directed by the Court on 1st July 2014.
3. No directions were taken on how the protest was to be heard. The two counsel appearing for the parties agreed by consent to dispose of the matter by way of written submissions.
- While highlighting the submissions it was indicated that the property falling for distribution was:
 - i. *Kericho/Nyamanga/325 (11) Acres*
 - ii. *Kericho/Roret/829 (14.2) Acres*
 - iii. *Kericho/Roret/599 (1.8) Ha.*

According to Mr. Motanya the two families have no problem with the distribution of No's (ii) & (iii).

Both petitioners have presented their different modes of distribution which are not in agreement.

- The 2nd petitioner says parcel no (i) was wholly sold to Samwel Kiplangat Kirui while the 1st petitioner says only 6 out of the 11 acres were sold to the said Samuel Kiplangat Kirui.
- There is also an issue of the 1st Petitioner wanting compensation, over tea bushes. These are not matters which can be determined through written submissions.
- My view is that oral evidence must be led and witnesses cross-examined to assist the Court on how distribution should be done.
- I therefore vacate the Orders of 4th June 2015 for the protest to be determined by written

submissions.

- The Order setting this matter for judgment on 30th October, 2015 is also set aside.
- The protest shall be determined by way of viva voce evidence.
- The parties to be heard on the earliest date available.

Dated, Signed and Delivered in open Court this 21st day of December, 2015.

H.I. ONG'UDI.

JUDGE.