

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

SUCCESSION CAUSE NO. 216 OF 1999

IN THE MATTER OF THE ESTATE OF THE LATE KIPNGENO ARAP RUTO (DECEASED)

ESTHER CHEROTICH KOECH.....1ST PETITIONER

RACHEL CHEPKURUI KOECH.....2ND PETITIONER

VERSUS

JOHN K.A.NGETICH.....OBJECTOR

JUDGMENT

A temporary grant of letters of administration intestate in respect of the estate of **Kipngeno A. Rutto**, deceased was issued in the joint names of **Esther Cherotich Koech**, **Rachel Chepkurui Ruto** and **John Kimursi Ngetich** by an order of consent recorded at the Principal Magistrate's court, Kericho on 13th January 1995. The Succession Cause was thereafter transferred to this court for hearing and determination. The grant has not been confirmed because the parties have not agreed on the mode of distribution of the estate.

On 27th January 2000, learned advocates appearing in the cause recorded a consent order to have the dispute over distribution arbitrated over by Hon. Ong'anyi (rtd) learned Principal Magistrate sitting at Kericho. By the award made on 21st June 2002, the learned Principal Magistrate distributed the estate as follows:

1. Kericho/Sosiot/182 – (8.5acres) John Kimursik Ngetich
2. Kericho/Sosiot/1273 – (2.75acres) Rachael Chepkirui Ruto
3. Kericho/Sosiot/1224– (1.5acres) Esther Cherotich Koech
4. Kericho/Sosiot/295 – (0.75acres) Esther Cherotich Koech

Esther Cherotich Koech and Rachel Chepkurui Ruto, hereinafter referred to as the Petitioners, disputed the award and by the application dated 25th July 2002, the duo sought for the award to be remitted back to the learned Principal Magistrate for reconsideration. The Petitioners' application has not been heard and determined. The Petitioners filed their preferred mode of distribution. John Kimursi Ngetich, hereinafter referred to as the Protestor, also filed his preferred mode of distribution. The award by the learned Principal Magistrate is therefore disputed and has not been adopted. Basically, the court has been indirectly invited to intervene. The Petitioners suggest for the decision to be disregarded while the Protestor is of the opinion that this court should adopt the award. On my part, I will treat the award of the learned Principal Magistrate as a proposal and proceed to determine the rival modes of distributions *vis-a-vis* what the law provides. The following issues are not in dispute:

First, the identified estate assets are:

- i. L.R.No. Kericho/Sosiot/182

ii. L.R.No. Kericho/Sosiot/1224

iii. L.R.No. Kericho/Sosiot/1273

Secondly, the beneficiaries are:

i. John Kimursi Ngetich-Son

ii. Esther Cherotich Koech-daughter

iii. Rachel Chepkurui Ruto-daughter

The main issue this court has been invited to decide is the question of distribution. It is the Petitioners' proposal that the estate be equally distributed as follows:

1. Esther Cherotich Koech – L.R. No. 182 - 4.25acres

2. Rachel Chepkurui Ruto – L.R. No. 182 –2.0 acres

L.R. No. 1224 –1.5 acres

L.R. No. 1273 –0.75 acres

4.25acres

3. John Kimursi Ngetich - L.R. No. 182 – 2.25acres

L.R. No. 1273 –2.00acres

4.25acres

The Protestor on his part has suggested that the estate be distributed as follows:

1.Kericho/Sosiot/1273 - Rachel Chepkurui-0.50 acres

- John Ngetich 2.25 acres

2.Kericho/Sosiot/182 -Rachel Chepkurui 1.0 acres

-John Ngetich 7.5 acres

3.Kericho/Sosiot/1224 -Rachel Chepkurui 1.5 acres

The Protestor seems to suggest that since Esther Cherotich Koech is married, she is not entitled to benefit from the estate. There is also an averment that the deceased distributed part of her estate *intervivos*. I am unable to agree with the later averment because there is no cogent evidence to back up the same. In my humble view, the law is very clear on how distribution should be done in respect of such an estate. Under **Section 38** of the **Law of Succession Act**, the net intestate estate shall be equally divided among the surviving children. None of the deceased's children has renounced her right to inherit the estate. The Law of Succession Act does not discriminate against any child. **Article 60 (f)** of the **Constitution** provides for the elimination of gender discrimination in respect of the land. The marital status of a daughter should not therefore be used to deny her the right to inheritance.

In the end, I find the Protestor's protest to be without merit. Consequently, the grant should be confirmed and the distribution to be in terms of the mode of distribution given by the Petitioners because the same is in line with the provisions of the Constitution and the Law of Succession Act. The proposed mode of

distribution given by the Protestor which is also similar to that made by Mr. Ong'anyi the then learned Principal Magistrate goes against the Constitution and the Law of Succession Act. Since the parties involved in this dispute are siblings, I direct each to meet his or her own costs.

Dated, signed and delivered in open court this 20th day of June, 2014.

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J.K.SERGON

JUDGE

In the presence of:

Mr. Mutai (B) holding brief for Mr. Orina for Petitioner

Mr. Mutai for Protestor