



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
SUCCESSION CAUSE NO.111 OF 2003
IN THE MATTER OF THE ESTATE OF TAPSUBE TITOMET (DECEASED)

AND

MOCHI KERICH.....1ST PETITIONER

KIPRUTO KERICH.....2ND PETITIONER

VERSUS

SIBORA CHEMITEI.....OBJECTOR

RULING

A grant of letters of administration intestate in respect of the estate of Tapsube Titomet, deceased was jointly made to Mochi Kerich and Kipruto Kerich on 29th October 2003. The duo, hereinafter referred to as the Petitioners have applied for the grant to be confirmed vide the summons dated 16th November 2006. Sibora Chemitei Kerich, hereinafter referred to as the Protestor filed an affidavit of what referred to as the preferred mode of distribution and beneficiaries. I will deem the aforesaid as an affidavit of Protest. When the dispute came up for hearing, this court directed the same to be disposed of by affidavit evidence and by submissions.

I have considered the grounds set out on the face of the summons plus the facts deponed in the rival affidavits. I have further considered both the oral and written submissions. The Petitioners have identified L.R. No. Kericho/Kabianga/39 as the only asset of the estate. The Petitioners have further proposed for the aforesaid to be distributed as follows:

- | | | |
|---------------------------|---|--------------|
| i. Mochi Kerich | - | 0.7083 Acres |
| ii. Kipruto Kerich | - | 1.0625 Acres |
| iii. John Talam Tesot | - | 0.7083 Acres |
| iv. Eunice Cheronno Tesot | - | 1.0625 Acres |
| v. Sibora Chemuner Tesot | - | 0.7083 Acres |

When the Protestor learnt of the above proposal on distribution she protested against both the list of

beneficiaries and the schedule of distribution. In her lengthy affidavit, the Protestor gave in detail the family of the deceased. She averred that Tapsuble Titomet the deceased herein was the first wife of one Titomet (*now deceased*) who was also married to Taplule as his second wife. It is the evidence of the Protestor that before Titomet passed on, he divided his land between the two wives (*i.e. Tapsuble and Taplule*). The Protestor identified Titomet's houses as follows:-

1st House

- i. Tapsuble (deceased) - Widow
- ii. Kipkoech Kericho (deceased) - Son
- iii. Mochi Kerich - Son
- iv. Kiptalam Tesot - Son
- v. Mrs. Cheption (deceased) - Daughter
- vi. Tabutanyi - daughter

2nd House

- i. Taplule (deceased) - Widow
- ii. Kipruto Kerich - Son
- iii. Kipngeno Tesot - Son
- iv. Tabagerot (deceased) - Daughter

It is the averment of the Protestor that the late Titomet had divided his property equally between the houses. It is her submission that Kipruto Kerich and Eunice Cheronno w/o Kipngeno Tesot (*deceased*) are children of the 2nd house i.e. the house of Taplule hence they are not entitled to inherit from the house of Tapsuble. The Protestor stated that the late John Kipkoech Kerich had his own share in L.R. No.Kericho/Kabianga/039 which had been registered in the name of Tapsuble w/o Titomet and that he had allowed Kiptalam Tesot to put up a house temporarily upon the request of his wife while they were looking for an alternative settlement elsewhere. The Protestor stated that L.R. No.Kericho/Kabianga/039 was not family land but belongs to the late Kipkoech Kerich and his children. She stated that Mochi Kerich has his own land which he bought from the compensation proceeds of family land at Kabianga Tea Farm hence he has no claim over the land in question.

In short, it is the submission of the Protestor that it is only the family of Kipkoech Kerich who can inherit the land. She proposed the land to be distributed as follows:

NAME	AGE	SHARE
1. SIBORA CHEMITEI KERICH		5 ACRES
2. JOHNSTONE KIPKOECH KOECH	57	8 ACRES
3. STANLEY KIBET KOECH	54	8 ACRES
4. VINCENT KIPRONO KOECH	48	8 ACRES
5. JULIUS KIPRONO KOECH	38	8 ACRES

6. BORNES CHEPKURUI KOECH

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7. HENRY KIPLANGAT KOECH

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8 ACRES

It is the Protestor's submission that when the family of Titomet were evicted by the colonial Government from the respective portions to give way to the establishment of Kabianga Tea Farm, they were compensated and each went to buy land elsewhere.

The Petitioners' admitted that the deceased was a co-wife to Taplule who predeceased Tapsube. They claimed that the aforesaid parcel of land was divided equally between the two houses but the Protestor's husband who is now deceased was uncooperative.

I have carefully considered the material placed before this court together with the submissions. The dispute initially appeared simple and straightforward but after a critical examination of the issues raised and the affidavit evidence presented it is now clear to me that the dispute is complex and cannot be disposed of by affidavit evidence. The same requires the presentation of oral evidence whose veracity can be interrogated by cross-examination. The process will also enable the court to observe the demeanor of the witnesses as they testify. For the broad interest of justice I hereby exercise my inherent jurisdiction *suo moto* and review the order directing the cause to be disposed of by affidavit evidence and substitute it with an order that the dispute be determined by *vivavoce* evidence. Consequently, the proceedings conducted pursuant to the directive given on 4th March 2014 are hereby set aside. I further direct that the Succession Cause be heard *denovo* on priority basis.

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

J. K. SERGON

JUDGE

In the presence of:

- Mr. Kirui for Petitioners.
- Mr. Nyaingiri for Protestors.