



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO. 38 OF 2009

IN THE MATTER OF THE ESTATE OF TAPKIGEN W/O CHEMORWOK alias TAPKIGEN CHEMORWOK (DECEASED)

SAMWEL CHERUIYOT LANGAT.....1ST PETITIONER

DAVID KIPKORIR LANGAT.....2ND PETITIONER

AND

RECHO CHEMELI.....OBJECTOR

RULING

On 1st April 2014, a temporary grant of letters of administration intestate in respect of the estate of Tapkigen w/o Chemurwok alias Tapkigen Chemurwog, deceased was made to Samuel Cheruiyot, Recho Chemeli and David Kipkorir Langat. The trio have now applied for the grant to be confirmed vide the summons dated 29th May 2014. **Recho Chemeli**, hereinafter referred to as the Protestor has filed an affidavit of protest claiming she was married to the deceased under the Kipsigis Customs, hence she is entitled to a share of the deceased's estate. When the dispute came up for hearing, this court gave directions to the effect that the dispute be decided by affidavit and written submissions.

I have considered the rival written submissions. It is not in dispute that **Samwel Cheruiyot** and **David Kipkorir Langat**, hereinafter referred to as the 1st and 2nd Petitioners did not name the Protestor as a beneficiary to the Estate of the deceased in the initial application for grant. However, in the affidavit of Samwel Cheruiyot sworn and filed in support of the summons for confirmation of grant, the Protestor has been recognized as the deceased's widow. It is the Protestor's contention that she was not consulted before the schedule of distribution was prepared she is of the view that the Petitioners are children of the deceased's other wife hence the estate should be shared equally between the two houses. She also argued that her children namely: Agnes Chebet, Julius Chepkwony were left out. After a careful consideration of the material placed before this court, it is clear in my mind that the deceased was married to two wives namely:

- i. **Ludiah Cheptonui Tapkigen, now deceased and**
- ii. **Recho Chemeli.**

It is also clear in my mind that the asset available for distribution is the parcel of land known as Kericho/Kapsaos/863 measuring about 1.0 Hectare. There is also no dispute that the two houses comprise of the following members:

1st House

Ludiah Cheptonui Tapkigen (deceased widow)

- i. **Lily Chepterer Langat – Daughter**
- ii. **Anna Chebet Koila – Daughter**
- iii. **Norah Chepwogen Cheruiyot – Daughter**
- iv. **Joyce Chepchirchir – Daughter**
- v. **Philister Chepkemoi- Daughter**

2nd House

- i. **Recho Chemeli- Widow**
- ii. **Agnes Chebet**
- iii. **Julius Chepkwony**
- iv. **Vincent Chepkwony**

It is further clear in my mind that David Kipkorir Langat and Samwel Cheruiyot Langat do rank way below the members of the above houses. They basically refer themselves as grandchildren. In my view, they can only claim through members of their respective houses. In the end, I find the Protest to be well founded. According to the provisions of **Section 40(1)** of the **Law of Succession Act** the deceased estate should be distributed to the houses and according to units in each house. The grant is confirmed in the joint names of Lily Chepterer representing the 1st house and Recho Chemeli representing the second house. The estate i.e L.R.no.Kericho/Kapsaos/863 to be distributed as follows:

- a. **0.5 Ha to be registered in the name of Lily Chepterer Langat to hold in trust of her self, Anna Chebet Koila, Norah Chepwogen Cheruiyot, Joyce Chepchirchir and Philister Chepkemoi.**
- b. **0.5 Ha to be registered in the name of Recho Chemeli to hold in trust of herself, Agnes Chebet, Julius Chepkwony and Vincent Chepkwony.**

This dispute involves members of one family hence I direct that each meets his or her own costs.

Dated, Signed and delivered in open court this 31st day of July, 2014.

.....

J.K.SERGON

JUDGE

In the presence of:

Mr. Kirui for Petitioners

N/A Nyaingiri for Protestor