



1. Law of succession
2. Subject of main cause
 - 2.1. Two houses
 - 2.2. Estate of the late Erasto Kiprono Kaplelach aged 71 years and 9.7.94
 - 2.3. 2nd house applies for grant but names both houses male only in the year 2000.
 - 2.4. Advocate for Petitioner (2nd House –widow) comes on record 18.9.01.
 - 2.5. Application for confirmation of grant 25th April, 2002.
 - 2.6. Consent to confirmation of grant to 2nd wife.
1st house did not sign consent
 - 3rd – son Samwel Rono described as deceased
 - 6th son Simion Rono adult – did not sign consent
 - 2.7. Orders of judge 6.5.09 confirms grant by allowing application
25th April, 2002.
 - 2.8. Effect – estate divided equally amongst the sons only.
 - 2.9. No widow allocated life interest.
 - 3.0. Only assets land LR. Kericho/Roret/73-7.9 acres
 - 3.1. 1st house refuse
to sign consent.

Application dated 9th March, 2009

- i. The Deputy Registrar do execute transfer forms pursuant to confirmed order of 6.5.04
- ii. Necessary direction be given.
- iii. Costs.

Reasons

- i. Samuel Rono and Simion Rono sons to the 1st houses refused to sign transfer.
- ii. That the forms be executed by the court.
3. **Held** – Samuel Rono was described in the consent as being dead. Formal mention to ascertain this fact
4. **Case Law** – Nil.
5. **Advocates**

C.K. Korir advocate instructed by M/S C.K. Korir & Co. advocates for applicant – present

N/A for Respondent

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

PROBATE & ADMINISTRATION 176 OF 2000

ERASTO KIPRONO KAPLELACH..... DECEASED

AND

SESILIA CHEBORE KIPLLELACH PETITIONER

RULING

Application dated 7th March, 2009

I: Law of Succession

1. On 9th March, 2009, the Applicant Sesilia Chebore Kaplelach sought orders of this High Court for the Deputy Registrar (to) execute the transfer forms (of land) as per the confined order of 6th May, 2004. (Section 82 and 85 Law of Succession, Rule 46 & 73 Probate and administrator rules, Part IV, Section 2(f) High court practice and Procedure Rules Section 98, Civil Procedure Act Cap 21 Law of Kenya).

II: Background of application

2. Erasto Kiprono Kaplelach died on the 9th July, 1994 aged 71 years old. He appears to have two houses. According to the Petition for grant of letters intestate filed in the year 2000 the 1st house Obot Rusi Kaplelach widow had two sons, the 2nd house Sesilia Chebore Kaplelach had three sons.

3. All the sons were described as adult though no age was mentioned. No daughters were described as survivors.
4. The Petition was filed by the 2nd house, the widow being Sesilia Chebore Kaplelach in person.
5. In the year 2001, September, she engaged the services of an advocate. On 27th February, 2002 the Court ordered that the grant of letters intestate do issue (*Visram J*). By the record on the file of 5th February, 2004 there appears to be an indications of objections to the grant being raised to an application of 25th April, 2002 seeking confirmation of the grant (*Apondi J*). The matter was taken out of the list. On 6th May, 2004 the same application was placed before the court and the same confirmed (*Apondi J*) (6.5.04).
6. For five years nothing occurred on this file save that the certificate of confirmation of grant was issued P&A 54 (6th May, 2004). It in effect took the only assets belonging to the deceased Kericho/Roret/73 and divided the same into equal shares amongst the sons only, leaving out the widows.

II: Distributions

7. I have had the occasion of going through Form P&A 5 that describes the summons together with the consent and noted that the survivors are
 - A) Obot Rusi Kaplelachi – widow No. 1
 - i) Samwel Rono – son
 - ii) Simion Rono – son
 - B) Sesilia Chebore Kaplelach - Petitioner and widow No. 2.
 - i) Joseph Rono – son
 - ii) Erick Rono – son
 - iii) Samson Rono – son
8. On the Court record, a consent forum was filed on 5th February, 2004 agreeing to the confirmation of the grant. This consent agreed that widow No. 1 was to get 3.95 acres. Widow No. 2 (*petitioner*) to get 3.95 acres.
9. On closer examination of this form. The parties who actually signed the form was the Petitioner and her three sons only from the 2nd house. The widow of the 1st wife did not sign. The son Samwel Rono was described as being deceased and the other son Simon Rono did not sign.
10. The application for confirmation of grant stated that the inter alia
“ identification and share of all persons beneficially (entitle) to the said estate have been ascertained and determined be divided equally between the children”
11. This contradicted the consent form.
12. No formal protest was filed but an objection was raised which the petitioner was aware.
13. It is therefore not surprising that the 1st house sons declined to sign the necessary forms of transfer.

14. The 1st son Samuel Rono is meant to be dead. The application now describes him as if he is alive and declining to sign necessary form.

15. For the purpose of this court to ascertain that Samuel Rono is alive and not dead as described in the letter of consent on making the grant this court do issue summons for all persons named in form P&A 5 including Samwel Rono to appear to this court to confirm that he is indeed alive or otherwise.

16. This matter will be mentioned on 26th May, 2009 at 9.00a.m or on a date convenient to the parties.

DATED this 14th day of May, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

C.K. Korir advocate instructed by M/S C.K. Korir & Co. advocates for applicant – present

N/A for Respondent