



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
SUCCESSION CAUSE 39 of 2005
TAPNYOBI CHERMURER LELOYET DECEASED
VERSUS
1. WILLIAM KIMIBEI KOROMICHAPETITIONER
2. JACKSON KIPYEGON A. KOROMICHA

RULING

I: confirmation of grant intestate

1. Tapnyolei Chemurer Leldayet alias Tapnyobi wife of Arap Leldaet died aged 78 years old on the 25th May, 2004. She was survived with sons and daughters and one son who predeceased her.

2. The cause of death was malaria.

3. She held the following pieces of assets in the way of land being:-

Kericho/Kyogong/673	-1.1ha
Kericho/Kyogong/686	- 01.4ha
Kericho/Kyogong/687	-2.6 ha
Kericho/Kyogong/183	-4.00ha
Kericho/Kyogong/199	-5.2ha
Kericho/Kyogong/196	-0.48ha

4. She left no will to dispose these assets. Letters of grant intestate were prayed for by her survivors being:-

a) William Kimirer Koromicha ages unknown.

b) Stephen Kipchumba Koromo – he(deceased) represented by Esther Cheronno Koromicha w/o William Kimibei Koromicha

c) Jackson Kipyegon A. Koromicha.

5. The relationships not disclosed nor their ages.

6. It is clear that the deceased had daughters who in effect had not been mentioned in this succession cause. Form P&A 57 being the Guarantee by personal sureties was never sealed and registered with the registrar of documents at the lands department.

7. Regardless of this which I am sure the parties will regularize in due course a grant of probate intestate or Form P&A 41 was issued to two administrators namely Jackson K.A. Koromicha and Wiliam K. Koromicha on the 10th November, 2005 (*Apondi J*).

8. The law requires for the administrators to gathers the estate of the deceased and to establish what debts requires to be paid and what appointment of the assets are to go to the survivors.

9. On the 16th November, 2006 the administrator through their advocate filed chamber summons for confirmation of grant. This should actually have been summons for confirmation of grant noting that the applicability of the civil procedure act does not actually apply herein except in particular cases as stated in **rules 63(1) of the Laws of Succession Act Cap 160** Law of Kenya.

II: The protest

10. When the said application of 7th November, 2008 came up for confirmation of grant, Kimurei Arap Leldaet filed a protest against that confirmation under rule 40(6) of the Law of Succession.

11. Namely the person named herein wishing to object to the proposed confirmation of grant is to file in duplicate an affidavit in protest in form P&A 10. The administrations are to be forwarded these protests by the registrar. Namely under rule 40(5) a consent is to be entered and a notice in Form III to the caveator (*protestor*) warning him of the making of the grant and if he wishes to object their Form 10 is to be filed.

12. In this case form P&A 10 has been accordingly field as there is an affidavit per se filed but no summons, the matter is to be placed before this court for direction under Form 74.

13. The parties are now before me.

III: Directions

14. The proceedings before me are defective in want and form. I direct that from P&A 5 discloses all the summons including the daughters to the deceased their ages and relationship to the deceased.

15. I further direct that form P&A 57 be signed, sealed and delivered for registration at the documentations records with the lands department.

16. That the application for confirmation of grant be amended to include the survivors who had been left out.

IV: Issue

17. The issue before me concerns one parcel of land being LR. Kericho/Kyogong/183 being 4.0ha. One Kimurei Arap Leldaet the protestor herein claims this amount of land should completely go to him.

18. The court is required under rules 41(1) of the law of succession act to read the application for confirmation to all the persons concerned then read the protest whether such persons appear personally, by advocate or by a representative.

19. The court then would identify the shares of each persons where a question arises as may be in this case other parties of the assets may be confirmed. What is disputed is required to hearing under order 36 r 1 Civil Procedure Rules subjected to provisions of section 71(2) and be so heard in a separate cause.

20. I accordingly find that the proceedings for a protest is not yet ready. The Registrar at the Principal Registry is required to the served the protest filed in the principal court and service the respondent administrators as the administrator require to amend their pleadings and involve all persons herein. I will adjourn under rule 41(2) for parties to regularize this cause.

21. The costs will be in the cause.

DATED this 15th day of June, 2009 at KERICHO

M.A. ANG'AWA

JUDGE

Advocates

A.N. Matwere instructed by the firm of M/S Matwere & Co. advocates for the Petitioner.

J.R. Kimeto instructed by the firm of M/S Bett & Co. advocates for the objector