



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO

Succession Cause 146 of 2004

1. Family Law Division
2. Law of Succession Act.
Status of HC P&A. 146/04
and HC P&A. 186/07
 - i) Two widows registered proprietor of LR Kericho/Kapsaos/783 6.6. Hectares (sheet No. 8) on 10th May, 1971
Mosp Location
 - ii) Widow No. 1 Tapsibei w/o Kesir
has three sons 63,62 and 61 one daughter 59 years
Widow No. 2 Taplelei w/o Kesir has one daughter age unknown
Three deceased sons ages unknown
 - iii) Widow No. 2 dies on 10th February, 1978 aged 78 years cough with short illness.
 - iv) No grant of probate or letters taken out (*The widow who was alive ought to have been registered as proprietor*)
 - v) Rebecca Chemoba – widow of 1st born son in house No. 2 together with grandson Joel Sigei grandson 4th born son of deceased in house No. 2 are alleged to have sold part of land.
 - vi) Son No. 2 to Rebecca Chemoba /also grandson to deceased files for letters of grant intestate issued on 2nd November, 2004. M. Apondi J.
 - vii) Widow of 1st born son in house Rebecca Chemoba files objection proceedings against him (her own son No. 2) (5th June, 2009)
 - viii) Widow No. 1 dies Tasibei w/o Kesir on 25th February 2005 aged 75 years old at Kapsaos
 - ix) Three adult sons file Petition for letter of administration intestate on 22nd June, 2007 through M/S Bett and Co. advocates. HCCC. 186/07.
 - x) Letters of grant issued 25th September, 2008 G.B.M. Kariuki J.
 - xi) Confirmation of grant pending.
 - xii) Asset is only one land parcel Kericho/Kapsaos/783 6.6 hectares for both cases.
 - xiii) 7th December, 2009 son No. 2 house No. 2 files list of all survivors including grand children.
3. **Position of file**
House No. 2
 - i) Problem in 146/04 – involvement of other survivors lacking.
 - ii) Temporary grant already issued.
 - iii) Objection proceedings overtaken by events.
 - iv) Sale of land before grant is issued.
Confirmation application 1st July, 2005.
two objectors equally.
House No. 1
 - i) P&A. 186/07 in order
 - ii) confirmation of grant lacking.
4. **Held**
House No. 2 – need to be able to agree
House No. 1- Have advocate and require to file for confirmation of grant.
Formal mention on date convenient to parties.

Confirmation of grants application.

5. **Case Law** – Nil

6. **Advocates**

- Petitioner; HCCC. 146/04 House No.2 in person.
- House No.1 in HCCC.186/07 M/S Bett & Co. Advocates.

TAPLELEI KESIRDECEASED

VERSUS

RAMOUSY YEGON KIPKOROSPETITIONER

RULING

The status of two Probate and administration court file P&A 146/04 and P&A 186/07

I: Background

1. Two widows have been the registered proprietor of Land parcel LR Kericho/Kapsaos/783 comprising of 6.6 hectares (sheet No. 8) since 10th May, 1971 Mosp location.
2. Widow No. 1 called Tasbei wife of Kesir gave birth to three sons (now aged 63, 62 and 61 years in 2005) and one daughter (aged 59 years in 2005) The second widow Taplelei wife of Kesir gave birth to one daughter age unknown and three sons' now deceased age unknown.
3. Widow No. 2 passed away on the 10th of February, 1978 aged 78 years old and before the Law of Succession in Kenya came into enactment. She suffered caught with a short illness. No grant of probate on letters of administration were taken out. No action on the only asset the two widows enjoined was taken (it is possible as tenants in common that the rights to the property proceeds to the surviving widow).
4. The House of widow No. 2 having no sons who are alive have Rebecca Chemoba – the widow to the 1st born son in house No. 2. She is alleged together with the grandson Joel Sigei to 4th born son of deceased in house No. 2 to have sold part of the land.
5. The son to Rebecca Chemoba one Ramousy Yegon Kipkoros files for grant of letters intestate that was issued on 2nd November, 2004 by M. Apondi J. Consent to the making of the said grant to be confirmed was signed by the three of them on 1st July, 2005. (in P&A 146/04).
6. Nothing more occurred on the file until this court made inquiries. The mother to the Petitioner Rebecca Chemoba files objection proceedings under rule 17 objecting to the issuance of grant – dated 5th June, 2008. This obviously was over taken by events as the temporary letters of grant had been issued on 2nd November, 2004. A full list of the survivors was thereafter tabled by the Petitioner and son to Rebecca Chemoba. It is then that it was transpired there was another widow who passed away on 25th February, 2005.

7. Tapsibei wife of Kesir was aged 75 years old when she died at Kasaos. She was survived by three adult sons aged 63, 62 and 61 years old and one daughter aged 59 years old (*possibly 3*) all the three sons petitioned for letters of grant intestate. This was granted on 25th September, 2008 G.B.M. Kariuki J. The only assets was the same parcel of land Kericho/Kapsaos/783 of 6.6. Hectares having been registered on 10th May, 1971 as proprietor with widow No. 2.
8. No confirmation of grant had been applied for. The advocates who represented ad filed the Succession case were M/S Bett & Co. advocate (P&A 186/07).

II: Status of two Succession case.

9. The Petitioner for widow No. 2 Ramousy Yegon Kipkorir (*grand son to deceased widow No. 2*) prayed the only asset be divided equally between the two deceased widows.
10. Each of the files P&A 146/04 widow No. 2 and P&A 186/07 widow No. 1 are separate Succession Cause although P&A 186/07 file for widow No. 1 is in order the only thing pending is for confirmation of grant of letters intestate to be applied by their advocates. The problems arises with file 146/04 widow No. 2. The children of widow No. 2 apart from one daughter have passed away. The issue therefore is the identification of all the survivors who are the widows of the deceased sons and grand children of whom the Petitioner is one. By form P&A 5 of 18th November, 2009 and again of 7th December, 2009 the Petitioner has attempted to make a list of the survivors in the widow No. 2's house. It is noted by this court that he had referred to the survivors as sons and daughters but they were actually grandsons and granddaughters.
11. This court requires that the survivor be clearly ascertained, as has the Petitioner now done. The said survivors must thereafter give their consent the making of the grant (*P&A 38*) to the Petitioner and filed in this court.
12. Both families require to come together if not on their own but before court to take up any objection on an application thereafter for confirmation of grant. (*P&A 37 is required to be filed with such application*).
13. In both files confirmation of letters of grant of administration is to be filed.

DATED this 14th of December, 2009 at **KERICHO**

M.A. ANG'AWA
JUDGE

Advocates

- Petitioner; HCCC. 146/04 House No.2 in person.
- House No.1 in HCCC.186/07 M/S Bett & Co. Advocates.