

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

Succession Cause 16 of 2002

IN THE MATTER OF THE ESTATE OF PHILEMON KIPKOROS LANGAT DECEASED

AND

TIMOTHY KIPRONO LANGAT..... 1ST PETITIONER

CALEB KIPLANGAT KORI..... 2ND PETITIONER

FAITH CHELANGAT 3RD PETITIONER

-VERSUS-

ROSE CHEPNGENO SIGILAIAPPLICANT

JUDGMENT

The late Philemon Kipkoros Langat (*herein after referred to as the deceased*) passed away on 22nd November 2000. Timothy Kiprono Langat, Caleb Kiplangat Korir and Chelangat Faith being the brother son and daughter of the deceased respectively petitioned for letters of administration. The grant of letters of administration was issued to the three petitioners on 25th June 2002. On 2nd May 2003 Rose Chepngeno Sigilai applied for the revocation of the grant on the grounds that the grant was obtained fraudulently by making of a false statement and by making untrue allegations of facts essential in a point of law to justify the grant.

This matter was heard by way of oral evidence. The applicant testified that she married the deceased in 1998 under the Kipsigis customary marriage. They were living together as man and wife at Kapruso village until when the deceased passed away. After the burial of the deceased, the applicant was chased away from the deceased home by the deceased brother and she therefore went to live with her parents. The applicant admitted that when she married the deceased, she had six children who did not belong to the deceased. The deceased was also married to two other wives who had passed away when the deceased was married. The applicant was living with the deceased and ten children from his previous marriages. The applicant participated in the marriage ceremony of the deceased's son and she produced photographs where she was taken with the deceased. During cross examination, she denied that she was married to Joel Kipkosgei Tuiya, the father of her six children. She contented that they were merely living together but they separated and Joel married another woman. The applicant also relied on the evidence of Silate Arap Thimisi who testified that he knew the applicant and married the deceased. He attended the marriage ceremony in the house of Kiptarus. However he did not know whether dowry was paid in respect of the said marriage.

On the part of the petitioners, Timothy Rono Langat, a petitioner and brother of the deceased testified that the deceased was married to two wives prior to his death. The first wife had ten children, while the second wife had three children. It is the petitioner's evidence that the deceased was terminally ill and the applicant was living with the deceased ostensibly as a worker. The applicant was never married to the deceased and if she was, him and his family would have known. He contented that the applicant was married to Joel Kipkosgei who is the father of her six children. Joel Kipkosgei also testified and confirmed that he married the applicant in 1980 and paid the dowry in accordance with the Kipsigis

customary law. They were blessed with seven children but one passed away. He is living with the six children because the applicant ran away in 1998 at first she was working as a casual at Longisa hospital and later she started working for the deceased. He confirmed that his marriage to the applicant was never dissolved. He produced a NHIF card in which he had registered the applicant as his wife when he was working. He said that the applicant was free to go back to her matrimonial home since he never divorced her. The applicant's son, Bernard Kipkoech Kipkosgei also testified and confirmed that he has been living with Joel since the applicant left them sometimes ago. He lives with his father and six siblings and it is his father who looks after them. Hellen Chepkwony a neighbour of the deceased and the applicant testified that she knew the applicant was the wife of John but a short while before the deceased passed away the applicant was working for him. She denied that the applicant was married to the deceased but to Joel whom she left with all the children when she moved to the home of the deceased. After the death of the deceased, the elders held a meeting and decided that the applicant should go back to her husband and leave the deceased homestead.

The principal issue raised in this application for revocation is whether the applicant was a wife of the deceased and should be considered as one of his beneficiaries. The applicant's evidence from her marriage to the deceased is highly contested by that of the deceased's brother, her son, Joel (her alleged husband) and a neighbour. The only person who supported the fact that the applicant was married to the deceased is Silate Arap Thimisi whose evidence was rather sketchy and lacked specific details of whether even dowry was paid. The above compounded by the fact that the applicant lived with the deceased for a very short time less than two years and the fact that the applicant had no children with the deceased not to mention the fact that the applicant's six children have all along been under the custody of Joel. This indeed lends credence to the contention that the applicant was not a wife of the deceased but a worker whose services were terminated immediately the deceased passed away.

The evidence of the applicant is also less than candid in supporting affidavit she averred that she used to live with the deceased and her children. She was also not sure when she married the deceased in her evidence and she denied that she was married to Joel despite overwhelming evidence from the other witnesses especially her son and Hellen Chepkwony who I believe had nothing to benefit by misleading this court. I am not satisfied that the applicant has proved that she was the wife of the deceased. The ingredients that form a valid Kipsigis marriage were also not proved. For example there was no evidence given on whether dowry was paid. For the foregoing reasons I disallow the applicants application which is hereby dismissed. This being a family matter, each party shall bear their own costs.

Dated at Kericho this 21st day of February 2008.

M. KOOME

JUDGE.