



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Prob & Admin Cause 310 of 1997

IN THE MATTER OF THE ESTATE OF THE KIPKEINO ARAP BOIT
(DECEASED)

ESTHER JEPKEMBOI1ST PETITIONER

SUSAN J. KEINO2ND PETITIONER

EGLA JERONO3RD PETITIONER

JOSIAH CHEPSIROR4TH PETITIONER

JUDGEMENT

This cause relates to the Estate of the late Kipkeino Arap Boit who died on 5th April, 1996. It is common ground that the deceased during his life time had married two wives, namely Anna Jeruto Boit and Bot Kiili under Nandi Customary Law.

The said wives gave birth as follows:-

Anna Jeruto Boit

1. Silvester Kipchirchir Keino
2. Martha Sawe
3. Dorcas Tum

Bot Kiili

1. Josiah Chepsiror

From the evidence on record, both the said wives are now deceased. Silvester Kipchirchir Keino died before his father the deceased in this Cause. The Petitioners after some substitution are now as follows:-

1. Esther Jepkemboi – first widow of Silvester Kipchirchir Keino son of the late Kipkeino Arap Boit.

2. Susan Keino – Second widow of Silvester Kipchirchir Keino.
3. Egla Jerono – daughter of Esther and Silvester.
4. Josiah Chepsiror – son of the late Kipkeino Arap Boit.

It is clear that the first three Petitioners have substantially lodged their claims to this Estate on the basis of being beneficiaries to the Estate of the late Silvester Kipchirchir Keino. Egla who is a grand-daughter of the deceased also claims 8 acres of land in her own right on the basis of an alleged oral will or gift-inter-vivos.

The said beneficiaries to the Estate of the late Silvester Kipchirchir Keino have not obtained any letters of Administration to the said Estate. The two widows are not spouses or dependants of the late Kipkeino Arap Boit which is the Estate that this court is dealing with. This Court is not dealing with any issues or questions of the Estate of Silvester Kipchirchir Boit.

In the premises, with hindsight all the disputes, evidence and proceedings relating to matters of the marriages of the late Silvester Kipchirchir Keino are strictly not relevant to the present cause. All the issues about the alleged divorce of Esther and the proceedings in connection therewith were irrelevant in this Cause.

The issues for the determination of this Court are:-

1. What law is applicable to the Estate of the deceased?
2. Who are the beneficiaries to the said Estate?
3. How should the Estate be distributed?

The deceased was a Nandi and had married under Nandi

Customary Law. Under Nandi Customary Law, the net estate of the deceased would be divided equally between the two houses of his widows Irrespective of the number of children. However, in this case, there were two houses. In the 1st house there are three (3) children.

1. The late Silvester Kipchirchir Keino
2. Martha Sawe
3. Dorcas Tum

While in the second house, there is Josiah Chepsiror only. The deceased left 125 acres as follows:-

- (i) Nandi/Ndalat/360 measuring 87 acres
- (ii) Nandi/Ndalat/420 measuring 38 acres

Under Nandi Customary Law each house would have been entitled

to 62.5 acres each. However, clear evidence had been shown that the deceased had given a portion of land to his grand-daughter Egla. This was confirmed by most witnesses. The portion of land was stated to be 8 acres where she currently lives with her children. This should not be upset as it is what the deceased wished. This Court will not delve into the question whether the deceased intended to disown the 1st Petitioner or not on basis of any estrangement or divorce from his son, the late Silvester. That is not a matter that can be in issue in these proceedings. I do find that the deceased had given a portion of land to Egla which is agreed to be 8 acres. It is just and fair that she gets this in her own right as a direct

beneficiary. I find her to have been a dependant of the deceased herein.

The 8 acres is part of Nandi/Ndalat/420 from which it will be excised. The record shows that DW 2, Japheth Sawe Cheluget, an elder testified that Martha Sawe and Dorcas Tum, the daughters of the 1st house live on the land. He claimed that they had been given 10 acres each out of parcel No. 360. Esther, the 1st Petitioner also testified that the two are entitled to the same.

I am aware of Nandi Customary Law. However, I do find special circumstances and facts in this case. The deceased appeared to be a person who cared for the welfare of the female members of his family. He gave Eglā, a grand-daughter 8 acres. I am inclined to believe that he intended to give his two daughters 10 acres each out of Nandi/Ndalat/320. In this decision, I have also taken into account the provisions of section 40 (1) of the Law of Succession Act regarding situations where an intestate is polygamous.

In the light of the foregoing, I do hereby order the distribution of the Estate of the deceased as follows:-

NANDI/NDALAT/360 MEASURING 87 ACRES

1. Estate of Silvester Kipchirchir Keino – 33.5 acres
2. Josiah Chepsiror – 33.5 acres
3. Martha Sawe – 10 acres
4. Dorcas tum – 10 acres

NANDI/NDALAT/420 MEASURING 38 ACRES

1. Estate of Silvester Kipchirchir Keino – 15 acres
2. Josiah Chepsiror – 15 acres
3. Eglā Jerono – 8 acres

Any party who sold to third parties is expected by the law to honour the said transactions from their own portions.

The claimants to the portions which constitute the entitlements of the Estate of the late Silvester Kipchirchir Keino should file the appropriate petition and litigate their issues therein.

Costs shall be in the cause.

DATED AND DELIVERED AT ELDORET ON THIS 1ST DAY OF APRIL, 2008.

M. K. IBRAHIM

JUDGE

In the presence of:

Mr. Kiboi for the 2nd Petitioner, also present

4th Petitioner - present