



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO

Succession Cause 162 of 2003

IN THE MATTER OF THE ESTATE OF KIPYEGON ARAP LANGATDECEASED

AND

SIMON KIPCHIRCHIR BIEGON PETITIONER

VERSUS

MARTHA TAPRANDICH LANGAT 1ST OBJECTOR

MARTHA LANGAT2ND OBJECTOR

JUDGMENT

Kipyegon Arap Langat (*hereinafter referred to as the deceased*) is said to have died on the 16th July, 1983 by Simon Kipchirchir Yeggon (*hereinafter referred to as the petitioner*), whereas Martha Taprandich Langat and Martha Langat (*hereinafter referred to as the objectors*) have stated that the deceased died on the 16th June, 1980. On the 28th October, 2003 the petitioner applied for letters of administration intestate to administer the estate of the deceased. In the said application, he listed the beneficiaries of the deceased as himself, Taprandich Langat and Tabelgaa Langat (*the objectors in this case*). He also listed the properties that comprised the deceased's estate to be parcel no. KERICHO/KIPTERE/1757, KERICHO/KIPTERE/1754 and KERICHO/KIPTERE/1749. On their part, the objectors applied for letters to administer the deceased's estate at Nakuru in **Succession Cause No. 591 of 2003**. In their said application, they excluded the petitioner as a beneficiary of the deceased's estate. This court ordered the two succession proceedings to be consolidated and ordered the objectors to file objection proceedings in this succession cause. Directions were taken and this court ordered that *viva voce* evidence be taken to determine the beneficiaries of the deceased's estate and the mode of distribution to be adopted if need be.

At the hearing of the objection proceedings, the objectors called four witnesses. PW1 Martha Langat (*one of the objectors*) testified that she was married by the deceased in 1957. She was a second wife. The first wife Taprandich Langat (*the other objector*) was blessed with seven children namely; Kipkoskei, Cherotich, Chepngetich, Jane, Esther, Alice, William Biegong and Wilson Biegong. PW1 was blessed with four children namely; Chepkorir, Cheron, Chebwogen and Kipkemoi. She was emphatic that the deceased did not sire any children out of wed lock. She testified that the petitioner in this case was a clansman and lived at Kiptere but was not a child of the deceased. PW1 denied that the deceased had married the mother to the petitioner. She further denied that the mother to the petitioner had at any time

during the lifetime of the deceased resided on any parcel of land owned by the deceased. She testified that she did not recall seeing the petitioner during the burial of the deceased neither did the deceased summon the petitioner to his bedside when he was ailing prior to his death. She denied that a succession dispute had been referred to the chief at Kiptere for adjudication. She further denied that the deceased had given the petitioner a donkey and Kshs.600/- before his death.

PW2 Kipkemoi Arap Tele testified that the deceased was his friend. He knew that the deceased was only married to two wives i.e. the objectors in this case. He did not have any knowledge that the deceased had married another wife who gave birth to the petitioner. He testified that he was present when the deceased married his second wife, PW1. He recalled that when the petitioner was young, before he was circumcised, he used to live with the family of the deceased but later went and lived in a different parcel of land. He testified that the petitioner was a member of the clan of the deceased but was not a son to the deceased. PW2 did not recall ever having heard the petitioner or anyone else in that matter, claiming that the petitioner was a son of the deceased. He recalled that he was present when the sons of the deceased were circumcised and were named by the deceased, Arap Biegon. He was however not present when the petitioner was circumcised. He further testified that he was not aware that the deceased had given the petitioner a donkey and money before his death.

PW3 Simon Malel testified that he knew the deceased who was his neighbour at Kiptere. He knew the deceased was married to two wives, i.e. the objectors in this case. He knew the petitioner as a resident of Kiptere. He also testified that the petitioner had other brothers. It was his testimony that the deceased had not married any other wives other than the objectors. As a resident of Kiptere, he had not heard anyone claim that the petitioner was a son of the deceased although he knew that the petitioner to be a member of the clan of the deceased.

PW4 Andrew Kipkemoi Biegon testified that he was a son of the deceased by his second wife. He testified that the deceased died on the 16th June, 1980 at Kaplong Hospital (*Death certificate produced as petitioner's exhibit no. 1(a)*). He also produced a copy of the application that he made to obtain the said death certificate (*produced as petitioner's exhibit no. 1(b)*). He testified that it was untrue that the deceased had died on the 16th July, 1983 as claimed by the petitioner. In his view, the said death certificate was a false document. He denied the petitioner was a son to the deceased. He recalled seeing the petitioner operating a retail business at Kiptere. He testified that the petitioner had not at any time resided on any parcel of land owned by the deceased. It was his further testimony that after the death of the deceased, the properties of the deceased were divided among the members of his two families in 1981. He recalled that at the time the properties were subdivided, the petitioner made no claim on the properties comprised of the deceased's estate.

He testified that the deceased had left behind three parcels of land namely; KERICHO/KIPTERE/1745 where the two widows are currently residing. PW4 and William Kipnyole Biegon also lived on the same parcel of land. Rodah Chepkorir and the family of Kiprere Yeggon resided in parcel no. KERICHO/KIPTERE/1757. Other children of Kiprere Yeggon, namely; David Bore, Richard Bore and Charles Bore lived on the said parcel of land. Wilson Biegon lives on parcel no. KERICHO/KIPTERE/1749. He testified that all the parcels of land which were owned by the deceased had been subdivided and distributed to the beneficiaries of the deceased's estate. He denied that the petitioner was a son to the deceased. He denied that there was a meeting held by the members of their clan to discuss the issue of the distribution of the deceased's estate between the children of the objectors and the petitioner. He testified that he only became aware of the petitioner's claim when the petitioner filed the current petition before this court in 2003. The objectors then closed their case.

The petitioner called two witnesses. He testified as DW1. It was his testimony that the deceased was married to his mother called Taplelei Langat who was the second wife to the deceased. He testified that his mother was blessed with six children namely; Rebecca Koe, Cheruiyot Arap Biegon, Kiptanui Arap Biegon, himself, Taprandich Sulo and Kugo Arap Biegon. He testified that his mother died about ten years ago and prior to her death lived with the deceased in parcel no. KERICHO/KIPTERE/1749. He recalled that the deceased had three parcels of land. He produced the search certificates as petitioner's exhibits no. 1, 2 and 3. He testified that the house of his mother used to be in parcel no.

KERICHO/KIPTERE/1749 but was demolished when she disagreed with the deceased and was forced to move to another parcel of land now belonging to his younger brother, Kugo Arap Yeggon registered as parcel no. KERICHO/KIPTERE/1747. The certificate of search was produced as petitioner's exhibit no. 4.

He testified that his mother was buried at the said parcel of land now owned by his younger brother. It was his testimony that it was normal for his mother to be buried in a land owned by his younger brother because it was acceptable under the Kipsigis Customary Law. He testified that the said parcel of land where his mother was buried used to belong to the deceased before it was transferred to his younger brother. He reiterated that the deceased married his mother and prior to his death had not divorced her. He further reiterated that it was the deceased who named him Arap Yeggon when he was circumcised. He recalled that the deceased had rubbed oil on his face as per the Kipsigis Customary Law when he was circumcised signifying that he was his father. He testified that all his brothers were circumcised by the deceased. It was his testimony that although his father and mother had disagreed, the deceased's relationship with his children was good.

He testified that the deceased had attended his engagement when he got married. He recalled that before the deceased died, he called him to his house and gave him two cows, a donkey and Kshs.600/- after he had consulted a witchdoctor who had advised him to make peace with the petitioner's mother. The deceased undertook to give him land, but died before he could do so. He testified that he attended the funeral of the deceased and even poured soil into the grave of the deceased as required by tradition. He further testified that he attended the engagement of PW4. He also attended the graduation ceremony of PW4 at Moi University. He also attended the graduation ceremony of PW4's wife at Narok Teacher's College. He was present when the daughter of Sigilai Arap Langat, a son to the deceased was getting married. He produced the photographs of the said ceremonies as plaintiff's exhibits no. 5(a),(b) and (c).

He further testified that although the clan members had attempted to resolve the issue of the land, their attempt had been unsuccessful. It was his testimony that he came to court on his own behalf and on behalf of his brothers. He was of the view that if this court were to find that he was a beneficiary to the deceased's estate, then he and his brothers should be awarded six acres out of parcel no. KERICHO/KIPTERE/1757. He conceded that at the time the deceased died, his mother and his brothers were not living on any parcel of land owned by the deceased. He however testified that the land that his mother was buried used to belong to the deceased and was transferred to his younger brother in 1970. He reiterated that he did not want the parcels of land belonging to the deceased to be distributed equally between the three families because he and his brothers were already settled elsewhere. He only wanted six acres from the properties that comprised the deceased's estate.

DW2 Kipkemoi Arap Kimeto testified that he knew the deceased had married three wives namely; Taprandich, Taplelei and Martha. He recalled that the deceased was blessed with many children by the three wives. He further recalled that the deceased had erected a house for the mother of the petitioner but was later moved to another parcel of land at Kimalal where upon her death she was buried. He testified that when the mother of the petitioner was moved out of the parcel of land owned by the deceased, her house was demolished. He reiterated that the petitioner and his brothers were the children of the deceased. He conceded that it was against the Kipsigis Customary Law for the mother of the petitioner to be buried in the parcel of land belonging to her son instead of the land belonging to her husband.

I have carefully considered the evidence that was adduced by the objectors and the evidence that was adduced by the petitioner. The issue for determination by this court is whether the petitioner has established that he and his brothers were children of the deceased and therefore entitled to be considered as the dependants and beneficiaries of the deceased's estate. The objectors adduced evidence to the effect that the deceased was only married to two wives. They also testified that to their knowledge, the deceased had not sired any children out of wed lock. It was their further testimony that the mother of the petitioner did not at any time reside on a parcel of land that was owned by the deceased, neither did the petitioners and his brothers. The summary of the evidence by the objectors is that the petitioner was a stranger to the immediate family of the deceased. They however acknowledged that the petitioner was a member of the clan of the deceased.

On the other hand, the petitioner has adduced evidence to the effect that his mother was the second wife to the deceased and was lawfully married to him under the Kipsigis Customary Law. He testified that his mother disagreed with the deceased leading to the deceased to be relocated to another parcel of land which was previously owned by the deceased but which had been transferred to the younger brother of the petitioner. It was his testimony that although the deceased disagreed with his mother, he maintained a good relationship with his children. He testified that it was the deceased who had circumcised him and named him Arap Yeggon during the circumcision ceremony. He further recalled that it was the deceased who attended his engagement ceremony when he sought to marry his wife.

He recalled that when the deceased was about to die, he called him to his house and gave him two cows, a donkey and Kshs.600/- to give to his mother. He testified that the deceased had sought forgiveness from his mother and had sought to make peace with her before his death. He however conceded that since his mother moved from the parcel of land owned by the deceased, she did not have an opportunity of returning back. Indeed the mother of the petitioner was buried in the parcel of land owned by his younger brother called Kugo Arap Biegon. He further conceded that during the lifetime of the deceased he made no claim on the deceased's parcel of land. He testified that he had made the application for grant of letters of administration on his own behalf and on behalf of his brothers.

I have evaluated the said evidence adduced. Whereas the petitioner claims that he was the son of the deceased, it is apparent from the evidence that was adduced by the objectors, that the petitioner made no claim to the deceased's estate during his lifetime. Although the petitioner claims that his mother was the second wife to the deceased, there is no evidence, apart from the assertion by the petitioner, that the deceased recognized the mother of the petitioner as his wife. Indeed there is evidence that for more than twenty years prior to the death of the deceased, the mother of the deceased was not residing on any parcel of land belonging to the deceased.

Furthermore it would be inconceivable that the deceased could have disowned the mother of the petitioner with her children without providing for them and without the petitioner and his brothers raising a furore. Indeed the petitioner and his brothers buried their mother in the parcel of land belonging to their youngest brother without raising the issue with the family of the deceased. The petitioner admits that since their mother left the parcel of land owned by the deceased more than forty years ago, none of his brothers had claimed any land from the deceased. The petitioner never made any claim on the deceased's estate immediately after the death of the deceased. He waited for more than twenty three years after the death of the deceased to apply for letters of administration claiming that he was the son of the deceased. To date the petitioner and his brothers have not established a foothold on any parcel of land belonging to the deceased.

In that regard therefore, I hold that on a balance of probabilities, the objectors have established that the deceased only had two wives, the objectors in this case. I hold that the behaviour of the petitioner during the lifetime of the deceased and for twenty years after the death of the deceased was uncharacteristic of someone who claims that he is a son of the deceased. The petitioner is not recognized even by the neighbours of the deceased as a son to the deceased.

Further it is clear that the petitioner was not even aware of the date when the deceased died and when he hatched the plan to inherit the deceased's parcel of land, he went to the registrar of persons and claimed that the deceased had died on the 16th July, 1983 when in actual fact he had died on the 16th June, 1980. The original death certificate and the application for the death certificate were produced in evidence by the objectors which clearly establish that the deceased died on the said 16th June, 1980 at Kaplong Hospital. The said death certificate was issued to the objectors on the 3rd November, 1982. The death certificate that was issued to the petitioner by the Registrar of persons was issued on the 2nd October, 2003, which was three weeks prior to the petitioner filing the present petition.

If the petitioner did not know when the deceased died, then can he claim to be the son of the deceased? What other untruths has the petitioner told the court? Why the laid back behaviour in not asserting his proprietary rights over the deceased's parcel of land when the deceased was alive? Why file the petition and claim the deceased's parcels of land over twenty years after his death? The answer to all these

questions is evident; the petitioner was never at any time considered by the deceased to be his son. The evidence by the objectors that the petitioner was a member of the clan of the deceased is therefore most probably true. I therefore hold that the objectors have established that the petitioner was a stranger to the deceased and therefore is not entitled to be considered as a beneficiary of the deceased's estate.

The upshot of the reasons stated hereinabove is that the objection by the objectors is upheld. The objectors and their children are hereby declared to be the sole beneficiaries of the deceased's estate. The objectors are hereby granted the letters of administration of the deceased's estate to be confirmed within the period provided by the law. The petitioner shall pay the costs of these proceedings.

DATED AT KERICHO THIS 8TH DAY OF JUNE, 2006

L. KIMARU

JUDGE