



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU
Succession Cause 434 of 1996

IN THE MATTER OF THE ESTATE OF KIPNGENY ARAP CHEPKWONY (DECEASED)

ELIZABETH W. KIPNGENY.....
.....PETITIONER

VERSUS

MARY KERUBO KIPNGENY.....
OBJECTOR

JUDGEMENT

The late **Kipngeny Arap Chepkwony** (*deceased*) passed away on 10th June, 1996 intestate. On 25th November, **Elizabeth Wanjiru Kipngeny** petitioned for Letters of Administration and in the affidavit in support of the petition, she indicated that the deceased was survived by herself and 7 children whom she listed as beneficiaries.

On 4th December, 1996 an objection to the making of the grant was filed by **Mary Kerubo Kipngeny** the second widow. It would appear that the issue of who were the survivors of the deceased was settled to the effect that he was survived by the petitioner **Elizabeth Wanjiru Kipngeny** the 1st widow and her seven (7) children and **Mary Kerubo Kipngeny** the second widow with her two children.

The dispute over what assets or properties formed part of the deceased estate was fully heard whereby parties adduced oral evidence and by a ruling by **Hon. Visram – Judge** dated 13th May, 2003 the following properties were identified and determined as the properties for the deceased:-

- a) That Title Number Miti Mingi/Mbaruk Block 3/256 (Baruti) solely belongs to the estate of the deceased.
- b) That Title Number Nakuru/Municipality Block 29156 belongs to the estate of the deceased.
- c) That Title Number Kericho/Kipsonoi/633 belongs to the estate of the deceased.
- d) That Title Number Kericho/Kipsonoi/658 belongs to the estate of the deceased.
- e) That the deceased's shares in Plot Numbers 19 and 30 at Kipsonoi Trading Centre belong to the estate of the Deceased.

f) That none of the three Plots in Njoro Sosiot Farm belong to the estate of the deceased.

The issue that remains outstanding is on the distribution of the deceased estate among the beneficiaries.

This matter came before this court on 24th February, 2006 and the Court directed that the grant of Letters of Administration which was not issued since the proceedings started perhaps due to an oversight be issued to both the Petitioner and Objector who are ranked in priority as widows of the deceased. The Court also directed that the parties do file an application for confirmation of the grant. **Mary Kerubo Kipngeny** filed the summons for confirmation dated 2nd February, 2006 and proposed that the deceased properties be shared in what appears to be proportionate shares between her and the 1st house.

Elizabeth Wanjiru Kipngeny filed an affidavit of protest protesting the made of distribution suggested by **Mary Kerubo** and gave her own proposal of how the deceased estate should be shared. The challenge before me is to determine how the deceased estate should be distributed.

The deceased died in 1996 and therefore his estate should be administered according to the Law of Succession Cap 160 of the Laws of Kenya.

Section 2(1) of Cap. 160 provides:-

“Except as otherwise expressing provided in this Act or any other written law, the provisions of this Act shall constitute the Law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estate of deceased persons dying after the commencement of this Act and to the administration of estate of these persons.”

The deceased was polygamous and his estate should therefore be distributed according to **Section 40 of the Law of Succession** which provides:-

“Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the next intestate estate shall in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”

In this case the first house has seven children plus the widow and the second house has two children in addition to the widow. The deceased estate should be divided among the eleven units or as the protester has proposed 70% to the 1st house and 30% to the second house.

Since the properties have not been valued and it is not clear whether some of them are capable of being sub-divided I hereby direct that the parties do conduct a valuation of the properties and present a report by a valuer on how the properties can be distributed at the ratio of 70:30.

Upon the indication of values or portions for each widow shall hold their respective properties for life and thereafter to all their respective children in equal shares. The costs of the valuation should be borne from the estate but the parties herein should bear their own costs. Any party shall be at liberty to apply.

It is so ordered.

Ruling read and signed on 14th July, 2006.

MARTHA KOOME

JUDGE