



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Succession Cause 208 of 2002

IN THE MATTER OF THE ESTATE OF KIPKOSGEI SITIENEI CHEBII (DECEASED)

BETWEEN

MICHAEL CHEBII.....PETITIONER

AND

KIPKIYENG KEMEI, PAULINE SITIENEI & KIPKEMEI CHEBIIRESPONDENTS

JUDGMENT

Kipkosgei Sitienei Chebii died on 13th May 2002 at 65 years. He was then domiciled in Turbo, and owned 10.1 acres of land being the property known as Uasin Gishu/Tapsagoi/99, which I shall now refer to as ‘the subject land’.

Within four months of his death, Kipkiyeng Arap Kemei, Pauline Jelagat Sitienei and Kipkemei Ngetich Chebii who I shall now refer to them as the 1st, 2nd and 3rd Petitioners respectively, petitioned the court to be allowed to administer his Estate. Kipkiyeng Arap Kemei and Kipkemei Ngetich Chebii were his brothers while Pauline Jelagat Sitienei was one of his widows. Amongst those named as survivors were his other widow Susana Chebii Chuma, his two brothers and three sons namely Peter Kosgei, James Sitienei and Eliud Kiplagat.

Michael Chebii who is a son of Rosebella Chepkemboi, and who also claims to be the son of the late Kipkosgei Sitienei Chebii and thus a beneficiary of his Estate has now moved this court and he objects to the making of the Grant in favour of the three Petitioners, especially because, his consent was not obtained; that some of those whose names appear in the petition are brothers and are thus strangers to the estate, and that the Petitioners have denied him a right to use the Estate land. I shall refer to him as (“the Objector”).

The Petitioners who do not dispute the fact that Kipkosgei Sitienei Chebii who I shall hereinafter refer to as ‘the deceased’ had actually married the said Rosebella Chepkemboi as his third wife in October 1978, however dispute the fact that the objector is a son of the deceased, as it is their contention that by the time of his birth, the deceased had divorce his mother and that their marriage had already been dissolved.

At the close of the case, which proceeded by way of viva voce evidence, Mr. Omboto who appeared for the objector urged the court to find that the objector has established that he was the son of the deceased and his 3rd wife, and that in the circumstances, the Grant of 20/1/2003 should be revoked and the objector be included as one of the beneficiaries of the Estate.

Mr. Kamau who appeared for the petitioners was however of a different view in that it was his submission that the objector had not proven his parentage especially because he contradicted himself and his witnesses on the exact date of his birth and further that given that the marriage between the deceased and the objector's mother lasted only 3 months, the objector could not have been an issue of that marriage. He urged the court to find that the said union could not have been blessed with a child because the deceased had divorced Rosebella. He was also of the view that if at all the objector was son of deceased he would have lived with his family and not his paternal uncle, and further the fact that the objector did not acquire name of deceased upon initiation was also suspect.

It is on record that the deceased was known as Kipkosgei Sitienei Chebii, and the objector is Michael Chebii. In view of the fact that the surnames appear to be the same I am unable to understand Mr. Kamau's line of submission. The issue that arises is whether the objector who claims to be a son of the deceased and thus a beneficiary of the estate has proven his case on a balance of probability.

The objector testified that he was born in 1980, at the home of the deceased and that he was circumcised in 1999, at his paternal uncle's home, where he was brought up and where he was living at the time when the deceased died.

It was also his evidence that upon attaining adulthood, the deceased had allotted him with an acre of land, to fend for himself, after which the deceased proceeded to subdivide his land in the presence of several people.

The objector's paternal uncle (PW2) confirmed that he was present when the objector was born to Rosebella in the home of the deceased, after which she left him. He testified that the objector, who was taken to live his maternal grandfather, came to live with him after he encountered problems, while at school and that he saw to his education and how he was allowed by the deceased to live with the objector as his other wives would not have been able to take care of him. He recognized the objector as his brother's son, and he confirmed that he participated in the objector's circumcision ceremony, which ceremony the deceased also attended and participated in. His evidence was corroborated by the midwife who attended to Rosebella at the material time (PW3), after being called by the 2nd petitioner. A sister to the deceased (PW4) also confirmed that the deceased was the objector's father, while Rosebella's brother, who lived with her in her matrimonial home during her marriage to the deceased (PW5) also recognized the objector as a son of the deceased. Their evidence was not challenged at all.

The petitioners gave evidence and called one additional witness (PW4), who is the 2nd petitioner's son, whose evidence it was that he was the one who accompanied the deceased when he went to fetch the dowry, which had been paid for Rosebella back. They all testified that the deceased had divorced Rosebella and that the two had no children. They denied any knowledge of the objector, and though DW4 confirmed that the objector lived with one Kibet who is one of the sons of the deceased, he was in their view an impostor, whose objection should be dismissed with costs. I formed the opinion that they were reluctant to tell the truth and that their evidence actually bordered on pure lies and denials. I would not give it a lot of weight.

I have taken the evidence by both the parties in to account. I have also had an opportunity to peruse the pleadings herein and especially the affidavits by both parties and the annexure thereto. It is apparent that the subject land has been the subject of disputes over a long period of time with some sons feeling deprived of a share of the same. Of interest are the minutes of a land dispute meeting in which the deceased was the defendant, in a matter instigated by one of his sons and revolving around the subject land. During that meeting of 29/3/2001, all present, including the deceased acknowledged that he had four wives; that he had initially allocated to each 5 acres of the subject land, and retained the balance of 4 acres. The names of the four wives were clearly spelt out to include Mama Kipruto Chebii. It is my humble opinion that those minutes said it all, for he acknowledged all his four wives including the objector's mother. In my view had he divorced her as the petitioners would urge this court to believe, there was no reason to consider her as his wife and at that time or even then to allocate her with land in equal shares with his other wives. This line of evidence was not controverted at all in either the replying affidavits or when oral evidence was taken. The fact that the District Officer later rejected the proposed

scheme of allocation without interfering with the names of the beneficiaries would tend to support the position and the fact that the deceased and indeed members of the local administration and his family acknowledged the fact that Rosebella was until her death, still married to him and that the two had a son namely Kipruto Chebii who is the objector herein. I am thus convinced that the deceased never divorced Rosebella, and it is for these reasons that the citations from Nandi Customary Law by G.S. Snell pertaining to the fact that once a married couple is blessed with children divorce would not issue, cannot apply at all in the petitioners' favour, as in my view the deceased continued to acknowledge Rosebella as his wife.

It must be obvious by now that I am also convinced that the objector is a son of the deceased.

The objector has in the circumstances been able to prove on a balance of probability that the deceased was his father. I feel that faced with the above revelations there would be no valid reason to deny him his inheritance.

The upshot of all this is that I find that there is merit in this objection, and I do order that the interests of Michael Kipruto Chebii be taken into account after which the petitioners can take steps to have the Grant confirmed. The Petitioners shall bear the costs of this application.

Dated and delivered at Eldoret this 4th day of July 2006.

JEANNE GACHECHE

Judge

Delivered in the presence of:

Mr. Kamau for the Petitioners

Mr. Omboto for the Objector