

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO

Succession Cause 134 of 2001

**IN THE MATTER OF THE ESTATE OF THE LATE TIGIRER ARAP MUTAI –
DECEASED**

AND

JOSEPH SIGILAI MUTAI.....1ST PETITIONER

MARIA CHEPKEMOI LELEI.....2ND PETITIONER

TAPSABEI CHEPKEMOI LELEI.....3RD PETITIONER

VERSUS

PHILIP KIPYEGON LELEI.....OBJECTOR

JUDGMENT

Tigirer Arap Mutai died on the 10th of August 1991. According to the pleadings filed in court in these Succession proceedings, the deceased was married to four wives and had several children. On the 4th of October 2001 Joseph Mutai, Maria Chepkemoi Lelei and Tapsabei Lelei (*hereinafter referred to as the petitioners*) petitioned this court to be granted letters of administration to administer the deceased's estate. They listed themselves as the only dependants of the deceased. The only property that was listed to belong to the estate of the deceased is ***Kericho/Kapkatet/1226***. On the 1st of July, 2001 Philip Kipyegon Lelei (*hereinafter referred to as the objector*) objected to the letters of administration to the deceased's estate being issued to the petitioners. He filed a cross petition stating that the petitioners had failed to disclose that the deceased had two other wives namely Paskaliah Cherotich Mutai and Taptue Cherotich Mutai. He further stated that the petitioners had failed to disclose that the deceased owned another parcel of land at Narok known as ***Transmara/Ololmasani/68***. He therefore stated that all the dependants of the deceased's estate should be recognized and the estate of the deceased be equitably distributed among the dependants of the deceased.

On the 19th of March 2004, the petitioners and the objector entered into a consent whereby they agreed that all of them would be the administrators of the deceased's estate. Directions were therefore taken before this court whereby it was agreed that the petitioners and the objector would file further affidavit indicating their preferred mode of the distribution of the deceased's estate. The petitioners and the objector complied with the order of the court and filed further affidavit indicating their preferred mode of distribution of the deceased's estate. The issue that emerged from the said affidavits is that the petitioners were contending that the deceased had a parcel of land at Transmara which at the time of his death was unregistered. The said parcel of land measured 36.36 Hectares. However when the land was registered in the year 2001, the sons of the 2nd, 3rd and 4th wives who were residing on the said parcel of land subdivided the said parcel of land among themselves and only left 1.38 Hectares registered in the name of the deceased. The petitioners contended that since the 2nd, 3rd and 4th wives, of the deceased resided on the Transmara land, and since they had already distributed the Transmara land among themselves, they should not interfere with the distribution of the land at Kericho which was solely occupied by the 1st wife and her children. The objector countered this argument by the petitioners by

stating that the Kericho land and the Transmara land should be combined together and distributed equally between the four wives of the deceased.

At the hearing of the objection proceedings, I heard the submissions that were made by Mrs. Oange for the petitioners and by Mr. Mutai for the respondent. The issue for determination by this court is what mode of distribution should be adopted by this court to distribute the estate of the deceased. The parties to this objection proceedings are agreed as to who are the beneficiaries of the deceased. They are further agreed that the mode of distribution of the deceased's estate that should be adopted should be as between the four wives of the deceased. Having carefully considered the pleadings filed by the parties to this Succession proceedings, and the submissions made before me by their counsels, it is clear that the deceased settled his 1st wife at his parcel of land known as **Kericho/Kapkatet/1226** which measures 15.5 Hectares. The 1st wife resided on the said parcel of land with her children. The deceased married three other wives. He set up matrimonial homes for his said three wives at his parcel of land in Transmara which at the time of his death was still unregistered. The total acreage of the said parcel of land was 36.36 Hectares. In the year 2001 the said parcel of land at Transmara was registered. Instead of the objector and the three wives who reside at Transmara applying for letters of administration to administer the deceased's estate, they took advantage of the adjudication process and registered themselves as the owners of the said parcel of land.

This court saw the certificates of search which were annexed to the affidavit sworn by Joseph Sigilai Mutai. It is clear that the sons of the three wives of the deceased who reside at Transmara subdivided the parcel of land which was owned by the deceased and distributed among themselves to the exclusion of the 1st wife and her children. For some reason, the objector made a decision to register 1.38 Hectares of land at Transmara in the name of the deceased. Having evaluated the submission made in these succession proceedings, it is clear that the said registration of the name of the deceased was made with ulterior motives. The objector and his siblings registered the name of the deceased as owning the said 1.38 Hectares so that they could mount a claim on the Kericho parcel of land which is occupied by the 1st wife and her children.

I have considered the facts of this cause. I am satisfied that the petitioners have established on a balance of probabilities that the deceased had settled his wives in their respective portions of land. The 1st wife was settled at Kericho while the three other wives of the deceased were settled at Transmara. The three wives and their children recognized this fact when they subdivided the Transmara parcel of land among themselves to the exclusion of the 1st wife and her children. I therefore hold that none of the children of the three wives who reside at Transmara, including the objector, are entitled to the parcel of land occupied by the 1st wife and her children at Kericho namely **Kericho/Kapkatet/1226**.

In the premises therefore, I find that the objection proceedings filed by the objector have no merit and is hereby dismissed. The objector and his other siblings of the three wives who reside at Transmara shall inherit the 1.38 Hectares of land known as **Transmara/Ololmasani/68**. The petitioners and the children of the 1st wife shall inherit all that parcel of land known as **Kericho/Kapkatet/1226**. They shall make an appropriate application for the distribution of the said parcel of land among themselves. Since this was a family dispute, there shall be no orders as to costs.

DATED at KERICHO this 30th day of October 2006

L. KIMARU

JUDGE