

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

Succession Cause 54 of 2004.

IN THE MATTER OF THE ESTATE OF KIPLETING KISORIO (DECEASED)

JUDGMENT

Sylvester Murei and Marcella Jebitok Ruto who are the plaintiff and the defendant in this cause are siblings. Their father Kipleting Kisorio died on 18/5/2000 and since then, his succession has been unresolved, for each of the two had individually petitioned this court for a Grant of Letters of Administration of his Estate.

The two agreed to have the two petitions merged with Murei being the petitioner and Marcella being the objector after which the court took evidence in the matter.

According to Murei, his father's Estate comprised of a 17.6 acres farm, known as Chesunet Farm situate in Uasin Gishu District and a two acre parcel in Lelwak Farm within Nandi district. Marcella claims that her father's Estate comprises of a 52 acre farm commonly known as Chesunet Farm – LR 4281, of which she wants to be apportioned a 17.6 acre portion which she alleges belongs to her, having contributed to the purchase of the whole Farm. Murei however maintains that Marcella, being a married woman cannot inherit her father and it is his stand that their father had even obtained an order to evict Marcella from that 17.6 acre portion on 26/11/1999. Marcella's stand is that, that case in which her father obtained the eviction order to with SPMCC (Eld) 754/1992 had been investigated by Murei and that her father was not aware of its existence.

I have considered the evidence on record and I find that Marcella has establish on a balance of probability that she contributed to the purchase of the 52 acres parcel of land. Indeed that was corroborated by her brother (DW3) who testified further that their father had allocated him with 15 acres of that land, and that Murei had initially been allocated with 15 acres and a further parcel of 5 acres thereafter. This was further supported by the fact that the farm registers included the names of both parties with Murei's portion being 20.4 acres, while Marcella's was 17.6 acres. The fact that the contents of the register were what the District Surveyor relied on during the subdivision of the farmf would also give more credence to Marcella's claim. I do also note that had her father really wanted to evict her, nothing would have stopped him as the order was obtained during his lifetime.

Marcella moved this court by way of a petition, she had filed that petition personally and though it was Murei's stand that she has no priority over him over the Estate, I would take cognizance of the fact that not being represented, she appears to have taken the easiest way out for which she cannot be faulted.

I find that she was and still is entitled to 17.6 acres of the Chesunet Farm and would in the interest of justice order that both Murei and Marcella be joint administrators of the Estate of the late Kipleting Kisorio and that she be registered as the sole proprietor of the aforementioned parcel of land. Murei who has already had his share should be registered as the proprietor of the 2 acres in Lelwak Farm.

Dated and delivered at Eldoret this 22nd day of November 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

Mr. Kathili for the defendant

No appearance for the plaintiff though plaintiff is in court