



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET.
Probate & Admin Cause 194 of 2000

IN THE MATTER OF THE ESTATE OF THE LATE JAMES KIPTUEI CHUMO

JUDGMENT

James Kiptuei Chumo died on 10/5/2000. Soon thereafter, Hellena Jepkoech Lelei petitioned for the administration of his estate. She claimed to do so in her capacity as his widow and she named his mother and her 6 children as the only survivors of the said James Kiptuei Chumo (who I shall now refer to as 'the deceased').

The Estate comprised of the following assets:-

- (a) Kapsaret/Kapsaret Block/Mararma /26 - 2.10 hectares,
- (b) Kapsaret /Kapsaret /Block/Mararma/10 – 3.42 hectares,
- (c) Business and Plot No. 28 Race Course/Eldoret Municipality,
- (d) Motor vehicle registration number KVT 081 Toyota Saloon,
- (e) Plot No. B Shauri Yako Estate survey PDP/ELD17/01/16A Site B
- (f) Account with Nationwide Finance Co. Ltd.

The Grant, which was originally issued on 2/11/2000, was confirmed on 14/6/2002, at which point it was declared that the assets be held by Hellena and her son Joshua Kimutai Tuwei jointly in trust.

On 22/7/2002, Christine Chumo who claims that she was not provided for, neither were her two sons, has now moved this Court in an application in which she seeks an order to revoke the said Grant on the grounds that not only was it obtained fraudulently by the making of false statement and concealment of material facts, but that it was obtained by means of 'untrue allegation of facts essential in point of law to sustaining the grant'.

She prays for a half share of the Estate. It was her evidence that the deceased married her in a customary marriage in 1967, while they were living in Serengeti, in the then Tanganyika; where they stayed for two years, after which they moved to Kapsaret in Nandi Kenya, where they bought two parcels of land which were 11 and 5 acres respectively, whose land numbers were 10 and 24, after which they acquired another plot of 0.2 acres. There was however no issue of their marriage, as she had problems conceiving and would therefore leave the matrimonial home often to seek the relevant treatment. She recognises Hellena, who was married in 1980, as her co wife.

It was also her evidence that the deceased never divorced her, and further that though he had consented to the adoption of her two children the adoption was not legalized during his lifetime, but that Hellena was

aware of the adoption of the two children who were then 3 years, and 3 months respectively.

Grace Chepkemboi Sang (PW2), the mother of the deceased who lived with him till his death, confirmed that Christine was her late son's wife; that they got married in the then Tanganyika, after her family paid dowry of seven cows, which were collected by Christine's family; that they all lived together in Tanganyika and upon their return to Kenya they all settled in Kapsaret where the deceased bought a 10 acres piece of land where he set up a home with Christine. She also confirmed that she knew Hellena, who was Christine's co-wife; that the deceased had built a house for Christine, which house, he later expanded for his two wives; that Christine and the deceased had lived happily though Christine had not been able to conceive. It was her evidence that the deceased never divorced Christine and she therefore recognized Christine as her late son's wife. She also confirmed that the deceased had acquired his assets at the time when he lived with his Christine and Hellena. She was however assertive that the deceased was never involved in the aforementioned adoptions, but she urged the court to share the assets amongst the two wives in the proportions of 5 and 10 acres respectively. .

Joseph Martim Arap Tanui (PW3), a brother to the deceased also recognized Christine as his late brother's wife. He confirmed that he had lived in Tanzania for 25 years with his brother, after which they all came back to Kenya in 1974, and moved to the deceased's farm in Kapsaret, where they all lived until 1984 when he moved to his own farm. He also recognizes Helena as his brother's wife. He also testified that the deceased had also bought a plot of land in Race Course, Eldoret, at a time when he was married to both Christine and Helena. It was also his evidence that the deceased never acquired any properties after Christine left, and that everything was purchased when Christine was still living with his brother. Though he testified that the deceased and Christine had adopted two children, he however conceded that the said children were adopted after his brother had died. He recognizes Christine and Helena as widows of the deceased.

Helena testified that the deceased married her in a traditional ceremony at Kapsaret; that there were six issues of that marriage. She denied any knowledge of Christine whom she claims to have met for the first time after Chumo's death; that all the aforementioned properties were acquired during her marriage to the deceased and not before then.

David Kipkemboi Tanui (DW2) step-brother to the deceased and a coadministrator of the Estate, testified how the deceased came back home in 1974 with his wife Christine; that he initially accommodated them until 1978; that the deceased acquired the 7 acres farm in August 1974; that Christine left the home in 1978, due to her inability to conceive, but that he never divorced Christine; that the deceased married Helena in 1979 and then acquired the 5 acres farm in 1980 and a further 3 acres soon thereafter. He confirmed that there were 6 issues of the second marriage, and though he denied that Christine and the deceased had adopted any children, he however conceded that Christine should be entitled to a share of the Estate.

Based on the evidence on record, I find that Christine was actually married to the deceased, and having never been divorced, and seeing that both counsel are agreed on it, she remained his wife until the time of his death. As was well put by Mr. Keter, learned counsel for the Administrators, a widow is entitled to petition for Letters of Administration. The court however has the final discretion on who should administer the estate. I must point out that DW2 acknowledged the fact had Christine returned before the date when they filed the petition, she would have been recorded as one of the survivors, which would mean that he recognises her as so. However, she was not able to prove that they had adopted any children; in any event, he was not privy to the adoption and evidence on record shows that the two were adopted after his death. The two children can not qualify to inherit him.

DW2 was very clear in his testimony that had Christine, who had been away from the matrimonial home for 22 years, returned before they filed their petition they would have catered for her. In my humble opinion, there is no evidence to prove that the Grant was obtained fraudulently, or by the making of false statement and concealment of material facts, and in the circumstances, I find that the Grant was properly made and confirmed, and I would have no reason to nullify the same save for providing for Christine.

In providing for the parties I must take into account that Hellena has already disposed of 3 acres of Kapsaret /Kapsaret /Block/Mararma/10, for the purpose of redeeming a debt, which the deceased owed to Industrial and Commercial Development Company (ICDC).

The first wife Christine who did not have any children with deceased, and who stayed away from the matrimonial home for over 20 years shall be entitled to a half share of Kapsaret /Kapsaret/Block/Mararma/26, while Hellena who has six children shall be entitled to the other half as well as following:

Kapsaret/Kapsaret Block/Mararma /10,

The business and Plot No. 28 Race Course, Eldoret Municipality,

Plot No. B Shauri Yako Estate survey PDP/ELD17/01/16A Site B Motor vehicle registration number KVT 081, and

Funds in the account with Nationwide Finance Co. Ltd.

It is so ordered.

Dated and delivered at Eldoret this 8th day of July 2005.

JEANNE GACHECHE

Judge