



**In re Estate of Taplule W/O Teituk (Deceased) (Succession Cause
143 of 2014) [2024] KEHC 1266 (KLR) (8 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1266 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 143 OF 2014
JK SERGON, J
FEBRUARY 8, 2024**

BETWEEN

REUBEN KIPKURUI LANGAT ADMINISTRATOR

AND

EVALINE CHEMUTAI LANGAT OBJECTOR

JUDGMENT

1. The administrator filed a summons for confirmation of grant dated 11th December, 2020 seeking to have the letters of administration intestate made to the Reuben Kipkirui Langat the administrator of the estate on the 11th November, 2020 confirmed.
2. The summons for confirmation of grant was supported by the affidavit of Reuben Kipkirui Langat who stated that the deceased died intestate on 23rd January, 2008 and was survived by the following dependants:
 - (i) Reuben Kipkirui Langat (Son) - 52 Years
 - (ii) Esther Cherotich Langat (Daughter-in-Law) - 64 Years
 - (iii) Evaline Chemutai Langat (Daughter-in-Law) - 64 Years
3. The administrator stated that identification and shares of all the beneficiaries entitled to the estate were determined as follows; Land Registration Number Kericho/Litein/489 (i) Reuben Kipkirui Langat - (6.166 acres); (ii) Esther Chrotich Langat - (6.166 acres) and (iii) Evaline Chemutai Langat - (6.166 acres).
4. Evaline Chemutai Langat the objector herein filed an affidavit of protest dated 24th February, 2021 against the proposed confirmation of grant of administration intestate.



5. The objector stated that her deceased husband had informed her that sometime in 1967 while abroad he sent money for the purchase of 10 acres of land which was sold by their neighbour to add to the 6 ½ acres the family already had and further that Taplule w/o Teituk the deceased herein, her mother-in-law bought 2 acres on her own with the assistance of her brothers the total acreage of the land in dispute is 18 ½ acres.
6. The objector stated that the administrator denied her access to her rightful share by evicting her and redistributing the estate equally yet her family was entitled to a larger share having purchased a portion of the said land contrary to the deliberations of the meeting held on 10th May, 2009.
7. The objector was adamant that it is fair and just that the estate of the deceased be redistributed to allow the beneficiaries to her their rightful share and proposed that the estate of the deceased be distributed as follows; Land Registration Number Kericho/Litein/489 (i) Reuben Kipkirui Langat - (7 acres); (ii) Esther Chrotich Langat - (2 acres) and (iii) Evaline Chemutai Langat - (9 ½ acres).
8. The administrator filed a further affidavit dated 31st May, 2023 in support in support of the summons for confirmation of grant and in opposition of the affidavit of protest
9. The administrator stated that Kericho/Litein/489 measuring 18 ½ acres belonged to the deceased, the objector had not provided this court with any agreement of sale and proof of payment of the purchase price.
10. The administrator stated that at the time when the purported meeting in 2009 was convened, no one was authorized by law to distribute and/or dispose of the property of his late mother, the deceased herein.
11. The administrator maintained that the land belonging to the deceased ought to be divided equally among all beneficiaries and in any event the objector has not justified why she was entitled to a larger portion.
12. The administrator urged the court to distribute the property equally among all beneficiaries as proposed in his summons for confirmation of grant.
13. The administrator urged this court to dismiss the affidavit of protest and proceed to confirm the summons for confirmation of grant dated 11th December, 2020.
14. The court directed that the protest be canvassed by viva voce evidence.
15. James Cheruiyot Langat (Pw.1) adopted his witness statement as evidence in chief. He stated that Taplule w/o Teituk the deceased herein was his brother and the petitioner was his late brother. He stated that his brother Robert Langat who was living abroad sent money to his mother to purchase 10 acres from their neighbour, Taplule bought an additional 2 acres making the land 12 acres, there was no sale agreement to document the transaction. He stated that his mother requested Robert to give 7 acres to their younger brother. He urged this court to distribute the land as indicated on the ground.
16. On cross examination, he reiterated that Robert sent money to purchase the land by post in 1967, at the time he was aged seven years old and would accompany his mother to the post office. Robert was to get 10 acres, his step mother bought 2 acres and his mother was to get 5 1/2 acres. He confirmed that there was no written agreement to document this transaction. He stated that he spoke to Robert to ask his mother to separate the land he owned but refused saying that it would shock his mother. He stated that Evalyne Chemutai Langat is the wife of his step brother. On re-examination he confirmed that Robert sent money to his mother to purchase the property. The land was purchased from his neighbour. The land Evalyne has measures 7 ½ acres.



17. Evelyne Langat (Pw.2) she adopted her witness statement as her evidence in chief. She stated that she is the wife to the late Robert Langat who was a son to the deceased Taplule Teituk, she produced two copies of airmail as PExh. 1 and 2 and a copy of minutes as PExh.3 which were annexures in her affidavit of protest. She stated that while her husband was abroad he would send money which was used to purchase land measuring 9 ½ acres and she was shown the boundaries.
18. On cross examination she confirmed that she was married to Robert Langat and has a marriage certificate which she did not produce in court. She stated that at the time Robert was sending money to purchase the land, she was not married to him, Robert had a passbook showing withdrawals from his account. She stated that Johnstone Kipkorir Langat was her brother-in-law and she had objected to the grant being issued to Johnstone Kipkorir Langat on 9th October, 2014. She states that the minutes she produced related to a meeting held in 2009 which she did not attend, the minutes were kept by her husband. She stated that her husband was abroad for a period of four years from 1966 to 1969. She stated that in the schedule of distribution she was entitled to 9 ½ acres. There was a dispute on ownership of the property as it was registered in her mother-in-law's name. On re-examination, she stated that she has taken out letters of administration in respect of her late husband's estate, Robert Langat.
19. Ezekiel Kiprotich Siele (Pw.3) stated he executed a statement and adopted it as his evidence in chief, he stated that his parents sold land to the family of Taplule. He stated that the money was sent by Robert Langat through the post office, money was withdrawn from the post office and paid to the vendor the next day. He stated that a consideration of Kshs. 10,000 was paid to his parents, he was there when the money was paid.
20. On cross examination, he confirmed that Taplule purchased the land on behalf of Robert Langat and that his family received the money and moved out of the land.
21. Joshua Koskey (Pw. 4) adopted his statement as his evidence-in-chief. He stated that he has known the deceased's family since 1980, he stated that he was present when Taplule fixed boundaries on the land in dispute, Robert was given 9 ½ acres and tea was planted.
22. On cross examination he stated that Robert sent money to Siele to purchase the land in dispute, he however was not certain of the amount paid to purchase the land. On re-examination, he stated that the land be distributed according to the wishes of their late mother, Robert to get 9 ½ acres whereas Stephen was given 2 acres.
23. Reuben Kipkirui Langat (Dw. 1) adopted his evidence in chief. On cross examination he stated that his brother Robert went abroad to study, he stated that he was still young and cannot tell whether Robert bought land. He stated that he lives in the land his mother showed him. He stated that Evelyne Chemutai Langat planted tea leaves on her portion of land. He stated that the land owned by his mother is 18 acres. He confirmed that Evelyne Langat is the wife of his late brother Robert, hence she is his sister in law. He stated that Johnstone bought land in Koiwo. On reexamination he reiterated that Evelyne was his sister in law and maintained that the land should be equally shared among the three of them.
24. This court directed the parties to file written submissions, the protestor complied and filed her written submissions.
25. The protestor maintained that the summons for confirmation should not be allowed for the sole reason that the suit property L.R. No. Kericho/Litein/489 measuring 18.5 acres registered to the deceased did not wholly belong to the deceased rather Robert Langat (now deceased) a son to the Taplule w/o Teituk the deceased herein while abroad had contributed towards its acquisition and therefore a resulting trust



should be presumed and cited the case *Gissing v. Gissing* (1971) AC 886 where the court stated that; “... a resulting trust is created when a property is purchased by one party and the purchase price is paid in whole or in part by another person on the understanding that the person paying the money will receive an interest in the property. The paper title is held by one party with a trust that ‘results’ back to the person who provided the money.” The protestor urged the court to find that Robert Langat advanced money outside of a gift and therefore a resulting trust automatically arose and cited the case of *Twalib Hatayan & Another v Said Saggat Ahmed AC Heidy & Another* [2015] eKLR where the court held that; “ ...resulting trust will automatically arise in favour of the person who advances the purchase money. Whether or not the property is registered in his name or that of another, is immaterial.”

26. The protestor conceded that there was no documentation of the transaction to wit a sale agreement and documents signed as an acknowledgment of payment at time of purchase. This was primarily because the parties were neighbours and members of the same clan, hence their relationship was based on trust and further to this the said Robert Langat was certain that his interest in the suit property would not be extinguished since the deceased was his mother. In any event Pw.2 was present when consideration was made for purchase of suit property.
27. The protestor reiterated that the transaction was not documented, therefore she did not have any sale agreement however relied on the proviso of section 3 (3) on the *Law of Contract Act* and section 38 of the *Land Act* with the effect that the requirement that contracts for sale of land be in writing does not apply to resulting trusts.
28. Furthermore the section 3 (3) on the *Law of Contract Act* and section 38 of the *Land Act* do not apply retrospectively to an oral contract entered into in 1967, section 3 (3) on the *Law of Contract Act* came into effect on 1st June, 2003 whereas and section 38 of the *Land Act* took effect on 2nd May, 2012. The protestor cited the Court of Appeal case of *Peter Mbiri Michuki v Samuel Mugu Michuki* [2014] eKLR whereby the superior court held that section 3 (3) on the *Law of Contract Act* came into effect in 2003 and therefore does not apply to oral contracts concluded before the Act came into force.
29. The protestor submitted that the ratio in her proposed mode of distribution in here affidavit of protest dated 24th February, 2021 took cognizance of the fact that Johnstone Langat (now deceased) a son of the deceased had land bought for him in Koiwa using proceeds from sale of family cows and further that her late husband Robert Langat had contributed some monies towards the purchase.
30. I have considered the summons for confirmation and grant dated 11 December, 2020, the affidavit of protest dated 24th February, 2021, viva voce evidence and the submissions herein. I find the sole issue for this court’s determination is whether the summons for confirmation should be allowed as proposed, the answer is in the negative as the protestor has proven to this court on a balance of probability that Robert Langat (now deceased) purchased 9 ½ acres constituting the estate property and therefore his widow was entitled to a larger share of the estate. Pw. 1, 2 and 3 testified that Robert Langat (now deceased) while studying abroad between 1966-1969 sent money via airmail thus contributing towards purchase of 9 ½ acres of Land Registration Number Kericho/Litein/489 constituting the estate property of the deceased. Pw. 4 testified that stated that he was present when there was a land dispute, a meeting held, resolutions made and thereafter Taplule the deceased herein fixed boundaries on the land in dispute, Robert Langat was given 9 ½ acres and tea was planted, there is on record minutes of the said meeting dated 19th May, 2005 and further that Taplule the deceased herein had demarcated boundary lines of the suit property in line with the resulting trust, prior to her demise. Pw. 2 stated that she currently occupies 9 ½ acres of the suit property, where she has a tea plantation and a house.



31. On his part, the administrator did not furnish this court with cogent evidence to back his assertion that the suit property was wholly owned by the Taplule w/o Teituk the deceased herein. While giving viva voce evidence he stated that he was young when the suit property was purportedly purchased.
32. In the circumstances, I hereby dismiss the summons for confirmation of grant dated 11th December, 2020 and instead allow the protest and proceed to confirm the grant. The estate be distributed as proposed in the Affidavit of Protest as follows:
 1. Land Registration Number Kericho/Litein/489
 - (i) Reuben Kipkirui Langat - (7 acres);
 - (ii) Esther Chrotich Langat - (2 acres) and
 - (iii) Evaline Chemutai Langat - (9 ½ acres).

DELIVERED, SIGNED AND DATED AT KERICHO THIS 8TH DAY OF FEBRUARY 2024.

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J.K. SERGON

JUDGE

In the Presence of:

C/Assistant – Rutoh

Miss Aoko holding brief for Gatimu for Protestor

Miss Rotich holding brief for Lorot for Administrator

