



REPUBLIC OF KENYA



KENYA LAW

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**In re Estate of the Late Simion Kibiego Jumo alias Simeon Kibiegog Juma (Deceased)
(Succession Cause 4 of 2014) [2024] KEHC 5922 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5922 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 4 OF 2014**

JK SERGON, J

MAY 23, 2024

**IN THE MATTER OF THE ESTATE OF THE LATE SIMION
KIBIEGO JUMO ALIAS SIMEON KIBIEGON JUMA (DECEASED)**

BETWEEN

STEPHEN MUZEE ARAP KERING APPLICANT

AND

JOHN CHEPCHILAT ARAP CHUMO 1ST PETITIONER

WILSON KIBET YEGON 2ND PETITIONER

RULING

1. The chronology of events in this succession cause is as follows; there was an objection to the making of grant dated 27th January, 2015 by Charles Kipruto Koske, the said application was withdrawn via a notice dated 22nd August, 2016.
2. Consequently, one Stephen Muzee Arap Kering filed an application for revocation of grant dated 5th September, 2016, however, before the application could be heard and determined, the parties came by a concession and filed a consent dated 2nd November, 2016 where they agreed that the objectors should be included as beneficiaries of the estate and thereafter each party to file its preferred notice of distribution.
3. The parties complied and filed their preferred mode of distribution.
4. Stephen Muzee Arap Kering the objector, filed an affidavit in support of the proposed mode of distribution dated 20th March, 2017.
5. The objector avers that even though the land parcel Kericho/kapsoit/432 is registered in the joint names of Simon Kibiegog Jumo and John Chepchilat Chumo, the land parcel was the property of his grandfather the late Busienei Arap Siongog.



6. The objector avers that the registered proprietors are holding the same land in trust of other family members and in particular the grandsons of the late Busienei Arap Siongog namely; Arap Chumo, Kipsigei Maina, Arap Legetet, Arap Leting, Arap Sawe and Joshua. Further to this, he avers that since the grandsons are deceased, their rightful entitlements should pass to their children.
7. The objector avers that the estate has been divided into six (6) portions and each house has been allocated three (3) acres. He further avers that five families are living peacefully save for the family of Kipsigei Maina who are still fighting over equal distribution amongst the dependents. The objector proposed that their share of 3 acres be distributed among the following persons in equal shares.
 1. Stephen Muzee Arap Kering.....0.7 acres
 2. Richard Kiprono Chebochok.....0.7 acres
 3. John Chepchilat Chumo.....0.7 acres
 4. Joseph Kiplangat Maswai.....0.7 acres
8. The objector urged this Court to adopt his proposed mode of distribution.
9. John Chepchilat Arap Chumo the petitioner and administrator of the estate, filed an affidavit in support of the proposed mode of distribution dated 15th November, 2017.
10. The petitioner avers that upon the demise of the deceased herein on 15th December, 1998 a grant of letters of administration of the said estate was made to him on 24th August, 2014.
11. The petitioner avers that the deceased was the registered proprietor of Kericho/kapsoit/432 measuring 18 acres which constituted the deceased's estate. The petitioner proposed to distribute the estate as follows;
 - a. John Chepchilat Chumo.....3 acres
 - b. Hannah Chumo.....1.2 acres
 - c. Joel Too..... 6.3 points
 - d. Andrea Rotich.....4.37 acres
 - e. Henry Arap Tuigong.....5 points
 - f. Erick Bett.....7 points
 - g. Jonathan Bett.....1.3 acres
 - h. David Kimutai Langat.....1 acre
 - i. Peter Ngeno.....2.35 points
 - j. Esther C. Ngeno.....8 points
 - k. Peter Bore.....7 points
 - l. Andrew Rono.....5 points
 - m. Charles Kipruto Koske.....2 points
 - n. Monicah Chepngeno.....8 points
 - o. Sogutek Primary School.....2 acres



12. The petitioner avers that his preferred mode of distribution is just and fair among the beneficiaries of the deceased.
13. The matter was set down for hearing *vide viva voce* evidence. The objector availed five (5) witnesses in support of his case whereas the petitioner opted to testify and not to call any witnesses in support of his case.
14. Stephen Mzee Arap Kering (Pw. 1) the objector stated that he recorded a statement on 20th December, 2017 and adopted it as his evidence in chief. He stated that Kericho/Kapsoit/432 belonged to their grandfather the late Busienei Arap Siongog and that the land is registered in the names of John Chepchilat Chumo and Simon Kibiegog Chumo. He further stated that his grandfather had six sons who are now deceased but survived by their children. He conceded that their grandfather did not distribute the land among his sons during his lifetime. However, he stated that the parcel of land is 18 acres and was divided into six equal portions, 3 acres each and shared equally amongst the surviving dependents of the deceased sons and all of them had disposed off their respective portions to third parties. He stated that the only portion that was under dispute is a 3 acre parcel, the share of the late Kipsigei Arap Maina (one of the deceased son's of the late Busienei Arap Siongog) whereby John Chepchilat Arap Chumo (the 1st Petitioner herein), wanted the entire portion of the land belonging to his father to the exclusion of his brothers Stephen Arap Kering (the objector herein), Richard Kiprono Chebochok (deceased) and Joseph Maswai.
15. On cross examination, Pw. 1 confirmed that he was not given any land by his father Kipsigei Maina. He further confirmed that sometime in 1986, the six sons of Kipleting Arap Siongog divided the subject parcel measuring 18 acres into six portions, however, he was not present at the time. He stated that when his father passed away, he had not subdivided his property, it was inherited by one person. Pw. 1 confirmed that he was aware that Kericho/Kapsoit/432 was registered in the name of Simeon Kipyegon Juma and John Chepchilat for a long time.
16. Kipsoi Arap Langat (Pw. 2) a village elder where the suit land is situated, stated that he made a statement dated 5th March, 2018 and adopted it as his evidence in chief. In the statement he stated that the property, though registered in the joint names of John Chepchilat Chumo and Simon Kibiegog Juma, was acquired by their grandfather, the late Busienei Arap Siongog who had six sons, who are deceased but survived by their children. He further stated that the 1st petitioner and objector are brothers. He further stated that he witnessed the subdivision of the suit land into six equal portions amongst the beneficiaries after which each beneficiary was allocated 3 acres each. He stated that most of the beneficiaries had sold their respective shares. Pw. 2 also stated that he was in support of the objector's averment that the disputed 3 acre portion ought to be shared amongst his four brothers.
17. On cross examination, Pw. 2 stated that he does not know how Simon Kipyegon Juma and John Chepchilat Chumo were registered as joint proprietors of Kericho/Kapsoit/432. He also stated that he did not know what properties Kipsigei Arap Maina had prior to his demise and whether he subdivided his land among his sons. He stated that he was aware that the objector lives in Subukia on land belonging to his father, who had two properties one in Subukia and the other in Kapsoit.
18. On re-examination Pw. 2 confirmed that the land was subdivided in his presence, it was divided into six parts and each beneficiary took their rightful share of the property after subdivision.
19. Charles Kibet Tuwei (Pw. 3) the assistant chief of Ketitui Sub Location in Telanet Location, where the suit land is located stated that he wrote a statement dated 5th March, 2018 and wished to adopt it as his evidence in chief. In the said witness statement, he stated that he was present when the subdivision was done in his capacity as the area assistant chief. Pw. 3 also stated that he was in support of the



- objector's averment that the disputed 3 acre portion entitled to the late Kipsigei Arap Chumo ought to be distributed equally among his four sons Stephen Kering, Richard Chebochok (Deceased), John Chumo and Joseph Maswai.
20. On cross examination, Pw. 3 stated that he knew that Simon Kipyegon and John Chepchilat Chumo were registered as joint owners of the suit land. Simon Kipyegon was a surveyor in the lands office and therefore used his office to register the land in his name and his cousin's name. He confirmed that he was not there when the land was subdivided in 1986 and that he became assistant chief in 1997. He stated that he was aware that the late Kipsigei Arap Maina had land in Subukia and Kapsoit and that he did not know how Kipsigei Arap Maina subdivided his land among his children. He confirmed that the objector resides in Subukia whereas the petitioner John Chepchilat Chumo resides in Kericho/Kapsoit/432.
 21. Richard Chumo Kiplangat (Pw. 4) stated that he wrote a statement dated 20th December, 2017 and adopted the same as his evidence in chief. In the said witness statement, he stated that he was aware that the suit property is ancestral land that was acquired by his great grandfather the late Busienei Arap Siongog, however, it was registered jointly in the names of John Chepchilat Chumo and Simon Kibyegon Juma. He stated that the land was subdivided with most people having disposed of their shares to third parties. He stated that the only portion under dispute was the 3 acres belonging to the late Kipsigei Arap Maina which ought to be distributed equally among his four sons Stephen Kering, Richard Chebochok (Deceased), John Chumo and Joseph Maswai.
 22. On cross examination, Pw. 4 stated that he was not aware of the properties of the late Kipsigei Arap Maina, however, he was aware of the parcels of land in Subukia and Kericho. He stated that sometime in 2017, he was informed about the dispute on Kericho/Kapsoit/432, which the chief was not able to resolve and it was decided that the dispute be brought to Court for justice.
 23. Nicholas Kipkirui Sawe (Pw. 5) stated that he recorded a witness statement dated 20th December, 2017 and adopted it as his evidence in chief. In the said witness statement he stated that the land was acquired by their grandfather but registered to John Chepchilat Chumo and Simon Kibyegon Juma. He stated that after the demise of his grandfather Busienei Arap Siongog, the land was subdivided into 6 portions as per the number of sons and most of these families sold their respective portions to third parties. However, in the disputed parcel, the beneficiaries had failed to agree on how to distribute their share and that John Chepchilat Chumo wanted to inherit the entire portion to the exclusion of his brothers. He further stated that the 3 acre portion ought to be distributed equally among the four brothers.
 24. On cross examination, Pw. 5 confirmed that the suit land was in the name of two people namely John Chepchilat Chumo and Simon Kibyegon Juma and they were able to register the land because Simon Kibyegon was working at the land registry. He confirmed that he was not aware whether late Kipsigei Arap Maina distributed any assets before he died.
 25. At the close of the objector's case, the petitioner testified in support of his case.
 26. John Chepchilat Arap Chumo (Dw. 1) the petitioner, stated he had recorded a witness statement and adopted it as his evidence in chief. He confirmed that he and Simon Kibyegon Juma (now deceased) are cousins and that the the suit land was registered jointly in their names in 1993 while his father Kipsigei Arap Sang was alive. He stated that his father had four sons, himself included and three daughters. He further stated that his father bequeathed 3 acres of the suit land to him and other properties to his brothers. He stated that he and Simon Kibiegon Juma were registered as trustees of the land acquired by their grandfather Kipleting Arap Siongok, further that their grandfather met them sometime 1969 and gave the orders.



27. On cross examination (Dw. 1) he confirmed that the suit land was jointly registered. He confirmed that sometime in 1969 the land was divided among the six sons of Kipleting Arap Songoik, his father included. He confirmed that the disputed 3 acre portion of the land was the share of his father Kipsigei Arap Maina, who had four sons and some daughters. He conceded that he had a dispute over the suit land with the objector and that the objector had incited the others. He contended that if the disputed 3 acre portion was to be divided by four then the other properties of his deceased father ought to be divided into four.
28. The parties were directed to file written submissions, however, they failed to comply despite several mentions in Court to confirm compliance.
29. I have considered the pleadings in the instant succession cause, respective modes of distribution by the parties and the *viva voce* evidence and the sole issue for this court's determination is what mode of distribution to adopt in respect to the estate of the deceased, the objector and petitioner have filed two modes of distribution for this court's consideration. The Court of Appeal, in [*Justus Thiora Kiugu, & 4 Others vs. Joyce Nkatha Kiugu & Another*](#) [2015] eKLR (Visram, Koome and Otieno-Odek JJA), held *inter alia* that an intestate estate could not legally be distributed in any other way other than by the parties agreeing amongst themselves and filing a consent, or by the court strictly following the provisions of the [*Law of Succession Act*](#) on intestate distribution. It was stated that where the parties were in total agreement, and recorded a consent on the mode of distribution, the court would have no choice but to adopt the consent, and make it an order of the court. In the absence of a written consent on the mode of distribution, the court would have no discretion but to distribute the estate of the deceased as per the provisions of the [*Law of Succession Act*](#).
30. This position has been upheld in [*In re Estate of Juma Shiro - Deceased*](#) [2016] eKLR whereby Mwita J stated that where the beneficiaries had not agreed on the mode of distribution, the court would resort to the provisions of the [*Law of Succession Act*](#) to resolve the issue. See also in [*In re Estate of MM \(Deceased\)*](#) [2020] eKLR where Gikonyo J. stated that where there was no total consensus amongst the survivors on distribution, the court was guided by the law, and strictly applied the provisions of the [*Law of Succession Act*](#).
31. This Court's jurisdiction is to enforce the [*Law of Succession Act*](#) Cap 160 on administration of testate and intestate estates of deceased persons. In this regard the probate court shall hear and determine issues of issuance of grants, summons for confirmation of grants where lists of beneficiaries, lists of assets and modes of proposed distribution of estates are agreed and consented to by all beneficiaries. Where there is a contest, the court may proceed to hear and determine the protests and revocation of grants applications. However, the mandate of the probate court under the [*Law of Succession Act*](#) is limited. It does not extend to determine issues of ownership of property and declarations of trusts.
32. In the instant succession proceedings there are several witnesses who testified that KERICHO/KAPSOIT/432 comprising the estate of the deceased herein is ancestral land. Pw. 1, Pw. 2, Pw. 4 and Pw.5 stated that KERICHO/KAPSOIT/432 was acquired by their grandfather the late Busienei Arap Siongog, but subsequently registered jointly in the names of John Chepchilat Chumo and Simon Kibyegon Juma to hold in trust for the other beneficiaries. (Dw. 1) the petitioner herein conceded that he and Simon Kibyegon Juma (deceased) were registered as trustees of the land acquired by their late grandfather.
33. In the circumstances both parties have raised the fact that estate property is a customary trust. The land is jointly registered in the names of John Chepchilat Chumo and Simon Kibyegon Juma and these succession proceedings are in respect to the estate of Simon Kibyegon Juma, this raises pertinent questions as to the ownership of the estate property and as to whether the estate property is a customary



trust. *In re Estate of Mbai Wainaina (Deceased)* [2015] eKLR in a matter where one of the parties stake to a share of the estate of the deceased estate was based on a customary trust, the court held that: “Even if there was material establishing that there was such a trust, I doubt that the resolution of this issue would be a matter of the probate court. The mandate of the probate court under the Law of Succession Act is limited. It does not extend to determining issues of ownership of property and declaration of trusts. It is not a matter of the probate court being incompetent to deal with such issues but rather that the provisions of the Law of Succession Act and the relevant subsidiary legislation do not provide a convenient mechanism for determination of such issues. A party who wishes to have such matters resolved ought to file a substantive suit to be determined by the Environment and Land Court.

34. The upshot of all the above is that this court sitting as a Probate Court has no jurisdiction to determine the issue touching on trust or ownership over the Estate Property or Land. The issue can be resolved through other proceedings contemplated under rule 41 (3) of the *Probate and Administration Rules*. This Court stays further proceedings in this succession Cause for a period of 12 months. Parties should take out the proceedings contemplated in Rule 41 (3) of the *Probate and Administration rules* and report the outcome of those proceedings to this court so that the issue of distribution can be determined. Each party to meet their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 23RD DAY OF MAY 2024.

.....

J.K. SERGON

JUDGE

In the Presence of:

C/Assistant – Rutoh

Motanya for the Petitioner

No Appearance for the Objectors

