



In re Estate of the Late Philip Chumba Sirma alias Sirma s/o Chumba, Philip Sirma s/o Chuba, Philip Sirma arap Chumba alias Philip Sirma Chumba (Deceased) (Succession Cause 395 of 2015) [2024] KEHC 12889 (KLR) (25 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12889 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 395 OF 2015
RN NYAKUNDI, J
OCTOBER 25, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE PHILIPH CHUMBA SIRMA
ALIAS SIRMA S/O CHUMBA, PHILIPH SIRMA S/O CHUMBA, PHILIPH
SIRMA ARAP CHUMBA ALIAS PHILIPH SIRMA CHUMBA (DECEASED)**

BETWEEN

JARED KIPROTICH MUTAI 1ST PETITIONER

BOAZ KIPSIGEI BIWOTT 2ND PETITIONER

AND

EMILY JELIMO 1ST OBJECTOR

EDWIN KIPKOECH KEMBOI 2ND OBJECTOR

RULING

1. On 13th May, 2024, this court adopted a partial mediation settlement on distribution of the estate save for land known as Kibagenge/ChepyegoriS/2198/2, which was referred back to court together with NCBA shares.
2. The Objectors' witness one Kafuna Mugodo through his witness statement stated that the late Philip Chumba Sirma bought the land from a white settler by the name Edward Northly with six others namely; Kenyo Martim, Kitur K. Kirwa, Malakwen Rotich, Jerop Kobob Hulei, Kipkosgei Boit Kipchumba and David K. Lagat in the year 1977 or thereabout.
3. The witness further stated that he was a secretary for Chepyagoris farm, from the year 2011 to 2017. The purpose of him being a secretary was that since they had bought a land together with seven others and they were in the process of looking for land title deeds. He deposed that when he was a secretary, Philip Chumba Sirma was the owner of 30 acres and he did not have the title deed; only the seven



of them had one title deed in the name of the white settler LR No. 2198/2 measuring 145 acres or thereabout, subdivided upon seven people.

4. It was his case that the deceased herein died before he got the land title deed. That when he was registering, they requested from those who had bought the land to bring in their documents. Around 215, somebody called Joseph brought documents in the name of Josephat Sirma. He stated that he does not know the said Josephat Sirma neither has he ever met him.
5. He further deposed that during the meetings held in respect to the subject farm, one Joseph used to attend the meetings and indicated he was for Mr. Josephat Sirma for Philip Chumba. That they ended up recording Josephat Sirma as the owner of the farm which was a mistake.
6. Finally, it was his case that the original records read Philip Chumba Sirma hence he is only aware of Philip Chumba Sirma (deceased) who was one of the allottee of the land parcel LR No2198/2.
7. The objectors filed written submissions in their capacities and argued that the parcel of land known as Kibagenge/chepyegoris/2198/2 forms part of the estate on the basis of their witness who recorded a witness statement. That Josephat Sirma only acquired title to the said land 3 years after the demise of the deceased. The Objectors submitted that this court is vested with powers to cancel the said titles or such orders as it may deem fit. On this they cited the provisions of Section 47 of the Law of Succession Act and Section 143 (1) of the Registered Land Act.
8. As to the mode of distribution, the Objectors submitted that the provisions of Section 38 of the Law of Succession Act ought to apply. They urged that where a child of the deceased is also deceased but left behind a widow and children, the latter are entitled to inheritance in equal share as would have been given to their father. It was further their argument that although Section 38 calls for equal distribution of the suit land, in this case and in accordance to the Nandi customary laws, the suit land is only to be divided upon the Petitioners (for and on behalf of the Aggrey, Kipkemboi Kosgei – the deceased son) and one Josephat Sirma who are the only sons of the deceased for purposes of succession. That the girls are not allowed to claim from their deceased father's estate and that's why in the instant suit, the girls have not claimed any share in respect of the suit land.

Analysis and Determination

9. In so far as this estate is concerned, the applicable law is Section 38 of the Law of Succession Act, which states:

“ 38 Where an intestate has left a surviving child or children but no spouse, the next intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”
10. The Constitution of Kenya in Art 27(4), outlaws discrimination on grounds of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour age, disability, religion, conscience, belief, culture, dress, language or birth etc.
11. Generally speaking, the provisions of the Law of Succession Act i.e. Section 3(2), 5, 26, 29, 35, 36, 37, 38, 39, 40 and 41 seek to protect and promote the rights of women which includes a wife ranking high among the dependants of the deceased husband and a surviving spouse is considered as the most suitable person to take charge of the deceased's husband property and in this Act, children are allowed to inherit without making any preference to a male or female child. In the case of Re Estate of Priscilla Wairimu Kamau (2005) eKLR the court inter alia ruled that whereas the deceased prior to the



enactment of the *Law of Succession Act*, customary laws that discriminate against women on inheritance could not be applicable since they are repugnant to justice (see also *Rono v Rono* (2006) KLR)

12. The legislature in Kenya has made great strides in outlawing discrimination on inheritance on any of the grounds stated in Art. 27(4) of the *Constitution* by enacting section 3(2) of the *Law of Succession Act* which states that in reference to a child or children under this Act shall include in relation to a female person a child born to her out of wedlock and in relation to a male person, a child whom he has expressly recognized or in fact accepted as a child of his own without singling out of the child being a female or male for whom he has voluntarily assumed parental responsibility. Therefore, the children born out of wedlock are not precluded from enjoying inheritance rights of their deceased parent. It is not dependent on what kind of relationship they had during the survivorship of the deceased. Further, the *Constitution* under Art. 2(5) & (6) provide that the general rules of international law and any treaty or convention shall form part of the law of Kenya. In this respect, the following international and Human Rights Instruments i.e. *Universal Declaration of Human Rights*, *International Covenant on Economic, Social and Cultural Rights*, *International Covenant on Civil and Political Rights*, the *convention on the Elimination of all forms of discrimination against women*, *African Charter on Human and People's Rights* and the *Protocol to the African Charter on Human and People's Rights* commonly known as the Maputo protocol have very clear provisions that promote the protection of women's land, property and inheritance rights.
13. On the question of ownership of the said suit property, evidence was led by Kafuna Mugodo that the deceased was all along the allottee of the said parcel of land and that Josephat Sirma only came in to attend meetings standing in for Philip Sirma. The transaction in this case is not an ordinary one. It involves a piece of land where originally the title was registered in one white settler and the purchasers including the deceased person had not been given individual titles. As to how the beneficiary became a title holder of the suit property, the witness stated that Josephat Sirma might have been registered as the owner by virtue of attending meetings on behalf of his father, which should not be the case. The said viva voce evidence not countered, I am of the opinion that the Objectors have established a case as is required under the provisions of sections 107(1) of the *Evidence Act*. It has not been disputed that the witness, one Kafuna Mugodo is one key individual who held the records of the said parcel of land. His evidence as adduced can therefore solely be relied upon given the central position he held in trying to have the seven purchasers acquire individual titles. The resultant effect is that the said suit property in the name of Josephat Sirma is hereby cancelled and reverts back to the state for equal distribution amongst the beneficiaries. The remaining properties are hereby distributed as follows:



	Beneficiary	Property	Share
	Josphat Sirma Emily Jelimo Rosa chumba Alice Kegir Ludia Chumba Florence Chumba Jonah Sirma (deceased) Aggrey Kipkemboi Kosgei (deceased)	Kibagenge/ Chepyekorismeasuring 25 acres.	To be shared equally amongst all the beneficiaries
	Josphat Sirma Emily Jelimo Rosa chumba Alice Kegir Ludia Chumba Florence Chumba Jonah Sirma (deceased) Aggrey Kipkemboi Kosgei (deceased)	PensionandSharesatNCB	To be shared equally amongst all the beneficiaries

14. The certificate of confirmation of grant be issued forthwith for the administrators to transmit the estate within the laid down matrix

15. Orders accordingly

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 25TH DAY OF OCTOBER 2024

R. NYAKUNDI

JUDGE

Representation:

M/s Arap Mitei & Co. Advocates

