



**Marisin & 6 others v Chepkwony & another; Marisin & 5 others (Applicant)
(Succession Cause 32 of 2014) [2023] KEHC 19996 (KLR) (4 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19996 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 32 OF 2014
HK CHEMITEI, J
JULY 4, 2023**

BETWEEN

ELIZABETH CHEMUTAI MARISIN & 6 OTHERS APPLICANT

AND

FLOSSY CHEROTICH CHEPKWONY & ANOTHER RESPONDENT

AND

SARAH CHEPNGENO MARISIN & 5 OTHERS APPLICANT

JUDGMENT

1. The deceased herein the late John Chepkwony Marisin was a polygamous man who died intested on July 1, 2010. At the time of his death he left behind his three wives and several children both male and female.
2. The deceased left behind two sets of properties namely Njoro/ Ngata Block 2 / 90 measuring 72 acres and Kericho/ Kabianga/1773 measuring 27 acres.
3. James Kipsege Chepkwony, Joshua Kiptanui Chepkwony, Flossy Cherotich Chepkwony and Alice Chepngeno Marisin were issued with a confirmed grant on May 17, 2016. The said grant was rectified on December 31, 2019 where Flossy Cherotich Chepkwony and Alice Chepngeno Marisin were issued with a fresh grant.
4. The said second grant jolted the estate wherein the other beneficiaries filed several sets of applications seeking it to be revoked and the estate be distributed afresh. The following applications seeking the following orders or prayers were filed;
 - (a) The application dated November 14, 2019 prays for revoking of the rectified certificate of grant issued on January 31, 2019 issued to Flossy Cherotich Chepkwony and Alice Chepngeno Marisin and that the estate be distributed afresh.



5. The same is supported by the sworn affidavit of Rachel Chelangat Marisin who deponed that she and her co -applicants were not involved in the rectification of the grant and the signatures appended thereto giving the consent were forgeries.
6. She further stated that their names were left out in the application for confirmation of grant and in any case they had not renounced their rights to inherit their father's estate. They therefore prayed that the orders be granted.
 - (b) The application dated December 2, 2019 by Flossy Chepkwony and Alice Marisin prayed that the assets bequeathed to their late mother Martha Chepkoech Marisin, the first widow be distributed among the beneficiaries from her house as she held it in trust for them. The other prayers were that the compensation from Ketraco way leave for construction of Olkaria –Lessos-kisumu power line in parcel number Njoro /Ngata Block 2/90 be distributed proportionally to those their land was affected.
7. In her supporting affidavit she said that since their mother had been granted her share it was then appropriate that the same goes to her beneficiaries which in this case was her house as she held the 18 acres in trust for them.
8. As regards the compensation they deponed that the power line had reduced the portion due to some of the beneficiaries and the only logical way was to pay them directly.
 - (c) The application dated March 8, 2023 by Sarah Chepngeno Marisin on behalf of “Fresh Applicants” prayed that the grant issued on January 31, 2019 be revoked and or amended to include Sarah Marisin, Mary Marisin, Rosaline Cheronno Rotich, Joyce Chepnetich Rono, Eunice Chepkorir and Chebii Eddah.
9. They also prayed that the estate be distributed afresh. They deponed that they were daughters of the deceased and in their earlier family decision they had agreed as daughters that they were not going to seek to inherit their father's estate. However, the girls from the first house breached the said family understanding and they felt therefore that they are entitled to inherit from the said estate just like them.
10. They deponed that all the girls should share 18 acres out of land parcel number Njoro /ngata block 2/90 which the deceased had set aside for his personal use. They proposed that the rest of the estate should be left intact as per the deceased wishes.
11. In regard to the Ketraco compensation they depose that those whose portions were affected ought to be compensated by the amount paid.
 - (d)The application dated February 14, 2022 by Joseph Kibet Sigei, a grant son to the deceased prays that he be recognised as a beneficiary to the estate and he be given two acres out of land parcel number Njoro/Ngata Block 2/90. He backed up his argument with a letter or minutes prepared on 11th June 2006 under the auspices of the area chief, the deceased, his father and other elders.
12. It was his claim that the deceased gave him the two acres as per the said minutes and thus he has all the rights over it and this court should simply ratify and have it enforced.

Analysis and Determination

13. The court directed the parties to file written submissions which they have all complied. The court has perused the same together with the cited authorities and does not intend to reproduce the same here.
14. The sum total of the issues raised in the said submissions are; Whether Joseph Kibet Sigei, the objector and grandson to the deceased is entitled to inherit the estate by virtue of the minutes dated 11th June



- 2003; whether the deceased had set aside 18 acres out of Njoro /ngata block 2/90 for his personal use; whether the daughters should share the said parcel equally or those from the first house only; how should Ketraco compensation money be shared out.
15. Before looking at the above issues, the parties have no problem generally with the fact that all the beneficiaries are on board. In other words, save for Joseph Sigei, the grandson, the rest recognise each other.
 16. At the same time the properties left behind by the deceased are well known and none has been left out. In fact, the property in Kericho namely Kericho/Kabianga/1773 measuring 28.8 acres has been shared out and none of them would want to disrupt that position left by the deceased.
 17. In regard to whether Joseph Sigei should be given the two acres, some of the beneficiaries are opposed to the same on the grounds that he should inherit from the portion due to his father just like the rest of the grandchildren. On his part he alleged that he was gifted by the deceased during his lifetime.
 18. His main supporting documents are the minutes dated 11 June 2003 attached to his supporting affidavit.
 19. Section 42(a) of the Succession Act states as hereunder;

“Previous benefits to be brought into account

Where-

(a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or

(b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35,

that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”
 20. Effectively therefore and taking cue from the above portion of the Act the gift must be clear and unambiguous.
 21. Looking at the minutes of the said meeting before the chief it appears that the dispute was between the deceased, his son who was the father to the applicant and centered on the fact that James Chepkwony the applicant's father and who was residing in the deceased land had chased away the applicant from the half acre portion which the grandfather had given him.
 22. After a lengthy deliberation the chief indicated what the deceased said;

“...since he had chased away my grandson from ½ acre land, I am giving him the defendant 2 acres of land which I will go and show him today. He requested the elders to put the case to an end because the two people are mine.”
 23. The said minutes have not been challenged by all the parties herein by way of affidavits save in their submissions. It is the finding of the court that the deceased died 7 years later and there is no evidence that he reneged on his promise. In any case the land in question was clearly known by the deceased, his son and the grandson. The deceased had the capacity and competency to do so. If for instance the deceased had changed his mind, then he would have taken the action of chasing away the grandson or doing such acts so as to cancel or change his intentions.



24. There is no evidence indicating that the applicant did not take possession of the said two acres or at all. This court therefore makes a presumption that immediately he was shown the portion of the land he took it and has been in possession of the same.
25. This line is also supported by the way the deceased arranged the above indicated Kericho parcel while he was alive. The three families by the time he died were clear on their living arrangements on the land despite the fact that he did not formally transfer the titles or executed any conveyancing arrangements in their favour.
26. Although it was submitted by the objectors that there was no formal transfer, the same essentially is double speak as the objectors are comfortable with the other arrangements made by the deceased despite the fact that he did not formally transfer them to the beneficiaries. The totality of the deceased intention was to ensure that the family arrangements he had done affecting all the houses would be respected.
27. The same goes with the Njoro /Ngata Block 2/90 parcel. It was not disputed that all the deceased had done was to settle the houses in the manner he did before he died. The only contentious portion was the 18 acres left for his own use. The girls as well as the grandson have laid claim to the said property.
28. The girls from the 2nd and 3rd houses from their evidence and submissions had agreed to have the estate remain as their father left it. Their sisters from the first house then demanded to have the 18 acres which negates the earlier family arrangements. This provoked them and they therefore insisted that they must get a share of the same.
29. It is worthy to note that the sons from the three houses are comfortable with the deceased arrangement. The portions in Kericho and Ngata accordingly ought to remain as their father left and it appears they have no much interest in the 18 acres.
30. It was the submission of the objectors that since their mother who was from the first house contributed much to the estate then her house ought to be rewarded with the 18 acres as desired by the deceased.
31. Although the above argument is plausible, it appears from the arrangement by the deceased that all the houses were to inherit equal shares. There is no evidence of any “special” contribution by the first house more than the rest of the widows.
32. Notwithstanding, all the girls in my view are on the same footing. Most if not all are already married and outside their father’s home. In any case the 18 acres the deceased distributed equally without any evidence of discrimination.
33. There are however allegations which are uncontested that Rachel Chelangat Marisin and Mary Chelangat Marisin were given two acres each by their mother prior to her death. I find this arrangement ought not to be disturbed as it appears that they had issues with their marriages and that is why they had to come back home and their late mother had accommodated them.
34. In the premises and in regard to these 18 acres out of Njoro/Ngata Block 2/90 the same ought to be divided equally between all the girls except the two mention above and the grandson who shall each get 2 acres leaving the rest to share out 14 acres.
35. As regards the Ketraco compensation it is apparent that all the parties agree that the power lines disrupted a portion of the 18 acres stated above. In fact, there is uncontested sketch map exhibited which shows the portion of the Way Leave took.



36. The parties except some few are generally in agreement that those affected by it ought to be compensated by receiving the amount already earmarked by Ketraco which is totalling kshs14,651,794.50. Others are of the opinion that the amount must be shared out equally among all the beneficiaries.
37. Sharing out equally will obviously disadvantage those whose land has been affected. The others cannot benefit because naturally they have not lost anything. Of course, individuals without affecting the rest can make their own “local “arrangements once the payment is made out.
38. Finally, it appears that the parties on the ground seemed to have settled well. This court if that is the position does not expect the subdivision exercise to interfere with such arrangements unless it is a requirement. For those who have passed on, if any, it shall be the responsibility of the administrators to ensure that their rights are transmitted to the proper beneficiaries.
39. In view of the issues raised concerning the rectified grant this court is of the considered opinion that now that all the parties are on board, the grant issued on 31st December 2019 is further amended to include James Chepkwony who had complained that he had not been consulted.

Conclusion

40. The court having gone through the applications stated above, respective supporting affidavits and the submissions makes the following orders;
- (a) Joseph Kibet Sigei the deceased grandson is hereby recognised as a direct beneficiary to the estate herein.
- (b) The 18 acres out of land parcel number Njoro/Ngata Block 2/90 shall be shared out as follows;
- (i) 2 acres each to Joseph Kibet, Sigei, Rachel Chelangat Marisin and Mary Chelangat Marisin.
- (ii) The balance of 14 acres of (b) above shall be shared out equally between all the deceased girls except the two mentioned in (b), (i) above.
- (c) The compensation from Ketraco company totalling kshs14,651,794.50 be paid out to those whose parcels have been specifically affected by the power lines or the wayleave line in a pro rata basis.
- (d) The rest of the deceased estate including land parcels number Kericho /Kabianga/1773 and the balance out of Njoro /Ngata/Block 2 /90 shall remain as the deceased arranged and left and as per the grant already issued by the court.
- (e) The grant be amended appropriately so as the administrators of the estate shall be Flossy Cherotich Chepkwony, Alice Chepogeno Marisin and James Chepkwony.
- (f) Being a family matter each parties shall meet their respective costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 4TH DAY OF JULY, 2023.

H. K. CHEMITEI

JUDGE

