



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

SUCCESSION CAUSE NO. 134 OF 2009

IN THE MATTER OF THE ESTATE OF KIBOR ARAP SEGO (DECEASED)

THOMAS KIMITEI KIBOR.....PETITIONER

AND

ANGELLAH JEPCHIRICHIR KIBOR.....OBJECTOR

**RULING**

1. This Court delivered a ruling on the 9/10/2019 and ordered that the objector herein was entitled to be apportioned a part of the estate of the deceased, as she had not been adequately provided for. It is the basis of this order that parties were to file submission within 14 days as per the order granted on 9/11/2020.

2. The objector filed her submissions dated 25/11/2020 and submitted that the deceased left behind 24 dependants. The deceased was married to four wives and its only the last widow that survived the deceased. The proposed mode of distribution date 2/11/2018 did not cater for all the dependants' as provided for by the law. The parcel of land known as Sergioit/Elgeyo Border Block 1 (Belimo)/78 was distributed to 9 siblings only as follows:

- i. Thomas Kibor .....1 ¼ acres
- ii. Lawrence Kibor .....10 ¼ acres
- iii. Pius Kibor.....1 ¼ acres
- iv. Joachim Kibor.....4 ½ acres
- v. Mark Kibor.....9 acres
- vi. Joseph Kibor.....1 ¼ acres
- vii. Fred Kibor.....4 ½ acres
- viii. Johnstone Kibor.....1 acre

3. Further it was urged that the law applicable to the distribution of the estate was Section 40 of the Law of Succession. In **John Musambayi Katumanga (deceased) (2014) eklr. Musyoka J.** held that Section 40 (1) means,

**“Adding children from the houses with the addition of a surviving spouse than share the estate equally and thereafter each house take their share and split it with their surviving mother if any having a life interest.”**

4. In addition to the above, it is submitted that the rest of the beneficiaries were in agreement with the proposed mode of distribution save for her who objected to the same.

5. Article 27(4) of the Constitution provides for non-discrimination of persons against their gender, marital status, sex, or religion. It is her submissions that she has been discriminated against during the sharing of the estate of the deceased. The Court was referred to **Peter Karumbi Keingati & 4 others Vs. Dr. Ann Nyokabi Nguithi (2014) eklr.**

6. The Court was urged to distribute the 33 acres of land amongst the 9 siblings whereby each takes 3.66 acres.

**Petitioner's submission:**

7. Nil

**Analysis and determination:**

8. The distribution of the deceased estate is provided for under Section 40 of the Succession Act which addresses a polygamist family. Section 35 of the Succession Act addresses a situation where the deceased left behind a spouse and children. In the instant case, the deceased was survived by one wife only after three passed on. The Chief's letter dated 4/12/2008 shows the deceased had 24 children, it does not include the objector's name nor her mother. The affidavit by the petitioner however includes her name. The only asset for distribution is L.R No. Seroit/Elgeyo Border (Block 1 Belimo) 171. In his replying affidavit dated 18/3/2019 the petitioner averred that the fourth house had been given parcel number L.R No. Sergoit/Elgeyo Border Block 1 (Belimo) 78.

9. The objector in her further affidavit dated 24/4/2019 stated at paragraph 7 land parcel number L.R No. Sergoit/Elgeyo Border Block 1 (Belimo)/78 was bequeathed to her brother and thus it was not subject to distribution.

10. The objector cannot claim to have a share of the L.R No. Sergoit/Elgeyo Border (Block 1 Belimo)/171 and not have a share of the L.R No. Sergoit/Elgeyo Border Block 1 (Belimo) 78 which she claims was given to her brother. The objector had stated that the deceased had not left any oral will and neither had any sibling been gifted, therefore the brother could not have been given the land.

11. The objector's submission that the estate of the deceased be distributed equally amongst 9 siblings does not sum up. The letter from the Chief indicates that the deceased had 24 children. All these siblings are entitled to an inheritance of their father.

12. The law of the Succession Act and the Constitution does not discriminate against female children of the deceased. In this case the objector is entitled to a share of the estate. In *Re-Estate of Solomon Nagatia Kariuki (deceased) (2008) ekr Makhandia J.* (as he then was) stated that:

**“The Law of Succession Act does not discriminate between the female and male children or married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased's estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of an old Kikuyu Customary Law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father's estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father's inheritance because they are likely to enjoy inheritance of the husband's side of the family.**

13. The properties that are available for distribution of the estate are as follows:

i. L.R No. Sergoit/Elgeyo Border (Block 1 Belimo)/171 and

ii. L.R No. Sergoit/Elgeyo Border Block 1 (Belimo) 78

14. The acreage of land parcel 78 has not been given but parcel number 171 measures 33 acres.

15. Equal distribution of the deceased's estate to all the beneficiaries is the fairest way of sharing out the Estate amongst the beneficiaries unless there are justifiable grounds to warrant some other mode of distribution.

16. In this matter no such grounds were availed and all the beneficiaries of the deceased, including the surviving spouse, should share it out equally, taking into account any existing difference in value.

17. Each party to bear their own costs in this matter.

**S. M GITHINJI**

**JUDGE**

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 15<sup>TH</sup> DAY OF MARCH, 2021.**

In the presence of:-

Mr. Kiplangat for the petitioner/Respondent (absent)

Mr. Kandie for the objector (present)

Abigael- Court Assistant

Mr. Kiplagat be notified.