



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT KERICHO**

**SUCCESSION CAUSE NO.7 OF 2018**

**IN THE MATTER OF THE ESTATE OF THE LATE SAMWEL CHEPKWONY**

**KALYA alias SAMWEL CHEPKWONY ARAP KALYA alias SAMWEL**

**KALYA Alias SAMWEL ARAP KALYA alias KALYA**

**SAMUEL CHEPKWONY (DECEASED)**

**EUNICE CHELANGAT KIMETTO.....PETITIONER/APPLICANT**

**VERSUS**

**ISHMAEL CHEPKWONY.....1<sup>ST</sup> PROTESTOR**

**PAMELA CHEPKWONY.....2<sup>ND</sup> PROTESTOR**

**ALICE CHEPKWONY.....3<sup>RD</sup> PROTESTOR**

**RULING**

1. The Protestors herein **ISHMAEL CHEPKWONY, PAMELA CHEPKWONY, and ALICE CHEPKWONY** filed an Affidavit of Protest against the summons for confirmation filed by the Petitioner **EUNICE CHELANGAT KIMETTO** dated 23/10/2020.
2. The Petitioner herein was issued with Grant of Letters of Administration on 28/1/2019 to administer the Estate of the Deceased herein **SAMWEL CHEPKWONY KALYA alias SAMWEL CHEPKWONY ARAP KALYA alias SAMUEL KALYA alias SAMWEL ARAP KALYA alias KALYA SAMUEL CHEPKWONY (herein referred to as the Deceased)**.
3. The basis of the protest was that the Applicant used a forged death certificate to petition for Grant of Letters of Administration and further that the deceased had distributed his Estate on 20/2/2000 as per minutes attached to the AOP (Affidavit of Protest).
4. The Protestors further stated in the Affidavit of Protest dated 9/11/2020 that the only properties not distributed were L.R. **ELBURGON/ARIMI/NDOSHTWA BLOCK 7/36 (WALDA)** and shares in several companies which should be shared equally amongst the beneficiaries.
5. They also said that the Petitioner failed to include some properties which should be shared equally amongst the ten children of the deceased.
6. Further, that the Petitioner included plot No. **KERICHO MUNICIPALITY BLOCK 111/631/19** which does not belong to the deceased herein.
7. The Protestor filed a Replying Affidavit to the Protest dated 8/3/2021 in which she deposed that she was issued with the Death Certificate by a Government Agency and any errors on it cannot be attributed to her.
8. The Petitioner further stated that the Protestors have been intermeddling with the Estate after holding out the original death certificate and titles of the properties prompting her to apply for a duplicate copy of the death certificate.

9. The Protestor denied that the deceased distributed his properties on 20/2/2000 as alleged and she challenged the minutes attached to the Affidavit of Protest.
10. The parties filed written submissions which I have duly considered. The submissions are in line with the contents of the respective affidavits.
11. The issues for determination in this protest are as follows:-
- (i) ***Whether the grant is a nullity on the basis that the death certificate is a forgery.***
  - (ii) ***Whether the deceased had distributed his property prior to his death on 20/2/2000.***
  - (iii) ***How the property of the deceased should be distributed.***
12. On the issue as to whether the grant is a nullity on the basis that the death certificate relied on was a forgery; I find that the Protestors had attempted to revoke the grant here and the Court delivered a ruling dated 23/4/2020 dismissing the protest.
13. I find that the Protestor did not raise the issue of the forged death certificate at that time and the attempt to raise it at this stage amounts to res judicata since the Court rejected their application to revoke the grant issued to the Petitioner on 28/1/2019
14. I find that the authorities referred to by the Protestors are not applicable in this case since there is no dispute that the deceased herein died intestate in the year 2009.
15. The error on the date of death can be redressed by filing a summons for rectification. I also find that there is no evidence that the Petitioner forged the death certificate she file herein.
16. On the issue as to whether the deceased distributed his property to all the beneficiaries on 20/2/2000, I find that there is no oral or written will presented to this Court and the minutes of 20/2/2000 cannot be the basis of alleging that the deceased distributed his property.
17. If a person gives property while still alive, the same is called gifts intervivos and the law requires that the transfer should be effected.
18. In the current case, the Protestors filed minutes dated 20/2/2000. If the deceased had given out his property intervivos, he would have transferred the same to the beneficiaries before he died in the year, 2009.
19. I find that the deceased herein died intestate and the property should be shared equally amongst his beneficiaries.
20. On the issue as to how the property should be shared, the law is clear that the property should be shared equally. Section 38 of the Law of Succession Act provides as follows: ***“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”***
21. The Court of Appeal in Stephen Gitonga M’murithi versus Faith Ngira Murithi (2015) eKLR stated as follows: ***“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried.”***
22. The deceased was survived by 10 beneficiaries and each is entitled to equal share of the property.
23. I also find that Plot ***No. KERICHO MUNICIPALITY BLOCK 111/631/19*** belongs to the deceased as per search certificate.
24. The Protest herein dated 23/10/2020 is dismissed with no orders as to costs.
25. The Protestors did not file their proposed mode of distributions of the property.
26. I direct that the Petitioner files a summons for rectification stating the correct date of death and attached her proposed mode of distributions.
27. The Protestors are also directed to avail the Original Death Certificate and also to file their proposed mode for consideration by the Court.
28. If the Protestors do not file their proposed mode of distribution, the property will be distributed in accordance with the mode proposed by the Petitioner.
29. The Petitioner is at liberty to file a formal application against any beneficiaries whom she alleges have been intermeddling with the Estate.
30. The parties to take a date in the Registry for compliance with the court’s directions.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 1ST DAY OF OCTOBER, 2021.**

**A. N. ONGERI**

**JUDGE**