



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KERICHO

SUCCESSION CAUSE NO. 4 OF 2018

IN THE MATTER OF THE ESTATE OF THE LATE CHUMEK CHEPNGOK (DECEASED)

JANE CHEPKORIR CHUMEK.....1ST PETITIONER

ESTHER CHELANGAT RONO.....2ND PETITIONER

VERSUS

JANET CHEPTOO CHUMEK.....1ST OBJECTOR

SALLY CHEPKEMOI LANGAT.....2ND OBJECTOR

RULING

1. The 2nd Petitioner filed a summons for confirmation dated 15/7/2020. The said summons for confirmation was protested by two protestors namely **JANET CHEPTOO CHUMEK** and **SALLY CHEPKEMOI LANGAT** with Affidavit of Protestor dated 9/11/2020.
2. The grant was issued to **KIPRONO ARAP RONO (1st Petitioner now deceased)** and **JANE CHEPKORIR CHUMEK (2nd Petitioner)**. The 1st Petitioner **KIPRONO ARAP RONO (now deceased)** was substituted with **ESTHER CHELANGAT RONO**.
3. The Deceased died intestate on 23/6/1976 and left one Parcel of Land namely **KERICHO/TEBESONIK/255** measuring 29.5 Acres.
4. The parties filed written submissions in the protest which I have duly considered. The 1st protestor **JANET CHEPTOO CHUMEK** submitted that the proceedings herein were instituted by **JANE CHEPKORIR CHUMEK** and **KIPTONUI ARAP RONO (now deceased)** on 24/4/2018 and a grant was issued on 28/1/2018.
5. The 1st Petitioner **KIPTONUI ARAP RONO (deceased)** was replaced by **ESTHER CHELANGAT RONO**.
6. The Protestors **SALLY CHEPKEMOI LANGAT** and **JANET CHEPTOO CHUMEK** filed Affidavits of Protest.
7. **SALLY CHEPKEMOI LANGAT** deposed that she is the daughter of **KIPTONUI ARAP RONO (now deceased)** who was the 1st Petitioner and further that her mother **TABUTANY CHESIELE RONO (deceased)** was the 2nd widow of **KIPTONUI ARAP RONO (now deceased)**.
8. She further stated in her Affidavit that the Petitioners did not disclose that the deceased herein also owned **KERICHO/CHEBORGE/623** and **LULUNGA FARM** measuring 9 Acres.
9. **JANET CHEPTOO CHUMEK** also stated in her Affidavit of Protest that she is the daughter in law of the Deceased herein and further that the only surviving beneficiaries of the deceased herein **CHUMEK CHEPNGOK** are as follows:

1ST HOUSE

- (a) Sarah Chepchirchir Rono)Daughter in Laws
- (b) Esther Chelangat Rono)

2ND HOUSE

- (c) Esther Chelangat Tonui - Daughter
- (d) Jane Chepkorir Chumek) Daughter in Law
- (e) Janet Cheptoo Chumek)

10. The 1st Petitioner **JANE CHEPKORIR CHUMEK** filed a Reply to the Affidavit of Protest dated 9/11/2020 in which she deposed that the deceased herein **CHUMEK CHEPNGOK** was polygamous and that he had two households as follows:-

1ST HOUSE

- (a) Tapsobei Chepngok - widow - Deceased
- (b) Kiptonui Arap Rono - Son - Deceased
- (c) Taplule Chirchir - Daughter - Deceased
- (d) Sarah Chepchirchir Rono Daughter-in-Law
- (e) Esther Chelangat Rono Daughter-in-Law

2ND HOUSE

- (f) Truphena Chepngok - Widow - Deceased
- (g) David Cheruiyot Chumek Son - Deceased
- (h) Esther Chelangat Rono - Daughter - Married
- (i) Jane Chepkorir Chumek Daughter-in-Law
- (j) Janet Cheptoo Chume Daughter-in-Law

11. The 1st Petitioner further deposed in the said Replying Affidavit that prior to his death, the deceased had subdivided his Estate comprising **KERICHO/TEBESONIK/255** measuring 29.5 Acres according to the Kipsigis customary law as follows:-

1ST HOUSE

Kiptonui Arap Rono (now Deceased) 17.67 Acres. His two widows agreed to share the Land as Follows:-

Sarah Chepchirchir Rono - 16.21 Acres

Esther Chelangat Rono - 1.46 Acres

2ND HOUSE

David Cheruiyot Chumek (now deceased) - 11.82 Acres

His two widows agreed to share the said land as follows:-

Jane Chepkorir Chumek - 5.915 Acres

Janet Cheptoo Chumek - 5.915 Acres

12. She further deposed that the two households have extensively developed their rightful portions by planting tea bushes and building houses.

13. The 1st Protestor **JANET CHEPTOO CHUMEK** filed written submission dated 19/7/2021 in which she stated that the property should be shared equally between the 1st and 2nd Houses as follows:-

1ST HOUSE

(a) Sarah Chepchirchir Rono) Daughter in Law- Widows of

(b) Esther Chelangat Rono) Kiptonui Rono (Deceased)

2ND HOUSE

(c) Jane Chepkorir Chumek) Daughters-in-Laws – Widows of

(d) Janet Cheptoo Chumek) David Cheruiyot Chumek (Deceased)

14. The 2nd Protestor **SALLY CHEPKEMOI LANGAT** also submitted through her Advocate that she is claiming a share of the Estate as the daughter of Kiptonui Arap Rono (now deceased) and further that the Petitioner concealed the fact that Kiptonui Arap Rono (now Deceased) was married to three wives and not two wives as stated by the Petitioners.

15. The 2nd Protestor further submitted that her mother Tabutany Chesiele Rono (deceased) was the 2nd wife of Kiptonui Arap Rono (now deceased). She submitted that in succession case No.117/2020 pending before the Chief Magistrate's Court, it is indicated that the deceased Kiptonui Arap Rono had three wives.

16. She submitted that Sally Chepkemai Langat and Recho Chepkemai Mitei being daughters of the 2nd wife of Kiptonui Arap Rono (deceased) should be added as beneficiaries of the Estate of the deceased here in since their mother is deceased.

17. The 1st Petitioner filed written submissions dated 4/10/2021 in which she stated that the deceased died on 23/6/1976 and prior to his death, he had already subdivided his property as indicated in her Replying Affidavit.

18. The 1st Petitioner further submitted that the provisions of Section 2 of the Law of Succession Act, Rule 64 of the Probate and Administration Rules and Section 3 (2) of the Judicature Act should guide the Court in the distribution of this estate.

19. I have carefully considered the submissions filed herein together with the authorities relied on. The issues for determination in this Ruling are as follows:-

(i) Who are the beneficiaries of the Estate of Chumek Chepngok (deceased)?

(ii) Did the deceased share the Estate prior to his death on 23/6/1976?

(iii) What Law is applicable in this case?

(iv) How should the Estate be shared?

(v) Who pays the costs of this case?

20. On the issue as to who the beneficiaries of the Estate of the deceased herein are, I find that there is undisputed evidence that the deceased had two wives as follows:-

1ST HOUSE

(k) Tapsobei Chepngok - widow - Deceased

(l) Kiptonui Arap Rono - Son - Deceased

(m) Taplule Chirchir - Daughter - Deceased

(n) Sarah Chepchirchir Rono Daughter-in-Law

(o) Esther Chelangat Rono Daughter-in-Law

2ND HOUSE

(p) Truphena Chepngok - Widow - Deceased

(q) David Cheruiyot Chumek Son - Deceased

(r) Esther Chelangat Rono - Daughter - Married

(s) Jane Chepkorir Chumek Daughter-in-Law

(t) Janet Cheptoo Chumek Daughter-in-Law

21. There is also no dispute that Esther Chelangat Rono replaced Kiptonui Arap Rono (now deceased) representing the 1st house.

22. I also find that Esther Chelangat Rono is the Administrator of the Estate of Kiptonui Arap Rono (deceased) in Succession Cause No.117 of 2020 still pending before the Chief Magistrate's Court.

23. There is evidence that the said Succession Cause No.117 of 2020 has included the mother of Sally Chepkemoi Langat as a wife of the deceased Kiptonui Arap Rono (deceased).

24. I accordingly find that the 2nd Objector Sally Chepkemoi Langat will be catered for in the Estate of her father Kiptonui Arap Rono in Succession No.117 of 2020 and not in this Estate.

25. However, I find that the 1st Protestor, **JANET CHEPTOO CHUMEK** is entitled to inherit from the Estate of Chumek Chepngok (the deceased herein) as the widow of David Cheruiyot Chumek (deceased)

26. There is an indication that the married daughter of the deceased herein namely Esther Tonui relinquished her rights to the Estate. This is subject to confirmation. If the same is confirmed, the beneficiaries of the Estate of Chumek the (deceased herein) are as follows:-

1ST HOUSE

(i) The Estate of Kiptonui Arap Rono (deceased) represented by the 2nd Petitioner Esther Chelangat Rono (Daughter-in-Law). Their share will be distributed in Succession Cause No. 117 of 2020.

2ND HOUSE

(ii) The Estate of David Cheruiyot Chumek (deceased), represented by the 1st Petitioner Jane Chepkorir Chumek (daughter-in-Law). It is not clear whether the said Estate of David Cheruiyot Chumek (deceased) has petitioned for Letters of Administration. If they have not done so, they are required to do so, so that they can also distribute their share of the Estate to the beneficiaries of David Cheruiyot Chumek (deceased).

27. On the issue as to whether the deceased shared his Estate in 1970 prior to his death on 23/6/1976, I find that if he had done so, this Succession Cause would not have been filed in the year, 2018.

28. I find that there is no evidence on record to suggest that the deceased left any valid will, be it written or oral and neither did he transfer his property to the beneficiaries' *inter vivos*. As such the deceased died intestate.

29. It is not in dispute that the deceased in this cause died in 1976 which is before 1st July 1981 when the Law of Succession Act (Cap 160) Laws of Kenya) came into operation. Thus, the substantive law governing the devolution of his estate as per section 2 (2) cited below is the written laws and customs that were in force as at the time of the deceased's death.

30. As of 1976, estates of African Kenyans who died intestate were subject to customs of the community from which such a person hailed. The applicable law governing the devolution and distribution of the estate would be Kipsigis customary practices in so far as it is not repugnant to justice or inconsistent with any written law.

31. The High Court in **PHILLIS MICHERE MUCEMBI VS. WAMAI MUCHEMBI 2010 eKLR** where the deceased had died before the commencement of the Law of Act, the Court stated: - "**Section 2 (2) of the Law of Succession Act clearly excludes the distribution of the estate of a person who died before 1/7/1981. Such property must be distributed in accordance to the Law of Succession that was in place before the Law of Succession was enacted ...**"

32. In the matter of the **ESTATE OF MWAURA MUTUNGI ALIAS MWAURA GICHINGO MBURA ALIAS MWAURA MBURA (DECEASED) (NBR HC SUCCESSION CAUSE NO. 935 OF 2003)**, the court held that since the deceased died before the Act came into force, the applicable law on the distribution of the estate was customary law, but the law applicable to the administration and procedural aspects of the estate was the Law of Succession Act. This position has been asserted in various decisions of the High Court.

33. Notably, the 1st Petitioner did not adduce any evidence to show or illustrate the customs that applied at the time the deceased died in so far as the devolution or distribution of the deceased's estate is concerned.

34. On the issue as to which law is applicable in the circumstances of this case, there is evidence that is not disputed that the deceased died on 23/6/1976. The Law of succession Act came into force on 1/7/1981.

35. Section 2 (1) and (2) of the Law of Succession Act states as follows:-

“(1) Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law

of Kenya in respect of, and shall have universal application in all cases of intestate or testamentary succession to estates of deceased persons dying after the commencement of this Act and to the of estates of those persons.

(2) The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act.”

36. In RE ESTATE OF NDUATI MBUTHIA (DECEASED) [2015] eKLR Musyoka J. as stated as follows:-

“The effect of Section 2(1) of the Law of Succession Act is that the provisions of the said Act are to apply to the estates of all persons dying after the commencement of the Act on 1st July 1981, subject of course to the exceptions created by the Act. The Act applies both the substantive law as well as the procedural law to the estates affected.

Section 2(2) of the Law of Succession Act defines the application of the Law of Succession Act with respect to persons who died before the said Act commenced on 1st July 1981. The provision is categorical that the substantive provisions of the said Act are not applicable to the estates of persons who died before the said Act commenced. The substantive provisions of the Act are those governing devolution or distribution of the estate of the dead person, whether such person died testate or intestate. These provisions are to be found in Parts II, III, IV, V and VI of the Law of Succession Act. The substantive law of succession for estates of the persons who died before 1st July 1981 is not to be found in Parts II, III, IV, V and VI of the Law of Succession Act, but in the written laws and customs that applied at the date of the death of the person in question.

The second part of Section 2(2) of the Law of Succession Act states that the administration of the estates of persons who died before 1st July 1981 should commence or proceed so far as possible in accordance with the provisions of the Law of Succession Act. In other words the procedure with respect to administration of estates of such persons is to be governed, not by the law as at the time of death, but by the procedures set out in the Law of Succession Act. The said provisions in the Law of Succession Act governing procedures and processes in administration of estates are to be found in Part VII. Part VII of the Law of Succession Act applies universally to the estates of persons dying both before and after the commencement of the Act.”

37. I find that the Provisions of the Law of Succession Act are not excluded from the Administration of the Estate since the second limb of section 2 (2) of the Act is clear that

“... the administration of their estates shall commence or proceed so far as possible in accordance with this Act”.

38. I have considered the authorities relied on by the 1st Petitioner and I find that the same can be distinguished on the grounds that each case is decided on its own merits.

39. I therefore find that the Law of Succession Act is applicable to the administration and procedural aspects of the estate.

40. I direct that the Estate be shared equally but the distribution should take into consideration the portions where the beneficiaries are settled when making the demarcations.

41. The Estate to be shared Equally between the two Estates as follows:-

(a) The Estate of Kiptonui Rono (Deceased) - 14.75 Acres.

(b) The Estate of David Cheruiyot Chumek (Deceased) - 14.75 Acres.

42. Now that Kiptonui Rono and David Cheruiyot Chumek are deceased, their share shall pass to their respective estates to be distributed in succession causes to be initiated by their survivors in matters of their respective estates.

43. This is a family matter, each party to bear its own costs of this case.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 5TH DAY OF NOVEMBER, 2021.

A. N. ONGERI

JUDGE