



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NO. 51 OF 2003

IN THE MATTER OF THE ESTATE OF PAUL MKIK LONYANGAPOI – DECEASED

LABAN RUTO LIKOLAI.....1ST PETITIONER

JOYCE CHENANGAT.....2ND PETITIONER

RULING

1. The grant of letters of Administration in this matter were confirmed on 21/11/2016. All the beneficiaries were satisfied with their share. Apparently the applicant Josephine Keunde Rang, whose husband Laban Ruto Likolai was dissatisfied with the way parcel No. A9, at Makutano Township was shared. She came on board to represent her husband who was said to be sick and unable to deal with his issues. This court granted her authority to act as guardian ad litem.
2. The court then ordered the issues surrounding the above parcel to be canvassed by way of oral evidence. The deceased Paul Lonyangapoi was a polygamous man. The mother to Laban Ruto Likolai passed on having had only one child, the applicant.
3. When this matter came up for hearing pw1 Josephine Keunde led evidence to show that the parcel in question belonged to her mother in law pursuant to a decree in Kitale land case no. 57 of 2003. In that decree the parcels of land were given to the deceased wives and A9 was given to her mother in law.
4. They have since developed the same and there are now rental house. That the development was solely undertaken by herself and her sickly husband through loans and other means. She produced several documents showing the purchase receipts for the materials, payment of Statutory dues to the County Government among others. She also produced the bills of quantities.
5. **PW2 Daniel Makanga** an architect produced the drawings of the property which were duly approved by the County Government and other relevant agencies. According to him all payment including his fees were paid by the applicant (PW1).
6. **DW1 Samson Lonyangapoi** is a brother in law to the applicant. He testified that parcel No. A9 was to be shared as per the family meeting of 14/9/2016.
7. Apparently in that meeting all signed the minutes except his brother Laban. The same was given to Samson, Laban, Moses, Joyce and Mary Lonyangapoi.
8. He acknowledged the decree dated 16/10/2003 but went on to state that he did not see Laban's mother as he was born in the year 1962.
9. **DW2 Eunice Chelagat Paul** testified that Laban's mother died when he was 1 year and 2 months old and that it is her who took care of him including taking him to college. She said that she bought the stones to develop plot A9 but Laban and PW1 took them and used to build their house. He insisted that the property be shared equally.
10. Having stated the above fact and evidence as presented during trial and having read the submissions of both counsels, it appears to me that there is no dispute that Laban was the son to the late Cheposikar the widow to the deceased herein. He was born alone and her mother died when he was just an infant.
11. It is also clear from the evidence that he has developed the plot as clearly shown by the plans which were approved by the relevant authorities. The respondent as a matter of fact did not dispute the same. The only basis of their argument is that there was a family meeting held on 14/9/2016 which distributed inter alia the plot in dispute. It was acknowledged by DW1 that Laban did not sign the family agreement. Infact her wife did not sign either.

12. It was contended by PW1 that the basis of them demanding that the land be given to them is because of the decree dated 16/10/2003 in Land case No. 57/2003 at Kitale Court. The same was produced as Exhibit 1. This land case was not disputed by the parties.

13. That decree states that ;

(1) “ That the land and Plots of the late Paulo Lonyangapoi be sub divided to four wives namely Chepkar Pkafunga A/8, Cheplakut C3, Cheposikar A9 and Grace A1.

(2) Each wife to be given equal acres of land to the others”.

14. It was acknowledged by the parties that nobody appealed against the said decree. The parties were Laban Ruto Likolai and 2 others Vs Eunice Kapkai Lonyangapoi.

15. A quick interpretation of the decree indicates that the court did distribute the deceased properties to his wives. As admitted by all the parties, the decree was not appealed against. The rest of the properties were taken over by the respective houses and it appears that the only property in dispute is Plot A9.

16. If then there were no disputes regarding the sharing of the other properties why plot A9? If the rest of the beneficiaries have shared out peacefully the rest including the large agricultural parcels why not shared out A9 as decided by the court's decree.

17. It is hypocritical in my view for the respondent to argue that no letters of administration were taken out in respect to the late Cheposikar, the mother to the applicant. Infact as at the date of the decree of 16/10/2003 the deceased herein had passed on. The parties therefore litigated without having taken out succession proceedings in respect to his estate.

18. In any event its acknowledged that the applicant has all along occupied and used Plot A/9. They have carried out extensive developments which were done on a broad daylight over a period of time. None of the respondent exhibited anything to show that they raised any objection. In fact by the time of the family meeting of 14/9/2016, the Applicant was already in active occupation of the plot.

19. Their houses have benefited from the commercial properties left behind by the deceased. It is clear that the applicant's mother was given A9 at least by a decree of the court. Nothing has been shown to suggest that they were stopped from carrying out the development of the parcels given to them.

20. For the foregoing reasons I find that there is merit in the application to vary the certificate of confirmation of grant issued on 21/11/2016.

21. The same is hereby varied to the extent that Plot No. A9 Makutano Township shall be inherited by Laban Ruto Lokalai alone. The grant be amended appropriately.

Each party shall bear their respective costs.

Delivered, signed and dated at Kitale this 14th day of February, 2019.

H.K. CHEMITEI

JUDGE

14/2/19

In the presence of:

Barongo for Munialo for Objector

Wafula holding brief for Wanyama for the Petitioner

Court Assistant – Kirong

Judgment read in open court.