



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 72 OF 2003

IN THE MATTER OF THE ESTATE OF NDIEMA CHERUNGUT SAKONG - DECEASED

RICHARD NDIEMA1ST PETITIONER

RONALD MATUI2ND PETITIONER

GEOFFREY KIMUTAI.....3RD PETITIONER

R U L I N G

1. The grant was confirmed in this cause on 23/8/2017. The applicant herein Ronald Matui Sungut seeks to amend the same vide the application dated 23/8/2017 for the simple reason that the acreages under parcel **No. Elgon/Kaptama/53** measures **87 Acres** and not **91.7 Acres**. As a result of this anomalously other beneficiaries were left out and others given more or less. There was therefore need to harmonize the grant. All the details are contained in the supporting affidavit sworn on the even date.
2. Claudina Sakong and Collins Chesumba Ndiema in their joint replying affidavit sworn on 16/10/2017 have opposed the same although at some instance seemed to be in some agreement.
3. The court allowed all the other beneficiaries if necessary to file affidavits in support or in opposition. The court further ordered that a survey be done to determine the actual acreages of land parcel No. Elgon/Kaptama/53 which according to Veronica Awinja the Sub County Surveyor's report dated 25/5/2018, the same was found to be measuring 84.7 Acres or 34 Ha.
4. Based on the above findings the court ordered the parties to file supplementary affidavits which they did. The applicant filed the supplementary affidavit dated 5/11/2018 while the Respondent filed the further affidavit dated 21/1/2019.
5. The court has perused the said affidavit together with those of Geoffrey Kimutai Ndiema, Hillary Laibich Ndiema and Gilbert Kitiyo Ndiema which they have attached copies of title deed in their favour.
6. The contents of the said affidavit agree in several respect. In particular it appeared that the deceased by the time he died had already settled almost all the members of his family. He had 5 houses a fact which is agreed across the board.
7. They were as follows;

1st House

- a) Maua Ndiema - Widow
- b) Michael Sakong – Son
- c) Selpher Chemayek – Daughter

2nd House

- a) Judith Tengen – Daughter
- b) Janerose Ndiema – Daughter
- c) Lilian Ndiema – Daughter

- d) Edwin Mululo – Son (Deceased).
- e) Linet Cheshoror – Daughter
- f) Joselyne Chebone – Daughter
- g) Cherungut Ndiema – Son
- h) Faith Chebet - Daughter

3rd House

- a) Nelly Chemsto – Daughter
- b) Richard Ndiema – Son- (Deceased)
- c) Geoffrey Kimutai – Son
- d) Hilary L. Ndiema – Son
- d) Javan Mwetich – Son

4th House

- a) Picha C. Ndiema – Widow
- b) Everlyne Cheboswo – Daughter
- c) Winrose Cheptoo – Daughter
- d) David Chebonga – Son
- e) Roselyne Chepkwemoi – Daughter
- f) Janet Cheptingei – Daughter
- g) Ronald Matui – Son
- h) Violet Chebokii – Daughter
- h) Cecilia Ndiema – Daughter
- i) Silas Kwalia – Son (Deceased)

5th House

- a) Leah Chepkisichi Ndiema – Widow
- b) Linet Cheptaliat – Daughter
- c) Lorin Yego – Daughter
- d) Leonard Chesumba – Son
- e) Lilian Chemutul – Daughter
- f) Jacob Kiprop – Grand son

8. It is also agreed that the deceased left the following assets.

- a) Elgon/ Kaptama/53 measuring 84.7 Acres
- b) Museng Farm measuring 63 Acres

- c) Kipsagan Farm 'A' measuring 19 Acres
- d) Kipsangan 'B' measuring 10 Acres
- e) Chebosam Farm measuring 28 Acres
- f) Kissawai Farm 'A' measuring 100 Acres
- g) Kisawai 'B' measuring 17 Acres
- h) Plot at Kaboywa Market measuring 50 x 100 Ft – Developed
- I) Tractor Registration No. KLE 277 Massey Ferguson.
- j) Tractor Registration No. KLM 858 Massey Ferguson
- k) Tractor Registration No. KSD 099 Massey Ferguson
- I) Motor vehicle Registration No. KAJ 780 P Toyota Pick up.
- m) Posho Mill – Lister Engine

9. According to the rival affidavits save for land parcel No. Elgon/Kaptama/53, the rest of the properties have been generally agreed and without spending much energy on the same, let the grant be rectified to reflect the same, that is

1) Musang Farm measuring 63 Acres

- a) Eldrin Mutulo – 18 Acres
- b) Richard Ndiema – 28 Acres
- c) Hillary Ndiema – 17 Acres

2) Kipsangani "A" Farm measuring 19 Acres to go to **Geoffrey Kimutai**

3) Kipsangan "B" Farm measuring 10 Acres to go to **Michael Sakong**

4) Chebosom Farm measuring 28 Acres to go to

- a) Javan Mwetich – 10 Acres
- b) Gilbert Kitiyo – 18 Acres

5) Kissawai "A" Farm Measuring 100 Acres

- a) Winrose Cheptoo – 15 Acres
- b) David Chebonye – 29 Acres
- c) Ronald Matui – 23 Acres
- d) Silas Kiwalia – 29 Acres
- d) Picha Chemtai Ndiema – 4 Acres

6) Kisawai 'B' Farm Measuring 17 Acres

- a) Lilian Ndiema – 6 Acres
- b) Linet Cheshoror – 6 Acres
- c) Nelly Chemsto – 5 Acres

7) Plot at Kaboywa Market measuring 50 x 100 Ft to be jointly owned by;-

- a) Eldrin Matulo
- b) Cherungut Ndiema
- c) Richard Ndiema
- d) Geoffrey Kimutai
- e) Hillary Ndiema
- f) Javan Mwetich.

8. Machinery

- a) **Tractor Registration No. KLE 272 Massey Ferguson – To Eldrin Matulo.**
- b) **Tractor Registration No. KSD 099 Massey Furgerson to Hillary Ndiema**
- c) **Motor vehicle Registration KAJ 780 P Toyota Pick Up to Ronald Matui**
- d) **Posho Mill – Lister Engine to Leah Chepkisichi**

9. As regards the contentions parcel namely **Elgon /Kaptamma/53** it appears that from the applicants affidavit in support the daughters of the deceased who had been left behind have been catered for as opposed to the respondents proposed made of distribution. It also appears that the deceased had given some of his sons for instance Richard Ndiema some portion before he died.

10. Taking totality of the above observation and the fact that the proposed mode of distribution by the applicants seemed to me to be equitable, and taking into consideration that none of the beneficiaries have been left behind and that in probate matters there would not necessarily be an equal distribution but equitable I shall distribute the aforementioned parcel of land as proposed by the applicants, thus **Elgon/Kaptama/53 measuring 84.7 Acres**

- a) **Michael Sakong – 2 Acres**
- b) **Selpher Chemayek – 1.5 Acres**
- c) **Judith Tengen – 4 Acres**
- d) **Janerose Ndiema – 1 acre**
- e) **Joselyne Chebone – 1.5 Acres**
- f) **Cherungut Ndiema – 18 Acres**
- g) **Faith Chebet – 1 Acre**
- H) **Geofrey Kimutai – 6 Acres**
- I) **Hillary L. Ndiema – 8 Acres**
- j) **Javan Mwetich – 8 Acres**
- k) **Everlyne Cheboswo – 2 Acres**
- l) **Roselyne Chekwemoi – 2 Acres**
- m) **Janet Cheptingei – 1.5 Acres**
- h) **Ronald Matui – 7 Acres**
- o) **Violet Cheboki – 1 Acre**
- p) **Linet Cheptaliat – 1 Acre**
- r) **Lorin Yego - 1 Acre**

s) Leonard Chesumba – 8.5. Acres

t) Lilian Chemutui – 1 Acre

u) Jacob Kiprop – 8.5 Acres

11. Let the grant therefore be rectified as per the distribution ordered above. The parties be at liberty to make their own “ local arrangements” if need be to add or consolidate or “trade-in” as the case may be. During the sub-division exercise care should be taken so that the portions already developed especially buildings should not be interfered.

12. Each party shall met their respective costs.

Delivered, signed and dated at Kitale this 3rd day of April, 2019.

H.K. CHEMITEI

JUDGE

3/04/19

In the presence of:

Mr Barongo for the 1st Petitioner

Respondents are present

Court Assistant – Kirong

Ruling read in open court.