



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

SUCCESSION CAUSE NO.16 OF 2016

IN THE MATTER OF ESTATE OF THE LATE MARITIM CHEPKWONY CHUMO (DECEASED)

PAUL KIPKOECH MARITIM.....PETITIONER

VERSUS

ANGELINER CHERONO CHUMO.....OBJECTOR

RULING

1. This matter relates to the estate of Maritim Chepkwony Chumo who died intestate on 27th December 2010. The deceased was survived by the following beneficiaries, his spouse, Elizabeth Chebore Chumo, also being deceased:

i. Mathias Kipkemoi Maritim – 58 years

ii. Angeline Cherono Chumo- 54 years

iii. Joseph Kiplangat Maritim-50 years

iv. Paul Kipkoech Maritim-46 years

v. Maritim A. William-42 years

vi. Christine Chebet-36 years

vii. Chepngetich Chumo-34 years

viii. Charles Maritime Cheruiyot-31 years

2. The estate of the deceased comprised the following assets:

1. Kericho Kabianga/3143 measuring 0.2 ha or 0.49 acres

2. Kericho/Boito/155 measuring 3.00 ha or 7.4 acres

3. Kericho/Boito/161 measuring 0.5 ha or 1.23 acres

3. An application for letters of administration intestate was made by Paul Kipkoech Maritim and duly issued on 10th May 2016, there being no dispute with regard to representation.

4. The beneficiaries have been unable to agree on the distribution of the estate. The petitioner filed an application for confirmation of grant dated 9th March 2017 in which he proposed that the estate of the deceased be distributed as follows:

Kericho/Kabianga/3143 measuring 0.2 ha

Angeline Cherono Chuma.....absolute

Kericho/Boito/155 measuring 3.0 ha

i. Mathias Kipkemoi Maritim-0.6 Ha

ii. Joseph Kiplangat Maritim-0.6 Ha

iii. Paul Kipkoech Maritim-0.6 Ha

iv. Maritim A. William-0.6 Ha

v. Charles Maritime Cheruiyot-0.6 Ha

Kericho/Boito/161 measuring 0.5 Ha

i. Mathias Kipkemoi Maritim-0.1 Ha

ii. Joseph Kiplangat Maritim-0.1 Ha

iii. Paul Kipkoech Maritim-0.1 Ha

iv. Maritim A. William-0.1 Ha

v. Charles Maritim Cheruiyot 0.1 Ha.

5. With the exception of Angeliner Cherono Chumo, the other beneficiaries consented to the mode of distribution proposed by the petitioner. Ms. Chumo filed an affidavit of protest dated 6th June 2017 in which she avers that she is entitled to an equal share of the estate of the deceased with her brothers and asks the court to distribute the estate equally.

6. In an affidavit in response, the petitioner avers that the protestor had agreed on the mode of distribution that he proposed at a family meeting held on 25th August 2015. He also alleges that Kericho/Kabianga/3143 is a commercial plot already developed with rental premises and a rental income while the other plots are agricultural land. He asks the court to dismiss the protest.

7. In submissions dated 6th September 2017, the protestor proposes that each of the land parcels of the deceased be distributed equally between her and her brothers. The effect of this distribution is that each beneficiary would get 0.0033 ha out of Kericho/Kabianga/3143; 0.5 ha out of Kericho/Boito/155 measuring 3.0 ha; and 0.08 ha out of Kericho/Boito/161 measuring 0.5 ha.

8. In a departure from the proposal contained in his application for confirmation of grant, the petitioner proposes in his submissions dated 30th October 2017 that the estate of the deceased be distributed as follows:

Kericho/Boito/155-

Mathias Kipkemoi Maritim, Joseph Kiplangat Maritim,

William Maritim and Charles Maritim Cheruiyot -1.5 acres each

Kericho/Boito/161

Angeliner Cherono Chumo – absolutely (0.5 ha or 1.25 acres)

9. The petitioner further proposes in his submissions that the protestor should get 0.2916 acres out of Kericho/Kabianga/3143 while each of the other beneficiaries gets 0.0416 of an acre. He argues that the distribution proposed in his submissions will result in each beneficiary getting 1.5416 acres which will be in accord with the provisions of the Law of Succession Act.

10. I have considered the protest and the submissions of the parties with respect thereto, as well as their proposals on the distribution of the estate of the deceased. The deceased left only children surviving him, and his estate therefore falls for distribution under section 38 of the Law of Succession Act which provides that:

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.

11. The total estate of the deceased comprises **3.7 ha** or **9.1429 acres**. Each of the beneficiaries is therefore entitled to approximately 1.523 acres. I have noted the proposal by the protestor that the estate should be distributed equally, which is what the law requires in circumstances such as are before the court. However, I do not believe that equal distribution of the estate of a deceased person requires that each of the beneficiaries gets a slice out of each of the assets of the deceased. In the circumstances, I am satisfied that the mode of distribution proposed by the petitioner in his written submissions will result in a reasonable and fair distribution of the estate of the deceased.

12. Accordingly, I direct that the estate of the deceased shall be distributed as follows:

Kericho/Kabianga/3143 (0.2 Ha or 0.49 acres)

- 1. Angeliner Cherono Chumo -0.2916 acres**
- 2. Mathias Kipkemoi Chumo -0.0416 acres**
- 3. Joseph Kiplangat Maritim-0.0416 acres**
- 4. William Maritim-0.0416 acres**
- 5. Charles Maritm Cheruiyot -0.0416 acres**

Kericho/Boito/155-1.5 acres each to:

- 1. Mathias Kipkemoi Maritim**
- 2. Joseph Kiplangat Maritim**
- 3. William Maritim**
- 4. Charles Maritim Cheruiyot**

Kericho/Boito/161 (0.5 ha or 1.235 acres)

Angeliner Cherono Chumo

13. A certificate of confirmation of grant shall issue along these directions. Each party shall bear its own costs.

Dated Delivered and Signed at Kericho this 7th day of March 2018.

MUMBI NGUGI

JUDGE