



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NO. 61 OF 2014

IN THE MATTER OF THE ESTATE OF PETER KISANG CHELEWA – DECEASED

AND

LINAH CHEROP WANGAMATI.....PETITIONER

VERSUS

PHILIP KISANG.....1ST RESPONDENT

KABON KISANG.....2ND RESPONDENT

J U D G M E N T

1. The late **Peter Kisang Chelewa** died on 6/1/1974 and left behind the following surviving him as at the date of this petition.

(a) 1st house

1. Kabon Kisang (surviving widow)
2. Janet Chepchumba – daughter
3. Susan Kipken – daughter
4. Margaret Jepkorio – daughter
5. William Kisang – Son

(b) 2nd house

1. Philip Cheruiyot – son
2. Seline Chepkosgei – daughter
3. Janet Yarer – daughter
4. Nicodemus Kisang – son

(c) 3rd house

1. Linet Cherop Wangamati – daughter

2. All are adults. The following properties were left behind.

- 1. Plot Number Trans Nzoia/Suwerwa/83 measuring 22.5 acres**

2. **Sambirir/Sambirir/235 measuring 25.5 acres**

3. **Lelan/Kaptalamwa/213 measuring 65.75 acres**

3. The following were appointed administrators of the estate **Linah Cherop Wangamati, Kapon Kisang and Philip Kisang Cheruiyot.**

4. At the point of confirming the grant issued on 22/6/2016 by this court the parties disagreed on mode of distribution. This court then advised each to file their respective mode and further submit on the same. The parties have since complied and what is left now is for this court to analyse the same and arrive at its own conclusion.

5. What is evident though is that all the parties recognise each other as well as the respective properties.

6. It is apparent also that though there was not much sufficient evidence, it is agreed across the board that the deceased settled the houses as hereunder:

7. The **first house of Kabon Kisang** were settled at **Sambirir/Sambirir/235** and had one son and 2 married daughters.

8. The **2nd house of Tula Kisang** who is deceased were settled at **Lelan/Kaptalamwa/213**. That land measure 65.75 acres. He left behind 2 sons and 2 daughters.

9. The **3rd house of Joyce Chepkemei Kisang** was settled at **Trans Nzoia/Suwerwa/83** and left behind one daughter.

10. The applicant on her part has suggested that the family should be left as they are. On the other hand the respondent proposes that Plot No. 83 Suwerwa should be shared out among the beneficiaries. They content that the applicant has sold her portion to one David Saina and they attached copies of Sale agreements.

11. This disposal of the portion of the estate was not apparently disputed by the applicant.

12. **Section 40 of the Law of Succession Act** governs such polygamous system. The same state that:

“ Where an intestate has married more than once Under any system of Law permitting polygamy, his personal and household effects and the residue of the net intestate shall, in the first, instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”

13. In the now famous case of **Rono Vs Rono & Another (2005) eKLR** the Court of Appeal stated as follows:

“Section 40 of he Act which applied to the estate makes provision for distribution of the net estate to the houses according to the number of children in each house, but also adding any wife surviving the deceased as an additional unit of the number of children. A “house” in a polygamous setting is defined in Section 3 of the Act as “Family unit comprising a wife ---- and the children of that wife.”

There is no discrimination of such children on account of their sex.”

14. Taking we from the above citations it is apparently clear that there is no distinction between the sexes and the 9 children of the deceased herein whether married or not are all in equal footing. Ordinarily the circumstances on the ground may change for instance some married daughters may cede their portions willingly or vide a “local” arrangement to the rest of their siblings especially their brothers.

15. The submissions at hand have not provided me with any options or alternatives or suggestions to the effect that the married daughters have ceded their portions. On the contrary each would want a stake in their father's estate.

16. It appears that the applicant is the only child left behind in the 3rd house. The widow is equally deceased.

17. It must be noted that in succession proceedings it may not be possible to be mathematically precise in distribution. Some of the dynamics include the size of the estate and at times the prevailing situations left behind by the deceased. The equity sought therefore should be one that brings peace and harmony to the estate and as much as possible the status quo left behind by the deceased.

18. Having stated so, it is my view that the estate herein be shared as hereunder:

1. Land parcel Number Lelan/kaptalamwa/223 measuring 63.75 acres shall be inherited by the house of Tula Kisang.

The 2 boys and the 2 girls may consider an appropriate way to share among themselves.

2. Land parcel number Sambirir/Sambirir/235 measuring 25.2 acres shall be inherited by the 1st house of Kabon Kisang.

They shall share appropriately with a rider that the surviving widow Kabon Chesang's portion ought to be clearly delineated.

3. Trans-Nzoia/Suwerwa/83 measuring 22.5 acres as follows:-

i) Linah Cherop Wangamati – 12 acres

ii) 10 acres to the house of Kabon Kisang.

The main reason for giving 10 acres to the 1st house of Kabon Kisang is to add to the portion earlier given to them to achieve some equity.

I find that the 12 acres given to the applicant shall almost be commensurate to the rest of the beneficiaries if one was to undertake some simple arithmetic.

It is understood that she had sold a portion of the same to one David Saina. If this is so, then the said purchaser shall get his portion from the 12 acres bequeathed to her.

4. Plot measuring 50x100ft at Kaptalamwa shall be valued and sold and the proceeds shared equally among all the 10 beneficiaries. In selling the same priority shall be given to any beneficiary who may be interested to purchase.

19. As this is a family matter each party shall meet their respective costs.

Let the grant herein be and is hereby confirmed on the above mode of distribution.

Orders accordingly.

Delivered, signed and dated at Kitale this 14th day of May 2018.

H.K. CHEMITEI

JUDGE

14/5/18

In the presence of:

Kiarie for the Applicant

Teti for Respondent

Court Assistant - Kirong

Judgment read in open court.