



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

SUCCESSION CAUSE NO. 205 OF 2015

IN THE MATTER OF THE ESTATE OF

CHEPKWONY ARAP LABOSO alias

CHEPKWONY LABOSO.....DECEASED

-AND-

TAPSABEI CHEPNGETICH LABOSO.....1ST PETITIONER

ELIZABETH LABOSO.....2ND PETITIONER

-VERSUS-

SAMUEL KIPNGENO CHEBOCHOK.....1ST OBJECTOR

SIMON KIPLANGAT CHEBOCHOK.....2ND OBJECTOR

DAVID KIMUTAI CHEBOCHOK.....3RD OBJECTOR

WILLIAM KIPKIRUI CHEBOCHOK.....4TH OBJECTOR

RULING

Grant of letters of administration intestate were issued on 29th March 2016. Affidavit in protest against confirmation of grant was filed on 9th June 2017. Samuel Kipngeno Chebochok (the deponent) contends that the Deceased was married to two wives namely

1. Tapsabei Chepngetich Laboso
2. Elizabeth Laboso

It is further contended that the Deceased was the registered owner of parcel No. L.R Kericho/Kapkimolwa/1146 measuring approximately 4.18 hectares (10.45 acres) and that he died on 29th November 1995. Prior to his death he had subdivided his land amongst the two wives.

- (a) Tapsabei Chepngetich Laboso7.78 acres
- (b) Elizabeth Laboso 2.67 acres.

Further, the said subdivision is clearly marked on the ground.

It is further contended that the second wife Elizabeth Laboso has

sold her portion of the land measuring 2.67 acres to

- (1) John Kiringet1 acre

(2) Olgoswet Secondary School1.6 acres

All to the total of 2.67 acres in measurement.

It is the contention by Tapsabei Chepngetich Laboso that she is the first wife of the Deceased having been married in the year 1955. The marriage was blessed with eight children namely:

- a. Samuel Kipngeno Chebochok
- b. Simon Kiplangat Chebochok
- c. David Kimutai Chebochok
- d. William Kipkurui Chebochok
- e. Grace Chepkirui Tuei
- f. Esther Cheronno Molel
- g. Alice Chelangat Terer
- h. Evaline Chepkorir Maritim

That Elizabeth Laboso the second wife was married in the year 1979

and was blessed with the following children.

- (a) Alice Chepkorir Molel
- (b) Janeth C. Chelule
- (c) Jesca C. Koech
- (d) Ronice Mutai

She further contends that her husband prior to his death subdivided his parcel of land amongst the two wives in the following manner.

Tapsabei7.78 acres

Elizabeth 2.6 acres

They and their children occupied the said portions of land during the life of the Deceased.

In the year 1997 the second wife sold her portion of land 2.67 acres to

1. John Kiringet -1 acre
2. Olgoswet Secondary School1.67 acres

Total 2.67 acres

That she went and purchased land at Sogoo where she and her

family stay.

The petitioners' case is that the estate of the Deceased ought to be distributed equally among the two wives. She does not deny having sold a portion of her land on the disputed parcel so as to buy another parcel of land at Narok but this was as a result of frequent attacks. She had thought that after the attacks subsided, she would return back to the other portion but it did not mean that she had sold everything and gone for good. She denies the allegation that her late husband had subdivided his land prior to his death.

Law analysis and conclusion

It is not in dispute that the Deceased was married to his first wife in the year 1955 and that he married the second wife in the year 1979 which is a duration of 24 years thereafter.

It is patently clear that the second wife was apportioned a portion of the Deceased land where she was staying together with her children. The deceased died on the 29th day of November 1995.

The petitioner does not dispute the fact that in the year 1996 she sold a portion of LR No. Kericho/Kapkimolwa/1146 to third parties. She has not denied the sale and the acreage in question. She does not deny the fact that after the sale of the said portion of land she relocated elsewhere in the neighbouring county of Narok.

There is evidence which is not seriously contested that there were physical boundaries between her portion which she subsequently sold and the land apportioned to the 1st wife and her children. There is no evidence to the effect that there were objections to the sale of the portion of land which she sold.

It is her contention that she sold some of her portion of land knowing that she would later return to claim her other portion when attacks and enmity subsided.

I am not persuaded by her argument. If there were constant attacks and that was reason she was selling some of the land, she would have sold more than her portion she sold and relocate for good not to return.

It is apparent that there had been an unwritten agreement that the portion of land allocated to her was the 2.67 acres which she subsequently sold out and relocated elsewhere in 1996. She filed this petition in the year 2015 claiming subdivision of the parcel of land No. Kericho/Kapkimolwa/1146. This was close to 20 years after her relocation.

It is not in dispute that the petitioner was married 24 years after the 1st wife.

The 1st wife must have contributed to the development of the parcel of land now in dispute. Her share of 2.67 acres from a portion of land close to ten acres is not inordinately disproportionate she sold out her portion of 2.67 acres and relocated. 19 years down the line she filed this petition demanding another share. This is clearly an afterthought. She cannot eat her cake and still have it. The 1st wife and her family must have developed the portion that the petitioner left behind. To ask and demand for equal share would be unfair and unjustifiable in the circumstances of this case.

I believe this is an ideal case where the spouses contribution should be taken into account. The objection has merit and it is allowed.

Each party to bear its own costs.

Ruling delivered dated and signed this 14th November 2018 in the presence of learned counsel for the objector Mr. Kenduiwa. Petitioner present in person.

Court Assistant Mr. Rotich.

M. MUYA

JUDGE

14/11/2018