



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BOMET**

**SUCCESSION CAUSE NO. 194 OF 2015**

**IN THE MATTER OF THE ESTATE OF**

**CHESIMENT ARAP SITONIK.....DECEASED**

**-AND-**

**KIBET ARAP KIRUI.....PETITIONER**

**-VERSUS-**

**EZEKIEL CHESIMET.....1<sup>ST</sup> OBJECTOR**

**MUSA CHESIMET.....2<sup>ND</sup> OBJECTOR**

**RULING**

Grant of letters of administration were issued by this court on 20<sup>th</sup> day of July 2016.

An affidavit of protest against confirmation of grant was filed in court on 30<sup>th</sup> May 2017 by the objectors Ezekiel Chesimet and Musa Chesimet.

It is deponed that the late Chesimet Arap Sitonik whose estate is in contention died intestate on 26<sup>th</sup> February 1993 at Kapsimbiri village.

It is contended that the petitioner Kibet Arap Kirui and his brother Kipkemoi Arap Kirui are not related to the objectors as they are sons of the late Melo who is a resident of Kesabita village Kyogong.

It is contended that Chesimet Arap Sitonik occupied the land in dispute in the year 1935 before land adjudication commenced in the country.

Sometimes around 1955 the Deceased allowed Meto to carry out a joint business of grinding maize in the parcel in dispute which business they carried till 1960's when the type of posho mills they were using became obsolete in the wake of the introduction of new ones.

It is further deponed that during the adjudication process in the year 1969, the deceased Arap Sitonik was registered as the owner of parcel No. Kericho/Kapsimbiri/858 measuring about 3.5 acres. At the time Meto, the father of the petitioner was alive and did not challenge ownership of the land now in dispute.

That the Deceased used and occupied the land in dispute peaceably till his death on 26/2/93.

After his death the objectors used the land till 2008 when the petitioner and his brother commenced suits claiming a share therein.

The correct beneficiaries are:

1. Ezekiel Chesimet
2. Musa Chesimet
3. Grace C. Chesimet

4. Mary C. Chesimet

Who should occupy 0.35 hectares each.

The petitioner in his affidavit in reply depones that he filed the succession cause on behalf of the Meto family.

That Meto was a shareholder in land parcel No. Kericho/Kapsimbiri/858 and together with the deceased co-owned the posho mill and the land in dispute and that it is the deceased who secretly registered the land in his name in 1987.

Further that in Misc Application No. 91 of 2008 Kericho Principal Magistrate's Court elders verdict was adopted as the order of the court which was to the effect that parcel No. Kericho/Kapsimbiri/858 be subdivided into two. The objectors did not appeal within the period stipulated in law and on 4<sup>th</sup> November 2010 the objectors were served with a letter from the District Surveyor to be present during subdivision as per the court order.

There is a further affidavit of the objectors wherein Ezekiel Chesimet had deponed that the deceased was the absolute owner of parcel L.R No. Kericho/Kapsimbiri/858 and that the decision of the magistrate in adopting the elders verdict was appealed at the provincial land dispute tribunal at Nakuru and judgment given in their favour and the ruling by Bomet Land Disputes Tribunal was quashed.

**Analysis and conclusion**

It is not in dispute that parcel No. Kericho/Kapsimbiri/8958 is registered in the name of Chesimet Arap Sitonik the Deceased.

It is not in dispute that the petitioner Kibet Arap Kirui and his brother Kipkemoi Arap Kirui are not related to the Deceased Chesimet Arap Sitonik. They are not beneficiaries to the Estate of the Deceased.

Their claim to the Estate is founded on the business relationship which existed between their father one Meto and the Deceased.

The two jointly operated traditional posho mills at parcel No. Kericho/Kapsimbiri/858. These posho mills became obsolete after the introduction of modern ones.

It is instructive to note that there is no evidence to the effect that Chesimet Arap Sitonik and Meto jointly owned the parcel of land in dispute. Chesimet Arap Sitonik passed on on 26<sup>th</sup> February 1993 while Meto the father of the petitioners died in the year 1995. There is no evidence to the effect that during his life time Meto the father of the petitioners had contested ownership of parcel No. Kericho/Kapsimbiri/858.

It is only after the death of the two old men that the sons of Meto who are the petitioners, in this cause went before Bomet Land Disputes Tribunal in the year 2009 and obtained orders of subdivision. These orders were appealed against *vide* appeal No. 40 of 2009 at the Provincial Land Disputes Appeal Committee at Nakuru and the decision of Bomet Land Disputes Board was overturned.

The petitioners are not the beneficiaries of the Estate of the Deceased which comprises of parcel No. Kericho/Kapsimbiri/858.

The rightful beneficiaries are

1. Ezekiel Chesimet
2. Musa Chesimet
3. Grace C. Chesimet
4. Mary Chesimet

An application for succession to be filed with the names and distribution as above.

Costs to the objectors.

**Ruling delivered dated and signed in open court this 13<sup>th</sup> November 2018 in the presence of learned counsel for objector Mr. Kenduiwa, petitioner in person present.**

**Court assistant Mr. Rotich.**

**M. MU YA**

**JUDGE**

**13/11/18**