



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 137 OF 2010

IN THE MATTER OF THE ESTATE OF WILLIAM CHERUIYOT LELMET – DECEASED

MIKE K. LELMET

ELISHEBA C. LELMET

PAULINE J. LELMET

ESTHER J. LELMET.....ADMINSTRATORS

VERSUS

JULIA KIMOI CHEBIATOR

MOSES KIPLAGAT CHERUIYOT

ROSSY CHEPKOSGEL.....OBJECTORS

J U D G M E N T

1. The late **William Cheruiyot Lelmet** died intestate on 20/5/2005. He was a polygamous man. He left behind 2 parcels of land namely **L.R. No. 6614/4 measuring 431 acres Cherengany farm** and **L.R. No. 94 measuring 60 acres at Lelan Keptalamwa farm**.
2. The applicants/Administrators herein did file and obtain grant of letters of administration. The objectors did file their objection proceedings arguing that they had been left out yet they are beneficiaries to the estate. They also argued that part of the estate had been left out especially the capital assets and that the moveable assets had been sold by the administrators and some of the family members.
3. The court ordered that this matter be heard by way of viva voce evidence. The objectors became the plaintiff and applicants the defendants.
4. At the conclusion of the hearing, the court ordered the parties to file written submissions. The court has perused the pleadings, the evidence (oral) tendered as well as the written submissions.
5. The question which needs to be addressed as of first instance is whether the objectors are the heirs or beneficiaries of the deceased estate. If so, what is their entitlement?
6. It is further claimed by the applicant that the deceased by the year 2000 had already bequeathed the properties to the beneficiaries and that the only remaining portion was 78 acres out of the Cherengany farm. The beneficiaries each had their independent titles.
7. Concerning whether the objectors were beneficiaries, **PW1 Julia Kimoi Chebiator** stated that she was married to the deceased in the year 1975 and had 2 children with him Reuben and Winnie Chepkemboi. She said that the deceased build her a separate home. On cross-examination however she said that there was no dowry paid to her parents or customary marriage under the tenents of Keiyo customary.
8. **PW2 Rose Chepkosgei Lelmet** claimed that the deceased was her father. She said that her mother was one Naomi who was the deceased 7th widow. Her mother however has laid no claim to the estate as she did not live with the deceased. She was however already married to one Rotich who was also deceased.
9. **PW3 Moses Kiplagat Cheruiyot** testified that the deceased was his father and his mother is Judith Naliaka Waswa. She did not however live on the deceased parcel of land. His other brothers were Daniel Kipkosgei and David Kibet. They did not file any objection. He said on

cross examination that the clan decided that he should be given 7 acres. He was apparently raised by PW1.

10. **DW1 Mike Kiptoo Lelmet** the first born son to the deceased testified and narrated the history behind the issues bedeviling the family. He admitted on cross-examination that the 1st objector was a widow of the deceased. He said that the deceased distributed the estate before he died. They all had titles namely **Cherengany/Nzoia Block 8 (Kipgiwa/1- 30**. The only available land was 78 acres. He admitted that the 1st objector was living on the land.

11. He further denied that Reuben was a child to the deceased and that Moses , Daniel and Kibet came after the death of the deceased. The clan agreed and gave them 7 acres each on humanitarian grounds.

12. On the third objector he claimed that she later came and demanded back the dowry given on her behalf as her mother did not stay with the deceased.

13. **DW2 Joseph Kibet Kiplelmet** was the brother to the deceased. He said that during the family meeting the only remaining land for distribution was found to be 78 acres left behind by the deceased after sharing out the rest before he died. He said that the deceased had 4 wives namely Grace, Esther, Christine and Pauline.

14. **DW3 Richard Kigen Arap Masit** a 98 year old stated that the deceased was his brother in law. He equally testified of a clan meeting to essentially share out the 78 acres. He said Julia was a friend and not a wife to the deceased. He said that Reuben was not the son for to the deceased.

Analysis and Determination

15. From the evidence on record it is clear that the 1st objector though not formally married under the tenets of Keiyo customary law had a liaison with the deceased who in fact went ahead and build a house for her. As a matter of fact her daughter Winnie Jepkemei Lelmet was recognised by the clan and other family members to belong to the deceased.

16. Reuben K. Lelmet apparently was not recognised and according to the clan elder was born out of wedlock . This in my view brings complication and difficulty to prove. Apparently the clan meeting held on 28/7/2015 ordered by this court recognised and gave him 1 acre.

17. The sons of Judith Naliaka Waswa, namely Moses Kiplagat, Daniel Kipkosgei and David Kibet were recognised as the sons of the deceased. The clan gave each 7 acres out of the 78 acres that remained.

18. Rose Chepkosgei the 3rd objector was recognised as the deceased daughter and her mother was one Naomi who did not stay with the deceased. She is married to the late Rotich . She apparently came and demanded back the dowry paid to her father as according to the applicants her mother was not formally married to the deceased. She did not deny this.

19. So what's the position as regards the distribution of the estate. It appears that the deceased had already subdivided and transferred LR No. 6614/4 measuring 431 acres by the year 2000 leaving behind 78 acres. The applicants already each had obtained their title deeds. If then the deceased did this 5 years prior to his death why did he leave behind the objectors? Obviously he must have had his own reasons.

20 The court as mentioned above ordered for a settlement of this matter through mediation. The minutes are attached to the application dated 18/11/2015 for confirmation of grant.

I have carefully perused the same especially the list of distribution. I am particularly satisfied that indeed the only remaining estate to be distributed is 78 acres.

21. What is the objectors entitlement? I find that the distribution as per the elders was fair in the circumstances. They did consider the surviving widows including the 1st objector who was given 5 acres. Daniel, Moses and David were each given 7 acres. If the deceased desired to give them land then there was no difficulty in giving them like the rest of his sons. To restructure the same afresh would in my view curtail the deceased plan especially knowing that they already possess their separate titles courtesy of the deceased wishes.

22. The place of Reuben is further complicated by the fact that he did not agitate his claim and I supposed that he would by extension get a share due to his mother. Her sister Winnie Jepkemboi was recognised by the family elders and given one acre just as the rest of the step sisters Rose Jepkosgei was given 2 acres which in my view was an extra acre from the rest of her sisters. It's apparent that she was already married and settled elsewhere although a widow.

23. From the evidence therefore on record, it is clear that the houses of Grace, Christine, Pauline and Esther were essentially what can be termed stable. The other women Judith, Naomi and Julia seemed unstable as one cannot conclude that there was a marriage ceremony or such other evidence save the bearing of the children with the deceased. This therefore lends credence to the finding by the clan that land parcel No. L.R. 94 Kaptalamwa farm which was ancestral be shared equally among the 4 houses of Grace, Christine, Pauline and Esther.

24. How then should the deceased estate be distributed taking into account that the deceased had already dealt with LR No. 6614/4 save for 78 acres thereof? I find that the arbitration proposed by the clan elders as mandated by the court dated 28/7/2015 reasonable. The objectors though present did not append their signatures for the simple reason that they did not agree with their proposal.

25. This court lays emphasis on the clan proposal based on the fact that the deceased deemed it fit not to provide for the objectors like the rest of his family during his lifetime. The rest of the beneficiaries from the 4 houses appeared closer and well recognised. The other 3 houses

appeared periphery and that is why Judith and Naomi did not file any objection proceedings.

26. The provisions of Article 159 (2) (c) of the Constitution provide for the alternative dispute resolution mechanism. I have perused the said proceedings and I find that the three objectors did make their presentations freely and willingly.

27. The said meeting had other neutral parties who included the objector uncles and neighbours who in my view appreciated the estates background.

28. DW2 and DW3 on the other hand from their filed statements and oral evidence did not think that the objectors should be discriminated against.

29. Consequently, I think I have stated so much to indicate that the objectors should be entitled to what the clan decided and it appears that even on the ground they have all along occupied less acreage than what they were given. It has to be added though that they are entitled as of right and not on humanitarian grounds as the petitioners or the clan suggested.

30. As regards the purchasers it appears that the only questionable purchaser is one Dr Richard Torotich whose portion is pending in court. The same which measures 2 acres shall be held in abeyance pending the courts determination.

31. In the premises the certificate of grant issued on 29th September 2011 is amended and the distribution of the deceased estate be made as hereunder.

A) L.R. No. 6614/4, the remainder measuring 78 acres as hereunder;

1. Daniel Kipkosgei Lelmet – 7 Acres
2. David Kibet Lelmet - 7 Acres
3. Moses Kiplagat - 7 Acres
4. Richard Masit Lelmet – 7 Acres
5. Josphat Sawe – 1 acre
6. Boaz Kimaiyo - 12 acres
7. Sarah Chemwalo – 5 acres
8. Julia Kimoi Chepyator – 5 acres
9. Grace C. Lelmet – 5 acres
10. Esther C. Lelmet – 5 acres
11. Pauline C. Lelment – 5 acres
12. Reuben Lelmet – 3 acres
13. Margaret Osiris – 1 acre
14. Esther Mahindi – 1 acre
15. Janet Ruto – 1 acre
16. Irene Luhoywa – 1 acre
17. Joyce Kangongo – 1 Acre
18. Elsheba Ruto – 1 acre
19. Susan Lelmet – 1 acre
20. Prisca Muli – 1 acre
21. Purity Lelmet – 1 acre

22. Estate of Lydia Lelmet – 1 acre

23. Winnie Jepkemei Lelmet – 1 acre

24. Rose Jepkosgei – 1 acre

B) LR No. 94 – Kaptalamwa Measuring 60 acres to be divided between the 4 houses of Grace Lelmet, Christine Chelagat Lelmet, Pauline Jerop Lelmet and Esther Lelmet.

C) Moi's Bridge commercial Plot Nos 21 and 34 to be shared between the objectors herein Julia Kimoi Chebiator and her household and Moses Kiplagat Cheruiyot and Rossy Chepkosgei in equal proportions. They are at liberty to dispose the same and share the proceeds as they deem fit.

D) The rest of LR No. 6614/4 Cherengany farm which the applicants already have titles do remain as they are.

E) The portion which is currently contested by Dr Richard Torotich vide ELC Case No. 17/2014 be held in abeyance. However should the same revert to the estate then it shall equally be shared by the three objectors equally.

F) Public utilities

I) Centre plots measuring 4 ½ acres

The three objectors shall be entitled to ½ an acre at the centre plot.

32. Being a family dispute each party shall bear their respective costs.

Orders accordingly.

Delivered, signed and dated at Kitale this 10th day of December, 2018.

H.K. CHEMITEI

JUDGE

10/12/18

In the presence of:

Arunga for the Objector

Sifuna for the Applicant – Absent

Court Assistant – Kirong

Judgment read in open court.