



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 198 OF 2005**

**IN THE MATTER OF THE ESTATE OF BOIYO ARAP**

**MURGOR .....DECEASED**

**AND**

**RICHARD MUZEE }**

**PAUL KIPROP }.....APPLICANTS**

**JUDGMENT**

1. The late Boiyo Arap Murgor died intestate. In his life he had married 4 wives who included Chematie Murgor PW1 herein. Two of his wives have since died. The petitioners brought this succession proceedings leaving behind the objectors but later they were all included. The only issue pitting the parties is on the question of distribution and in particular whether land parcel **No Kaplamai/Sirende Block 1/Ngonyek 83** measuring 45 acres should be shares between the 3<sup>rd</sup> and 4<sup>th</sup> house.

2. It is further worth noting that the deceased left behind the following properties.

**a) LR No 5736 in Surungai measuring 9.5 acres**

**b) LR No Cherangany /Kachibora Block 1(Kipkekei/220 measuring 29 acres**

**c) LR No Kaplamai/Sirende Block 2 (Ngonyek) 8 measuring 45.6 acres**

3. There were several sworn affidavits filed herein and it was agreed that they do form part of the evidence.

4. As earlier indicated Chematia Murgor the 4<sup>th</sup> widow did testify and stated that the deceased had already subdivided the estate while he was alive. That the 1<sup>st</sup> house had been allocated the Surungai land measuring 9.5 acres. The 2<sup>nd</sup> house Kachibora parcel measuring 29 acres.

5. As regards the 3<sup>rd</sup> house, the deceased had allocated each one of them their respective parcels and as per the affidavit of one Alexander Kipyego, Paul Rotich Murgor, Philp Kipkemboi Murgor, Wilson Kiplagat Arap Keter and Barnaba Kiptoo Kipkoech had each been given their respective portions out of the 45 acres or chamber.

Infact DW1 did not contest to this and the same was not challenged during oral evidence.

6. The 4<sup>th</sup> house therefore contents that the deceased was not able to transfer the portion to th 4<sup>th</sup> house as the children by then were still underage and therefore he saw it fit that the title do remain in his name. DW1 Richard Mzee conceded to this an agreed that the Ngonyek land was original measuring about 90 acres or thereabouts and the deceased divided it into two between 3<sup>rd</sup> and the 4<sup>th</sup> house.

7. The affidavit of Alexander Kipyego Keino in support of the protest sworn on 17/2/2016 attached the farm area list which clearly shows that the children from the 3<sup>rd</sup> house each got a share of their father's estate. There is attached minutes of 20/6/2011 which shows that the deceased had agreed to divide his land into two houses.

8. From the facts therefore on record there is overwhelming evidence that the deceased subdivided his properties to his 4 houses (wives) before his death. It is even agreed that by the time of his death, all the 4 houses were residing in their respective portions. Infact the sons of the 3<sup>rd</sup> houses seemed to have received their respective titles a fact which they did not dispute.

9. As a matter of fact there is no evidence or that any of the surviving beneficiaries more so those from the 3<sup>rd</sup> house purchased the parcels individually they are residing in or at all. They did not suggest that they did not inherit from the deceased.

10. Section 42 of the Law of Succession Act provides as follows:-

“ where -

**a) an intestate has, during his lifetime or by will, paid, given or settled any property to or from the benefit of a child, grand child or house; or**

**b) property has been apportioned or awarded to any child or grandchild under the provisions of Section 26 or Section 35, that property shall be taken into account in determining he share of the net intestate estate finally accruing to the child, grand child or house”**

11. It is , from the above Section of the Law, expected that such arrangements made by the deceased herein respect to his estate ought to be respected.

12. It is evident that the 1, 2, and 3<sup>rd</sup> houses were settled and infact no objection was even raised. Its only the 4<sup>th</sup> house, whose title remained with the deceased as the children were young. This was understandable and within the Law.

13. Consequently it would be in my view unfair and unjust to disturb the deceased arrangements. Infact it is contested by the 4<sup>th</sup> house that the value of the estate taken by the 3<sup>rd</sup> houses surpasses that given to them.

14. In the premises I do hold that in terms of the distribution of the estate, the same shall remain as per the deceased wishes which is as hereunder;

**1) 1<sup>st</sup> house to get LR No Surungai Measuring 9.5 acres**

**2) 2<sup>nd</sup> house Cherengany/Kachibora Block 1 (Kipkeikei) 220 measuring 29 acres**

**3) 4<sup>th</sup> house Kaplamai Sirende Block 2(Ngonyek/8 measuring 45.6 acres**

15.The 3<sup>rd</sup> house as indicated above was already catered for.

From the affidavit of Richard Mzee dated 8/2/2016 it appears that there was no contest on the movable assets. The said movable assets if any shall therefore be shared as proposed in the said affidavit. The

share due to one Jacob Rutto Cheserek was already determined and the same ought to be transmitted to him.

16. Each of the three houses namely, 1, 2 and 4<sup>th</sup> shall thereafter subdivide their respective portions as they deem fit. The immovable assets whether domestic animals or machinery be divided as proposed in the affidavit of Richard Mzee dated 8/2/16.

17. This being a family matter, each party shall meet their respective costs.

**Delivered this 14<sup>th</sup> day of February 2017.**

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**H.K. CHEMITEI**

**JUDGE**

**In the presence of;**

**Arunga for Bungei for Respondent**

**No appearance for Applicant**

**Court Assistant - Kirong**