

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 813 OF 2009

IN THE MATTER OF THE ESTATE OF KULIENTA NASHERO OLE KOPAI (DECEASED)

DANIEL MUNEI OLE KUPAI.....1ST APPLICANT

OLOISHURO OLE KUPAI.....2ND APPLICANT

VERSUS

PAUL POLOLET OLE KUPAI.....RESPONDENT

RULING

1. The late Kulienta Nashero Ole Kopai died intestate on 7th October 1982. He was survived by five sons; Paul Pololet Ole Kupai (respondent), Daniel Lamoi Ole Kupai and the late Lemodi Ole Kupai, and eight (8) daughters. The applicants and the respondent jointly petitioned for grant of letters of administration intestate which was issued to them and confirmed on 26th May 2010. The estate comprising of LR No. Kajiado/Lorngosusua/3 was distributed among five (5) sons, the daughters having indicated to the court that they were not interested in inheriting the estate.

2. The applicants filed summons for rectification dated 18th November 2015 under certificate of urgency seeking orders that the grant of letters of administration intestate issued to the applicants and the respondent and confirmed on 26th May 2010 be rectified. They also asked that the respondent be compelled to execute the mutation forms and any other documents required for the expedient administration of that estate of the deceased, in default the Registrar be ordered to execute the same on behalf of the respondent. The application was premised on the grounds that the beneficiaries had entered into consent on the mode of distribution of the estate recorded in court on 17th March 2014; in the consent the beneficiaries agreed to transfer 200 acres from LR Kajiado/Lorngosusua/3 from the estate to one James Kioi Muhuri; they had agreed to have Sipilon Ene Lemodoi marked as a beneficiary in place of the late Lemodoi Ole Kupai; the applicants had prepared mutation forms which the respondent had adamantly refused to sign; and that it would be prudent and in the interest of justice for the respondent be compelled to sign the mutation forms, in default of which the Registrar of the High Court do sign the same on behalf of the respondent.

3. The respondent opposed the summons stating in his replying affidavit dated 17th June 2016 that at the time of obtaining and confirmation of the grant the administrators had failed to inform the court of the existence of the other beneficiaries of the estate. These were the daughters of the deceased. He stated that the administrators had not obtained the written consent of those beneficiaries who were equally entitled to obtain the grant as per **rule 26(2)** of the **Probate and Administration Rules**, and neither had they cited the said beneficiaries as per **rule 22(1)** of the **Rules**. It was his case that he had not signed the mutation forms as his sisters and their children would be rendered destitute as they had not been included as beneficiaries of the estate.

4. Counsel gave oral submissions in court in support of their clients' cases. It was submitted for the

respondent that the proceedings leading to the issuance and confirmation of the grant were fundamentally flawed for not including the names of the eight (8) daughters as beneficiaries of the estate, and that there was failure to obtain their consent to the issuance and confirmation of the grant. It was submitted that the respondent was hesitant to sign the conveyance documents as the same would result in disinheriting his sisters.

5. I note that the respondent's application dated 5th April 2012 seeking redistribution of the estate was declined by this court on 22nd September 2015. It is evident that the respondent was not happy with the distribution as consented to by himself and the other beneficiaries. He did appeal against the decision. His explanation for refusing to sign the mutation forms to facilitate distribution of the estate among the beneficiaries cannot in any case, be legitimate as the daughters of the deceased whom he claims will be left destitute have filed consent dated 29th April 2016 stating that they were not interested in the estate of the deceased. The children of the three deceased daughters also filed consent dated 7th July 2016 stating that they were not interested in the estate.

6. Under these circumstances, I allow the application dated 18th November 2015. I order the grant issued to Paul Pololet Ole Kupai, Oloishuro Ole Kupai and Daniel Munei Ole Kupai and confirmed on 26th May 2010 be rectified so as to reflect Sipilopm Ene Lemodoi as a beneficiary replacing Leomodoi Ole Kupai who has since died. This is as per the consent recorded in this court on 17th March 2014. The respondent is hereby ordered that within 14 days he will sign the mutation forms and any other documents necessary to enable distribution of the property amongst the beneficiaries; failure to which the Deputy Registrar, Family Division, shall execute the said documents on behalf of the respondent. The applicants shall have the costs of the cause application.

SIGNED at NAIROBI this 28th day of September 2016

A.O. MUCHELULE

JUDGE

DELIVERED at NAIROBI this 4th day of October 2016

W. MUSYOKA

JUDGE