



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
SUCCESSION CAUSE NO. 152 OF 2010

ESTATE OF THE LATE BENJAMIN KIPRONO SOI (DECEASED)

AND

SAMWEL RONO1ST PETITIONER/RESPONDENT

GOEFFREY RONO.....2ND PETITIONER/RESPONDENT

REUBEN RONO3RD PETITIONER/RESPONDENT

VERSUS

GLADYS CHEROTICH1ST PROTESTOR

BEATRICE CHEBET SOI2ND PROTESTOR

R U L I N G

1. This is a matter concerning the estate of the late **Benjamin Kiprono Soi** *alias* **Benjamin K. Soi** *alias* **Benjamin Kiprono Arap Soi**.
2. On 13th November, 2012 letters of administration were issued to **Samwel Rono, Reuben Rono** and **Geoffrey Rono**.
3. The deceased is survived by his three(3) widows, 12 sons, 13 daughters and grand-daughters (*children of the late Marceline alias Margaret Chepkemoi*.)
4. On 24th April, 2014 an application for Confirmation of Grant supported by the joint affidavit of the administrators was filed. The mode of distribution is found at paragraph 6 of the said affidavit.
5. On 30th June, 2014 Gladys Cherotich and her sister who are among the daughters of the deceased filed an affidavit of Protest saying the administrators had in the mode of distribution discriminated against the daughters of the deceased plus their deceased sister's children.
6. The Protest was heard by way of *viva voce* evidence. Gladys Cherotich in her evidence was basically saying she and her sisters had not benefited anything from the deceased's estate which comprised of several acres of land. She further stated that the daughters had each been given Shs. 10,000/= after their father's funeral. She stated that was only asking for 3 acres of land for each of

her sisters from their father's estate.

7. The 1st Petitioner/Respondent does not deny the assertions by his sister Gladys. All he says is that their father shared out his estate among the three (3) widows and his sons according to the Kipsigis customs where daughters are not to inherit anything.
8. That the custom requires that a daughter is given a heifer and nothing more. That in this case each daughter was given Shs. 10,000/= in lieu of the heifer.
9. The three widows testified on behalf of the Petitioners/Respondent. They were in total agreement with what the Petitioners were saying and what their deceased husband did. They were satisfied with the discriminatory distribution.
10. Mr. Joshua Mutai of Chelule & Co. Advocates for the Petitioners/Respondents in his written submissions cited **Section 32 and 33** of the **Law of Succession Act** saying there was no evidence that the Minister had excluded Kericho area from the operation of **PART V** of the **Act (Cap 160)**. To him **Section 33** of the **Act** applied to the present case.
11. He also cited Kipsigis customary laws which allow only the sons to share the property of a deceased person. To him, that's what the deceased herein did and his wishes should be respected by all, as it conforms with Kipsigis traditions.
12. Mr. Julius Mutai for the Protestors in his submissions quoted **Article 60(1)** of the **Constitution** saying the proposed mode of distribution went against this provision. In support to this provision he cited the case of **Samson Kiogora Rukunga V Zipporah Gaiti Rukunga [2011] eKLR** and **Article 27** of the **Constitution**.

He submitted that neither custom, marital status nor the gender of the Protestors can justify the denial of their right to inherit from their father's estate.

13. He further submitted that the deceased's estate does fall under the category of estates anticipated in **Section 32 and 33** of the **Act** and the application of the deceased's tribe's custom did not arise. On this he cited the case of **RONO VS RONO & ANOR [2008] 1 KLR (G&F) 803**.
14. The deceased herein died on 25th June, 2010 when the Law of Succession Act was operational. His estate is therefore governed by the Provisions of the said Act.
15. It is clear from the material before me that the deceased did not leave behind any written or oral will. He therefore died intestate. He left behind the following beneficiaries:

- Ruth Soi
 - Grace Soi widows
 - Rebecca Soi
 - Samwel Soi
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- David Rono
 - Joseph Rono
 - Kenneth Rono
 - Reuben Rono sons
 - John Rono
 - Peter Kipkoech Rono
 - Dickson Rono
 - Geoffrey Rono
 - Paul Rono

- Peter Rono
- Nicholas Rono

- Rhoda Chepkwony
- Sallay Ngeno
- Nancy Cherop
- Gladys Omoke
- Florence Cheruiyot
- Beatrice Chebet Daughters
- Caroline Chepwogen
- Maurice Chelangat
- Mercy Cherop
- Edna Chepkemoi
- Lilian Chepwogen Chepng'eno
- Gladys Koros
- Margaret Chepkemoi (*deceased daughter*) and survived by three children (*E C, N C and F C*).

16. The deceased's estate comprises of the following:

- Kericho/Chepsir/49
- Kericho/KPN/Chepseon Block 4(*Chepseon*) 290
- Kericho/KPN/(*Chepseon*) 294
- Kericho/Cheseon Block 4(*Chepseon*) 290
- Kericho/Kabianga 1549
- Kericho/Kabianga 1545
- Kapkugerwet plot 46(50 by 100)
- Kapkugerwet plot 33(50 by 100)
- Ainapkoi Market plot 3(25X100)
- Plot – Kapkelek market
- Rental Houses – Corner C
- Rental Houses – Jericho Market
- Shares in companies listed in the Stock Exchange
- Shares in Mau Tea Ltd
- Shares in KTDA managed factories
- Bank Accounts, among others.

17. Paragraph 6 of the supporting affidavit of the three administrators shows only nine (9) properties as due for distribution. The rest of the properties have been obtained from the Affidavit of Protest. Of interest are the following:

i. Form P&A 5 only lists five(5) properties as the ones forming the deceased's estate.

ii. There are documents filed before this court showing that the deceased owned shares in various entities.

iii. The 1st Respondent in cross-examination admitted having sold two of the deceased's plots. It is nowhere shown how the proceeds from these two plots were utilized.

iv. It is also clear from paragraph 6 of the supporting affidavit of the Petitioners/Administrators that the mode of distribution of the deceased's estate only caters for the widows and sons of the deceased; The daughters and the children of the deceased's deceased daughter are not catered for at all. This amounts to a very high level degree of discrimination.

18. Why is this so? The evidence and the submissions by counsel for the Petitioners is that this is a practice anchored in the Kipsigis customary laws and it must be respected by all.

19. What does the Constitution say about discrimination? **Article 27** provides:

1. Every person is equal before the law and has the right to equal protection and equal benefit of the law.

2. Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

3. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

4. The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

5. A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

20. The Law of Succession Act which governs the issue of estates of deceased persons states under **Section 40(1)** as follows:

40. (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

21. The Constitution does not provide any platform for any manner of discrimination. The **Law of Succession Act** under **Section 40** speaks of Children and does not refer to the sex of any child. The marital status of any child should therefore not be used as a ground for discrimination. See **RONO VS RONO** *supra*.

22. Mr. Joshua Mutai referred this court to **Sections 32** and **33** of the **Law of Succession Act** which identifies some districts which are not affected by Part V of the Act. In those districts the law applicable to an intestate is the law or custom applicable to the deceased's community or tribe.

23. It was Mr. Mutai's submission that the mere fact that the deceased's district is not among them did not mean the deceased's estate cannot benefit from **Sections 32 and 33** of the Act. With all due respect to counsel the law cannot be twisted to suit the circumstances of the Petitioners. If the said provisions applied to the then Kericho District, there is nothing that stopped the drafters from including it.

24. The truth of the matter is that the deceased's estate does not fall under the category of estates clearly mentioned in **Section 32** and **33** of the **Law of Succession Act**. Therefore his tribe's or community's customs are not applicable. Even where customary law is applicable it must not be repugnant to justice and morality or inconsistent with any written law.

25. The deceased's estate must therefore be distributed in accordance with the provisions of the **Law of Succession Act**. Any child is at liberty to voluntarily waive his/her right to inherit the deceased parent's property.

26. I have heard the daughters of the deceased through the Protestors to be saying that all they are asking of their brothers is three (3) acres for each out of the two hundred and thirty one (231) acres belonging to the estate. That is a small request which the sons of the deceased should readily accept before **Section 40** of the **Law of Succession Act** is applied.
27. This court therefore finds the Protest to be merited and allows it by striking out the mode of distribution presented by the Petitioners/Administrators herein.
28. I would have gone ahead to distribute the deceased's estate but I cannot do so now for the following reasons:
- i. The full inventory of the assets forming the deceased's estate is not before the court.
 - ii. The money realized from the unauthorized sale of the two plots must be accounted for.
 - iii. The Protestors and their sisters appear to be willing to settle for three acres being given to each.
29. In the circumstances, I am giving the administrators an opportunity to sit down with their three (3) mothers, brothers and sisters and agree on an acceptable mode of distribution without looking at gender/sex, as already explained above.
30. A provision must be made for the children of their deceased sister.
31. Finally, there must be a full inventory of the assets of the deceased's estate plus an account of the proceeds of the sale of the two plots filed together with the agreed mode of distribution.
32. Mention on 7th May, 2015 to confirm compliance. If on the mention date there is no consent on the mode of distribution, this court will do the distribution. The issue of costs will be addressed on the mention date.

Dated, signed and delivered this 9th day of March, 2015

H.I. ONG'UDI

JUDGE

In the presence of

M/S Chelangat for Mutai for Applicants.

Mr. Mutai for Respondents – present

1st Applicant – present

Petitioner/Respondents – absent

Lagat – Court Assistant

Interpretation – English/Kipsigis

Some beneficiaries – present