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| Case Number:                 | Succession Cause 72 of 2006   |
| Date Delivered:              | 05 Dec 2016   |
| Case Class:                  | Civil   |
| Court:                       | High Court at Kitale  |
| Case Action:                 | Directions  |
| Judge:                       | Hilary Kiplagat Chemitei  |
| Citation:                    | In re Estate of Lotungwa Arap Sang (Deceased) [2017] eKLR                             |
| Advocates:                   | Gacathi for Marube for the Interested Parties.<br>Khisa for Kiarie for the Objectors. |
| Case Summary:                | -   |
| Court Division:              | Family  |
| History Magistrates:         | -   |
| County:                      | Trans Nzoia   |
| Docket Number:               | -   |
| History Docket Number:       | -   |
| Case Outcome:                | Ruling on distribution differed   |
| History County:              | -   |
| Representation By Advocates: | One party or some parties represented   |
| Advocates For:               | -   |
| Advocates Against:           | -   |
| Sum Awarded:                 | -   |

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**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 72 OF 2006**

**IN THE MATTER OF THE ESTATE OF LOTUNGWA ARAP SANG (DECEASED)**

**CHRISTOPHER KIPKORIR LOTUNGWA.....PETITIONER**

**VERSUS**

**ALBERT KIMELI.....1ST OBJECTOR**

**MARY JEPKOECH KIPLAGAT.....2ND OBJECTOR**

**JOHN KIPCHUMBA KIPLAGAT.....3RD OBJECTOR**

**AND**

**MOSES KIMAIYO.....1ST INTERESTED PARTY**

**LETEMA KIPSANG.....2RD INTERESTED PARTY**

**KIMAGUT KIPSANG.....3RD INTERESTED PARTY**

**DIRECTIONS**

The court has perused the entire proceedings herein, Earlier, the court was of the view that the issues of distribution of the deceased estate was purely between the objectors and the applicants but upon perusing the proceedings it has emerged that there is the question of whether the interested parties have a share in the suit property as their protest seemed to suggest. This was an issue which was not raised or determined earlier own when the objection proceedings were taken not and the ruling nullifying the grant delivered.

Were the court to proceed with the distribution of the estate then the objectors whose protest is already on record will suffer prejudice. For whatever reasons and although the objectors want them to be excluded as they did not participate in the objections proceedings, this court cannot wish them away.

They cannot be sent away from the mercy seat. They have to be heard.

Succession proceedings and for that matter our constitution under Article 159 provides that their rights ought to be determined either way. The fundamental question is whether the deceased was holding the suit property in trust for them or otherwise.

Needless to say all the parties shall still have the chance and opportunity to have their issues ventilated. It is however regretted that these proceedings have taken such a long time.

Consequently the ruling on distribution is deferred. The matter of distribution should be heard by way of Viva voce evidence on priority basis.

Orders accordingly.

Delivered this 5<sup>th</sup> day of December 2016.

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**H.K. CHEMITEI**

**JUDGE**

**In the presence of;**

**Gacathi for Marube for interested parties**

**Khisa for Kiarie for objectors.**

**Kirong – Court Assistant**



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