



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT BOMET**

**SUCCESSION CAUSE NO.2 OF 2017**

**IN THE MATTER OF THE ESTATE OF KIPSOI ARAP CHEPKOMET (DECEASED)**

**ANYESI CHEPKOECH CHEPKOIMET.....PETITIONER**

**AND**

**JOHANA KIPKIRUI SOI.....OBJECTOR**

**RULING**

1. This Succession matter was filed in Kericho High Court in 2012, before it was transferred to Bomet High Court in 2017.
2. The issue currently in contest is the mode of distribution of the deceased's assets among ten (10) households, as there were 10 wives of the deceased. Two different proposed modes of distribution were filed and Mrs. Kirui and Mr. Mugumya agreed that this court gives its ruling on distribution of the assets of the deceased herein, which are land assets.
3. I note that the main difference in the two proposed modes of distribution is that Mr. Mugumya's client (Anyesi) maintains that the land assets be distributed equally among children, while the other nine (9) houses maintain that the land was subdivided by the deceased, and should be distributed as such among the houses and beneficiaries.
4. Distribution of the assets of a deceased person in an intestate polygamous family is governed by the provisions of section 40 of the Law of Succession Act (Cap.160), which provides 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 section 35 and 38.***

5. Though generally speaking, the above statutory provisions apply, courts have long held that an African can divide his property to his dependants or beneficiaries before death, and that such division of assets is valid and effective.
6. In the present case, all the contesting parties herein agree that the deceased divided the land and settled members of all the 10 houses on various portions of his land assets, both in Kericho County and Transmara County as per the minutes of the family meeting held on 8<sup>th</sup> March, 2019 attended by both counsel Mrs. Milcah Kirui and Mr. Rogers Mugumya. It was recorded in those minutes that the only person who opposed to the division of assets by the deceased was Anyesi Chepkoech Chepkoimet, who though she agreed that the deceased showed them the land boundaries, maintained that she was no longer interested in those boundaries because she had suffered for 18 years.
7. I note that from the facts disclosed in the documents filed, that she had disagreed with the deceased before he died, and had relocated to her family of origin, but attended his funeral. Though the other beneficiaries say that she should get 2.6 hectares of land in Transmara/Njipishi/1080, she maintains that each of the land assets be divided equally among all the beneficiaries.
8. In my view, since it is not disputed even by Anyesi Chepkomet that the deceased divided the land and settled everybody there before he died on 13<sup>th</sup> April 1996, which is more than 24 years now, that subdivision is the fairest mode of distribution of the assets herein, because the deceased had already distributed his estate before he died and did not leave out anybody, including Anyesi Chepkoech.

9. I thus order that Anyesi Chepkoech will get 2.6 hectares on land parcel No. Transmara/Njipishi/1080, and the rest of the beneficiaries will get the agreed shares of the land per the minutes of the meeting of 8<sup>th</sup> March 2019. I thus confirm the grant or representation of letters of administration herein.

10. Certificate of confirmed grant of letters of administration will issue with the mode of distribution of assets as above.

**Dated this 29<sup>th</sup> day of April 2020.**

**GEORGE DULU**

**JUDGE**

Delivered through video conferencing in the presence of Mr. Langat court assistant, Mr. Musyoka ICT officer and Mr. Mugumya for petitioner (Anyesi)