



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT BOMET**

**SUCCESSION CAUSE NO.111 OF 2015**

**IN THE MATTER OF THE ESTATE OF ROBERT KIPKORIR ARAP CHUMO**

**Alias ROBERT ARAP RONO (DECEASED)**

**CHRISTINE CHEPKEMOI RONO.....1<sup>ST</sup> PETITIONER**

**AND**

**TIMOTHY KIPKEMOI KORIR.....2<sup>ND</sup> PETITIONER**

**JUDGMENT**

1. The deceased herein ROBERT KIPKORIR ARAP CHUMO alias ROBERT KIPKORIR RONO (deceased) died intestate on 12/10/2003 leaving the following beneficiaries;

**First Household**

1. Alice Cherotich Rono - 80 years
2. Grace Cheptanui - Unmarried
3. Lily Chelangat (Deceased)- Married
4. Esther Chepnetich – Unmarried – 58 years
5. Timothy Kipkemoi Korir – Adult son – 56 years
6. Winy Chesigei Langat – Married – 52 years
7. Betty Chepkoech – Married – 50 years
8. Samwel Kimutai Korir – Adult son – 48 years.

**2<sup>nd</sup> household**

1. Christine Chepkemoi Rono – Widow – 64 years
2. Josephine Cherotich – Married 41 years
3. Julia Chelangat – Married – 39 years
4. Emmy Chepkoech – Unmarried – 35 years
5. Gedion Korir – Adult son – 34 years
6. Lidia Chepchirchir Rono – Married – 31 years

7. Duncan Korir – Adult son – 25 years

2. The deceased had the following properties;

i) LR Kericho/Kapkatet/974

ii) LR Kericho/Chemagel/3500

3. The petitioner herein WALTER KIPRONO NGENO petitioned for grant of letters of Administration but the Application was amended and the grant of letters was made to CHRISTINE CHEPKEMOI RONO and TIMOTHY KIPKEMOI KORIR on 5/4/2017.

4. The 1<sup>st</sup> Administrator filed a summons for confirmation dated 7/6/2017 while the 2<sup>nd</sup> Administrator filed a summons for confirmation dated 5/9/2017. The two administrators filed two different modes of distribution of the Estates. The case proceeded by viva voce evidence.

5. The 2<sup>nd</sup> Petitioner testified that the deceased had allocated his property to his two houses before he died. He said that the 1<sup>st</sup> house was allocated land parcel No Kericho/Kapkatet/1974 while he 2<sup>nd</sup> house was allocated Kericho/Chemagel/3500. He said the 1<sup>st</sup> petitioner who is his step mother never stepped on their land when the deceased was alive.

6. The 2<sup>nd</sup> petitioner also said the family had a meeting on 27/9/2014 where they agreed to share the Estate according to the oral will of the deceased.

7. The 2<sup>nd</sup> petitioner called four witnesses namely;

1) Andrew Rono

2) Susan Rono

3) Tamoke Arap Cheriro alias Joshua Cheriro and

4) John Arap Sang

8. All the 2<sup>nd</sup> petitioner's witnesses said that the deceased herein bought a portion of Kericho/Kapkatet/1974 measuring 5 acres with the mother of the 2<sup>nd</sup> petitioner ALICE RONO and the father of ALICE RONO bought 10 acres and said the land belongs to his daughter ALICE RONO. They said according to traditions, the land belongs to the 1<sup>st</sup> house.

9. The 1<sup>st</sup> petitioner said the Estate of the deceased should be shared equally. She called two witnesses namely;

1) DANIEL KIPNGETICH RONO and

2) JOHN KEMEI

10. The two witnesses said they were not aware of any oral will. The 1<sup>st</sup> petitioner and her witnesses said the deceased purchased Kericho/Kapkatet/974 from ALICE TABARGUT.

11. The court has considered the evidence on record and submissions filed by both parties. This case proceeded before Hon. Justice Martin Muya and I took it up at Judgment stage. I find that it is not in dispute that the 1<sup>st</sup> petitioner is the 2<sup>nd</sup> wife of the deceased while the 2<sup>nd</sup> petitioner is the son of the deceased.

12. It is also not in dispute that the two parcels of land the subject of this case are registered in the name of the deceased. The 2<sup>nd</sup> petitioner said the deceased left an oral will allocating the 1<sup>st</sup> house land parcel No Kericho/Kapkatet/974 and the 2<sup>nd</sup> house was allocated LR Kericho/Chemagel/3500.

13. The issues for determination are as follows

**i) Whether the deceased left a valid oral will.**

**ii) What properties constitute the estate of ROBERT KIPKORIR ARAP CHUMO alias ROBERT KIPKORIR RONO (deceased)?**

**iii) How should the properties of the deceased devolve?**

14. On the issue of existence of a valid oral will, the relevant Section of the Law with regard to oral wills is Section 9 of the Law of Succession Act which provides that:

**(1) No oral will shall be valid unless:**

**(a) It is made before two or more competent witnesses and**

**(b) The testator dies within a period of three months from the date of making the will.”**

15. In any case in **Re Rufus Ngethe Munyua (deceased) Public Trustee v Wambui (1977) KLR 137** and **Beth Wambui and Another - vs- Gikonyo and others (1988) KLR 445** the courts in both instances held inter alia that if the witnesses present during the making of an oral will make a record of the terms of the oral will, so long as it meets the requirements of Section 9, of being made in the presence of two or more competent witnesses and the maker dies within three months, then that oral will would be considered valid.

16. I find that in the current case, there is no evidence of existence of a valid oral will. The deceased had also not distributed his property inter vivos and therefore the property has to be distributed in accordance with the law governing intestate succession.

17. I also find that the two parcels are registered in the name of the deceased. If the land parcel No Kericho/Kapkatet/974 was bought by the 2<sup>nd</sup> petitioner’s paternal grandfather for the 2<sup>nd</sup> petitioner’s mother, it would have been registered in her name.

18. I find that the deceased had the following properties which constitute his Estate and which are registered in his name;

iii) LR Kericho/Kapkatet/974

iv) LR Kericho/Chemagel/3500

19. There is evidence that the deceased had purchased land parcel No. Kericho/kapkatet/1000 which was not yet transferred to his name at the time of his demise. The properties available for distribution at this moment are the two listed above.

20. The beneficiaries are entitled to share the estate equally regardless of whether they are male or female. The law prohibits discrimination on the ground of gender. The Court of Appeal in the case of **Mwongera Mugambi Runturi & Another -V- Josephine Kaarika & 2 others (2015) EKLR** held as follows on the issue of discrimination:

***“With the greatest respect, such full throttled patriarchy that flies in the face of current conceptions of what is fair and reasonable cannot stand scrutiny not least because it is plainly discriminatory of itself and in its effect. It is anachronistic and misplaced notwithstanding that it was (once) the norm for a vast majority of Kenya’s communities. This Court has long accepted that a child is a child none being lesser on account of gender or the circumstances of his or her birth. Each has a share without shame or fear in the parents’ inheritance and may boldly approach to claim it. What Rono -V- Rono (2005 IEA 363 decided about the prohibition of discrimination on grounds of sex under the retired Constitution applies with yet greater force under the current progressive Constitution of Kenya 2010. See also Grace Wachuka -V- Jackson Njuguna Gathungu (2014) eKLR 100.”***

21. In the case of **John Musambayi Katumanga (2014) e KLR J. Musyoka** held:

***“Under Section 40 of the Act, if the deceased had several wives, as opposed to households, the estate would devolve depending on the number of children. Ideally, the estate would be divided equally among all the members of the entire household, comprising the children and surviving spouses together. After that, the family members would retreat to their respective houses where Section 35 of the Act would be put into effect, so that if there was a surviving spouse in a house she would enjoy life interest over the property due to her children. The house without a spouse would split its entitlement in terms of Section 38 of the Law of Succession Act, the children would divide the estate equally amongst themselves.***

22. This Court This court is bound by Section 40 of the Law of Succession Act and has no discretion. The section clearly provides that the estate be divided between the houses taking into account the number of children in each house.

23. For avoidance of doubt, I wish to reproduce Section 40(1) which provides:

***“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 share, 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 additional unit to the number of children”.***

23.I accordingly direct that the properties devolve in accordance with section 40 of the Law of Succession Act which provides for intestate succession where the deceased was polygamous.

24.The properties to be distributed as follows; Land parcel, L.R NO. KERICHOKAPKATET/974 measuring approximately 15.5 acres be distributed as follows:

1. Grace Cheptanui-1.38 acres

2. Timothy Kipkemoi Korir-1.38 acres (to hold in trust for the children of Lily Chelangat(deceased))

3. Esther Chepngetich-1.38 acres
4. Timothy Kipkemoi Korir-1.38 acres
5. Winy Chesigei Langat-1.38 acres
6. Betty Chepkoech-1.38 acres
7. Samuel kimutai Korir-1.38 acres
8. Christine Chepkemoi Rono-1.38 acres
9. Josephine Cherotich Rono-1.38 acres
10. Chepkemoi Emmy-1.38 acres
11. Korir Gidion-1.38 acres
12. Julia Chengat Rono-0.29 acres

Land parcel, L.R NO. KERICHO/CHEMAGEL/3500 measuring approximately 3.85acres be distributed as follows:

1. Julia Chengat Rono-1.09 acres
2. Lidia Chepchirchir Rono- 1.38 acres
3. Korir Duncan- 1.38 acres

25. Any party aggrieved by the orders made herein shall be at liberty to challenge the same at the Court of Appeal within twenty-eight (28) days.

**Delivered, signed and dated at Bomet this 3<sup>rd</sup> day of August 2020.**

**A. N. ONGERI**

**JUDGE**