



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.220 OF 2014**

**IN THE MATTER OF THE ESTATE OF THE LATE:**

**ZABLON KOMINGOI MATEGET *alias* KOMINGOI ARAP MATEGET  
*alias* KOMINGOI C/O ARAP MATEGET**

**And**

**ANDREW CHERUIYOT.....1<sup>ST</sup> PETITIONER**

**ANNAH MATEGET.....2<sup>ND</sup> PETITIONER**

**STANLEY KIPKEMOI CHERUIYOT.....3<sup>RD</sup> PETITIONER**

**RULING**

1. This matter relates to the estate of Zablun Komingoi Mateget *alias* Komingoi arap Mateget *alias* Komingoi s/o Arap Mateget who died intestate on 24<sup>th</sup> June 2011. The deceased was polygamous, with three wives. The first two wives are deceased, but he was survived by the 3<sup>rd</sup> wife, Anna C. Mateget, and the following children from the three houses:

- a. Rasto Kiprono Cheruiyot**
- b. Ann Chepkemai Ruto**
- c. Esther Chepkorir Serem**
- d. Eunice Chepkorir Serem**
- f. Elizabeth Chepkurui Cheruiyot**
- f. Sally Chepchirchir Ruto**
- g. Dina Chepngeno**
- h. Andrew Kiplangat Cheruiyot**
- i. Anna Chepkoech Cheruiyot**
- j. Wilson Kiplangat Cheruiyot**
- k. Raeli Chepukurui Rono**
- l. Sarah Chepkorir**
- m. Jane Koskei Chelangat**
- n. Stanely Kipkemai Cheruyoit**

- o. Lydia Cherop Sigei**
- p. Nelly Chepkemoui Ngetich**
- q. Anna C. Mateget**
- r. Mary Chepngeno Ngetich**
- s. Ludia Chemutai Sitienei**
- t. David Kipkorir Cheruiyot**
- u. Reuben Kimutai Cheruiyot**
- v. Edna Chelangat**
- w. Phrisilah Chepkemoui Langat**
- x. Benard Kipkoech Cheruiyot**
- y. Betty Chebet Mutai**
- z. Jackline Chepkirui Sigei**

- a. Richard Kipyegon Cheruiyot**
- b. Weldon Kibet Cheruiyot**

2. According to form P&A 5 filed in court, the deceased had the following assets:

- a. L. R. No.Kericho/Litein/7 Trading Centre**
- b. L.R. No.Kericho/Getarwet/454 measuring 32 acres**
- c. L.R. No.Kericho/Litein/30 measuring 3.0 acres**
- d. L.R. No.Kericho/Litein/790 measuring 0.041 hectares**
- e. L.R. No.Kericho/Boito/158 measuring 8.4 hectares**
- f. Motor vehicle Reg. No.KAV 879L Toyota Saloon**
- g. Motor vehicle Reg. No.KAA 190G Toyota Saloon**
- h. Money in Bureti Tea Sacco Litein A/C No.6944**
- i. Money in Kenya Commercial Bank Litein A/C No.069-142063671**

3. An application for letters of administration intestate was made by Andrew Kiplangat Cheruiyot, Anna Cheronon Mateget and Stanley Kipkemoui Cheruiyot. A grant was duly issued on 8<sup>th</sup> March 2015.

4. An application for confirmation of grant was made dated 20<sup>th</sup> April 2015 in which the applicant, Anna Cheronon Mateget, represented by the firm of Miruka and Company Advocates, proposed that the estate of the deceased be distributed as follows:

- a. L.R. No.Kericho/Getarwet/454 (32 acres to be shared equally)**
- b. LR. No.Kericho/Litein/30 (3.0 acres to be shared equally)**
- c. LR. No.Kericho/Litein/790 (3.0 acres) to be shared between 1<sup>st</sup> and 2<sup>nd</sup> houses.**
- d. LR No.Kericho/Boito/158 (8.4 He. To be shared equally)**
- e. Motor vehicle reg. no.KAV 879 L. Toyota saloon to be sold and the proceeds be shared equally among the 3 houses**

f. Motor vehicle reg.KAA 190 G Toyota saloon to sold and the proceeds be shared equally among the 3 houses

g. Money in Buret Tea Sacco Litein A/C No.6914 savings

h. Money in Kenya Commercial Bank Litein a/c no.142063671. All the savings be withdrawn and be shared among the 3 houses.

i. 3<sup>rd</sup> house-L.R.No.Kericho/Litein/7

5. Prior to the confirmation of grant, an affidavit of protest was filed by Alice Chepkurui Ruto. The affidavit, sworn on 30<sup>th</sup> July 2015, alleged that the first house had left her out of the list of beneficiaries of the estate of the deceased. She further alleged that she was the widow of a son of the deceased from the 1<sup>st</sup> house, one Stephen Kipkoech Cheruiyot. Thereafter, on 14<sup>th</sup> November 2016, the administrators conceded that Alice Chepkurui Ruto was a daughter in law of the deceased, and that she had been married to Stephen Kipkoech Cheruiyot, a son of the deceased, who had predeceased him. She was therefore entitled to a share of the deceased's estate. The protest having been thus settled, what remains is to consider the manner in which the estate of the deceased should be distributed.

6. In an affidavit sworn on 4<sup>th</sup> June 2015, the 1<sup>st</sup> and 3<sup>rd</sup> petitioners proposed that the estate of the deceased be distributed equally between the three houses. Thereafter, Andrew Cheruiyot, the 1<sup>st</sup> petitioner, changed his mind and requested the court on 14<sup>th</sup> November 2017 to distribute the estate in accordance with the Law of Succession Act.

7. In the absence of agreement between the parties on the mode of distribution of the estate, the law requires that the estate of the deceased, who was polygamous, be distributed in accordance with section 40 of the Succession Act which provides as follows:

**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. "**

8. The court had requested the parties on 27/2/2018 to file an affidavit to clarify the names of the persons who had renounced their interest in the estate. In an affidavit sworn on 7<sup>th</sup> June 2018, Mr. Stanley Kipkemoi gave a list of names that included daughters of the deceased, Jane Chelangat and Nelly Chepkemoi Ngetich who had not renounced their interest before Ong'udi Judge on 8<sup>th</sup> October 2015.

9. Where, as is the case with the 1<sup>st</sup> and 2<sup>nd</sup> house, the spouse of the deceased is also deceased, the children of the deceased take the share due to their respective houses in equal share. With respect to the 3<sup>rd</sup> house, Anna Cherono Mateget, the widow of the deceased, will have a life interest in her house's share of the estate. Upon termination of her life interest, her children will take their share of the estate in equal share.

10. I note from the court record that some beneficiaries of the estate appeared before the court (Ong'udi J) on 8<sup>th</sup> October 2015 and renounced their interest in the estate. Those who renounced their interest were the following:

**1<sup>st</sup> house**

1. Eunice Chepkurui
2. Selly Chepchirchir
3. Esther Chepkorir
4. Sarah Cheprotich

**2<sup>nd</sup> house**

1. Sarah Chepkorir
2. Raeli Chepkirui Rono
3. Lydia Cherop

**3<sup>rd</sup> house**

**Betty Chebet**

11. Accordingly, the estate of the deceased will be distributed as provided under section 40 among the following beneficiaries:

- i. Rasto Kiprono Cheruiyot**
- ii. Anna Chepkemoi Ruto**
- iii. Elizabeth Chepkurui Cheruiyot**
- iv. Dina Chepngeno**
- v. Andrew Kiplangat Cheruiyot**
- vi. Anna Chepkoech Cheruiyot**
- vii. Alice Chepkurui Ruto**

**2<sup>nd</sup> House**

- i) Wilson Kiplangat Cheruiyot**
- ii) Jane Koske Chelangat**
- iii) Stanley Kipkemoi Cheruiyot**
- iv) Lydia Cherop Sigei**
- v) Nelly Chepkemoi Ngetich**

**3<sup>rd</sup> House**

- i) Anna Cheronno Mateget**
- ii) Mary Chepngeno Kimetto**
- iii) Ludia Chemutai Sitienei**
- iv) David Kipkorir Cheruiyot**
- v) Reuben Kimutai Cheruiyot**
- vi) Edna Chalangat**
- vii) Phrisilah Chepkemoi Langat**
- viii) Benard Kipkoech Cheruiyot**
- ix) Jackline Chepkurui Sigei**
- x) Richard Kipyegon Cheruiyot**
- xi) Weldon Kibet Cheruiyot**

12. I had also noted that there is no evidence of ownership by the deceased of L. R. No.Kericho/Litein/7 Trading Centre, nor is the acreage indicated. There is also no evidence that the deceased had a property known as LR. No. Kericho/Litein/30 measuring 3.0 acres which is included in the 2<sup>nd</sup> petitioner's affidavit on distribution of the estate. I had therefore requested the parties to file evidence of the properties that belong to the deceased. In his affidavit aforesaid, Stanley Kipkemoi Cheruiyot indicated that there had been errors made in the list of properties. He stated that the assets of the deceased should be as follows:

- i) L.R. No.Kericho/Getarwet/454 measuring 32 acres**

ii) L.R. No. Kericho/Chemoiben/30 measuring 0.1482 (0.06 ha which was jointly owned with Kipsigei Arap Korir and Rubonet Munai both deceased)

iii) L.R. No.Kericho/Litein/790 measuring 0.041 hectares or 0.1 of an acre

iv) L.R. No.Kericho/Boito/158 measuring 8.4 hectares or 20.75 acres

v) L.R. No.8839/7 Litein Township. No acreage is indicated.

The evidence of ownership of this latter property are copies of receipts in the name of Zablun Mateget for payment of rates in 2014.

13. The total acreage of the deceased's estate is therefore 52.99 acres. Taking into account the beneficiaries of the estate who have renounced an interest in the estate, the first house has 7 units, the second 5 and the third has 11 units, making a total of 23 units. Each of the beneficiaries is therefore entitled to approximately 2.3 acres. The 1<sup>st</sup> house is entitled to 16.1 acres, the 2<sup>nd</sup> house 11.5, while the 3<sup>rd</sup> house is entitled to 25.3 acres.

14. Accordingly, as the parties were unable to agree on the distribution, I direct that the estate of the deceased be distributed as follows:

**i. 1<sup>st</sup> house -16.1 acres out of L.R. No.Kericho/Getarwet/454**

**ii. 2<sup>nd</sup> house -11.5 acres out of L.R. No.Kericho/Getarwet/454**

**iii. 3<sup>rd</sup> house**

**a. 4.4 acres out of L.R. No. Kericho/Getarwet/454**

**b. L.R. No. Kericho/Chemoiben/30 measuring 0.1482 acres**

**c. L.R. No.Kericho/Litein/790 measuring 0.041 hectares or 0.1 of an acre**

**d. L.R. No.Kericho/Boito/158 measuring 8.4 hectares or 20.75 acres. (Total 25.339 acres)**

15. The estate had two motor vehicles, registration numbers KAV 879 and KAA 190 G Toyota saloon. The said vehicles shall be sold and the proceeds be distributed equally between the beneficiaries of the 1<sup>st</sup> and 2<sup>nd</sup> house.

16. With respect to the cash said to be held in Buret Tea Sacco Litein A/C No.6914 and in Kenya Commercial Bank Litein A/c no. 142063671, it shall be withdrawn and be shared equally among the three houses.

17. There shall be no order as to costs.

**Dated Delivered and Signed at Kericho this 14<sup>th</sup> day of June 2018.**

**MUMBI NGUGI**

**JUDGE**