



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO.165 OF 2014

**IN THE MATTER OF THE ESTATE OF KIPKEMOI CHEPKWONY METO alias KIPKEMOI
ARAP KIMETO – (DECEASED)**

JOSEPH KIPRONO CHEPKWONY.....1ST PETITIONER

JOHN KIPNGENO CHEPKWONY.....2ND PETITIONER

RULING

1. The deceased to whose estate this matter relates is **Kipkemoi Chepkwony Meto** alias **Kipkemoi Arap Kimeto** who died intestate at the Kabarnet District Hospital on the 18th day of May 1990. The deceased was polygamous and had three wives and 22 children, according to the letter from the Chief in Bureti dated 17th September 2013. His beneficiaries were as follows:

1st House-Wilfrida Kimetto (1st wife, Deceased)

- 1. William Chepkwony-son**
- 2. Joseph K. Chepkwony-son**
- 3. John K. Chepkwony-son**
- 4. Simion K. Chepkwony-son**
- 5. Tapcheliong Talaam-daughter**
- 6. Cecilia Chumo-daughter**
- 7. Christina Chalulot-daughter**
- 8. Tecla Chelule-daughter**

2nd House-Hellena Kimetto –(2nd wife, deceased)

- 1. Paul Chepkwony – son**
- 2. Joseph K. Chepkwony-son**
- 3. Charles K. Chepkwony-son**

4. Leah K. Choche-daughter

5. Richard Chepkwony-son

3rd House-Annah Cherono Kimetto – (3rd widow)

1. Joseph K. Chepkwony – son

2. Francis K. Chepkwony-son

3. John K. Chepkwony – son

4. Selina Rono-daughter

5. Recho Tapritany-daughter

6. Nancy Chirchir – daughter

7. Evaline Borli-daughter

8. Lilian Chepkori Kitur-daughter

2. The estate of the deceased comprised of two properties: **Kericho/Kabartegan/349** measuring 11 acres and **Kericho/Kabartegan/211** measuring 34 acres according to the certificates of official search dated 22nd April 2014 and 19th November 2013 respectively annexed to the application for letters of administration intestate filed in court on 7th August 2014. Kericho/Kabartegan/349 is registered in the name Kipkemoi Arap Kimeto while Kericho/Kabartegan/211 is registered in the name Kipkemoi Chepkwony Meto.

3. An application for letters of administration intestate to the estate of the deceased was made by Joseph Kiprono Chepkwony and John Kipngeno Chepkwony and filed in court on 7th August 2014. A grant of letters of administration intestate was duly issued to Joseph Kiprono Chepkwony and John Kipngeno Chepkwony, who appear to be sons of the deceased from the 1st and 3rd house, on 13th November 2014.

4. An application for confirmation of grant dated 24th April 2015 was filed by the 2nd petitioner/administrator, John Kipngeno Chepkwony, on 24th April 2015. The application is supported by an affidavit sworn by the said John Kipngeno Chepkwony in which he proposes the mode of distribution as follows:

1. John Kipkorir Chepkwony

KERICHO/KABARTEGAN/349 3.7 ACRES

KERICHO/KABARTEGAN/211 11.33 ACRES

(To hold in trust for William Chepkwony, Joseph K. Chepkwony, Simion K. Chepkwony)

2. JOSEPH KIPRONO CHEPKWONY

KERICHO/KABARTEGAN/349 3.7 ACRES

KERICHO/KABARTEGAN/211 11.33 ACRES

(To hold in trust for Paul Chepkwony, Charles Chepkwony, Richard Chepkwony

3. JOHN KIPNGENO CHEPKWONY

KERICHO/KABARTEGAN/349 3.7 ACRES

KERICHO/KABARTEGAN/211 11.33 ACRES

(To hold in trust for Joseph Cheruiyot Chepkwony, Francis Chepkwony and Annah Cherono Kimetto

5. Essentially, what the 2nd administrator proposes is that the estate of the deceased be distributed to the sons of the three houses, with John Kipkorir Chepkwony holding 3.7 and 11.33 acres for himself and in trust for his brothers, Joseph Kiprono Chepkwony holding similar proportions for himself and in trust for his brothers from the second house, and John Kipngeno Chepkwony holding in trust for his mother and brothers from the third house. Of the 22 beneficiaries, only 6 appear to have signed the consent attached to the application for confirmation of grant.

6. It appears that the first two houses of the deceased, that of Wilfrida Chepkorir Meto (deceased) and Hellen Chelangat Meto (also deceased) had settled on land parcel number Kericho/Kabartegan/211 during the lifetime of the deceased, while the third wife, Annah C. Meto had settled on Kericho/Kabartegan/349. The first two houses were therefore opposed to a distribution of the estate that would affect their holdings. Their proposal was that the properties be distributed so that they remain on Kericho/Kabartegan/211 while the third house remains on Kericho/Kabartegan/349. This has been the sticking point to the distribution of the estate.

7. I note from the record that some of the beneficiaries of the estate appeared several times before Ong'udi, J, but others did not appear. At one point, the court issued summons for the Chief Kipkerienye sub-location, Kabartegan location, to produce the beneficiaries before the court. The Chief did appear on the 22nd of September 2016. The 2nd petitioner informed the court then that the 3rd house of the deceased had signed the consent to the distribution, but the 1st and 2nd houses had declined.

8. When the parties appeared before the court on 30th November 2016, the 1st and 2nd house, through Paul Chepkwony and Joseph Chepkwony, stated that they had agreed that the two houses should share Kericho/Kabartegan/211 while the third house retains Kericho/Kabartegan /349. John Kipngeno Chepkwony, from the third house, indicated that he wished both parcels of land to be shared between the three houses, hence his proposal in his affidavit in support of the application for confirmation of grant that each house gets 3.7 and 11.33 acres respectively from both parcels. The three brothers, as indicated above, would hold in trust for the sons of each house. There is no mention of any share for the daughters, whom I note are 10 in number, four from the first house, one from the second and five from the third.

9. The law with respect to the distribution of the estate of a polygamous person is contained in section 40 of the Law of 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.

10. What this means is that, in accordance with the provisions of section 35, the surviving widow of the deceased has a life interest in the estate of the deceased. Upon her demise, the estate shall be distributed as provided under section 38 of the Law of succession Act, equally between the children of the deceased, regardless of their gender or marital status. Unless they renounce their interest in their father's estate, no one can deny the daughters of the deceased in this case an equal share, with their brothers, of the estate.

11. The parties in this matter have been unable to agree on the mode of distribution of the estate. The first and second house wish to have the two houses left to share Kericho/Kabartegan/211, while the third house retains Kericho/Kabartegan/349. The basis on which these two houses seek to have the property distributed in this manner is that the deceased had intended to transfer Kericho/Kabartegan/211 to his first two houses. They have relied on a letter dated 29th September 2016 and filed in court on 3rd October 2016. To this letter is attached an application to the Bureti Land Control Board dated 20th March 1981 in respect of Kericho/Kabartegan/211. In the application, the first two wives of the deceased are named in the section for transferees. The nature of the transaction is indicated as being a wish by the registered owner, Kipkemoi Chepkwony Meto, to subdivide the property and transfer it to his wives, Wilfrida and Hellen.

12. While the third house, through John Kipngeno Chepkwony, wishes to have each of the two properties divided equally between the three houses, it does not give a particular reason for so doing.

13. The court has two options in this case. It can divide the properties of the deceased between the beneficiaries of the estate in accordance with the provisions of section 40 of the Law of Succession Act, or give the parties an opportunity to agree on the distribution, bearing in mind the provisions of the Act. The court chooses the latter option, but only for a limited period.

14. The parties are directed to, within 30 days of today, agree on a mode of distribution that takes into account the interests of all beneficiaries of the estate of the deceased. The administrators, Joseph Kiprono Chepkwony and John Kipngeno Chepkwony, shall thereafter file an affidavit reflecting the agreed mode of distribution. Should any of the beneficiaries willingly renounce an interest in the estate, an affidavit of renunciation shall be filed in court.

15. Should the parties fail, within the said 30 days, to agree on the mode of distribution then the estate shall be distributed in accordance with the provisions of section 38 and 40 of the Law of Succession Act.

Dated Delivered and Signed at Kericho this 28th day of February 2017.

MUMBI NGUGI

JUDGE