



**IN THE HIGH COURT OF KENYA AT KERICHO**  
**SUCCESSION CAUSE NO.66 OF 2009**  
**IN THE MATTER OF ESTATE OF LOISE TAPKIGEN MALIT**  
**alias TAPKIGEN W/O MALIT – (DECEASED)**

AND

EMILY CHEPKOECH *alias*

EMILY CHEPKOECH CHUMO - APPLICANT

VERSUS

PRISCILLA MALIT - PROTESTOR

**RULING**

The subject matter of this ruling is the summons for confirmation of grant dated 27<sup>th</sup> November 2013 taken out by Emily Chepkoech Malit *alias* Emily Chepkoech Chumo, hereinafter referred to as the Applicant and the protest filed by Priscilla Malit, hereinafter referred to as the Protestor. When the dispute came up for hearing, this court directed it to be disposed of by affidavit evidence and by written submissions.

I have considered the schedule of distribution proposed by the Applicant and that proposed by the Protestor. I have also considered the rival written submissions. The Applicant proposed for the Estate to be distributed as follows:

**FIRST HOUSE**

<b>NAME</b>	<b>PROPERTY</b>	<b>SHARE OF HEIR</b>
a. Johana Kipkemoi Chepkwony b. Emily Chepkoech Malit <i>alias</i>	Ker/Kabianga/1292	0.525 HA
Emily Chepkoech Chumo	Ker/Kabianga/1292	0.525 HA
c. Philip Kiptanui Chepkwony d. Johnstone Kipsigei Chepkwony	Ker/Kabianga/1292 Ker/Kabianga/1292	0.525 HA 0.525 HA

**SECOND HOUSE**

NAME	PROPERTY	SHARE OF HEIR
a. Priscilla Malit	Ker/Kabianga/1292	2.1 HA

In her affidavit of Protest, the Protestor opposed the Applicant's schedule of distribution and proposed for the Estate to be distributed as follows:

- i. 1<sup>st</sup> house - 2.1 HA.
- ii. 2<sup>nd</sup> house - 2.3 HA.

It is the submissions of the Protestor that her proposal is in terms of the mutual agreement made before the clan elders. The Protestor claimed that the village elders took into account the developments she had put up in the land.

After a careful consideration of the rival proposals, it is clear in my mind that the clan elders attempted in vain to distribute the Estate. There is no doubt that the late **Loise Tapkigen Malit alias Tapkigen W/O Malit** died without having children of her own. According to the Kipsigis Customs such a person is allowed to marry another woman to bear children to keep her lineage alive. In this cause, there is no dispute that the deceased married two women namely: Jane Chepngeno Malit (*now deceased*) representing the first house and Priscilla Malit, the 2<sup>nd</sup> house. The deceased's first wife had four children namely:

- **Johana Chepkwony**
- **Emily Chepkoech Chumo**
- **Philip Chepkwony**
- **Johnstone Chepkwony**

The deceased's second wife i.e. Priscilla Malit had the following children:

- **Kennedy Chepkwony**
- **Lily Cherop**
- **Bernard Kipyegon Chepkwony**
- **Eric Chepkwony**
- **Cherotich Malit**

The Applicant and the Protestor appear to agree that the deceased's Estate be shared equally between the houses. The proposal is in line with the provisions of **Section 40 of the Law of Succession Act**. In the end the grant is confirmed and the Estate is distributed as follows:

- 1. **1<sup>st</sup> House - 2.1 Hectares.**
- 2. **2<sup>nd</sup> House - 2.1 Hectares.**

Each beneficiary in a house to get an equal share of their entitlement and this directive should be clearly shown in the schedule of distribution to be specified in a further affidavit. Each party to meet her own costs.

**Dated, signed and delivered in open court at Kericho this 30<sup>th</sup> day of May, 2014.**

**J. K. SERGON**

**JUDGE**

**In the presence of:**

- Applicant: present in person.

- Protestor: present in person.