



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**SUCCESSION CIVIL CASE NO. 173 OF 2005**

**IN THE MATTER OF THE ESTATE OF KIMUTTAI TUIMISING-DECEASED**

**SARAH CHERONO TUIMISING AND 3 OTHERS.....PETITIONERS**

**RULING**

This ruling relates to the distribution of the estate of the Late **KIMUTTAI TUIMISING**, who died on 22<sup>nd</sup> August 1980. The estate comprises two parcels of land known as **KERICHO/KABIANGA/781** measuring 4.2 hectares and **KERICHO/KABIANGA/753** measuring 0.7 of a hectare.

The said deceased was a polygamist with two wives. The first wife, **Tamirgoi Tuimising** has passed away. She and the deceased had six children namely;

1. Wilson Kiptonui Mutai, a son
2. John Kipkoech Mutai, a son
3. Tarboro Langat, a married daughter
4. Esther Mitei, a married daughter
5. Sarah Chumo, a married daughter
6. Mary Keter, a married daughter now deceased.

The deceased had seven children with the second wife **Sarah Cherono Tuimising**. These are:

1. Emily Langat, a married daughter
2. Daniel Kipruto Mutai, a son
3. Richard Kiprono Mutai, a son
4. Stanley Kipngetich Mutai, a son
5. Edna Chebet, a daughter, still single
6. Agnes Sigei, a married daughter
7. Doreen Koech, a married daughter.

When the hearing on the distribution of the estate came up on 16/11/2010, Mr.J.K.Kirui, the Learned Counsel for the objector, Wilson K.Mutai, and Mrs.J.R.Kimeto, the Learned Counsel for the Petitioners, messrs Sarah Cherono Tuimising, Daniel Kipruto Mutai, Wilson Kiptanui Mutai and John Kipkoech Mutai, recorded a consent to the effect that distribution of the estate of the said deceased should be determined by the Court on the basis of the parties' filed affidavits on the mode of distribution of the estate.

I have perused the file in this cause and the affidavits filed by the parties on the mode of distribution. In his affidavit sworn on 13/7/2007, the objector opined that the estate of the deceased should be divided as follows:

**Parcel No Kericho/Kabinga/781** should be distributed between John Kipkoech Mutai and Wilson Kiptanui Mutai, the former taking 4.75 acres and the latter taking 5.75 acres **while Parcel No Kericho/Kabianga/753 (measuring 1.75acres)** should go to Sarah Cherono Tuimising, the deceased's Second Widow, who is still living, alone. However, in his subsequent affidavit sworn on 14<sup>th</sup> December 2008, the objector changed turned and opined that while land title No Kericho/Kabianga/781 should be distributed as earlier proposed, land title No Kericho/Kabianga/753 should be distributed equally between John Kipkoech Mutai and Wilson Kiptanui Mutai, each taking 0.875 of an acre.

In her affidavit sworn on 30/10/2007, the 2<sup>nd</sup> widow, Sarah Cherono Tuimising, and in their joint affidavit sworn on 30/10/2007, the children of the 2<sup>nd</sup> widow, Sarah Cherono Tuimising, all agree that the estate should be distributed among the two sons of the second wife namely Wilson K. Mutai and John K. Mutai, the first taking 3.775 acres and the latter 2.775 acres and the three sons of the first wife namely Richard K. Mutai and Stanley K. Mutai each taking 1.411 acres and Daniel K. Mutai taking 1.729 acres while the second widow, Sarah Cherono Tuimising takes one acre.

The daughters of Sarah Cherono Tuimising have in their affidavit sworn on 30/10/2007 indicated that they are happy with this mode of distribution in which they take nothing as married daughters. The daughters of the first house all of whom are married are said to have no interest in the distribution of the estate of their late father. It is not clear why the objector and the administrators of the estate of the deceased desired to have the decision on the distribution of the estate made by the Court when all of them and the daughters of the deceased are in agreement that the estate should be distributed as aforesaid. Be that as it may, I hold that it is mete and just that the estate be distributed as agreed by the heirs who are living on the land.

Accordingly, I order that the estate of the late Kimutai Tuimising shall be distributed as follows:

**A Land Parcel No Kericho/Kabianga/781** measuring 4.2 hectares shall go to the following in the shares shown

1. Wilson K.Mutai shall take 3.775 acres
2. John K.Mutai shall take 2.775 acres
3. Richard K.Mutai shall take 1.411 acres
4. Stanley K.Mutai shall take 1.411 acres
5. Sarah Cherono Tuimising shall take 1.00 acre

**B Land Parcel No Kericho/Kabianga/753** measuring 0.7 of a hectare shall go to Daniel K. Mutai.

Hopefully, this distribution will set to rest the anxiety of the parties and hopefully they will live harmoniously on the land they have inherited without disturbing each others peace. The Grant is confirmed on these terms and a Certificate of the Confirmed Grant shall issue accordingly. Each party shall bear its own costs.

**DATED at KERICHO** this 18<sup>th</sup> day of January, 2011

**G B M KARIUKI**

**RESIDENT JUDGE**

**COUNSEL APPEARING:**

Mr.J.K.Kirui, Advocate, for the Objector  
Mrs.J.R.Kimeto, Advocate, for the Petitioner  
Mr.Bett, Court clerk