



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERICHO**  
**SUCCESSION CAUSE 32 OF 2007**

**JOSEPH RONGOEI KERICH ..... DECEASED**

**AND**

**1. SAMWEL KIBET BORE .....} 1<sup>ST</sup> PETITIONER**

**2. GRACE CHEPCHIRCHIR KERICH .....} 2<sup>ND</sup> PETITIONER**

**RULING**

**Confirmation of grant of letters of administration**

**I: Summons application dated 7<sup>th</sup> December, 2007**

1. The deceased Joseph Rongoei Kerich died on 22<sup>nd</sup> June, 2004 aged 52 years old at Kapsaos Kericho of Malaria.
2. Letters of grant of Probate was applied on 6<sup>th</sup> February, 2007. As the widow had two minor children at that time it was necessary under **Section 58** of the Act that a minimum of two administrators be appointed.
3. This was so done. The widow and her first born son were appointed administratrix/ administrator of the said estate.
4. A Gazette notice was issued on 6<sup>th</sup> February, 2007 the same date as the application of this grant having been filed and without the orders of the Hon. Judge. This was irregular by the Registrar – Deputy but is a system established at that time in all the files I had come across.
5. On 7<sup>th</sup> December, 2007 the son administrator applied for confirmation of grant together with his mother and widow to the deceased.
6. The apportionment of the deceased assets that consisted of land parcel Kericho/Londiani/Kedowa Block Chebawor 327 and plot No. 8869/15 at Kapsaos Trading Centre assorted shares in various Tea factories and institutions were apportioned only between the 1<sup>st</sup> son and administrator herein all shares. The widow some shares.
7. The son, Plot No. 8869/15 (0.024ha) Simon K. Bore.

8. Land parcel Kericho/Londiani/ Kedowa Block (Chebewor) 327 son Geoffrey K. Bore 2.31ha.

9. The other four children including the eldest daughter received nothing.

10. This court was alarmed at this apportionment. The court was informed that there are other ancestral land for the grandfather that is to be shared with the two minor children. No provision had been made for them.

### **III: Findings**

11. Under **Section 35** of the **Law of Succession Act** where a surviving spouse is left with a child or children then

*i) The personal and household effects of the deceased belongs to that spouse absolutely*

*ii) A life interest in the whole residue of the net intestate estate provided that this determines on the remarriage of a widow.*

*iii) The surviving spouse has powers to apply all or any part of the capital of the net estate.*

*iv) Where there are minors, such minors representative may apply to court for the apportionment of his shares.*

12. There is therefore required that all the survivors be apportioned a share, of the estate. In this probate it is important to note that there are four siblings of whom two are minors when the deceased passed away. Who were not apportioned any entitlement.

13. The elder son stated that this was because the elder daughter aged 31 years old was married. He went further to explain that the minors will get apportion in their grand fathers estate where possible their mother may or is residing. The third son had already been given land during the deceased lifetime. No revocation by that son was filed of this fact.

14. I find that because minors were involved there must be two administrator /administratrix as provided under **section 58** of the Law of Succession Act. I further find under **section 41(2)** this court has powers to “refer back a matter for consideration of confirming the identity shares and interest of persons beneficial entitled to the estate inter alia”.

15. The property of land is identifiable. The shares is what is uncertain. Their total value is unknown. It should be able to be a good income. This should be in monetary terms invested for the minors after identifying the shares.

16. I decline to grant that the matter be confirmed as such. I accordingly refer the matter back for consideration and on the welfare of the minors. Costs in the estate.

**DATED** this 16<sup>th</sup> day of June, 2009 at **KERICHO**

**M.A. ANG’AWA**

**JUDGE**

**Advocates**

Both petitioners/applicants – present in person