



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

**Succession Cause 365 of 2007**

**IN THE MATTER OF THE ESTATE OF**

MARTHA CHEPNGENO KETER.....DECEASED  
**AND**

MOSES C. A. TERER .....1<sup>ST</sup> PETITIONER  
KENETH K. CHEPKWONY.....2<sup>ND</sup> PETITIONER

IN THE MATTER OF AN APPLICATION FOR CONFIRMATION OF  
TEMPORARY GRANT OF LETTERS OF ADMINISTRATION

**RULING**

(Number 3)

**I: Clarification under Rule 41(2) of the Probate and Administration Rules.**

1. This court sought further clarification in this Probate matter in the Ruling No.1 and No.2 herein. The Probate matter concerned the Estate of the late Martha Chepngeno Keter aged 85 years old on 30<sup>th</sup> April 2007 at the time she passed away.
2. She was a progressive woman as at the time of her death her assets was a parcel of land L.R. Kericho/Sosiot/534 measuring 10.8 ha. She had two bank accounts with the Standard Chartered Bank amounting to Ksh.492,000/= and the Kenya Commercial Bank amounting to Ksh.622,373.60.
3. The deceased was survived by three sons and six daughters who were aged, sons 52, 39, 38 years whilst the daughters were 60, 57, 51, 48, 45 & 43 years respectively. The daughters were disclosed as married but there was one Beatrice, that this was not indicated, namely if she was married or not.
4. At the first application for letters of grant to be confirmed, the applicants through their advocate failed to disclose that they had sisters. They approved the assets almost equally amongst themselves. Namely the 1<sup>st</sup> petitioner and son – Moses C. A. Terer was allocated 12.6 acres whilst the other two sons were allocated 7.2 acres each of land. All three were to give moneys to the 1<sup>st</sup> and 3<sup>rd</sup> son but nothing to the sisters.
5. After seeking further clarification a further affidavit had now been filed apportioning Ksh.30, 000/= each to the sisters only but all the balance of moneys and land went to the 3 male sons.

6. The advocate on behalf of the applicant informed this court that the family sat, decided and thus he did not wish to interfere with the apportionment. That the said grant now be confirmed.

## **II. Opinion**

7. Letters of grant intestate was issued temporary on 18<sup>th</sup> September 2008 (by G.B.M. Kariuki J.). The grant notice had first been placed in the Kenya gazette (28<sup>th</sup> November, 2007) before it was issued (6<sup>th</sup> December 2007). Six months is required to lapse whilst parties gather the estate before confirmed letters are applied for. In this case the application was made a month later on 14<sup>th</sup> October 2008. This application was not set down for hearing by the advocate until 7<sup>th</sup> May 2009 for 11<sup>th</sup> June 2009.
8. The time lapse is important to be observed unless the parties apply to confirm the grant earlier but the law requires this be done after three (3) months has lapsed.
9. Apportionment of assets amongst children of the deceased must be equal and according to houses. There are no houses disclosed in this grant. The widower to the deceased's has not been mentioned.
10. In the **Rono v Rono & Anor. (2005) KLR 538** case the daughters are entitled to the estate of the deceased equally with their male counterparts. In this Probate matter the three male survivors have kindly agreed to apportion to each daughter to the deceased Ksh.30,000/= each. This though is not equality between them. The sums in the bank is Ksh.492,000/= Standard Chartered Bank and the sum of Ksh.622,373.60 in Kenya Commercial Bank. This is a total of Ksh.1,014,373.60. Out of this sum the daughters are to get Ksh.180,000/= amongst the six of them. The three sons would retain the land and the balance of moneys.
11. It is the task of an advocate dealing with Probate matters to advise their clients the workings of the law of succession and the apportionment under the act. The advocate relied on Customary Law which is only applicable if the deceased died prior to the act. Our laws are to be progressive.
12. In this matter I would rule that the sum of Ksh.1,014,373.60 be apportioned equally amongst all the children at Ksh.100,000/= per child. Therefore the sum from Account No.075-1370-60363 – Kenya Commercial Bank of Ksh.622,373.60 be paid to the daughters namely;-

- |  |               |   |                |
|--|---------------|---|----------------|
| 12.1. Ruth Cheruto Koske               | aged 60 years | - | Ksh.100, 000/= |
| 12.2. Jane Cheronno Koske              | aged 57 years | - | Ksh.100, 000/= |
| 12.3. Ann Chelangat Keter              | aged 51 years | - | Ksh.100, 000/= |
| 12.4. Beatrice Chepkirui               | aged 48 years | - | Ksh.100, 000/= |
| 12.5. Rael Chepkemai Keter             | aged 45 years | - | Ksh.100, 000/= |
| 12.6. <b>Rosemary Chepkoech Taalam</b> | aged 43 years | - | Ksh.100, 000/= |

The sum from the Standard Chartered Bank Ltd Account No.01501532815 of Ksh.492, 000/= be apportioned to;

- 12.7. Moses C. A. Terer aged 52 years - Ksh.100, 000/=
- 12.8. Henry Kiplagat Chepkwony aged 39 years - Ksh.100, 000/=
- 12.9. Kenneth K. Chepkwony aged 38 years - Ksh.100, 000/=
13. The balance sum of Ksh.22,373.60 and Ksh. 192,000/= respectively be used for costs to the estate and payment of any expenses.
14. There is the 10.8 hectares divided amongst the three sons. Failure to pay sum due the daughter that the daughters be apportioned the land parcel equally amongst the nine children.
15. The costs be in the Estate.

**Dated this 30<sup>th</sup> day of November 2009 at Kericho**

**M. A. ANG'AWA**

**JUDGE**

**Advocates**

D. O. Akinyi instructed by Akinyi & Co. Advocates for administrators/applicant – present.