



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

**Succession Cause 382 of 1998**

**IN THE MATTER OF THE ESTATE OF STEPHEN KIBET ARAP CHUMO**

**EDWIN BETT.....1<sup>ST</sup> APPLICANT**

**DAVID BETT.....2<sup>ND</sup> APPLICANT**

**FRANCIS BETT.....3<sup>RD</sup> APPLICANT**

**BETTY BETT.....4<sup>TH</sup> APPLICANT**

**VERSUS**

**MARY CHEPKIRUI CHUMO (*Administratrix of the estate of the deceased*)..RESPONDENT**

**JUDGMENT**

The late Stephen Kibet arap Chumo died on 4<sup>th</sup> March 1997. His widow Mary Chepkurui Chumo petitioned for letters of administration. The letters of administration were issued to the petitioner on 29<sup>th</sup> April 1999. The grant was subsequently confirmed on 28<sup>th</sup> November 2005. The petitioner proposed to distribute the deceased's estate as follows:

<b>NAME</b>	<b>DESCRIPTION OF PROPERTY</b>	<b>SHARE OF HEIRS</b>
Mary Chepkirui Chumo	A/c No. 324989 Barclays Bank of Kenya	Whole Share
Mary Chepkirui Chumo	Title No. Kieseges/Subukia West Block 4195 (Kipsigis Tugen)	Whole Share
Mary Chepkirui Chumo	Title No. Kericho/Mogogosiek 164 (0.8 HA)	Whole share
Mary Chepkirui Chumo	Title No. NKU MUNICIPALITY Block 24	Whole Share
Mary Chepkirui Chumo	Plot No. 631/511 Kericho	Whole Share
Mary Chepkirui Chumo	Plot No. 28 Mogogosiek	Whole Share
Mary Chepkirui Chumo	Plot No. 12 Kaptebengwet (8.6) 17.5, 8.0	Whole Share
	Title No. Kericho/Mogogosiek/559. 556 & 566 (34.1 hectares)	
Mary Chepkirui Chumo	3.1 Hectares	Whole Share

Paul Bett	3.1 Hectares	
Rose Chepkemoi	3.1 Hectares	
Florence Chepkorir	3.1 Hectares	
Edwin Kimutai	3.1 Hectares	
Peter Kipkoech	3.1 Hectares	
Irene Chelangat	3.1 Hectares	
Hannah Cheronno	3.1 Hectares	
David Cheruiyot	3.1 Hectares	
Francis Kippngetich	3.1 Ha	
Sophia Chepkirui	3.1 Ha	
Paul Bett	Title No. NKU MUNICIPALITY 24/1805	Whole Share
Mary Chumo	Title No. NKU MUNICIPALITY 24/1807	Whole Share
Rose Chepkemoi	Title No. NKU MUNICIPALITY 24/1808	Whole Share
Florence Chepkorir	Title No. NKU MUNICIPALITY 24/1819	Whole Share
Edwin Kimutai	Title No. NKU MUNICIPALITY 24/1815	Whole Share
Peter Kipkoech	Title No. NKU MUNICIPALITY 24/1812	Whole Share
Irene Chelangat	Title No. NKU MUNICIPALITY 24/1811	Whole Share
Hannah Cheronno	Title No. NKU MUNICIPALITY 24/1806	Whole Share
David Cheruiyot	Title No. NKU MUNICIPALITY 24/1816	Whole Share
Francis Kipngetich	Title No. NKU MUNICIPALITY 24/1818	Whole Share
Sophia Chepkirui	Title No. NKU MUNICIPALITY 24/1821	Whole Share

On 7<sup>th</sup> April 2006 Edwin Bett, David Bett, Francis Bett and Betty Bett filed a summons seeking for revocation of the grant, on the grounds that there was material misrepresentation and withholding of material facts before the grant was confirmed. However when this application came up for hearing, the petitioner Mary Chumo did not enter appearance nor did she file any replying affidavit. Based on the information that was before the court, namely that some beneficiaries who purportedly signed the consent were deceased before the consent was executed and that the estate was being distributed against the provisions of the law.

This court revoked the grant and all the consequential transactions effected through the said grant. The

court found that the petitioner was still ranked in priority and directed that another grant be issued jointly with one of the applicants namely Edwin Bett. The two administrators were directed to apply for the confirmation of the grant.

Mary Chepkurui Chumo filed the summons for confirmation and proposed to distribute the deceased's estate as per paragraph 4 of her supporting affidavit. Edwin Kimutai Bett also filed an affidavit proposing a different mode of distribution. According to the affidavits of protest the proposal by Edwin is consented to by three other beneficiaries namely Betty Chemutai Bett, David Cheruiyot Bett and Viola Chemeno Bett. The proposed distribution by the protestor is contained under paragraph 6 and 7 of his affidavit.

The protestor's proposal is at variance with the proposal by the petitioner. The deceased was survived by a widow and children from one household thus his estate should be determined according to the provisions of section 35 of the Law of Succession. According to Section 35, where a deceased person is survived by one spouse and children, the personal and household effects of the deceased vest upon the spouse. Thus the widow is also entitled to the life interest in the whole residue of the net intestate estate. The widow is also given the powers to make appointment of the estate by way of gifts to the children. The children can also apply to court to be granted a share of the deceased's estate. The court can determine the portion to be allocated to a child. Otherwise the widow is entitled to enjoy the residue of the net estate and upon her death, the net estate is supposed to revolve upon the surviving children in equal shares.

In this particular case, the widow has decided how she would like to distribute the deceased's estate. If she had chosen to hold the entire estate, she was at liberty to hold all the assets in trust and upon her death that is when her children or the children of the deceased would get a share. In this case the proposal by the petitioner has to be approved because she is the one with priority over the protestor who is the son. The petitioner has exercised her power of appointment and the proposed distribution has taken into consideration all the beneficiaries.

There is a contention by the protestor that two of the beneficiaries namely Hannah and Florence are married daughters. Unfortunately the law of succession does not discriminate on the basis of marital status or gender unless the daughters had denounced their interests in the deceased's estate. This court cannot exclude them from their father's estate. Accordingly the letters of administration should be confirmed according to the proposal by the widow Mary Chepkirui Chumo as contained on paragraph 4, 5 and 6 of her supporting affidavit. This being a family matter each party shall bear their costs of this litigation.

It is so ordered.

**Judgment read and signed on 23<sup>rd</sup> day of May 2008**

**M. KOOME**

**JUDGE**