



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KERICHO
Succession Cause 8 of 2003

IN THE MATTER OF THE ESTATE OF EZEKIEL CHEPKWONY ALIAS
KIPKEMOI A. CHEPKWONY (DECEASED)

AND

MARTHA CHELANGAT CHEPKWONY.....PETITIONER

VERSUS

HELLEN CHEMUTAI OBJECTOR

JUDGMENT

Hellen Chemutai, on behalf of the 2nd widow of the late Ezekiel Chepkwony (deceased) who died on the 4th day of June 1984 applied for the revocation of the grant of letters of Administration Intestate that had been issued to Martha Chelangat Chepkwony on 28th September 1988.

By a consent order recorded by both parties on 21st July 2003, two administrators were appointed to jointly administer the estate of the deceased, that is, Ismael Chesimet representing the first house of the deceased and Hellen Chemutai representing the second house.

The parties further agreed that the issue of distribution be determined by way of arbitration and thus it was referred by the consent of the parties Hon. Mr J. K. Ng'eno the Deputy Registrar who issued his ruling on 6th July 2005.

Pursuant to the said arbitration ruling, the objector/applicant, Helen Chemutai, filed the summons for confirmation of the grant which is the application before me for determination. The applicant has proposed a mode of distribution which is contained under paragraph 5 of the affidavit in support of the summons for confirmation and suggest the following mode of distribution: -

(a) (i) Ismael Chesimet - Kericho/Kimolwet/163 - 13.75 acres.

(ii) Hellen Chemutai - }Kericho/Kimolwet/163 - 13.75 acres.

Betsy Chebet Koech - }

(b) (i) Ismael Chesimet - Kericho/Kimolwet/331 - 3 acres.

(c) (ii) *Hellen Chemutai* - } **Kericho/Kimolwet/163 – 13.75 acres.**

Betsy Chebet Koech - }

(d) (i) *Ismael Chesimet* – **Kipsigis – Tugen Farm Subukia – 2 acres.**

(ii) *Hellen Chemutai* - } **Tugen Farm Subukia – 2 acres**

(ii) *Betsy Chebet Koech* - }

(e) (i) *Ismael Chesimet* – **8,000 bushes of tea in Kericho/Kimolwet/330 & 331**

(ii) *Hellen Chemutai* - } **3,000 bushes of tea in**

Kericho/Kimolwet/163.

Betsy Chebet Koech - }

(f) (i) *Ismael Chesimet* - **Litein Tea Factory Co. Ltd – 19.5 shares**

(ii) *Hellen Chemutai* - } **Litein Tea Factory Co. Ltd – 19.5**

shares

Betsy Chebet Koech - }

Ismael Kimutai Chesimet on behalf of the first house filed what I would call an affidavit of protest where he suggested that the *status quo* be retained so that the first house which has occupied **KERICHO/KIMOLWET/163** measuring 27.5 since 1937 should retain it while the second house that has occupied **KERICHO/KIMOLWET/168** since 1972 should be maintained.

The petitioner has no objection to other properties being shared equally. And the only dispute is as to how the deceased parcel of land **KERICHO/KIMOLWET/163** should be shared among the beneficiaries. There is also no dispute as to who are the beneficiaries of the deceased. The deceased was survived by two houses and therefore his estate should be determined according to **Section 40 of the Law of Succession Act** which provides:

Section 40 (1)

1. Where and intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residence of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

2. The distribution of the personal and household effects and the residence of the net intestate within each house shall then be in accordance with the rules set out in section 35 to 38”

It is apparent from the material on record that the deceased was survived by his two wives who subsequently died in 1998. Each wife had a total of nine children. The 1st wife was living on parcel number **KERICHO/KIMOLWET/163** which is one kilometers away and the second house was settled on **KERICHO/KIMOLWET/168** which is measuring four acres. According to the applicant, the deceased had other properties namely Tugen Farm Subukia measuring four acres and shares at Litein Tea Factory Co. Ltd which she has suggested should be shared equally. Ismael Kimutai Chesimet does not make any mention of those two properties and thus his contention is that his mother’s household should keep the property known as **KERICHO/KIMOLWET/163** measuring 27.5 acres which they have occupied since 1937. This argument although quite logical is not in line with the provisions of **Section 40**

of the Law of Succession which provides that the property be shared equally according to the deceased number of children. Of course there is no limitation to the deceased children based on their gender or marital status. However one would say the above **Section 40** did not take into account the fact that the first widow having been married to the deceased perhaps much longer than the second wife, might have made substantial contribution in acquisition of the assets before the entry of the second widow who is said to have been settled on another parcel of land thirty (30) years later. This logic can be understood from the argument by Ismael Kimutai Chesimet but unfortunately this court has a duty to determine the matter according to the provisions of the statute. Accordingly, the deceased estate should be shared equally among his two houses and each representative of each household to be registered in trust of the other beneficiaries in equal shares. When subdividing **KERICHO/KIMOLWET/163**, the parties developments by the first household should be left to them and since it makes sense for the second house to retain the whole four acres of **KERICHO/KIMOLWET/168** together with the developments therein, their share of **KERICHO/KIMOLWET/163** should be reduced by two acres and they should therefore get 11.75 acres or thereabout.

Accordingly, the grant of letters of Administration is confirmed in the following terms: -

HOUSE OF MARTHA CHEPKWONY

- a) **KERICHO/KIMOLWET/163** – 15.75 acres or thereabouts with tea bushes and all developments.
- b) Tugen Farm – 2 acres
- c) Litein Tea Factory Co. Ltd – 19.5 acres.

HOUSE OF ESTHER CHERONO

- a) **KERICHO/KIMOLWET/168** – 4 acres
- b) 11.75 or thereabout acres to be excised from **KERICHO/KIMOLWET/163**
- c) Tugen Farm – 2 acres
- d) Litein Tea Factory Co. Ltd – 19.5 acres

Each party to bear their own cost of this litigation.

It is so ordered.

Judgment read and signed at Kericho on 5th October 2006.

MARTHA KOOME

JUDGE