



**In re Estate of Kimoi Chirhir Chembulet (Deceased) (Probate & Administration
160 of 2023) [2024] KEHC 11109 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11109 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 160 OF 2023
RN NYAKUNDI, J
SEPTEMBER 20, 2024**

IN THE MATTER OF THE ESTATE OF KIMOI CHIRHIR CHEMBULET (DECEASED)

BETWEEN

**LILIAN JEPKEMOI KIPKOSGEI 1ST PETITIONER
FLORA JERONO KIMUTAI 2ND PETITIONER
RAEL JEMUTAI KIMAIYO 3RD PETITIONER**

AND

**SELLY KIBET 1ST RESPONDENT
JAMES CHEMBULET 2ND RESPONDENT
ALBINA KOECH 3RD RESPONDENT
GRACE TABSIMEI CHELAI 4TH RESPONDENT**

RULING

1. What is pending before me for determination is the mode of distribution to be adopted during the distribution of the intestate estate of the deceased herein. The Petitioners filed an affidavit for the proposed mode of distribution dated April 18, 2024, where they deposed as follows:

1. That the deceased was survived by the following dependants;

Flora Jerono Kimutai Daughter

Rael Jemutai Kimaiyo Daughter

James Kipyego Chembulet Son

Evans Kibet Chembulet (deceased) Son (Selly Kibet)



Lilian Jepkemboi Kipkosgei Daughter
Charles Chembulet (deceased) Son (Grace Tapsimei)
Stephen Chembulet (deceased) Son (Albina Koech)

2. That the identification and shares of all persons beneficially entitled to the said estate have been ascertained and determined as follows:

Sergoit/sergoit [moiben Sergoit] 1- measuring 100.0 Acres. To be sub-divided as hereunder:

Chembulet Sawe (40 Acres)

1st House

Charles Chembulet 3 Acres
Stephen Chembulet 3 Acres
James Kipyego Chembulet 3 Acres
Evans Chembulet 3 Acres

2nd House

Jacob Chembulet 12 Acres

3rd House

Kibet Chembulet 6 Acres
Kibiwot Chembulet 6 Acres

Sold

Daniel Chirchir 2 Acres
Andrew Kangogo 2 Acres

Kimoi Chirchir Chembulet (60 Acres)

Charles Chembulet (deceased) 9.75 Acres (Grace Tapsimei)
Stephen Chembulet (deceased) 9.75 Acres (Albina Koech)
James Kipyego Chembulet 9.75 Acres (James Chembulet)
Evans Kibet Chembulet (deceased) 9.75 Acres (Selly Kibet)
Lilian Jepkemboi Kipkosgei 6 Acres
Rael Jemutai Kimaiyo 6 Acres
Flora Jerono Kimutai 6 Acres
Andrew Kangogo 1 Acre
Kimoi Tekerei 2 Acres

Summary of Distribution of 100 Acres

Jacob Chembulet 12 Acres
Kibiwot Chembulet 6 Acres
Kibet Chembulet 6 Acres



Charles Chembulet (deceased) 12.75 Acres (Grace Tabsimei)
Stephen Chembulet (deceased) 12.75 Acres (Albina Koech)
James Kipyego Chembulet 12.75 Acres (James Chembulet)
Evans Chembulet (deceased) 12.75 Acres (Selly Kibet)
Flora Jerono Kimutai 6 Acres
Rael Jemutai Kimaiyo 6 Acres
Lilian Jepkemboi Kipkosgei 6 Acres
Kimoi Tekerei 2 Acres
Andrew Kangogo 3 Acres
Daniel Chirchir 2 Acres

3. That all beneficiaries have given their consent to the aforesaid mode of distribution and have no objection to the confirmation of the Grant as presented.
 4. That we therefore pray that the Grant of Letters of Administration be confirmed and the aforesaid property be distributed as set out herein above.
2. The Objectors/Respondents also filed an Affidavit which was sworn by Selly Kibet dated May 2, 2024 for the proposed mode of distribution in which she deposes as follows;
1. That I am the 2nd Respondent herein duly authorized by the 1st, 3rd and 4th Respondents, with the full knowledge of the facts appertaining to this suit hence competent to make and swear this affidavit.
 2. That I am the daughter-in-law of the late Kimoi Chirchir Chembulet whose estate these proceedings relate to.
 3. That at the time of her death the deceased left behind the following children Charles Chelal Chembulet (dcd), Flora Chepkirong Kimutai, Rael Jemutai Kimaiyo, Stephen Kipkoech Chembulet (dcd), James Kipyego Chembulet, Evans Kibet Chembulet (dcd) and Lilian Jepkemboi Kipkosgei.
 4. That at the time of her death the deceased had distributed her property as per an oral will that was tape recorded and hand written by one Edwin Kipruto Malakwen.
 5. That the said will was read out to us during the commemoration of the deceased in the presence of all family members and we have all been living as per her wishes.
 6. That I propose that the estate be distributed as hereunder as per her last wishes.



Item	Property	Name	Share
	Sergoit/sergoit (moiben Sergoit)/1 measuring 40 Acres	Andrew Kangogo	2 Acres
		Collins Kiprono	2 Acres
		James Kipyego Chembulet	8 Acres
		Charles Chelal Chembulet	8 Acres
		Evans Kibet Chembulet	8 Acres
		Stephen Kipkoech Chembulet	8 Acres
		Charles Chelal Chembulet James Kipyego Chembulet Evans Kibet Chembulet	4 Acres to be shared
	Koibarak Business Enterprises shares. (Koibarak bar and restaurant, Iten Plot 935, Iten Plot 130, Langas Plot 14/42, Safaricom, Co-operative bank, M-pesa, Kruger (Emoo))	Flora Chepkirong Kimutai Rael Jemutai Kimaiyo Lilian Jepkemboi Kipkosgei	To be shared equally
	Mosop/ Kaptarakwa Plot No. 100	Collins Kiprono	6 acres plus house
		Charles Chelal Chembulet Stephen Kipkoech Chembulet James Kipyego Chembulet Evans Kibet Chembulet	9 acres to be shared equally
	Trailer	Charles Chelal Chembulet Stephen Kipkoech	To be shared equally



		Chembulet James Kipyego Chembulet Evans Kibet Chembulet	
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7. That our proposed mode of distribution is based on the deceased's wishes and we pray this Honourable court gives effect to her wishes.
 8. That it is just, equitable and in the interest of fairness that this Honourable Court does consider the facts and circumstances aforementioned in arriving at a just and fair mode of distribution.
3. I have gone through the record and none has objected to the confirmation of the said grant.

Resolution

4. In the instant case, how should the distribution be done? The provisions of Section 40 of the [Law of the Succession of Act](#) gives a guide on how an intestate will be distributed where the deceased was polygamous and was survived by the wives and children. The Section states:

“Section 40

1. Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue 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 residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”
5. In the case of *Lucy Nyaruai Gachoki v Loise Wambuo Gachoki Succession Cause No. 12 of 2006*, the court underscored the fact that section 40 of the [Law of Succession Act](#) is a useful guide in the administration of the estate of a deceased person.
 6. In the case of [Mpatinga Ole Kamuye vs Meliyo Tipango & 2 others](#) (2017) eKLR the court opined

“this court's view before distribution of the estate of the deceased under section 71 of the [Law of Succession Act](#) Cap 160, the court must satisfy itself that the beneficiaries of the estate are the legitimate beneficiaries of the estate: that there are assets that comprise of the deceased's estate and are available for distribution after settling all liabilities and having the net estate for distribution.”
 7. I have had occasion to peruse through the proposed mode of distribution as filed herein by both parties. This court is satisfied that the said mode of distribution as per the Affidavit dated April 18, 2024 sworn by the petitioners is in conformity with the principles of equity which is envisioned in the letter and spirit of the provisions of section 38 & 40 of the [Law of Succession Act](#). As a consequence of the above findings, a Certificate of Confirmation of Grant shall be in full and true inventory of the properties exhibited in the Affidavit by the Petitioners.
 8. Consequent, upon my findings above, I therefore decide as follows:



- a. A Certificate of Confirmation of Grant shall be generated by the Administrators for endorsement by this Court as a legal instrument to distribute the estate to the beneficiaries.
- b. That pursuant to section 83(g) of the *Law of Succession Act*, the Administrators are bound by law to submit a probate account to this court within 6 months' form today's date.
- c. In terms of Section 66 of the *Law of Succession Act*, Flora Chepkirong Kimutai, Rael Jemutai Kimaiyo and Lilian Jepkemboi Kipkosgei be and are hereby appointed administrators of the intestate estate of the deceased.
- d. That each party be at liberty to apply.
- e. Costs of this probate be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET, THIS 20TH DAY OF SEPTEMBER 2024

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R. NYAKUNDI

JUDGE

In the Presence of

Mr. Songok

Kogo for the Respondent

