



**In re Estate of Chemjor Cheptalam (Succession Cause 9 of 2017)
[2024] KEHC 14829 (KLR) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14829 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
SUCCESSION CAUSE 9 OF 2017
RB NGETICH, J
NOVEMBER 21, 2024
IN THE MATTER OF THE ESTATE OF CHEMJOR CHEPTALAM**

BETWEEN

PHILIP CHEMJOR 1ST PETITIONER

EDMOND CHEMJOR 2ND PETITIONER

AND

STEPHEN CHEMJOR 1ST OBJECTOR

JULIUS KIPKORIR CHEMJOR 2ND OBJECTOR

JUDGMENT

1. The 1st petitioner Philip Chemjor initially filed this succession cause in Eldoret in 2012 after the objectors failed and/or neglected to take out letters of administration of the estate of the deceased who died on 10th February 2000 by virtue of being the eldest sons and of 2nd widow of the deceased. The succession cause was later transferred to Kabarnet in 2017 and a grant was issued in favour of the 1st petitioner. He proceeded to file an application for confirmation of grant on two assets being: Kituro/Chapchap/202 and 407.
2. Before the grant could be confirmed, the objectors filed an objection seeking revocation of the grant issued to the 1st Petitioner and also contested the mode of distribution of the estate. The 2nd petitioner, 1st and 2nd objectors were admitted as co-administrators of the estate by consent. Directions were given for the matter to proceed by way of viva voce evidence to determine mode of distribution.
3. On 28th April 2019 the petitioners filed an application dated 13th October 2018 setting out their proposed mode of distribution which was supported by the 3rd house and Michael Chemjor. The objectors filed their witness statements in support of their proposed mode of distributions. He allegedly included the properties of the interested party in his mode of distributions to wit parcels



numbers Chapchap/Kituro 158 and 235 prompting the court to grant leave to the interested party to join the succession cause and defend his assets.

Petitioner's Case

4. Pw1 Philip Chemjor testified that the beneficiaries appointed him to petition for grant and adopted written statement dated 18th April, 2019 as his evidence. On Cross-examination by Mr. Kibet for the 1st Respondent, he stated that Stephen Chemjor lived on plot no. 202/Kituro Chapchap where he had a cottage and it is true that he constructed a building but he does not know the number of rooms; that he is aware there are rental houses on the property and the 2nd objector Julius and the 1st objector Stephen constructed one house each. He further stated that on 2nd December, 1985, Stephen moved from the plot 202 to plot 323 which he had been allotted by their father, the deceased herein.
5. He further stated that the 2nd objector Stephen left his house for his parents to occupy and it is not true that it was his father and Stephen who approached his uncle George Cherono Rop to give him a plot no. 151/Kituro. He stated that there was no transaction between George Cherono Rop and the deceased herein. He denied that his siblings approached him to seek a piece of land for their uncle George Cherono Rono and that he did not have any record that plot no. 323 belonged to their father. He stated that his mother Sokome Chemjor has never cultivated plot no. 323. He said Plot no. 323 was family land and that it is not his father's land.
6. The 1st petitioner further stated that Plot no. 151 where he lives was a gift from his uncle and that he paid for it. He stated that at the land board that it was indicated as a gift and that it was only the 1st objector Julius who was at Land Board with him in 1995 and there was no sale agreement between him and George Cherono Rop his uncle. He stated that he has a brother called Samuel Sarmat Chemjor and confirmed that he is the one who demolished his cottage on plot 202.
7. He said Samuel Sarmat Chemjor returned from abroad but did not occupy plot 202 and has not occupied since then. He confirmed that the 1st objector Stephen Chemjor was collecting rent on his one house on plot 202 when their father was still alive.
8. On being Cross-examined by Mr. Olonyi for 2nd to 4th Respondents, he stated that the Rental houses on No.202 were constructed by 1st objector Stephen Chemjor and 2nd objector Julius and each land has rental units which remain rental houses up to now. He stated that he did not know whether the two took loans and he is aware that the 1st and 2nd objector took loan for purpose of constructing the rental houses on plot 202 but did not know which financial institutions gave advanced them the loan.
9. He further stated that he is from the 2nd house and they are 6 children (2 deceased) in the house of Sokome Chemjor being Late Mrs. Margaret Tomno, Mr. Stephen Chemjor, Mr. Julius Chemjor, Mr. Michael Chemjor, pw1 Philip Chemjor and Paulo Chemjor. That the 3rd wife Kobilu Chemjor's children are Joseph Berai, Kabon Berai, Samuel Chemjor, Leah Lokitela, Edmond B. Chemjor and Omar Chemjor. He further stated that the 2nd wife Sokome Chemjor still lives on plot 202/Kituro Chapchap while the 3rd wife Kobilu Chemjor lives on her first husband Berai's land and Joseph Berai lived with his mother lived in plot 202 and that his father the deceased herein was his guardian before he was shown his land. He said his father the deceased herein constructed a house for the 2nd wife Kobilu in plot 235 and did a ceremony and she has lived in that plot no.235 to date. He further stated that he is not aware that his father entered into negotiations with Raphael Cherutich who was a clansman and his father acquired plot number 235 from Raphael Cherutich.
10. He further stated that he did not know that plot 235 belongs to the Estate of his father and Joseph Berai is the legal holder of plot 235. That he did not know that he vacated plot no. 235 and constructed



home in parcel no. 249. He agrees that his father wanted to settle the two families peacefully. He said Parcels 323 and 152 do not belong to his father's estate. He further restated that his land is plot 151 which was allocated to him by his uncle George Cheronno Rop; that Plots 151, 152, 135 and 309 belonged to Cheptallam Cheronno his grandfather and it is true that plot 152 was given to his father by his grandfather and Plot no. 151 was given to his uncle George Cheronno Rop. That his uncle had a big chunk of land approximately 200 acres and his father had more children than his uncle George Cheronno Rop. He said his father and uncle spoke as brothers. He disagreed that plot 151 was given to his father Cheptallam Chemjor. He said he is not aware that his uncle George Rop gave plot 151 to his father and agreement was for it to go to him directly.

11. On cross examination by counsel for the 2nd Objector Mr. Olonyi, he stated that he is not aware that his father constructed a house for his stepmother Kobilu on plot Chapchap/235. He said tradition called pion in the lighting of fire so that a woman who has come to house may receive blessings to get children was done by his father to the 3rd wife in plot 202. He said he is aware that plot 235 initially belonged to Raphael Chebutuk a clansman who died in 1975 but he is not aware that his father negotiated a transfer of the land to Joseph Berai from Raphael Chebutuk.
12. He said that he is not aware that the transfer to Berai was to hold the same in trust for Samuel Chemjor and Daniel Chemjor and that he did not know that the property Chapchap Kituro/249 was inherited by Berai from his father and uncle named Chirchir Kibonsa who co-own plot no. 249.
13. He said his father left behind two houses and he wished to distribute his property equally between the beneficiaries from the two houses. He said parcel no. 151, 152, 135 and 309 belonged to his grandfather Cheptallam Cheboi. He said That he agrees that his uncle Chepkwony Cheptallam a brother to his father was given 135 and 309, his brother Stephen was allocated plot 323 and 152 both measuring about 5.2. acres and their uncle George Cheronno Rop who was the last born of his father's family got plot no. 151. He said he talked to his uncle George Cheronno Rop who had another parcel measuring about 200 acres at Sabatia Eldama Ravine and he agreed to give him plot 151; He said he attended Land Board around 1985 – 86 where the land plot 151 was transferred to him and his brother the 1st objector Julius was a witness on behalf of his father at the land board as their father was unwell at the time. He denied that the plot was given to him courtesy of agreement between his father and his brother Cheronno Rop.
14. He stated that he did not know that Plot no. 158 belonged to Kitilit and he is not aware that his father had plot Baringo/Kapropita/1091; further that he is not aware that there was an exchange involving his father and Kitilit regarding plot 158 and 1091. He further stated that he is not aware that Parcel nos. 158 and 235 belong to Daniel Omar and Edmond Chemjor and said Joseph Berai holds the two plots 158 and 235 in trust from Daniel Omar and Edmond Chemjor.
15. He said parcel number chapchap/Kituro/171, new number 407 belong to his father and he is not aware that his father sold the land to Joseph Kimochoch at Kshs.250,000/= neither is he aware that the said Kimochoch took possession of the land. He denied that his father sold the land to Kimochoch.
16. Pw2 Michael Kiprop Chemjor testified he is the son of the deceased herein Chemjor Cheptalam. He adopted his undated statement filed on 9th April, 2019 as his testimony. He said his father had two parcels of land being Nos. 202 measuring 7 acres and 407 measuring 0.26 acre and the beneficiaries are twelve but one being the first born had already been given plot 152 measuring 2 acres. He said the deceased's son Stephen Chemjor had obtained an identification card during the demarcation of Kituro area in 1967. He said their father had four parcels of land namely 202, 407, 152 and 323 but No. 323 was a buffer zone and during that time, their father decided that plot 152 be given to Stephen.



17. He said that they use to cultivate Plot No. 152 and Plot No. 323 was a buffer zone and the elders decided to share that small forest bordering the place where a dam has now been constructed and land was supposed to be given to the 2nd objector but instead 1st objector Stephen Chemjor had the land registered in his name. He said the 1st objector Stephen resides on plot 323 while him(pw2), the 1st objector Julius and the family of their late brother Paul live together with their mother on plot 202. He further stated that their father had three wives whereby Kaboon Beimok had 1 child; his mother Sokome Chemjor had 6 children; and Kobilo Chemjor had 4 children. That the third wife lives on the land of her former husband Berai with their stepbrother
18. He stated that 2nd Objector says he purchased plot No. 407 but he had not informed them that he purchased it from his father and the parcel is registered in the name of his father. He further stated parcels registered under the name Berai do not form part of the estate of his father. He stated that in his proposed distribution he has given the 2nd objector Julius Sigilai plot 407 and 0.4 acres of plot No. 202 when the two parcels of land are distributed everyone will get 0.6 acres. That Julius will get 0.66 acres and Stephen has a total of 5.2 acres.
19. On Cross-examined by Mr. Kibet, he said that he has excluded Stephen from the list of distribution and the 1st petitioner Philip has been included as plot No. 151, which does not belong to the estate of his father; that plot No. 151 was given to 1st objector by their uncle George Cheronno Rop. He further stated that Stephen, Julius and Paul constructed houses in 1988; that in 1988 Stephen and Julius approached their father and requested to put up rental houses so that they could get rent to pay fees for their children. He said in 1966 Stephen constructed two cottages on plot No. 202 and from 1975 to 1986 Stephen lived with his children in the two cottages. He said when Stephen lost a child, his father told him he could not bury the child in plot 202 but plot 323 and he complied and buried the child in plot 323.
20. He said his father allotted him land and he signed the agreement with Kiridam and that he used to collect rent and give the money to Julius, Stephen and Paul and in 2000 Kiridam moved out; He further stated that Kiridam constructed a permanent house in plot No. 415 which is registered in his name and 2nd objector's name. He said the 1st objector took the keys for the house from Kiridam for house constructed by Kiridam and that is what has brought issues. He says 1st objector wants 0.6 acre of plot 202. He said Stephen has 5.2. acres and that their father had told them parcels 152 and 323 should be left to Stephen and Stephen was to vacate plot No. 202.
21. On Cross-examined by Mr. Olonyi, he said that Kabon Beimok is the first wife of the deceased and restated that between 1976 and 1978 the 1st objector Stephen lost a child and his father insisted that the child should not be buried in 202. That he told him to bury the child in 323 and that Plot 202 did not belong to the 1st Objector and the 1st Objector is the registered owner of plot No. 323 which the elders including his father gave him and it is part of the 1st Objector's inheritance because his father had a hand in his registration of the land. He said that his father allocated plots 152 and 323 to Stephen during his life time and Plot 152 is 2 acres plot 323 is 3.2 acres. He further stated that parcel No. 152 is ancestral land which their father inherited from their grandfather Cheptalam Cheboi. He confirmed that their Uncle George Rop gave his parcel of land number 151 pw1 Philip. He said that he is not aware of the exchange of parcel No. Baringo/Kapropita/1091 and Chapchap/Kituro/158.
22. He confirmed that Joseph Berai is the son of kobilo the 3rd wife of the deceased herein who was remarried by his father death of her first husband Berai. He said that he is not aware that parcel's No. Chapchap/Kituro/158 and Chapchap/Kituro/ 235 were registered in the names of Joseph Berai in trust for Samuel Chemjor, David Chemjor and Edmond Chemjor but Parcel no. Chapchap/



- Kituro/407 belonged to their father and was ancestral land and he is not aware that Joseph Kimochoch purchased the land and 2nd Objector paid him back.
23. Pw2 was shown photographs of a house and he said it was constructed recently for the deceased's 3rd wife Kobilu Chemjor by all her children from the information he got from Joseph Berai and he cannot confirm if the house belongs to David and he did not know in which house Kobilu lives. He said the other house in the photographs is likely to be the house of Joseph Berai; that Joseph Berai has several parcels of land and he does not know which parcel he had constructed. That the deceased Paul is the last born of Kobilu and he cannot tell if the deceased said Plot No. 235 should go to Samuel Chemjor and David Omar and if 158 should go to Samuel Chemjor. He said that all the children except Stephen are entitled to a share of parcel No. 202
 24. Pw3 Sibilina Kabon Cheruiyot adopted her written statement dated 31st July, 2019. She said that Cheptalam Chemjor had 3 wives and had 4 parcels of land. She said the Land registered in the name of son of Berai does not belong to his brother Stephen was allocated plot 323 and 152 both measuring about 5.2. acres. He deceased Cheptalam and Berai is not Cheptalam's son.
 25. She said that before Stephen Chemjor got parcel No. 152 & 323 they belonged to Chemjor Cheptalam while Plot 151 was for George Cheronu and is not for the deceased herein Chemjor Cheptalam. She said Stephen has 2 parcels given by his father and the two parcels of land belonging to Cheptalam Chemjor should be given to all his children who have no land including Costher from the 1st house.
 26. On Cross-examination by Kiptoo holding brief for Kemboi for 1st Objector, she said that she got married in 1960 at Rosoka and in 1968 she was in her house in Emining and the 1st objector Stephen is her cousin (son of her uncle).
 27. She said during adjudication, she was in her marital home in Emining. she said when she came home she found Stephen and Michael having built in the land. She said the deceased's 1st wife of Cheptalam Kabon sired one daughter with Cheptalam and the 1st wife left when the 2nd wife got married.
 28. On Cross-examination by Mr. Olonye, she said that Berai and Chemjor were from the same clan and Kobilu got 2 children with Berai and 4 children with Cheptalam. She the two children sired by Berai with Kobilu lived in Bera's land an d2nd wife's son Paul who built far from the land in a plot he purchased.
 29. She said the deceased's father is Cheboi and his sons are Chepkwony who is her father and Chemjor Cheptalam. That the land parcel 152 which Stephen was given was for her grandfather Cheboi the it went to Cheptalam who gave Stephen; and Joseph Berai got land which belonged to his grandfather then t is father Berai.
 30. PW4 Coster Kabon Kigen testified that she is the only child form the deceased's 1st wife Kabon. She adopted her witness statement on 31st July, 2019 as evidence. She confirmed that her father the deceased herein had 3 wives her mother being her mother Kabon, 2nd wife Sogome and Stephen has 2 parcels given by his father her 3rd wife Kobilu. She said she was informed that his father gave the 1st objector Stephen 2 parcels of land. She said Kobilu had a son Joseph Berai when her father married her and they lived in their father's land and she later saw Joseph Berai go to his father's land. She said the children of Kobilu do not live in her father's land as all went to look for land for themselves after being chased away by the 2nd wife Sogome and her children. She said they also chased her away.
 31. She further stated that the deceased had given her plot number 152 to till to enable her pay school fees and the land is in the 1st objector Stephen's name. she said according to current law, she is entitled to a inherit a share from her late father's land. That all children of Chemjor born by Kobilu, Sogome and



- her late mother should be given land. She said she cannot visit home as she is normally chased away. she said when the 3rd wife Kobilo got married to her father, she moved into her mother's house but she was also chased away later.
32. On Cross-examined by Mr. Kiptoo, she said she is over 70 years and she cannot recall her year of birth but she is first child of Chemjor Cheptalam from the first wife. she said her mother was chased away when she was young and she went to stay with her grandmother at Kiptilit. She later returned when she was shown her father and she ploughed plot No.152 for school fees for one year. She said her mother lived in parcel 202 and Stephen was born in parcel 202. She said that there are houses build by Kirdam and she did know if the 1st objector Stephen also built. She said the 1st objector had his house in parcel 202 but she later learnt that he built elsewhere. That she was informed that when surveyors came, her father said Stephen be registered for the land because he had Identity card; she said it is not the land she was ploughing.
 33. She said the land where the 1st petitioner Philip lives was for her younger uncle and it borders the one she was ploughing. She said she wants a share of the land her mother lived I which measures about 7 acres and all children of Stephen has 2 parcels given by his father the deceased Cheptalam Chemjor should get a share.
 34. On Cross-examined by Mr. Olonye, she said Philip talked with their younger uncle and he gave him his portion of land and that the 3rd wife Kobilo lives with her children. She said knows Berai has his land but he did not know the parcel number and she did not know if Chemjor sold land to Kimojoj.
 35. PW5 Simon Bett aged 93 years adopted his Witness Statement filed on 17th December, 2018.He testified that the deceased Chemjor Cheptalam had 4 parcels of land and the 1st objector Stephen was given parcel no. 152 because he was the only one who had Identity Card in the family and the second plot 323 hived from Forest was also given by the deceased to the 1st objector Stephen and that's where the 1st objector lives. He said the two parcels given to the 1st objector measure a total of 5 acres.
 36. He said plot.202 is about 6 or 7 acres which is for the younger children who were still in school and the 1st objector Stephen is not supposed to get a share from it .He further confirmed that the 1st objector Stephen Chemjor lost a child around the year 1985 and his father refused him to bury the child in parcel 202 and he buried the child in parcel 323 and after burying the child, he did not go back to parcel 202 and was compensated for fruits he had planted but he later went to uproot fruits he had been compensated.
 37. He said the 1st objector built in parcel 202 by force and was not granted permission by his father. He said the late Cheptalam asked Michael to live in parcel 202 and compensate Stephen for fruits and Kirdam when came Cheptalam requested Michael to sign the contract with Kirdam.
 38. He said Kobilo's son joseph Berai was later shown his father Kibenai Chesaram Kitai's land. He said 3 boys one daughter sired by Cheptalam with Kobilo are entitled to Cheptalam's land and Cheptalam did not remove Kobilo to 249 but she moved to 249 due to conflict with co-wives. That the Parcels to be distributed is 202 and 407 which 171. He denied that Julius bought 407 from Tulel kimochoch but it returned to mzee Cheptalam and his family not for one person; that the land is for Chemjor Cheptalam which was for his father Cheptalama Cheboi.
 39. He confirmed that Cheptalam Cheboi had 2 sons – Chepkwony Cheptalam and Chemjor Cheptalam and a 3rd son George Rop born out of wedlock who gave land to Philip Chemjor Cheptalam
 40. On cross examination by Mr.Kiptoo he said that he has testified as an expert for Tugen and a person who knows the family and that he knows Tugen traditions well. He confirmed that Chemjor had 3



wives, Kabon Chemjor, had one daughter and left, Sogome Chemjor had 5 sons and a daughter. He confirmed that the 1st objector's child died in 1985 and was buried in 323 and did not go back. He further said the 1st objector Stephen build rentals in parcel 202 about the year 1999 when Chemjor Cheptalam was still alive.

41. On Cross-examined by Mr. Olonye, he said parcel 407 was returned to the family after deceased by Joseph Kimochoch who had purchased from the deceased and at that time Kimojoj lived in Kitale. He confirmed that Julius used the land and paid 250/= to Kimochoch to return the land. He said that parcel 249, 158 and 235 are registered in the name of Joseph Berai and the 3rd wife Kobilu lives in parcel 249 and her second son has built in plot no. 158.
42. PW6 Edwin Kipruto Tomno a retired senior chief confirmed knowing the Petitioner and the Objector Stephen Chemjor and Julius Chemjor and Interested Party Joseph Berai. He adopted Witness Statement filed on 17th December, 2018 as his evidence. He confirmed that Chemjor Cheptalam had 3 wives who were residing in his farm. He confirmed that the 3rd wife Kobilu Chemjor does not reside in parcel 202 but reside in the adjacent land with his son Joseph Berai though she resided in parcel 202 initially. Further that the 1st objector Stephen does not stay in parcel 202 but resides in adjacent land. He said he wrote a letter confirming dependants of the deceased and stated the deceased had 2 parcels and recalls parcel 202 where a meeting was held on the 17th September, 2016 to identify the beneficiaries.
43. On Cross-examined by Mr Kiptoo, he said parcel 202 has houses but he cannot confirm if they belong to Stephen and he cannot recall the parcel Stephen reside in but it is not 202. He said that the meeting he chaired was about identification of beneficiaries and he wrote a letter after the meeting; that he wrote a letter for succession in 2013 and the meeting of 2016 was to identify beneficiaries of the estate and the 1st objector Stephen was among attendees. He said he wanted to make sure no beneficiary was left out and he is not sure if minutes was signed by beneficiaries. He said that he was approached by one of the sons to identify beneficiaries and it is the prerogative of the chief to identify beneficiaries of a deceased person.
44. On Cross-examined by Mr. Olonyi, he said that he cannot confirm the date he wrote the first letter unless he is shown and that he gave a letter to Petitioner on 28th August, 2012; that the initial letter was interlocutory letter to file succession under new regulation and there was need to call a meeting to identify beneficiaries and it is the petitioner Philip who requested him to identify the beneficiaries on 17th September, 2016. That issues concerning the family may have cropped up but meeting was to identify beneficiaries. He said that he does not think there was provisions for members to sign and he did not know if they signed. He said the 2 widows explained to them about Cheptalam and it is not true that the 2 widows did not attend the meeting.

1st Objector's Case

45. 1st Dw1 1st objector Stephen Kipsawe Chemjor testified that he is a retired teacher and Assistant Chief. He adopted his affidavit dated 19th November, 2018. He said the deceased Cheptalam Chemjor was his father and the 1st petitioner Philip the Administrator is his younger brother. He confirmed that his father had 3 wives and the deceased's 1st wife got one child, the second wife is his mother Sogome Chemjor and the 3rd wife is Kobilu Chemjor was remarried by his father after her first husband passed on.
46. He said his father died in on 10.2.2000 and succession started in the year 2012 and that he learnt about it after the succession cause was transferred from Eldoret to Kabarnet. He said his father had 2 parcels of land Nos. 202 and 407 (initially No. 171) and Parcel 202 is 7 acres and that is where he was born



- and lived until when he moved to parcel 323 in the year 1986 after circumcision. He further stated that in the year 1988, he got bank loan and built 3 semi -permanent rental houses in parcel No. 202 and he receives rent of about 10,000/= a.; that he put up 2 permanents water tank and the development cover 0.8 acres in parcel number 202.
47. The 1st objector further stated that he registered 323 during demarcation and was issued title deed in 1976; that he was not given the land by his father. He said Parcel 152 was not for his father and he was given the parcel by his uncle George Cherono Rop & Philip Chesang Chepkwony son of his uncle Chepkwony Cheptalam to sell for school fees but he did not sell.; and it is registered in his name and that he is entitled to inherit from parcel 202.He said his father showed him where to build and the portion he has developed which is 0.8 acres.
48. On Cross-examined by Mr. Olonyi, he stated that he built his structure in parcel 202 in the year 1966 and married in 1975 and the first place to live in is in parcel 202. He Confirmed that he lost his child in 1985 while living in parcel 202 but he decided to bury his child in parcel 323 and it is not his father who told him to bury the child in parcel 323 because he had decided to go and live there and built rentals in 202. He denied that his father had given him parcel number 323 and that he built 323 when his father was alive. That his father opened for him house in 202 which is done once and what he built in 202 was not hut built after circumcision. He said that he was given parcel 323 by committee incharge of adjudication; and that he is the original owner of parcel 323 and 152. He confirmed that Parcels 135, 151, 152 were ancestral parcels which belonged to his grandfather Cheptalam Cheboi. He denied that 152 was given to his father and said parcel 151 was given to George Rop.
49. On Cross-examined by Mr. Chebii, he said the 3rd wife Kobilu lived in parcel 202 and her son was shown where to build in parcel 202. 1st objector denied that his father moved him to parcel 323 and said he has not moved from parcel 202 and denied that his portion in parcel 202 was given to Michael Chemjor but he allowed Michael to sign agreement with Kirdam when his father was alive and denied that his father authorized Michael to sign agreement with Kirdam. He said he signed agreement with Kirdam in respect to his house in plot no. 323 and reiterated that he was given parcel 152 by his uncle George Rop and Philip Chesang. He denied acquiring parcel no. 323 through his father and said there are structures constructed by Kirdam.
50. 1st objector further stated that his father acquired 151 from his step brother George and gave it to the 1st petitioner Philip and parcel 151 is 6 acres. He denied that Philip acquired parcel 151 using his resources. He said the beneficiaries to share 407 and 202 are Stephen, Julius, Michael, Paul, Samuel, Edmond, David and Philip.
51. The 1st objector's witness 1ST DW2 Kiplagat Ruto adopted witness statement filed 8th May,2019 as evidence. He said that he was classmates with the 1st objector in the year 1964 and that he lived in parcel 202 which belong to his father Chemjor Cheptalam who is his father.
52. He said the parents of 1st objector showed him where to build in parcel 202 and he moved to another parcel. That there are rental houses in 202 while 323 was community forest and it was not for Chemjor Cheptalam. He said Stephen Chemjor should inherit parcel 202.
53. On being Cross-examined by Mr. Olonyi, he said the 1st objector Stephen built a hut in 1964 after circumcision in plot no. 202 and later moved to plot 323. He confirmed that the 1st objector Stephen lost a child in 1980s and the child was buried in plot 323 but he did not know why the deceased Chemjor Cheptalam asked the 1st objector Stephen to bury the child in plot 323.He further stated that the 1st objector built rental houses in plot 202 together with 2nd objector Julius. He said 1st objector applied for parcel 323 during adjudication.



54. He further stated that it is true the deceased Chemjor Cheptalam said his son the 1st objector be given parcel 323 as his first born. He confirmed that the deceased Chemjor had divided his land to his children but he did not know whether the deceased moved the 1st objector to plot 323; he added that the 1st objector may have been removed by his father from plot 202 to 323.
55. On Cross-examined by Mr. Chebii, he said the 1st objector had fruit trees in parcel 2022 but he transferred them to 323 and it true he was moved by his father to parcel 323 which was forest land given through the fathers.
56. The 1st objector's third witness 1ST DW3 Ludia Talai Kiplimo testified that Chemjor Cheptalam was her neighbour; that she was born in 1956 and she knows all his children. On Cross-examination by Mr. Olonyi, she said she got married in 1978 and at that time, the 1st objector Stephen had built 2 grass thatched houses though she did not know the land parcel number. She said the 1st objector got married and got children there. She said that she did not talk with Cheptalam Chemjor concerning the land and does not know how it was distributed to his children.

2nd Objector's Case

57. The 2nd Objector Julius Sigilai Kipkorir Cheruiyot testified that he filed authority given by Sogome Cheruiyot who is the 1st widow of Chemjor Cheptalam, supporting affidavit dated 27th September, 2018, affidavit on proposed mode of distribution sworn on 29th October, 2018 and statement by Sogome Cheruiyot dated 29/10/2018 and wish to adopt as evidence.
58. He said Chapchap/Kituro 171 new number 407 initially belonged to Chemjor Cheptalam and during registration of Kituro section in 1967/1968 the deceased sold it to a relative Joseph Kimwochoch Tulel at Ksh. 250/= in 1967; that thereafter Joseph Kimwochoch went to Kitale and returned in 1980 and found him on the land. That the 3 of them Chemjor Cheptalam, Joseph Kipngochoch Tulel and 2nd objector met and Kimwochoch being a relative, he agreed to be refunded the money and he refunded him Ksh250 and took over the land and they agreed that they would transfer the title deed to him.
59. He said that Joseph Kimwochoch is alive, he is of age, diabetic and amputated but he swore an affidavit on 28th September, 2018 before commissioner for Oath Mike Chebii; and he stated in the affidavit that the petitioners and interested parties are lying by saying the land does not belong to the 2nd objector. He said parcel 407 does not belong to estate of Chemjor Cheptalam but it belongs to him and Parcel Chapchap/Kituro 235 belonged to Raphael Chebutuk who was also a clan's man. That Chemjor Cheptalam negotiated with Raphael in 1967 for Chemjor Cheptalam to settle his 2nd family Kobilo Chemjor who is their mother and his brothers. That his father instructed Raphael to transfer parcel 235 to Joseph Barkibir Berai to hold in trust for Samuel Chemjor and that Joseph Barai is their half-brother.
60. He confirmed that when Kobilo Chemjor was married by his father she had Joseph Berai with other 3 children and they were adopted by their father and the 3 sisters went back to Sandai Lake Bogoria area and got married in Sandai and did not return and Joseph Berai remained in parcel 235 but he was not supposed to get any portion from that parcel as he had his own parcel Chapchap/Kituro/249 which belonged to his father which he got through succession assisted by Chemjor Cheptalam.
61. That Parcel 235 is supposed to be shared by his 2 brothers Samuel Chemjor and David Oman Chemjor. That Edmon Chemjor has his own parcel number Chapchap/Kituro/158 which initially belonged to Kibiror Cheptalam and it was exchanged with parcel Baringo/Kapropita/1091. That Chemjor Cheptalam completed distribution of his parcels in the year 1992 as per his mode of distribution. He



- said that Parcel 158 was registered in the name of his half-brother Joseph Berai to hold in trust for Edmond Chemjor.
62. on cross-examination by Mr. Kiptoo, he was born in 1960. That his father parcel 171 now 407 to Kipngochoch in 1966 when he was 6 years. He said he saw Kipngochoch go to his home and his mother Sogomo Chemjor was present and it was mutual understanding and Part of the land was eaten by the road and his father Chemjor Chetalam was compensated in his presence. He said that he is not aware if Stephen Chemjor cashed the cheque 11984. That parcel number 407 was in name of Chemjor Chetalam same to parcel 202. That when he passed on 407 and 202 were in his name.
 63. He confirmed that parcel 152 and 323 were registered in the name 1st objector Stephen Chemjor as first registered owner and the title was issued in 1976 when his father was alive; and title for Parcel 202 was issued in 1985 in the name of Chemjor Cheptalam. He said he filed objection on 29th October, 2018 and swore affidavit the same day together with Kimwochoch that Parcel number 407 is his private land and it is not part of the estate.
 64. The 2nd objector testified that immediately he was given parcel number 407, he constructed structures and has also constructed in parcel number 202. He confirmed that parcels 407 and 202 are registered in his father's name but were officially given to him. He confirmed that parcel 407 has not been transferred to his name. He said Stephen had his Identity Card and that is why the deceased registered the two parcels under his names. He said that he paid Kimwochoch 250/= and he had an ID; and his father saw him paying and the 3 of them agreed that he pays him and Joseph Kimwochoch has acknowledged in his affidavit
 65. on cross examination by Chebii, he said that Properties registered in his father's names are 407 and 202 and he is urging this court to consider that parcel 151, 152, 323 to be considered as gift inter vivos.
 66. He denied that Kabon Beimo was not the first wife of his father and that it is not true that her first matrimonial home was built in parcel 202. He admitted that his father married Kobilo Berai who was wife of late Berai but they did not occupy the house in parcel 202 and it was not true that they occupied house of Kabon Beimo.
 67. He said that Kobilo had 4 children, 3 sons and one daughter who were born in parcel 235 and in parcel 202 there were 2 huts for Samuel Chemjor and Stephen Chemjor and it is not true that all the 4 children of Kobilo were born in parcel 202. He said that there were no fights between his mother Sogome and Kobilo and that he did not attack Kobilo. That Parcels 158 & 235 & 249 are registered in name of Joseph Berai (Interested Party) and were demarcated in 1967. He said that parcel 249 was acquired by Joseph Berai from his father through succession.
 68. He further stated that his father passed on in year 2000. That he exchanged land with Kitilit Chetalam who is their relative. He said that parcel 158 was exchanged with parcel number 1091 and parcel 235 is registered in Joseph Berai's in trust for his stepbrothers. That the two parcels 235 and 158 belonged to Chemjor Chetalam. He said Samuel Chemjor resides in Eldoret, Omar lives in 235 and Edmond has built in 158. That Berai has his own children and they have parcel 249.
 69. He continued to state that the land Chapchap Kituro/151 was for ancestral land. That Philip Chemjor (1st Petitioner) used to come home and his father talked with his brother and they agreed to give 1st petitioner parcel 151. He said that he was at home when they discussed though not in the meeting and they agreed it be transferred direct as a gift instead of going through Cheptalam on instructions of Cheptalam.



Interested Party's Case

70. The interested party Joseph Barkibin Berai a retired civil servant adopted affidavit dated 14th August, 2018. He testified that he is the son of Kobilo Chemjor and that he has lived in parcel no. 249; that he moved into the parcel 249 in 1980 and that he had lived in Chemjor Chetalam's parcel Kituro Chapchap/202. He confirmed that his father is Berai Cheserem Kitap who had married his mother earlier. He said when his father died, he left him with a sister and they were taken care of by his uncle and then the deceased herein Chemjor Cheptalam married his mother and she got 4 children, Samuel Sarmat Chemjor, Leah Lekuter, Edmond Chemjor and Omar David Chemjor. He said his mother was a 3rd wife to Chemjor and the 2nd wife lived in the same parcel 202 but they disagreed; he learnt that his mother was chased by the 2nd wife Sogome and she went to her son's Parcel 249 which was his father's ancestral land which he got through succession and it has no connection to Chemjor Cheptalam.
71. He further stated that he purchased parcel 158 from Kitilit Cheptalam and search showed it belonged to Kiptilit Cheptalam and he transferred to him on 14th August, 2000. That it is not true that the deceased purchased and instructed that it to be transferred to him. He said that he purchased parcel 235 from Raphael Chebutuk and it has nothing to do with Chemjor Cheptalam; and the land should not be given to Samuel and Omar. That if the deceased purchased it for them, it would have been registered in their names as they were adults. He said his mother lives in parcel 249 not 235. That Parcel 235 is a small land about 3 plots. He said that he lives in parcel in Kituro Chapchap 254 and the pictures produced for his house are in parcel 254. He said the Deceased Chemjor Cheptalam had 2 parcels 202 and 407 and his property has no relationship with property of Chemjor Cheptalam.
72. Th interested party further said Chemjor Cheptalam did not build his mother Kobilo Chemjor any house and the house she moved was his grass hatched house which he later demolished and built for her timber structure and later together with his children, they built a permanent house for his mother. He further said there is a permanent house in parcel No. 158 and it is him who built the house. That he built the house so that those who come to visit his mother can stay in.
73. He stated Samuel Sarmat was first son for Chemjor Cheptalam with his mother had built a grass thatched house in 202 and 2nd objector Julius lives where Samuel's hut was because Samuel decided not to live in that land. He said the pictures Julius produced in court are houses in his parcels.
74. on cross examination by Kiptoo for 1st Objector, he said that his father had no relationship with Chemjor Cheptalam and that Chemjor re-married his mother and his grandfather Arabai was still alive. He said Chemjor Cheptalam had parcel 202 and 407 and he is not interested in his parcels but his brothers are entitled to live in Chemjor's land and they should inherit from their father.
75. On cross examination by Mr. Olonyi, he said he was born in 1958 and was about 4 to 5 years old when Chemjor married his mother and that her mother went to Live in parcel 202. He confirmed that he studied in Kituro Primary School in 1968 and did CPE in Kituro Primary School. He said that he studied with Julius Chemjor but did not live with Julius in parcel 202 but he would visit his mother there as he lived in parcel 249. He said his grandfather who showed him where to build in parcel 249 but not Chemjor Cheptalam. He said that his mother had 4 children with Chemjor Cheptalam and the last child is Omar David Chemjor; that Omar David has purchased land and built and his mother Kobilo is living in parcel 249 while a gust house is in parcel 158 which his siblings Leah and Edward assisted him in building and there is no structure in parcel 235. He said parcel 158 and 235 are properties of the deceased Chemjor Cheptalam.



Petitioner's Submissions

76. The petitioners submit that the deceased had three wives being Kabon Beimok, Sokome Chemjor and Kobilo Chemjor respectively. That when the deceased married the 2nd widow the 1st wife left due to constant squabbles and fights with the 2nd widow and the 1st wife left one issue Costher Kigen. That the deceased later married the 3rd widow Kobilo Chemjor after the demise of her husband and settled her in the house of the 1st wife in Chapchap/Kituro/202.
77. That the deceased left behind the following dependants
1. First House
 - a. Kabon Beimok-1st Wife-Remarried
 - b. Costher Kigen-Daughter
 2. Second House
 - a. Sokome Chemjor-2nd Widow
 - b. Margret Chemjor-Deceased
 - c. Stephen Chemjor-Son
 - d. Julius Chemjor-Son
 - e. Michael Chemjor-Son
 - f. Philip Chemjor-Son
 - g. Paulo K Chemjor-Son
 3. Third House
 - a. Kobilo Chemjor -3rd Widow
 - b. Samuel Sarmat Chemjor-Son
 - c. Leah Lokiter-Daughter
 - d. Edmond Bii Chemjor-Son
 - e. David Omar Chemjor-Son
78. That the deceased had settled all the three wives in parcel number Chapchap/ Kituro / 202 but on or about 1980, the 2nd widow and her children forcefully evicted the 3rd wife and her children from her matrimonial home forcing her to seek refuge in her 1st son's house the interested party herein in parcel number Chap Chap/kituro/249.
79. That the interested party left his house for his mother, step brothers and sister. He assisted in educating them and upon being employed they moved out of his premises and bought their own properties where they reside to date.
80. That the interested party later constructed a permanent house for his mother in parcel number Chap Chap/kituro/249 and with the assistance of his step -brothers and sister he erected a guest house in parcel number Chap Chap/kituro/ 158.



81. That upon the forceful eviction of the 3rd widow, one of the sons of the 2nd widow demolished the house of Samuel Sarmat thereby completing the eviction of the 3rd house from parcel number 202.
82. The petitioners identified the following as issues for determination: -
- i. What are the assets of the deceased estate?
 - ii. Whether parcel numbers Chapchap/kituro/407 is available for distribution?
 - iii. Whether the 1st petitioner and 2nd objector's properties in parcel numbers Chapchap/kituro/151,152 and 323 should be taken into consideration in the mode of distribution of the estate?
 - iv. Whether the properties of the interested party in parcels numbers Chapchap/kituro/158 and 235 should be taken into consideration when distributing the estate of the deceased and/or should they be distributed to the dependants of the deceased?
 - v. Which mode of distribution of the estate ought to be adopted?
83. On what form the assets of the deceased estate, they submit that the deceased estate has only two assets in parcels numbers Chapchap/Kituro/202 and 407 which are available for distribution hence the contention by the 2nd objector that the deceased had acquired other assets and benevolently registered them in the name of the interested party to hold in trust for his step-brothers is unfounded and dishonest on his part.
84. On whether parcel numbers chapchap / kituro / 407 is available for distribution, they submit that this asset is registered in the name of the deceased hence it is not available for distribution to the dependants of the estate.
85. That the contention by the 2nd objector that he purchased it from Joseph Kipngochoch in 1980 is untenable in that this parcel of land had initially been registered as parcel number Chapchap/Kituro/171 and a portion of it was ceded by the deceased as a way leave for the construction Marigat-Kabarnet road in 1983 and the remaining portion was registered as parcel number 407 in his name and from evidence adduced, the deceased was compensated for the said portion and not the 2nd objector. That if the 2nd objector had purchased it as alleged then he ought to have caused himself to be registered as the proprietor of the remaining portion and/or ought to have been compensated. Further that he has not tendered any evidence as to why the deceased refused to transfer the property to him yet he alleges he purchased it and the affidavit in support of his contention was sworn on 28th September 2018 a day after he swore the affidavit in support of the objection on 27th September 2018, many years after the demise of the deceased.
86. They submit that the affidavit sworn by Joseph Kipngochoch does not indicate that the 2nd objector purchased the property from him, but that he refunded to him the money, which cannot be equated with purchase as contented by the 2nd objector.
87. It's their submission that the deceased simply asked the 2nd objector to assist him refund the money, which assistance does not amount to purchase. That at any rate, he had invaded the property without the consent of the deceased, hence his allegation that he purchased it are machinations to dispossess the estate of the property.
88. It is their contention that the timing of the sworn affidavit was intended to dispossess and/or oust the property from the estate of the deceased as aforesaid. That the 2nd objector ought to have called the deponent to testify and confirm whether the 2nd objector was refunding the purchase price to him and/or was out rightly purchasing the property which he failed to do. It is their submission that since



- the deponent of the affidavit was not tested through cross examination, the affidavit is of no probative value.
89. On whether the 1st petitioner and 1st objector properties in parcel numbers Chapchap/Kituro/ 151,152 and 323 should be taken into consideration in the mode of distribution of the estate, they submit that the 1st Petitioner is the registered owner of that parcel of land known as Chapchap/Kituro/ 151 having acquired it from his late uncle George Cheron Rop as a gift after giving him a token of appreciation.
 90. That at the time of acquisition of the property, the 1st petitioner was working at Eldama Ravine as an Animal Health Assistant and would visit his uncle at Sabatia to assist on issues of animal husbandry and he engaged and requested him to give him the said property and he acceded to it on condition that the 1st Petitioner gives him something as a token of appreciation which he did.
 91. That the contention by the 2nd objector that the deceased negotiated with his brother for the transfer of the said property to the 1st petitioner is unfounded and an attempt to oust him from benefiting from the deceased estate.
 92. That though the property was ancestral land having been the property of the late Cheptallam Cheboi, the same had been inherited by George Cheron Rop hence it did not form part of the deceased's estate and cannot be considered in the distribution of the estate.
 93. They submit that the 1st objector is the registered owner of parcels numbers Chapchap/Kituro/ 152 and 323; that parcel no 152 was ancestral land bequeathed to the deceased by his late father and during Adjudication of Chap chap/Kituro section, he caused it to be registered in the name of the 1st Objector who by then had attained the age of Majority.
 94. That as regards parcel number 323, the same was excised from a community forest by the community elders and given to their 1st born sons hence the 1st objector become a beneficiary by virtue of the said arrangement by the elders and it is their submission that parcels numbers 152 and 323 ought to be taken into consideration when distributing the estate of the deceased by virtue of section 42 of the law of succession; and further, there was consensus by all the beneficiaries that the deceased had settled the 1st objector through prior dispositions to him.
 95. On whether the properties of the interested party in parcels numbers Kituro /158 md 235 should be taken into consideration when distributing the estate of the deceased and/or should they be distributed to the dependants of the deceased, they submit that, the aforesaid properties are registered in the name of the interested party and therefore they do not form part of the deceased estate.
 96. That they have demonstrated in the background how the 3rd widow was violently evicted from parcel number 202 by the 2nd widow and sought refuge in her son premises in parcel number Chapchap/Kituro /249 and the interested party has demonstrated how he acquired the said parcels from Kitilit Cheptallam who has no relation to the deceased and Raphael Chebutuk respectively through purchase hence the allegation by the 2nd Objector and his mother that the deceased acquired the said properties and registered them in the name of the interested party to hold in trust for the deceased's beneficiaries from the third house is untenable and unfounded. That one of the assets in parcel number 158 was registered on 14th August 2000 after the demise of the deceased.
 97. That all the other beneficiaries have dissociated themselves from the 2nd objector's contention that the two properties forms part of the deceased estate and ought to be considered and/or distributed to the 3rd house. It is their submission that the inclusion of the interested party's properties in the estate of the deceased by the 2nd Objector was malicious and/or capricious as it was intended to deprive the beneficiaries from the 3rd house from benefiting from the deceased estate.



98. On which mode of distribution of the estate ought to be adopted, they submit that the estate has two properties in parcels numbers 202 and 407 for distribution as aforesaid. That there are 3 houses with several beneficiaries entitled to benefit from the said assets.
99. That it is trite law that where the deceased is a polygamous man the law applicable is section 40 and it follows therefore that the distribution of the net estate of the deceased shall be to the houses in accordance to the number of children in each house and adding any wife surviving the deceased as an additional unit to the number of children as set out by Justice Waki. JA in *Rono v rono* in Civil Appeal No 66 of 2002 where the High Court in Eldoret in succession cause number 58 of 2020 the estate of Eric Owino alias Joseph Eric Owino Nyaburi adopted the mode of distribution provided for in section 40 where there were two houses.
100. They submit that in the instant case, there are three houses with two surviving widows. The 1st wife having remarried does not qualify to be an additional unit. That the 1st house has therefore one unit, the 2nd house has 6 units and the 3rd house has 5 units making the total beneficiaries of the estate as 12 units who ought to share the two assets in parcels numbers 202 and 407 with a total of 7 acres. That these are the assets which ordinarily ought to be shared equally among the 12 units.
101. That they would have requested this court to distribute the estate in accordance with the provision of Section 40 of the *Law of Succession*, however there are cogent evidence which were presented before the court to the effect that the deceased had settled the 1st Objector on parcels numbers Chapchap/Kituro/152 and 323 and had caused them to be registered in his name during Adjudication; and submit that it was the wish of the deceased that the 1st objector should not benefit from his estate and to actualize this position he had ordered him in 1985 to move to his parcels of land and following his father's instructions, the objector moved and settled on parcel number 323 and when his daughter passed on around the same time, the deceased ordered him to bury her in his parcel of land and he complied. It is their contention that the 1st objector is well provided for and need not benefit from the deceased estate.
102. They further submit that evidence was tendered to the effect that the 1st objector went back to parcel 202 only after the deceased had passed on in 2000 and imposed himself on the estate and claimed ownership of some of the structures erected by Kirdam Consortium through the authority of the deceased and Michael Chemjor. It is therefore their submission that the 1st Objector ought not benefit from the estate of the deceased and urge the court to apply Section 42 of the *Law of Section*.
103. That as regards the remaining 11 units, they urge the court to apply section 40 of the laws of section and subdivide the 7 acres into 11 equal units, the 1st house to get 1 unit, 2nd house 6 units and 3rd house 5 units. In so doing they urge the court to allocate Michael Chemjor the section containing the Kirdam structures as it was his former portion where he had erected his matrimonial home before it was leased out; they urge the honourable court to adopt the petitioners' mode of distribution dated 13th October 2018.

2nd Objectors' Submissions

104. It is the objectors' case that the petitioner herein Philip Chemjor filed this petition secretly and without involving other beneficiaries hence the objection filed herein; further that their signatures and or finger print impressions contained in the petition for grant of letters of Administration are forged.
105. That the 1st objector Stephen K. Chemjor filed his separate objection and the 2nd Objector filed theirs. That the 2nd objectors initially comprised of Sokome Chemjor (Widow), Paulo Kibet Chemjor and Juluis Sigilai Kipkorir Chemjor who are the children of Cheptallam Chemjor. That Paulo Kibet Chemjor would later pass on during the pendency of the proceedings.



106. They submit that the 2nd Objectors filed their summons for revocation of the Grant on the 28th day of September 2018 together with an authority to act for Sokome Chemjor and Paulo Kibet Chemjor, giving authority to Julius Sigilai Chemjor to appear in and act on their behalf.
107. That parcels of land numbers Chapchap/Kituro 135,151,152 and 309 as demonstrated in the 2nd objectors evidence the above stipulated parcels were owned by Cheptallam Cheboi who was the father of Chemjor Cheptallam (deceased) the subject of this succession cause and therefore the parcels are ancestral properties.
108. They submit that it came out clearly in evidence that Cheptallam Cheboi distributed the said parcels as follows; to his sons; Chepkwony Cheptallam parcel Nos 135 and 309 George C. Rop parcel No. 151, Chemjor Cheptallam (deceased) 152 and according to the evidence lead, in this case, Chemjor Cheptallam deceased knowing well he had a polygamous family and to avoid disputes in future , distributed his property during his life and consequently he allocated plot No. 152 to his 1st born son, Stephen Chemjor.
109. They submit that it came out in evidence that George C. Rop the brother to Chemjor Cheptallam deceased had a lot of land of over 200 acres and it also came out clearly in evidence that owing to the fact that George C. Rop had a lot of land while Chemjor Cheptallam deceased had less land, but with a big family , Chemjor Cheptallam (deceased) talked to his brother Geroge C. Rop who agreed to gift Chemjor Cheptallam (deceased) parcel No.151 measuring approximately 6 acres.
110. That according to the evidence adduced by the 2nd Objectors and their witness Maichael Rop, after being given the said parcel No. 151, Chemjor Cheptallam gave the said parcel of land to his son Philip Chemjor (the Petitioner) as his inheritance and this fact was also alluded to by the 1st objector.
111. That it was also the 2nd objector's evidence corroborated by the petitioner, that Chemjor Cheptallam also gave the 1st Objector parcel No. 323 and therefore the 1st Objectors inheritance from the deceased are land parcels No. 152 and 323 which are in total, approximately 5 acres by measurement.
112. On parcel Nos Chapchap/kituro 158 and 235, they submit that it is the evidence of the 2nd Objector , moreso from the 1st widow Sokome Chemjor that , the above parcels initially belonged to Chemjor Cheptallam .That it was the 2nd Objectors evidence that in view of the fact that Joseph B. Berai (the interested party) was Kobilu Chemjor's 1st born, Chemjor Cheptallam entrusted him with the said parcels to hold them in trust for his sons Samuel Chemjor ; Edmond C. Chemjor and his last born David Omar Chemjor as Joseph B. Berai was a grown man, while Samuel Edmond and David Omar were minors.
113. That it was also the 2nd Objectors evidence that, according to the Tugen Tradition, every last-born boy child builds his house next to his mother and that is why in the 1st house, Paulo Kibet Chemjor constructed next to their mother Sokome on parcel no. Chap Chap Kituro 202 while David Omar Chemjor constructed a permanent house on parcel No. 235 next to the mother and it was also Sokome Chemjor's evidence that Samuel Chemjor and David Omar Chemjor are to share parcel No. 235 while Edmond was to inherit Parcel no. 158.
114. That it is interesting to note that, while the 2nd Objectors inclusive of Sokome Chemjor (the 1st widow) testified that parcels of land No 158 and 235 belonged to Chemjor Cheptallam and are to be inherited by Samuel, Edmond and David Omar, no attempt was made either by the petitioner or the interested party to bring on board Kobilu Chemjor in her capacity as the 2nd widow of the deceased to controvert that evidence.



115. That though the interested party, denied that parcel No. 158 and 235 belong to the estate and alleged to have purchased the same, during his cross examination, it became apparent that Raphael Chebutuk the alleged seller of parcel No. 235 died in 1975 and therefore he could not have sold the said parcel to the interested party as he was dead. That he further did not produce any sale agreement to prove his allegations of purchasing the same and it was the 2nd Objector's evidence that parcel No. 235 initially belonged to one Raphael Chebutuk who upon negotiation gave the same to the deceased Chemjor Cheptallam.
116. Further that in Sokome Chemjor's statement, she stated that parcel No.158 became the deceased's parcel after an exchange with parcel No. Baringo/Kapropita 1091. That parcel no..249 which is not in dispute, the interested party inherited the same through succession i.e. "under the consideration and Remarks" column, on the green cards, while in relation to parcel No. 158 and 235 it does not state that he purchased the same as it should.
117. On Parcel of Land No. Chap Chap Kituro 171 (407 New Number, they submit that in his supporting Affidavit sworn on the 27th day of September 2018 at paragraphs 14 to 20 Julius Sigilai Kipkorir Chemjor has explained that the parcel initially belonged to his father Chemjor Cheptallam who sold it to one Joseph K. Kimwochoch at Kshs 250. That he has explained that while Kimwochoch was away in Kitale, he took possession and he has explained that when Kimwochoch came back in the 1980's; himself, Joseph Kimwochoch and his father Chemjor Cheptallam deceased discussed the issue and all agreed that instead of him vacating the parcel, he refunds Joseph K. Kimwochoch the Kshs 250 he had paid as purchase price to his father and then take ownership of the same; which he did.
118. That the said Joseph K, Kimwochoch swore an Affidavit on the 28th day of September 2018 before Mike K. Cheboi, Advocate and commissioner for oaths explaining in details the same facts and at page 54 of the 2nd Objectors bundle of documents and submit that the parcel of land no. 407 does not belong to the Estate of Chemjor Cheptallam.
119. They submit that this position is fortified by paragraph 20 of Sokome Chemjor (1st widow) statement dated 29th October, 2018 and the fact that, in cross examination, the petitioner and the 1st objector did not deny it but alleged that they were not aware which they submit was an attempt by the two to be evasive rather than truthful.
120. That as a matter of fact Julius Sigilai Chemjor has been developing the property using bank loans and the latest being repaid by him is evidenced by the letter dated 3rd day of April 2019 from Equity Bank- Page 73 of the 2nd Objector bundle of documents.
121. On Parcel No. Chap Chap Kituro 202 A) Business Area, they submit that there is an area reserved for business and according to the evidence placed before court, Julius Sigilai Chemjor with the authority of the deceased constructed rental houses in the business area, after obtaining bank loans from the bank and the rental houses belong to Julius Sigilai Chemjor as evidenced by a letter by the area chief dated 9th December, 2009 addressed to Stephen Chemjor, A letter dated 28th November, 1992 from standard Chartered Bank, in relation to the loan facility he took to construct the said houses and A Bank statement at page 19 of the 2nd Objectors bundle of documents. That all the developments in the business area therefore belong to Julius Sigilai Chemjor and they urge this Honourable court to find so.
122. On the remaining portion of parcel no. 202, they submit that as deponed to in the Affidavit on proposed distribution, sworn by Julius Sigilai Kipkorir Chemjor on 29th October, 2018 -page 51-53 of the 2nd Objectors bundle of documents, parcel NO. 202 is approximately 7 acres.



123. That it was Julius S.K. Chemjor's evidence in the said Affidavit and indeed evidence of the 1st widow Sokome Chemjor that, besides the business area and the shrine, Chemjor Cheptallam gave the said parcel of land to his three children from the 1st house namely Julius S.K. Chemjor, Michael K. Chemjor and Paulo K. Chemjor to share equally with their mother Sokome Chemjor getting a life interest. They place reliance in section 42 of the succession Law and submit that the evidence led and/or placed before this court proves as follows;
- i. That petitioner Philip Chemjor was given parcel No. Chap Chap/Kituro 151 by measurement approximately 6 acres by the deceased Chemjor Cheptallam during his life.
 - ii. The 1st Objector Stephen K. Chemjor was given parcel Nos Chap Chap Turo/152 AND 323 by measurement approximately 5 acres by Chemjor Cheptallam (Deceased) during his life.
 - iii. Samuel Chemjor and David Omar were allocated parcel No. 235 by the deceased during his life (to be held by the interested party in their trust)
 - iv. Edmond Chemjor was given Chap Chap/Kituro 158 by the deceased during his life while:
 - v. Julius S. Sigilai Kipkorir Chemjor, Michael K. Chemjor and Paul K. Chemjor were assigned parcel No. Chap Chap Kituro 202 by measurement approximately 7 acres. With the widows Sokome Chemjor and Kobilo Chemjor having a life interest in their respective sons properties as allocated.
124. That in line with the provisions of sections of section 42 quoted, they urge this Honourable court to take into account the said awards made during the life of the deceased. They rely on Nakuru High Court Succession Cause No. 32 Of 2014, In the Estate of John Chepkwony.

Analysis and Determination

125. Having considered the petition for grant of letters of administration intestate, the objection to the making of grant, the affidavits of the parties, the evidence tendered in court and the submissions filed herein. The following are the issues for determination by this court:-
- i. Who are the beneficiaries of the Estate of the deceased?
 - ii. Which properties form the estate of the deceased herein?
 - iii. What is the mode of distribution of the estate?

i. Who are the beneficiaries of the deceased?

126. From the evidence adduced herein, the deceased Chemjor Cheptallam died intestate on the 10th February 2000. Evidence adduced confirm that the deceased was a polygamous man married to three wives with children from each house as set out hereunder: -

First House

- a. Kabon Beimok-1st Wife
- b. Costher Kigen-Daughter

Second House

- a. Sokome Chemjor-2nd Widow
- b. Margret Chemjor- Deceased



- c. Stephen Chemjor-Son
- d. Julius Chemjor-Son
- e. Michael Chemjor-Son
- f. Philip Chemjor-Son
- g. Paulo K Chemjor-Son

Third House

- a. Kobilo Chemjor -3rd Widow
- b. Samuel Sarmat Chemjor-Son
- c. Leah Lokiter-Daughter
- d. Edmond Bii Chemjor-Son
- e. David Omar Chemjor-Son

127. It is not disputed that the interested party who is a son to the 3rd wife was not sired by the deceased herein and he has indicated that he is not interested in the estate of the deceased. He testified that he inherited from his father parcel Kituro chap chap/249 and he lunched parcel Kituro Chapchap/235 and 158 and they do not form part of the deceased's estate. He has not therefore been listed as a beneficiary of the deceased.

(ii) Which properties form the estate of the deceased herein?

128. From the evidence tendered, it is clear that the only two properties are registered in the name of the deceased being Kituro/Chapchap/202 and 407 which was initially number 171; all the other properties mentioned in the proceedings are not in the names of the deceased. The 2nd objector claim that parcel 407 had been sold to kipngochoch in 1967 who went to Kitale after buying the land and after coming back in 1980 he found the 2nd objector in the parcel and together with the deceased, they agreed that Kipngochoch be paid Kshs 250 so that he could return parcel Kituro/Chapchap/ 407. The 2nd objector allege that he is the one who paid Kshs 250 and the land was to be transferred to him. From evidence adduced the same parcel which was number Kituro/Chapchap/1 171 changed to 407 because part of it was hived for road construction in 1983. The 2nd objector confirm that it is his father the deceased herein who was compensated by the Government for the portion hived for the road. If indeed the land had been given to him, the question that arise is why was his father compensated and not him. This confirms that the deceased did not give him the land neither had he intentions of transferring the land to him, From the foregoing, I find that parcel 407 belonged to the deceased herein and is available for distribution.

129. In respect to parcel 249, the interested party confirmed that he inherited from his late father Barai and that fact is not disputed by the parties herein. In respect to parcel Chapchap/Kituro/158, the interested party testified that he purchased it from Kiptilit cheptalam and it was transferred to him on 14th August 2000; and parcel number Chapchap/Kituro/235 the interested party testified that he purchased from Raphael chebutuk. These properties are not registered in the name of the deceased. They are registered in the name of the interested party who has explained how he acquired and in my view challenge on acquisition should go to the Environment and Land court. As at now ,the 3 properties do not form part of the estate of the deceased and are not available for distribution. In respect to parcel chap Chap/Kituro/151, it is not disputed that it is ancestral land which belonged the deceased's brother George



Rop. The objectors confirmed that this was ancestral land which was transferred from their grandfather to their uncle George Rop. The 1st petitioner testified that his uncle gifted as he had big parcel of land measuring about 200 acres and in its transfer, it was indicated as a gift to him. In my view any beneficiary of the deceased herein challenging said gifting or transfer of the said property by his uncle to the 1st petitioner should do it in another forum but not in this succession matter. Parcel chapchap/Kituro/151 do not therefore form part of the deceased's estate and is not available for distribution.

ii. What is the mode of distribution

130. From evidence adduced, the 1st objector being the 1st son from the 2nd house was provided for during the life time of the deceased. At the instructions of the deceased, he was allocated parcel number chap chap/Kituro 323 which formed part of the forest. From evidence adduced, fathers were to be given a portion of the forest but the deceased gave instruction that it be registered in the name of his son Stephen Chemjor. Further, the fact that the deceased instructed the 1st objector to bury his son at parcel 323 and not 202 where he had initially settled after initiation clearly confirm in the mind of the deceased, 1st objector no longer had a share in parcel 202. This was further confirmed by the 1st objector being compensated for fruits he had planted in parcel 202. Further the 1st objector's witness confirmed that the 1st objector was allocated parcel 152 as he already had ID.
131. It is not disputed that the 1st house had one child Costher Kigen whose mother remarried and that she has not been provided for. There is therefore one unit in the 1st house.
132. Having found that the 1st objector from the 1st house has been provided for, the units remaining in the 2nd house are 5 children and the mother making 6 units
133. In respect to the 3rd house, the interested party testified the deceased was not his biological father and that he inherited from his late father Berai and he is not interested in the deceased's estate. He however said his brother sired by the deceased are entitled to the estate herein. From evidence adduced, the 3rd wife sired 3 sons and one daughter with the deceased. The deceased's children from 3rd house is 4 making 4 units and the mother making the 5th unit
134. From the foregoing, having found that the deceased was a polygamous man with 3 houses, I proceed to distribute his estate as per section 40 of the succession Act which provide that the deceased's assets are to be distributed according to houses with each charge making a unit and their mother being an additional unit.
135. Final Orders: -
 1. The deceased's assets available for distribution are parcel 202 and 407.
 2. The 1st objector Stephen Chemjor was already provided for during the lifetime of the deceased herein.
 3. The 3 houses form the following units
 - a. 1st house.....one unit
 - b. 2nd house.....6 units
 - c. 3rd House.....5 units
 4. The two parcels 202 and 407 to be distributed Between the 3 houses set out above in the ratio of 1:6:5 as set out above.



**JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 21ST DAY
OF NOVEMBER 2024.**

.....

RACHEL NGETICH

JUDGE

In the presence of:

CA Elvis

Mr.Chebii for petitioners & Interested party present

Julius Chemjor Present

Michael Chemjor Present

