



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO.158 OF 2007

**IN THE MATTER OF THE ESTATE OF SOLOMON KIPKISKE A. YOSEI *alias* KIPKOSKE
SOLOMON ARAP YOSE (DECEASED)**

ALICE CHEPKEMOI YOSEI.....1ST PETITIONER

JOSEPH KIPKORIR KOSKEI.....2ND PETITIONER

VERSUS

RUTH CHEMUTAI YOSEI.....1ST OBJECTOR

ESTHER CHERONO YOSEI.....2ND OBJECTOR

RULING

- The Counsel appearing for the parties herein agreed to have the Court rely on the affidavits, modes of distribution and submissions filed to determine the distribution.
- I have perused all the material before me.
- It is clear there are four (4) houses left behind by the deceased.
- The 1st house has twelve (12) dependants, same to the 4th house. The 2nd house has nine (9) dependants while the 3rd house has four (4) dependants. There is no dispute about the number of dependants, and the properties to be shared.
- The dispute is the distribution of the estate.
- Both Counsel have tried to explain the distribution through their submissions most likely based on their instructions.
- There must be justification for any mode of distribution arrived at. This is lacking in the affidavits filed. **Section 40** of the **Law of Succession Act** narrows down the distribution of the estate of a polygamist to each house first, then to the number of children in each house plus a surviving widow as an additional dependant.
- If indeed the deceased had settled the houses and/or children this has to come out of the beneficiaries on oath and has to be tested through cross-examination.
- Since the parties are not in agreement there is no short cut to this. The matter has to proceed to hearing by *viva voce* evidence. I so order.

Dated, signed and delivered in open court this 16th day of July, 2015.

H.I.ONG'UDI

JUDGE

In the presence of:

Mr. Koech for Objectors

Petitioners-absent

Mr. Kirui for Petitioners absent

Hillary and Kenei- court assistants