



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KERICHO**  
**SUCCESSION CASE NO. 168 OF 2007**

**ESTATE OF CHEPKWONY ARAP NGETICH ---DECEASED**

**AND**

**EMILY CHERONO-----1ST PETITIONER**

**RUTH CHEPKEMEI NGETICH ----- 2ND PETITIONER**

**RULING.**

1. This Succession Cause relates to the estate of the late **CHEPKWONY ARAP NGETICH** who died on 12<sup>th</sup> July 2005.

He died intestate.

2. The deceased was polygamous and had two wives, namely:

**1<sup>st</sup> House – Ruth Chepkemei Ngetich.**

**2<sup>nd</sup> House – Ludiah Chepkorir Ngetich (now deceased) and substituted by Emily Cheron.**

3. Letters of grant of administration were issued jointly to the two widows on 3<sup>rd</sup> February 2014. Following the death of **Ludia Chepkorir Ngetich** her daughter **Emily Cheron** was on 10<sup>th</sup> December 2014 substituted in her place.

4. Both administrators filed summons for confirmation of grant. Each proposed their preferred mode of distribution.

**Ruth C. Ngetich for the 1<sup>st</sup> house**, proposed that the two parcels of land be shared among all the beneficiaries equally.

**Emily Cheron for the 2<sup>nd</sup> house**, proposed that the two parcels be shared out equally among the two houses.

5. Mr. Miruka for the 1<sup>st</sup> Petitioner submitted that since the deceased was polygamous and died intestate his estate should be shared out equally between the two houses.

6. Both counsels filed submissions in support of the different modes of distribution. Mr. Migiro for

the 2<sup>nd</sup> Petitioner relied on **Section 40 of the Law of Succession Act** and **Eldoret High Court Succession Cause No. 243 of 2008** in support of the 1<sup>st</sup> petitioner's preferred mode of distribution.

7. The undisputed facts are as follows:

(i) *The deceased died intestate.*

(ii) *He was polygamous & had two wives.*

(iii) *The 2<sup>nd</sup> wife Ludia is now deceased.*

(iv) *The two assets forming the estate are:-*

**(a) L.R. NO. KERICHO/KAPLELARTET/199 (10.2 Hectares)**

**(b) L.R. NO. KERICHO/KAPLELARTET/203 (2.8 Hectares)**

i. **The beneficiaries in the 1<sup>st</sup> House are:**

- |                           |   |          |
|---------------------------|---|----------|
| 1. Ruth Chepkemei Ngetich | - | Widow    |
| 2. Samwel Yegon           | - | Son      |
| 3. Daniel Yegon           | - | Son      |
| 4. Julius Yegon           | - | Son      |
| 5. Philip Yegon           | - | Son      |
| 6. Isaack yegon           | - | Son      |
| 7. David Yegon            | - | Son      |
| 8. Vincent Yegon          | - | Son      |
| 9. Christina Chemutai     | - | Daughter |
| 10. Geoffry Yegon         | - | Son      |
| 11. Alice Chepkorir       | - | Daughter |
| 12. Mary Cheptanui        | - | Daughter |

**The beneficiaries in the 2<sup>nd</sup> House are:**

- |                             |   |                  |
|-----------------------------|---|------------------|
| 1. Ludiah Chepkorir Ngetich | - | Widow (Deceased) |
| 2. Jacob Yegon              | - | Son              |
| 3. Josephat Yegon           | - | Son              |
| 4. Emily Cheron             | - | Daughter         |
| 5. Risper Chepkemoi         | - | Daughter         |
| 6. Weldon Yegon             | - | Son              |

1. The only disputed issue is the distribution. **Section 40 (1) of the Law of Succession provides:**

*“(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”.*

According to this Provision the distribution is in the first instance done among the houses according to the number of Children in each house. If there is a surviving widow she is added

as an additional unit to the number of Children.

2. In this case the 1<sup>st</sup> house which is the house of **Ruth Chepkemei Ngetich** has **11 Children** plus a surviving widow = **12 Units**.

On the other hand the 2<sup>nd</sup> house which is the house of **Ludiah Chepkorir Ngetich** has **5 Children** with no surviving widow = **5 units**. The total number of units is therefore **17 (Seventeen)**.

3. The Law of this land recognizes all Children irrespective of gender and/or sex to be equal.

The parties herein were unable to agree on an amicable mode of distribution. **Section 40 of the Law of Succession Act** shall therefore be applied in the instant case. **The larger house will get a larger share.**

4. It therefore follows that each of the two parcels of land shall be **divided into Seventeen (17) equal portions** so that none says he/she was given a lesser share.

For avoidance of doubt the mode of distribution shall be as follows:-

- i. **L.R. NO. KERICHO/KAPLELARTET/199 (10.2Ha)** to be subdivided into *Seventeen (17) equal portions, one for each beneficiary as shown in Paragraph 5 (v).*
- ii. **L.R. NO. KERICHO/KAPLELARTET/203 (2.8Ha)** to be subdivided into *Seventeen (17) equal portions, one for each beneficiary as shown in Paragraph 5(v).*

1. Since the parties are of one family I will not award costs to any of them. Each to bear her own costs.

**Dated, Signed and delivered in open Court this 17<sup>th</sup> day of July 2015.**

Orders accordingly.

Right of Appeal explained.

**H.I ONG'UDI**

**JUDGE.**