



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
SUCCESSION CAUSE NO.66 OF 2009
IN THE MATTER OF ESTATE OF LOISE TAPKIGEN MALIT
alias TAPKIGEN W/O MALIT (DECEASED)
AND
EMILY CHEPKOECH alias
EMILY CHEPKOECH CHUMO.....APPLICANT
VERSUS
PRISCILLA MALIT.....PROTESTOR
RULING

On 30th May 2014, this court delivered a ruling in which it directed that the grant be confirmed and the Estate distributed equally between the two houses. The parties were then directed to file a further affidavit containing the specific share due to each beneficiary. In compliance with the aforesaid directive, Emily Chepkoech Malit alias Emily Chepkoech Chumo the applicant herein, filed a further affidavit sworn on 30th May 2014.

The file was placed before this court for mention on 1st July 2014 for further orders and directions. I have critically examined the aforesaid further affidavit. In paragraph 2 the beneficiaries are clearly named. There is no doubt each house was to get 2.1 Hectares to be excised from L.R. No. Kericho/Kabianga/1292. The Applicant has clearly shown the acreage due to each beneficiary in the first house but has merely suggested that the portion due to the second house be registered in the name of Priscilla Malit, the protestor. That affidavit does not fully comply with this court's directive of 30th May 2014 and the same does not also comply with the provisions of Section 40 of the Law of Succession Act. Under Section 40, distribution should be done among the houses according to the number of children in each house and adding the surviving widow as a unit. Pursuant to the provisions of Section 36 (1) as read with Section 36 (3) of the Law of Succession Act, the widow is only entitled to life interest which automatically determines if she remarries. Having failed to give a further affidavit which conforms with this court order this court has no option but to make a definite order in exercise of its inherent power. Consequently I order that the grant be confirmed and distribution of L.R. No. Kericho/Kabianga/1292 be done as follows:

1ST HOUSE – (2.1 HA)

Name

Acreage

1. Johana Kipkemoi Chepkwony 0.525 Ha.
2. Emily Chepkoech Chumo

Alias Emily Chepkoech Malit 0.525 Ha.

3. Philip Kiptanui Chepkwony 0.525 Ha.
4. Johnstone Kipsigei Chepkwony 0.525 Ha.

2ND HOUSE – (2.1 HA)

Name	Acreage
1. Priscilla Malit (life Interest)	0.35 Ha.
2. Kennedy Chepkwony	0.35 Ha.
3. Lily Cherop	0.35 Ha.
4. Bernard Kipyegon Chepkwony	0.35 Ha.
5. Eric Chepkwony	0.35 Ha.
6. Cherotich Malit	0.35 Ha.

Dated, signed and delivered in open court this 4th day of July 2014

J. K. SERGON

JUDGE

In the presence of:

Applicant: present in person

Protestor: present in person

Other beneficiaries,