

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO. 317 OF 2007

**IN THE MATTER OF THE ESTATE OF STEPHEN KIPROP BETT ALIAS KIPROP BETT-
DECEASED.**

SAMWEL CHERUIYOT ROP

RICHARD KIPKORIR ROPPETITIONERS

WESLEY KIPRONO RONO

VERSUS

PAUL MARITIM ROP.....PROTESTOR

RULING

On 11th October 2013, this court directed the Protestor, namely **PAUL MARITIM ROP**, to file a further affidavit which gives a schedule of distribution in terms of **Section 40** of the **Law of Succession Act**. Pursuant to the aforesaid directive, the Protestor filed the affidavit he swore on 4th November 2013.

I have carefully perused the aforesaid affidavit and it is clear that Paul Maritim Rop has given the schedule of distribution in Paragraph 3 as follows:

That L.R. Kericho/Kapsuser/3503 measuring 5.4H.a or 14.33 acres be distributed as follows:

- | | |
|---------------------------|------------|
| 1. Joseph Boiyot Rop | 2.047Acres |
| 2. Paul Maritim Rop | 2.047Acres |
| 3. Vincent Kiprotich Rop | 2.047Acres |
| 4. Samwel Cheruiyot Rop | 2.047Acres |
| 5. Elizabeth Taparno Bett | 2.047Acres |
| 6. Esther Chepwogen Mitei | 2.047Acres |
| 7. Chepkemoi Chuma | 2.047Acres |

The Provisions of **Section 40** of the **Law of Succession Act** provides as follows:

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.

Let me now examine whether the proposal by the Protestor is in strict compliance with the aforesaid Provision. There is no doubt that the deceased was married to the following:

1. **Elizabeth Tarparno Bett (1st House).**
2. **Chesong'ony Bett (deceased) (2nd house).**

3. **Tabarno Bett (deceased) (3rd house).**

The surviving members of each house are identified as follows:

1ST HOUSE

- 1.Elizabeth Taparno Bett
- 2.Joseph Boiyot Rop
- 3.Paul Maritim Rop
- 4.Vincent Kiprotich Rop
- 5.Samuel Cheruiyot Rop

2ND HOUSE

- 1.Esther Taputany Kipkones
- 2.Ruth Chepng'eno Busienei
- 3.Wesley Kipkemoi Rop
- 4.Richard Kipkorir Rop
- 5.Evalyne Chepkirui
- 6.Wilson Kiprotich Rop

3RD HOUSE

- 1.Cecilia Chesiele Sigilai
- 2.Samwel Kiprotich Rop
- 3.Hellen Chepkurui Rotich
- 4.Zeddy Chepngetich
- 5.Wesley Kiprono Rop
- 6.Liner Chepkemoi

Those who survived the deceased are seventeen (17) in total. The Provisions of **Section 40** of the **Law of Succession Act** shows that the estate should be shared between the houses and each house to distribute their entitlement equally between their members. The estate therefore be shared as follows:

(i)1st House : 5/17

(ii)2nd House: 6/17

(iii)3rd House: 6/17

It is therefore clear that the Protestor's affidavit does not conform with the Provisions of **Section 40** of the **Law of Succession Act**. I think the Protestor intended to mislead the court by preparing a false schedule

of distribution. In view of his conduct this court has taken upon itself the responsibility of distributing the estate according to Law. The assets of the Estate which are available for distribution are:

1.L.R.no.Kericho/Kipkelion/Chepseon Block3(Kipkelion)26

2.L.R no. Kericho/Kapsuser/1503

The aforesaid properties should be distributed between the three houses as follows:

(a)1st House – 5/17

(b)2nd House- 6/17

(c)3rd House – 6/17

In the end, the grant of letters of administration intestate made to Samwel Cheruiyot Rop, Richard Kipkorir Rop and Wesley Kiprono Rop should be confirmed and distribution to be done as proposed by this court herein above.

The administrators herein are directed to give effect to the resultant certificate of confirmation of Grant by executing the necessary documents within 30 days in default the Deputy Registrar of this court is authorised to do so in place of any unwilling administrator or administrators. Each party to meet his or her own costs.

Dated, signed and delivered this 8th day of November 2013.

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J.K.SERGON

JUDGE

In open court in the presence of

Mr. G. K. Korir for 2nd & 3rd Petitioner

Mr. Koech for 1st Petitioner

Mr. C. K. Korir holding brief for Mr. Ongany for the Protestor

Mr. Koech- Court clerk