

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BOMET
SUCCESSION CAUSE NO. 10 OF 2018

IN THE MATTER OF THE ESTATE OF SAMWEL KIPKEMOI SOI
(DECEASED)

LINNER CHEMETET SOI
PETITIONER

VERSUS

CATHERINE CHEPKIRUI SOY OBJECTOR

RULING

1. The Petitioner, the Objector, Sally Jepkoech and Recho Cherono Soy petitioned for Letters of Administration Intestate for the estate of Samwel Kipkemoi Soi on 28th February 2018. They petitioned in their capacities as the

deceased's widows. The deceased's estate was captured as
KERICHO/SILIBWET/1223, KERICHO/SILIBWET/1751,
KERICHO/SILIBWET/1035, KERICHO/SILIBWET/1042,
KERICHO/SILIBWET/1769, KERICHO/ITEMBE/727 and
KERICHO/CHEMAGEL/2388.

2. A Grant was issued in the joint Petitioners' names on 20th December 2018. to the Petitioner on 14th February 2018. Linner Chemetet Soi then filed Summons for Confirmation of the Grant on 26th September 2019 together with her proposed mode of distribution.
3. The Objector filed a Protest dated 7th November 2019 which was the subject of this Ruling.

The Petitioner's case

4. Through her Supporting Affidavit dated 26th September 2019, the Petitioner stated that the deceased had four households:

-

1st Household

Linner Chemetet Soy

Widow

Vivian Chesang

Robert Bartore

Alvin Bartore

2nd Household

Catherine Chepmkirui Soy

Widow

Wesley Bartore

Hillary Kiprono Bartore

Cherotich Soy

Japhet Kibet Bartore

3rd Household

Sally Jepkoech

Widow

Patrick Bartore Kemboi

Moses Kiplangat Bartore

Doris Chepngetich

4th Household

Recho Cheronso Soy

Widow

Nelly Chebet

Edna Chepkemoi

Judith Chepkoech

Biarose Chepkorir

Mercy Chelangat

Winrose Cherotich

Emmanuel Kipkoech

5. It was the Petitioner's case that she had requested her co-wives and co-administrators to file a joint summons for confirmation of Grant but they refused.

6. The Petitioner's proposed mode of distribution was as follows: -

KERICHO/SILIBWET/1042 (GARAGE ESTATE) (0.2 ACRES)

Linner Chemetet Soi	0.1 acres
Recho Cherono Soy	0.1 acres

KERICHO/SILIBWET/1035

Sally Jepkoech	Safe Lodge
Catherine Chepkirui Soi	Amalo Estate
Linner Chemetet Soi	Sot Rural Craft Training School

KERICHO/SILIBWET/1233

Catherine Chepkirui Soi	0.81 Hectares
-------------------------	---------------

KERICHO/SILIBWET/1751 (CHEPKULO ESTATE) (0.87

HA)

Betty Chelangat	0.01 Hectares
Lilian Chepngetich	23' X 48'
Dalmas Kipkoech Bett	4276 sq. feet
Koskei Kipkurui	2825 sq. feet.

KERICHO/SILIBWET/1769 (SILENT ESTATE) (0.166 HA)

Mercy Cherono	0.87 Hectares
Joseph Mutai	50' X 100'
William Koech	61' X 49'.

The Objector's case

7. Through her Affidavit of Protest dated 7th November 2019, the Objector stated that the Petitioner had delayed the conclusion of this matter by filing numerous Applications. That the Objector was agreeable that the administrators would hold the shares of the deceased's estate in trust for their children. The Objector further stated that the Petitioner's proposed mode of distribution if adopted, would prejudice other beneficiaries.

8. The Objector proposed the following mode of distribution: -

KERICHO/SILIBWET/1042 (GARAGE ESTATE) (0.2 ACRES)

Linner Chemetet Soi	0.03295 acres
Catherine Chepkirui Soi	0.03295 acres
Sally Jepkoech	0.03295 acres
Recho Cherono Soy	0.03295 acres

KERICHO/SILIBWET/1035

Linner Chemetet Soi	0.14826 acres
Catherine Chepkirui Soi	0.14826 acres
Sally Jepkoech	0.14826 acres

9. The Objector stated that KERICH0/SILIBWET/1042 was a commercial plot which had a shop accessible from the road. That it would be just and fair that each beneficiary to acquire a plot in the parcel.

10. It was the Objector's case that alongside the other Petitioners, they were not opposed to the Petitioner's

proposed mode of distribution in KERICHO/SILIBWET/1233,
KERICHO/SILIBWET/1751, KERICHO/SILIBWET/1769,
KERICHO/ITEMBE/727 and KERICHO/CHEMAGEL/2388.

11. At the time of writing this Ruling, the Objector had not filed her written submissions despite being directed by this court to do so on 4th March 2025 and 24th July 2025.
12. In response to the Protest, the Petitioner filed a Replying Affidavit dated 2nd December 2019 where she stated that they held a meeting with the Assistant Chief on 5th July 2016 on how to distribute the deceased's estate and the meeting was attended by all the Petitioners. That her proposed mode of distribution was based on the agreement reached in the said meeting.
13. It was the Petitioner's case that Sally Jepkoech had thirty (30) rental houses in the area referred to as Safe Lodge and Catherine Chepkirui Soi had eighteen (18) rental houses in

the same area. It was the Petitioner's further case that she earned income from Sot Rural Craft Training College.

14. The Petitioner stated that Catherine Chepkirui Soy had her matrimonial home in KERICHO/SILIBWET/1223. That Sally Jepkoech had her matrimonial home in Tarkwa Village approximately had 1.2 acres in size. The Petitioner further stated that Recho Cherono Soy had her matrimonial home in KERICHO/CHEMAGEL/2388 and a further 0.475 acres purchased by the deceased but not registered in his name. That she (Petitioner) had her matrimonial home in KERICHO/SILIBWET/1035 where the deceased was buried as per Kipsigis customary law.

15. It was the Petitioner's case that it was not fair that all the widows/Petitioners share KERICHO/SILIBWET/1035 equally.

16. In regards to KERICHO/SILIBWET/1042, the Petitioner stated that it was agreed that she would be given the said portion as it would be difficult to subdivide the shops. That the shops

would compensate her as she got less acreage as per her proposed mode of distribution.

17. Through her written submissions dated 27th March 2025, the Petitioner submitted that the only issue for determination by this court was the distribution of KERICHO/SILIBWET/1042. That he proposed mode of distribution reflected the current settlement on the ground. The Petitioner submitted that she depended on the shops in KERICHO/SILIBWET/1042 as her only source of income.

18. It was the Petitioner's submission that she currently occupied a portion which had no income generating houses. That Sot Rural Craft Training School hosted a driving school and stopped generating income when the deceased died. It was her further submission that her co-wives had rental houses in their respective portions of land.

19. The Petitioner submitted that the shops in KERICHO/SILIBWET/1042 currently allocated to her may not be divisible as it would create permanent problems in the estate. That this court should grant her 0.1 acres and the shops in KERICHO/SILIBWET/1042.

20. I have gone through the Summons for Confirmation of Grant dated 25th September 2019, the Protest dated 7th November 2019, the Replying Affidavit dated 2nd December 2019 and the Petitioner's written submissions dated 27th March 2025. The only issue for my determination was the distribution in regards to KERICHO/SILIBWET/1042.

21. From the outset, it is important to state that Chiefs do not have the power to distribute a deceased's estate. Such power is vested in this court by dint of **section 47 of the Law of Succession Act** and it is the only entity that it empowered to distribute the free estate of a deceased person. It was wrong for the Chief to purport to distribute the

deceased's estate. It is therefore instructive to note that the deceased's estate was free for distribution by this court and any purported prior distribution was null and void.

22. That said, it is an undisputable fact that all the Petitioners i.e. Linner Chemetet Soi, Catherine Chepkirui Soy (current Objector), Sally Jepkoech and Recho Cherono Soy were the widows of the deceased, the late Samwel Kipkemoi Soi.

23. On the record are two partial Mediation Settlement Agreements dated 31st March 2022 and 19th September 2022. I have keenly perused the court record and I have noted that this court adopted the partial Mediation Settlement Agreement dated 19th September 2022 on 24th May 2023. The said partial Agreement acknowledged the Petitioners as widows and administrators of the deceased's estate. In the Agreement, it was proposed by Catherine Chepkirui Soy, Sally Jepkoech and Recho Cherono Soy that the shops in KERICHO/SILIBWET/1042 be shared equally.

24. With exception to KERICH0/SILIBWET/1042, The Objector, Sally Jepkoech (3rd widow) and Recho Cherono Soy (4th widow) did not object to the Petitioner's mode of proposal i.e. KERICH0/SILIBWET/1035 would be shared between Sally Jepkoech, Catherine Chepkirui Soi and Linner Chemetet Soi; KERICH0/SILIBWET/1233 would be allocated wholly to Catherine Chepkirui Soi; KERICH0/SILIBWET/1751 would be shared between Betty Chelangat, Lilian Chepngetich, Dalmas Kipkoech Bett and Koskei Kipkurui; and KERICH0/SILIBWET/1769 would be shared between Mercy Cherono, Joseph Mutai and William Koech.

25. From the Petitioner's proposed mode of distribution, out of all the deceased's estate, she asked to be allocated 0.1 acres of KERICH0/SILIBWET/1042 (where the shops are premised) and a portion of KERICH0/SILIBWET/1035. She stated that she currently occupied a portion of KERICH0/SILIBWET/1035 which had no income generating rentals. The Petitioner

submitted that Catherine Chepkirui Soi (Objector) had 18 rentals in KERICHO/SILIBWET/1035, Sally Jepkoech (3rd widow) had 30 rentals in KERICHO/SILIBWET/1035 and Recho Cherono Soy had 30 rentals on her portion of KERICHO/SILIBWET/1042.

26. It is trite law that the law contemplates equal sharing of the deceased's estate. However, the court has discretion when distributing the free estate of the deceased and may take into account the current circumstances on the ground or as in the present case, where parties have agreed on the mode of distribution. In **Re Estate of S B S [2014] KEHC 5697 (KLR)**, Mabeya J. held: -

“The other factor which I have taken into consideration is the developments undertaken by individual beneficiaries. There are those who told the Court that they have already constructed permanent homes in certain areas. In this

regard, the court has tried to ensure that while trying to maintain equity, the lives of the beneficiaries are to be disrupted at the minimum.....”

27. In **Justus Thiora Kiugu & 4 others v Joyce Nkatha Kiugu & another [2015] KECA 886 (KLR)**, the Court of Appeal held: -

“.....In the event that parties agree and they record consent on the mode of distribution, the court has no choice but to adopt the consent and make it an order of the court.....”

28. From the agreed mode of distribution contained in the Petitioner’s Supporting Affidavit dated 25th September 2019, I have noted that the Petitioner had only requested 0.1 acre of KERICHO/SILIBWET/1042. She also explained that her other proposed allocation in KERICJO/SILIBWET/1035 was

anchored on the fact that she currently occupied the portion, a fact that the other Petitioners/widows did not object. I have also noted that the other properties in the deceased's estate where the other Petitioners were proposed to inherit had income generating rentals and the Petitioner did not propose an equal share in those allocations.

29. Considering the current circumstances, the evidence on record and proposed modes of distribution as a whole, it is in the interests of justice that all the Petitioners benefit from the deceased's estate not in equal measure but as proportionately. In light of the above and in balancing the interests of all the Petitioners, it is my finding that the Petitioner's proposal contained in her Supporting Affidavit dated 25th September 2019 was just and fair.

30. In the end, I make the following orders: -

- I. The Grant issued on 20th December 2018 is hereby confirmed.
- II. The proposed mode of distribution contained in the Summons for confirmation of Grant dated 25th September 2019 is adopted by this court

Ruling delivered, dated and signed at Bomet this 21ST Day of October, 2025.

.....
HON. JULIUS K. NG'ARNG'AR
JUDGE

Ruling Delivered in the presence of;

Susan/Siele Court Assistant

Nyaate for petitioner

No appearance for the Objector