

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAPENGURIA.
SUCCESSION CAUSE NO. 9 OF 2022

**IN THE MATTER OF THE ESTATE OF KEMEI CHOMBOIR
PSETILAT – DECEASED.**

CHEMORIOT CHEPKITE TUKOO..... 1ST ADMINISTRATOR

CHEPOCHECHEO CHOMBIR ATODONGOR 2ND ADMINISTRATOR

ESTHER CHEPOSEKER ATODONGOR..... 3RD ADMINISTRATOR

- V E R S U S -

EMILY CHEPKEMEI LEMUKAL..... OBJECTOR

FRANCIS ODUOR MWAMO OBJECTOR

R U L I N G.

The application dated 7/11/2023 was filed by the firm of Kiarie Advocates on behalf of the 1st and 2nd administrators / applicants. They seek the following orders; -

- 1. That the County Surveyor West Pokot do undertake a ground survey over land parcel West Pokot/Siyoi ‘A’/71; West Pokot/Chepkono 179 and West Pokot/Kishaunet/134 and using GPS, the said Surveyor should pick the existing boundaries and also establish the size of the portions occupied by each of the nine houses;**
- 2. That the applicants be allowed to file their proposals in distribution after the Survey Report gets filed in court and also availed to the parties;**

3. **That the survey be undertaken in the presence of the families;**
4. **That the cost of the Survey be paid by the Estate as the court may direct.**

The application is premised on grounds found in the body of the application and the supporting affidavit of **Chepochechendo Chombir Atodongor**. The applicant who is the 2nd Administrator deponed that she had the authority of the first administrator Chemoriot Chepkite Tukoo, to file this application. It was deponed the deceased died on 2/12/2008 and left when he had settled the beneficiaries on the ground; that the extent of the land given to each house had been shown and perfected by fencing but no surveyor was involved in the exercise and the beneficiaries did not know the sizes or acreage occupied by each house; that it is therefore important for the Surveyor to establish the sizes occupied by each house and moreso, that some beneficiaries have sold their land before confirmation of grant.

According to the applicant, the land was not equally shared because some houses had more people than others. She also deponed that West Pokot/Kishaunet/134 had not been shared out yet it is now fully occupied and it will be necessary to establish the occupants.

The application was opposed by the 3rd Administrator, the 2nd and 3rd protestors.

The third Administrator Esther Cheposeker Atodongor swore the supplementary affidavit dated 27/12/2023 in which she deponed that the deceased never distributed his land as alleged by the 2nd Administrator because the purported distribution by the deceased was not equal; that the 2nd Administrator has denied to give her proposal of how the estate should be distributed and that the 2nd Administrator's push to have a Surveyor visit the ground and determine boundaries is meant to sanitize their wrongful deeds to deprive the other houses of their rightful shares.

The 2nd Protestor **Emily Chepkemei Lemukal** also filed a supplementary affidavit dated 27/12/2023 in which she deponed that the deceased never distributed his land before he died and the request by the 2nd Administrator for a Survey to be done is not welcome; that the court should distribute the estate equitably, then send a surveyor on the ground.

Ms. Sugut appearing for the 3rd Protestor supported the position taken by the 1st administrator and the 2nd protestor.

I have considered the application and the responses thereto. There is evidence on record that the deceased's six wives and their families were settled on the deceased's estate at Siyoi before he died. Before any distribution is done it would be important to establish where each of the said families was settled.

The witnesses, including PW1 Pilat Kimerinyang Loltanyang, PW2 Chepochechendo Chombir (2nd Administrator), PW4 Emmanuel Nyangasi, PW5 Emily Chepkemei (2nd Protestor), PW7 John Kibet, DW1 Esther Atodongor and DW2 Kamolinya Ngania, all admitted that the deceased had distributed his land in Siyoi to his six (6) wives before he died. PW3 Cosmas Barasa also testified to having been present when the deceased sub-divided the Chepkono land into six portions and gave to different beneficiaries. What is also clear from all these witnesses is the sizes of the portions were not equal. Some wives got bigger parcels than others. Also admitted is that the acreage of each parcel was not established though the Boundaries were established. Although some of the witnesses claim that the boundaries have been interfered with, at this stage, it is crucial that the boundaries that were fixed by the deceased be determined. Infact since DW2 claims that the beneficiaries including PW2, Chemoriot and Kinyatta have encroached on other people's land, that is the more reason why a Surveyor should establish where the deceased had established boundaries. The establishment of the boundaries does not mean at this stage, that the court is bound by that distribution. It will however help in determining where the different houses should be settled.

Another reason why it is important to ascertain the boundaries established by the deceased is because it clearly came out of the testimonies of PW2, PW4 PW5 PW7 and DW2 that some of the deceased's wives or children have sold

some or most of their portions given to them by the deceased. It is therefore important that a surveyor goes to the ground to determine, who has sold their portion of land, how much is left of what they were given by the deceased.

The parcel in Kishaunet was said not to have been given to any house but that some people now occupy it. PW5 admitted that some of her siblings live on that parcel. The surveyor has to establish who resides on the said land and how much each occupies.

Lastly, I wish to state that even without this application under consideration, because no one knew how much was given to each wife and what is still available for distribution, this court would still have ordered that a survey of the whole estate be undertaken.

For all the above reasons, I allow the application and grant the order as prayed.

Costs be shared equally amongst the deceased's houses settled on West Pokot 'A'/71; West Pokot/Chepkono 179 and West Pokot Kishaunet /134.

Delivered, Dated and Signed at Kapenguria this 30th day of October, 2025

**R. WENDOH
JUDGE**

Ruling delivered in the presence of:-

M/s Mufutu holding brief for Mr. Kiarie for Applicant.

M/s Chebet holding brief for Ms. Sugut for 3rd Protestor.

Mr. Barongo for 3rd Administrator

Emily Chepkemei for protestor - absent

Juma/Hellen – Court Assistants