

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

SUCCESSION CAUSE NO. 4A OF 2020

IN THE MATTER OF THE ESTATE OF KIPTERER SIMOTWO

ALIAS KIPTERER ARAP SIMOTWO (DECEASED)

KIMUTAI TERER TEKWA 1ST

PETITIONER

ZACHARIA TERER 2ND

PETITIONER

JOHNSTONE TEKWA 3RD

PETITIONER

VERSUS

ESTHER CHEPKIRUI SIMOTWO 1ST

OBJECTOR

ANNA CHELANGAT SIMOTWO 2ND

OBJECTOR

RULING

1. The Petitioners as sons of the deceased petitioned for Letters of Administration Intestate for the estate of Kipterer Simotwo (deceased.) A Grant in their joint names was issued on 4th August 2020.
2. The Petitioners filed Summons for Confirmation of Grant on 31st March 2021 where they attached their preferred mode of distribution of the deceased's estate being KERICHO/KIMULOT/582. The Petitioners stated that the deceased's estate ought to be divided equally among the deceased's three sons (9.40 acres each).

3. Through their written submissions dated 30th October 2025, the Petitioners submitted that it was not in dispute that KERICHO/KIMULOT/778 formed part of the deceased's estate. That its omission was neither deliberate nor malicious. That during the deceased's lifetime, the deceased had indicated that the said parcel be reserved for his unmarried daughters and it was for that reason that they excluded it. The Petitioners further submitted that the deceased had also indicated that KERICHO/KIMULOT/582 be shared among his sons and those instructions were conveyed, witnessed and validated by the area Chief, Mr. Joseph Cheborge. That Kenyan jurisprudence had consistently recognized customary law in succession matters. They relied on **Otieno v Ougo (1986-1989) EA 468, Rono v Rono & another (2005) eKLR, estate of Lerionka Ole Ntutu (2008) eKLR et.al.**

4. It was the Petitioners' submission that they had tendered evidence and testimony of family members which showed that the deceased had distributed his estate during his lifetime. That in Kalenjin customs, the word of a Patriarch

regarding land distribution was binding. That his sisters had all along resided in KERICHO/KIMULOT/778 and had enjoyed peaceful occupation. They relied on **Kanyi v Muthiora (1984) KLR 712.**

5. The Petitioners submitted that they had made significant contributions towards the maintenance and preservation of KERICHO/KIMULOT/582. That it would be unjust for this court to divide the estate equally without factoring in their contributions. They relied on **re Estate of Mwaura Mwangi Mutungi (Deceased) (2018) eKLR** and **re Estate of G.K.K (Deceased) (2017) eKLR.** The Petitioners further submitted that their sisters had long been married, had permanently settled in their respective homes and had not participated in the responsibility, care, maintenance and development of KERICHO/KIMULOT/582.

Objection

6. The 2nd Objector swore an Affidavit of Protest dated 11th May 2021. She stated that the Petitioners did not seek the

Objectors' consent during the distribution of the deceased's estate. That the Petitioners had omitted KERICHO/KIMULOT/778 as one of the deceased's properties. The 2nd Objector further stated that the Petitioners had allocated the deceased's estate to themselves to the exclusion of other dependants.

7. It was the 2nd Objector's case that their sister, Grace Murei had no interest in the deceased's estate as she was adequately provided for by her husband. That each of the deceased's dependants was entitled to an equal share of the deceased's estate.

8. The 2nd Objector stated that the Petitioners accosted their nephew, Victor Kipkirui Rono and demanded that he and his siblings pull down their house that sat on KERICHO/KIMULOT/778. The 2nd Objector proposed mode of distribution was as follows: -

KERICHO/KIMULOT/778

- i) Victor Kipkurui Rono (To hold in trust for himself and his siblings) 3.2 acres
- ii) Priscilla Chepkorir Simotwo 1.6 acres

KERICHO/KIMULOT/582

- i) Priscilla Chepkorir Simotwo 1.51 acres
- ii) Kimutai Terer Tekwa 3.5 acres
- iii) Zacharia Terer 3.5 acres
- iv) Johnstone Terer Tekwa 3.5 acres
- v) Annah Chelangat 3.2 acres
- vi) Esther Chepkirui Simotwo 3.2 acres
- vii) Winny Cherotich 3.2 acres
- viii) Esther Chepkirui Simotwo 1.5 acres

9. It was the 2nd Objector’s case that the 1.5 acres allocated to Esther Chepkirui Simotwo had been hived off from the shares of each daughter and did not affect their brother’s shares at all. That the 1.5 acres would be sold to settle legal, survey

and conveyancing fees. It was the 2nd Objector's further case the deceased's daughters had suffered from their brothers deliberate move to block them from being beneficiaries of the deceased's estate.

10. Through their written submission dated 2nd May 2025, the Objectors submitted that KERICHO/KIMULOT/778 formed part of the deceased's estate. The Objectors further submitted that the deceased did not distribute his estate during his lifetime. That the properties were still registered in the deceased's name.

11. It was the Objectors' submission that the Petitioners did not prove that the deceased distributed his estate in his lifetime. That there were no written agreements or title deeds issued and further that no one was informed of the alleged distribution. They relied on **Cecilia Chepkemoi Sangutet vs Kiplangat Arap Tonui (2018) eKLR**. It was the Objectors' further submission that their proposed mode of

distribution was in tandem with the law and that the Petitioners' proposed mode of distribution was meant to disinherit them. They relied on **Stephen Gitonga M'Murithi vs Faith Ngiramurithi (2015) eKLR.**

12. The Objectors submitted that KERICHO/KIMULOT/582 and KERICHO/KIMULOT/778 measured 23.11 acres and 4.49 acres respectively. That the Petitioners' proposed mode of distribution did not conform to the provisions of section 38 of the Law of Succession Act.

13. I have gone through the entire court record, the Summons for Confirmation of Grant dated 30th March 2021, the Affidavit of Protest dated 11th May 2021, the Petitioners' written submissions dated 30th October 2025 and the Objectors' written submissions dated 2nd May 2025. The only issue for my determination was to determine the just mode of distribution of the deceased's estate.

14. From the outset, it is important to state that KERICHOKIMULOT/582 had been omitted as part of the deceased's estate. The same was raised by the Objectors and the Petitioners acknowledged that their omission was not deliberate. In essence, the Petitioners admitted that KERICHOKIMULOT/582 was part of the deceased's estate and I so hold.

15. Regarding distribution, the Petitioners stated that the deceased had distributed his estate during his lifetime. That the deceased allocated KERICHOKIMULOT/582 to his daughters (Objectors) and KERICHOKIMULOT/778 to his sons (Petitioners). The Petitioners relied on customary law and urged this court to factor in the Kalenjin customary law and honour the deceased's wishes. The Petitioners had the burden of proving that the deceased had indeed distributed his estate during his lifetime. I have carefully gone through the record and I have noted that the Petitioners did not provide any evidence buttressing their claim that the deceased distributed his estate during his lifetime. I concur

with Mumbi Ngugi J. (as she then was) in **Cecilia Chepkemoi Sangutet v Kiplangat Arap Tonui [2018] KEHC 7829 (KLR)**, where she held: -

“The law is that if a deceased person had distributed his or her property in his lifetime, such distribution should be respected.....

..... However, such wishes must be demonstrably clear, and can only be so through oral or documentary evidence adduced before the court.” (Emphasis mine)

16. Flowing from the above, it is my finding that the Petitioners failed to discharge their burden of proof and I further find that the deceased did not distribute his estate during his lifetime.

17. That said, the law contemplates equal sharing of inheritance among the beneficiaries irrespective of any circumstances. Equality is guaranteed even in a scenario where the deceased left behind children but no spouse. **Section 38 of the Law of Succession Act** provides: -

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

18. The Objectors stated that they had been left out of the deceased's estate simply by being the deceased's daughters.

Article 27(3) of the Constitution of Kenya provides: -

Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

19.The Court of Appeal in **M'Murithi v Murithi** [2015] KECA 347 (KLR) held: -

“.....Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried.....”

20.Similarly, the court in **Re Estate of John Musambayi Katumanga - (Deceased)** [2014] KEHC 7506 (KLR) held as follows: -

“The spirit of Part V, especially Sections 35, 38 and 40, is equal distribution, of the intestate estate amongst the children of the deceased. There have been debates on whether the

distribution should be equal or equitable. My reading of these provisions is that they envisage equal distribution for the word used in Sections 35(5) and 38 is “equally” as opposed to “equitably”. This is the plain language of the provisions. The provisions are in mandatory terms - the property “shall ... be equally divided among the surviving children.” Equal distribution is envisaged regardless of the ages, gender and financial status of the children.”

21. Further, in **re Estate of Francis Andachila Luta (Deceased) (Succession Cause 875 of 2012) [2022] KEHC 16900 (KLR) (23 December 2022) (Judgment)**, Musyoka J. held: -

“Let me revisit section 38 of the Law of Succession Act. It provides for equal distribution of the estate amongst the children. The language

of section 38 is gender neutral. It does not classify children into male and female, nor sons and daughters, nor men and women. There is no discrimination nor differentiation nor classification nor categorization along gender lines. That would mean that sons and daughters of a dead person are entitled on equal basis to a share in the estate of their dead parent. Section 38 does not make marriage a factor in the distribution of the estate of a dead parent.....

Section 38 should be read together with Article 27 of the Constitution, which outlaws discrimination of women based on gender and marital status. It declares that men and women have a right to equal treatment in all spheres of life. These principles and standards set out in Article 27, are drawn from the United Nations Convention on Elimination of All Forms of Discrimination against Women. (CEDAW), to

which Kenya is a signatory. Article 27 and CEDAW enjoins the State, of which the courts are part, not to discriminate against any person on the basis of their sex or gender or marital status, Article 2(5) (6) of the Constitution incorporates and makes the general rules of international law part of the law of Kenya, and it also makes any treaty if or convention ratified by Kenya part of Kenyan law.....”

22. It is clear from the above that the deceased's estate should be shared equally among the deceased's beneficiaries. 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 the home of Mary Tekwa (deceased) was located in KERICHO/KIMULOT/778. 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.....”

23. When I look at the two proposed modes of distribution, I am convinced that the Objectors' proposed mode of distribution contained in the Affidavit of Protest dated 11th May 2021 presents a fair and balanced distribution and was more in consonance to the provisions of **section 38 of the Law of Succession Act.**

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

I. The Grant dated 4th August 2020 is hereby confirmed.

II. A Certificate of Confirmation of Grant do issue reflecting the distribution of the deceased's estate as per the Affidavit of Protest dated 11th May 2021.

III. Each party to bear their own costs.

Ruling delivered, dated and signed at Bomet this 13th day of November, 2025.

.....
**Hon. JULIUS K. NG'ARNG'AR
JUDGE**

Ruling delivered in the presence of:

Siele/Susan (Court Assistants).

Pere holding brief for the Petitioners

Kipkorir for the Objectors

ORIGINAL