



**THE REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**SUCCESSION CAUSE NO. 080 OF 2024 FORMERLY CHIEF  
MAGISTRATES SUCCESSION CAUSE NO. E094 OF 2022)**

**IN THE MATTER OF THE ESTATE OF RICHARD MALAKWEN ARAP  
CHEBOCHOK A.K.A RICHARD MALAKWEN CHEBOCHOK A.K.A  
CHEBOCHOK MALAKWEN RICHARD A.K.A RICHARD M.  
CHEBOCHOK A.K.A RICHARD M. ARAP CHEBOCHOK (DECEASED)**

**AND**

**IN THE MATTER OF SUMMONS FOR CONFIRMATION OF GRANT  
DATED 9<sup>TH</sup> JULY, 2024**

**AND**

**IN THE MATTER OF THE AFFIDAVIT OF PROTEST BY SEREM  
KIPKORIR BRIAN SWORN ON 3<sup>RD</sup> OCTOBER, 2024**

**RULING**

1. The dispute before this Court flows from a mediation agreement on distribution, that the parties submitted themselves to vide NKR/MED/O25/23 and a Settlement Agreement was recorded on 28<sup>th</sup> April, 2023, resolving that all assets except three be shared equally between the 1<sup>st</sup> and 2<sup>nd</sup> Houses.

2. The three assets that the parties resolved to be left for judicial determination were;
  - a) Nairobi Block 72/85 (in Langata, Nairobi)
  - b) Njoro Ngata Block 2/146 (In Nakuru)
  - c) Molo/ South Keringet/ 2/8 (Kirobon) in Nakuru.
3. The 1<sup>st</sup> house takes the view that the deceased had settled the 1<sup>st</sup> house Njoro Ngata Block 2/146 and that the Nairobi Block 72/85 was a matrimonial house for the 1<sup>st</sup> wife of the deceased.
4. The 2<sup>nd</sup> house takes the view that all assets should be shared out equally in strict compliance of section 40 of the law of succession act.
5. The 1<sup>st</sup> house proposes to retain Nairobi Block 72/85 and Njoro Ngata Block 2/146 within the 1<sup>st</sup> house while Molo/ South Keringet/ 2/8 (Kirobon) be retained by the 2<sup>nd</sup> house and to balance any seeming disparity in the ultimate share for each house, the 1<sup>st</sup> house is willing to relinquish their share in the following assets to the 2<sup>nd</sup> house: -
  - i. **Nakuru Municipality Block 24/33** measuring 0.054 Ha (a Town property with high value and commercial premises)
  - ii. **Kericho//Kipchorian/Lelu Block 4 (Mutaragon) 735** measuring 2.8 Ha (agricultural land where the 2<sup>nd</sup> house has been cultivating tea)
  - iii. Funds on MPESA NO. 0720842933
6. The 2<sup>nd</sup> house proposes as follows: -
  - i. Each family maintains their matrimonial home and at least an acre,

- ii. That the remainder of **Molo South/ Keringet Block 2/8(Kirobon) & Nakuru/Njoro/Ngata- Block 2/146** be divided equally noting that acreages of the parcels differ substantially;
- iii. **Nakuru Municipality/ block 24/433 & Nairobi/ Block 72/85** be renovated and put up for rent to cater for utilities of the estate including the needs of the school going children and remainder be distributed to the beneficiaries equally Section 40 of the law of succession act;
- iv. The remainder of the estate to be distributed equally amongst all the beneficiaries in line with Section 40 of the law of succession act.

7. The 1<sup>st</sup> House argues that;

- a. The entire wealth of the Estate was created by the deceased and his first wife, Rhoda, who made both direct and indirect contribution towards acquisition and development of not just the two portions but the entire estate.
- b. The deceased 1<sup>st</sup> wife contributed largely to the growth of the estate.
- c. The children of the first house also contributed in development, improvement and preservation of the family wealth.
- d. The 1<sup>st</sup> house occupied and utilized the entire estate until the year 1995 when the 2<sup>nd</sup> wife came in and was settled on Molo/ South Keringet/ 2/8 (Kirobon) where she resided with her children till the demise of the deceased.

- e. Since coming in of the second wife, no additional asset was added to the family pot. It was the express intention of the deceased that Nairobi Block 72/85 and Njoro Ngata Block 2/146 remain with the 1<sup>st</sup> family.
  - f. Children of each house grew separately all their lives.
  - g. As per Kipsigis culture, the sons of each house have been allocated a portion of existing land where they could build their house and start a family. To disrupt the arrangement would be against the deceased's wishes.
  - h. Each family has put up permanent constructions on their separate portions with the express advise and blessings of the deceased.
  - i. 2<sup>nd</sup> wife of the deceased was not allowed to move into and settle in the Ngata and Langata property even after demise of the 1<sup>st</sup> wife.
  - j. Njoro Ngata Block 2/146 forms part of Rodah's estate.
  - k. Rodah chebochok was laid to rest on Njoro Ngata Block 2/146. Carolyne's daughter, Natasha knows that to be her home.
8. The Court is persuaded to take judicial notice of the fact that Succession disputes involving polygamous families, especially when pre-death settlements are involved, are frequently emotionally charged and can be damaging to familial relationships. Family is a protected unit under the Constitution, where it is said that: -

***“45. (1) The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State”***

9. To mitigate conflict and preserve family ties in the context of Succession and Matrimonial Property disputes, Courts are called upon to consider factors such as the timing of marriages and living arrangements during the lifetime of the deceased. The Court should, as much as is practicable, refrain from making decisions that has the net effect of displacing beneficiaries from their initial permanent places of abode.
10. In this instance the 2<sup>nd</sup> house that started in 1995 stakes a claim upon the entire estate at the 50:50 ratio prescribed in section 40 of the Law of Succession Act against the 1<sup>st</sup> house that started in 1964 with all significant assets having been acquired before 1995.
11. It is noteworthy that the surviving widow was born in 1974 and would be two years younger than 1<sup>st</sup> Administrator the deceased eldest son it would be extremely disruptive to the 1<sup>st</sup> house to have the beneficiaries from the 2<sup>nd</sup> house share Njoro Ngata Block 2/146.
12. The 50:50 claim cannot hold as similar arguments cannot be sustained under the matrimonial properties Act.
13. In this instance the deceased had settled his two houses and his succession shall be in line with the same wish

14. With regards to the property known as NAIROBI /BLOCK 72/85 the same was acquired long before Winnie Chepkemoi Towett was born and it would then be foolhardy to urge that the same was a commercial and not a matrimonial home.
15. I respectively observe that, this property NAIROBI /BLOCK 72/85 was the sticking point in mediation and the other proposal to share the three properties in strict compliance with section 40 of the Act was a negotiating strategy to raise the stake.
16. However, this Court is persuaded of sufficient reason warranting the Court departing from the strict Application of Section 40 of the Law of Succession Act thus finds in favour of the 1<sup>st</sup> House proposal.
17. I am inclined to allow the summons for confirmation of grant as is presented by the 1<sup>st</sup> Administrator and the Affidavit of protect by the 2<sup>nd</sup> Administrator is dismissed.
18. The Application is in addition to and with minor variance of the mediation agreement dated 28<sup>th</sup> April 2023 allowed on the following terms;
  - a) **The 1<sup>st</sup> House** shall be bequeathed the following properties to be shared equally by the beneficiaries therein;
    - i. Nairobi Block 72/85
    - ii. Njoro Ngata Block 2/146

b) **The 2<sup>nd</sup> House** shall be bequeathed the following properties to be shared equally by the beneficiaries therein;

- i. Molo/ South Keringet/ 2/8 (Kirobon)
- ii. Nakuru Municipality Block 24/33 measuring 0.054 Ha
- iii. Kericho//Kipchorian/Lelu Block 4 (Mutaragon) 735 measuring 2.8 Ha
- iv. Funds on MPESA NO. 0720842933

19. There shall be no cost orders awarded this being a family matter.

20. The Administrators are expected to oversee the administration and distribution of the estate within the next six (6) months from today.

21. Any party aggrieved with the ruling has a forty-five (45) day leave to Appeal which period of leave shall act as stay of execution.

It is so directed.

**Delivered, Dated and Signed at Nakuru**

**On this 13th of March, 2026**

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**Mohochi S. M**  
**JUDGE**