



**In re Estate of the Late Samwel Maritim Chumek alias Maritim Arap Chumek (Deceased)
(Succession Cause 14 of 2014) [2025] KEHC 1268 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1268 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 14 OF 2014
JK SERGON, J
FEBRUARY 27, 2025**

BETWEEN

ERASTUS MARITIM PROTESTOR

AND

STEPHEN KIPRONO MARITIM 1ST PETITIONER

STANLEY SANG 2ND PETITIONER

ONESMUS KIPKIRUI ARAP MARITIM 3RD PETITIONER

RULING

1. The Petitioners filed summons for the confirmation of grant dated 12th September, 2022 seeking to have the grant of letters of administration intestate made to Stephen Kiprono Maritim, Stanley Sang and Onesmus Kipkirui Maritim on 26th May, 2014 confirmed.
2. The Petitioners filed an affidavit in support of the summons for confirmation of grant in which they aver that all beneficiaries of the estate had been ascertained and their shares to the estate of the deceased ascertained and determined per the schedule of property attached as follows;

1st Household

A total of 12.37 Ha which is made up of 5 Ha of Kericho/Tumoi/2 plus 7.37 Ha of Kericho/Kyogong/238

1. Kipkemoi and Maria Maritim both deceased (son and daughter in law to the deceased) their 7 surviving children to inherit their share of the estate equally - 1.25 Ha Kericho/Tumoi/2 and 1.8425 Ha Kericho/Kyogong/238 respectively



2. Fenicha and Liza Maritim both deceased (son and daughter in law to the deceased) their 6 surviving children to inherit their share of the estate equally - 1.25 Ha Kericho/Tumoi/2 and 1.8425 Ha Kericho/Kyogong/238 respectively
3. Stephen Kiprono Maritim (son to the deceased) - 1.25 Ha Kericho/Tumoi/2 and 1.8425 Ha Kericho/Kyogong/238 respectively
4. Jeremiah and Sarah Maritim both deceased (son and daughter in law to the deceased) their 5 surviving children to inherit their share of the estate equally - 1.25 Ha Kericho/Tumoi/2 and 1.8425 Ha Kericho/Kyogong/238 respectively

2nd Household

A total of 12.73 Ha which is made up of 10.2 Ha of Kericho/Tumoi/547 plus 2.53 Ha of Kericho/Kyogong/238

1. William K. Maritim (son to the deceased) - 2.53 Ha Kericho/Kyogong/238
2. Ezra K. Maritim (son to the deceased) - 2.55 Ha Kericho/Tumoi/547
3. Stanley Sang (son to the deceased) - 2.55 Ha Kericho/Tumoi/547
4. David C. Maritim (son to the deceased) - 2.55 Ha Kericho/Tumoi/547
5. Michael and Janet Sang both deceased (son and daughter in law to the deceased) their 6 surviving children to inherit their share of the estate equally - 2.55 Ha Kericho/Tumoi/547

3rd Household

A total of 13.10 Ha from Kericho/Kyogong/238

1. Erastus Maritim Komasgoi (son to the deceased) - 2.22 Ha Kericho/Kyogong/238
2. Eliud and Mary Maritim both deceased (son and daughter in law to the deceased) their 1 surviving child to inherit their share of the estate - 2.22 Ha Kericho/Kyogong/238
3. Onesmus Kipkirui Maritim (son to the deceased) - 2.22 Ha Kericho/Kyogong/238
4. Jane Chepkirui surviving widow of Joseah Cheruiyot Maritim (son to the deceased) - 2.22 Ha Kericho/Kyogong/238
5. David Kiprono Maritim (son to the deceased) - 2.22 Ha Kericho/Kyogong/238
6. Philister Chepkemoi Kirui (daughter to the deceased) - 0.4 Ha Kericho/Kyogong/238
7. Lilian Chepkirui Chumek deceased (daughter to the deceased) each of her 4 children to inherit - 0.4 Ha Kericho/Kyogong/238



3. The Protestor in response filed an affidavit of protest against the mode of distribution in the summons for confirmation of the grant dated 25th September, 2024.
4. The Protestor a beneficiary to the estate of the deceased avers that on 12th September, 2022 the Petitioners filed for summons for confirmation of grant distributing the estate of the deceased, however, the consent for confirmation of grant was not signed by all beneficiaries, he attached a copy of the consent.
5. The Protestor avers that the petitioners are set to confirm the grant distributing the estate of the deceased without the consent of all the beneficiaries.
6. The Protestor avers that when the petitioners filed summons for confirmation of grant distributing the estate of the deceased equally, his mother Raeli Chumek who is now deceased filed a protest stating that since each house resided on their respective parcels of land, they should therefore stay where they are.
7. The Protestor avers that the honorable court vide a judgment dated 16th April, 2021 upheld the protest and directed that the family distribute the estate in accordance with Kipsigis Customary Laws and attached a copy of the judgment.
8. The Protestor avers that the summons for confirmation of grant does not reflect the directions of this honorable court vide the Judgement dated 16th April April, 2021 which directed that the Estate be distributed in Accordance with Kipsigis Customary Law.
9. The Protestor avers that this Honorable Court while pronouncing itself considered the fact that the deceased settled his family on their respectful parcels of land and had been living in harmony for 35 years as follows;
 - 1st House - Kericho/Tumoi/2
 - 2nd House - Kericho/Tumoi/547
 - 3rd House - Kericho/Kyongong/238
10. The Protestor avers that the Petitioners concealed the fact that the wishes of the deceased were that each house should live on their respective parcels of land and therefore the estate should be distributed as per the wishes of the deceased.
11. The Protestor avers that other beneficiaries are likely to suffer irreparable loss if the grant is confirmed as they had already settled on the various parcels.
12. The court directed the parties to canvas the application by means of written submissions.
13. At the time of writing this ruling, the Petitioners complied and filed written submissions whereas the Protestor had not uploaded their submissions on the Case Tracking System.
14. The Petitioners filed submissions, they contended that the protestor's assertion that the schedule of distribution of the estate of the deceased in the affidavit in support of the summons for confirmation, did not reflect the wishes of the deceased and/or the directions of this court issued vide judgment dated 16th April, 2021.
15. The Petitioners contended that the issues canvassed in the protest are res judicata having been heard and determined vide the judgment of the court dated 16th April, 2021 where the court having heard witnesses found that there was no evidence that the deceased left a will.



16. The Petitioners contended that the mode of distribution in the affidavit in support of the summons for confirmation is tandem with the court's directions issued vide the judgement dated 16th April, 2021 that the estate should be distributed in accordance with Kipsigis customary law. The Petitioners made reference to an affidavit sworn by one Kipkoech Arap Chepkwony of the National Myot Council of Elders, minutes of meetings held by the various households and the clan elders, asserting that the same contain the dictates of Kipsigis customs in so far as the devolution or distribution of the deceased's estate is concerned, particularly, that the estate is to be subdivided equally among the households. The Petitioners therefore reiterated that this court ought to dismiss the protest and allow the summons for confirmation of grant.
17. Having considered pleadings and submissions, the sole issue for determination by this court is whether to allow the protest.
18. On one part, the protestor is adamant that the deceased settled his family on their respectful parcels of land and they had been living in harmony for 35 years. The protestor maintains that the wishes of the deceased were that each house should live on their respective parcels of land and therefore the estate should be distributed as per the wishes of the deceased.
19. On the other part the petitioners, contended that there was no evidence that the deceased left a will and therefore the estate is to be subdivided equally among the households. The petitioners attached an affidavit sworn by one Kipkoech Arap Chepkwony of the National Myot Council of Elders and minutes of meetings held by the various households and the clan elders in support of their assertion that the estate of the deceased ought to be subdivided equally among the households.
20. This court, having considered the arguments by the parties, finds that the petitioners have made out a strong and cogent case for equal distribution of the estate of the deceased that is supported by minutes of meetings held by the various households and clan elders that are on record. It is the finding of this court that the mode of distribution propounded in the summons for confirmation of grant is in tandem with the legal provisions on intestate distribution. The Court of Appeal, in *Justus Thiora Kiugu, & 4 Others v Joyce Nkatha Kiugu & Another* [2015] eKLR (Visram, Koome and Otieno-Odek JJA), held that an intestate estate could not legally be distributed in any other way other than by the parties agreeing amongst themselves and filing a consent, or by the court following the provisions of the *Law of Succession Act* on intestate distribution. It was stated that where the parties were in total agreement, and recorded a consent on the mode of distribution, the court would have no choice but to adopt the consent, and make it an order of the court. In the absence of a written consent on the mode of distribution, the court would have no discretion but to distribute the estate of the deceased as per the provisions of the *Law of Succession Act*.
21. Consequently, the summons for confirmation dated 12th September, 2024 are hereby allowed and distribution of the estate be done as per the schedule of distribution proposed by the Petitioners vide the Affidavit filed in support of the application for Confirmation of Grant.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 27TH DAY OF FEBRUARY, 2025.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh



Kipkorir holding brief for Miss Sang for Petitioner
Miss Chelimo for the Respondent

