



REPUBLIC OF KENYA



**In re Estate of Joshua Kiptoo Kimutai (Deceased) (Succession Cause
60 of 2020) [2024] KEHC 7503 (KLR) (24 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7503 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
SUCCESSION CAUSE 60 OF 2020**

RN NYAKUNDI, J

JUNE 24, 2024

IN THE MATTER OF THE ESTATE OF JOSHUA KIPTOO KIMUTAI

IN THE MATTER OF

**BENSON KIPKORIR MUTAI 1ST PETITIONER
SHARON JELAGAT 2ND PETITIONER
PHILIP KIPROTICH KANDIE 3RD PETITIONER**

RULING

1. The applicant approached this court vide a summons for confirmation of grant of probate dated 6th September, 2022 seeking the following orders;
 - a. The Grant of Probate of the estate of the above-named Joshua Kiptoo Kimutai (deceased) made of the said Benson Kipkorir Mutai, Sharon Jelagat and Philip Kiprotich Kandie on 17th December 2020 be confirmed.
 - b. That the costs be in the cause.
2. The application is premised on the grounds in the annexed affidavit of Benson Kipkorir Mutai, Sharon Jelagat and Philip Kiprotich Kandie. The applicants deposed that the grant of probate was made to them on the 17th day of December, 2020 and that the deceased was survived by the following;
 - i. Sharon Jelagat (daughter)
 - ii. Amanda Jerono (daughter)
3. The Applicants have also proposed a mode of distribution and undertaken to diligently distribute the estate and account to court.



Analysis and determination

The Law

4. On the formal requirements of validity of a will, the law is in section 11 of the [Law of Succession Act](#). It states -
 - ‘11. No written will shall be valid unless-
 - (a) The testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;
 - (b) The signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;
 - (c) The will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.’
5. Freedom of testation is considered one of the founding principles of Kenyan law of testate succession. A Kenyan testator enjoys the freedom to dispose off the assets which form part of his/her estate upon death in any manner he/she deems fit. This principle is supplemented by a second important principle namely; that Kenyan courts are obliged to give effect to the clear intention of a testator as it appears from the testator’s will. Freedom of testation is further enhanced by the fact that private ownership and the concomitant right of an owner to dispose off the property owned constitute basic tenets of the Kenyan law of Property. An owner’s power of disposition included disposal of his/her property upon death by any of the means recognized by the law including a last or oral or written will. The courts therefore acknowledge that private ownership of property and the power of disposition of an owner therefore serve as a sound foundation for the recognition of private succession as well as freedom of testation in our law of Succession. Therefore, freedom of testation itself is constitutionally protected as it implicates rights to property Art 40 of [the Constitution](#).
6. Rule 40(1) of the [Probate and Administration Rules](#) provides as follows;

“Where the holder of a grant which has not been confirmed seeks confirmation of the grant he shall apply for such confirmation by summons in Form 108 in the cause in which the grant was issued, supported by an affidavit in Form 8 or 9 exhibiting the grant together with an estate duty compliance certificate or other satisfactory evidence that no estate duty is payable and setting out the full names of the deceased person to whose estate the grant relates, and he shall satisfy the court that no application under Part III of the Act is pending.”
7. In the present case, there is only one testamentary made by the deceased namely, Joshua Kiptoo Kimutai bequeathing his estate to the heirs. It is in the case of the applicant that the will is not contested and presents the last testamentary of the deceased. The relations between the parties are not in dispute. It is also not in dispute that the testator died on 29th April, 2020. Therefore, there being no objections, the instant application is meritorious and the grant of probate made to Benson Kipkorir Mutai, Sharon Jelagat and Philip Kiprotich Kandie on 17th December, 2020 is hereby confirmed in the following terms;



Property	Beneficiary
Kaptagat/kaptagat Block 1(losirwa) 320 Measuring 1 Acre	Penna Sawe and Sharon Jelagat to hold in trust for Sharon Jelagat and Amanda Jerono
Pioneer/ngeria/block 1(eatec) Plot No. 12	Penna Sawe and Sharon Jelagat to hold in trust for Sharon Jelagat and Amanda Jerono
Shares In Kenversity Sacco	Benson Kipkorir Kimutai
Shares In Kimwogo Land	Benson Kipkorir Kimutai

8. All in all, I find the applicants are entitled to the orders sought to proceed with the testate administration of the estate. That the grant of letters of administration herein confirmed be issued to the applicants and at an opportune time set at six months under Section 83 (g) of the Law of Succession Act, the applicants do submit to court a full true and updated inventory of the administration of the estate as propounded in the Will.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 24TH DAY OF JUNE 2024

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R. NYAKUNDI
JUDGE

