



In re Estate of Kiptoo Kiptanui alias Kiptoo Kiptanui (Deceased) (Probate & Administration 026 of 2021) [2024] KEHC 10381 (KLR) (23 August 2024) (Ruling)

Neutral citation: [2024] KEHC 10381 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 026 OF 2021
RN NYAKUNDI, J
AUGUST 23, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE KIPTOO
KIPTANUI ALIAS KIPTOO KIPTANUI (DECEASED)**

IN THE MATTER OF

**HELLEN JEPKORIR KIPTANUI 1ST PETITIONER
CHRISTINA JEPKOECH TANUI 2ND PETITIONER**

RULING

1. The Petitioners filed an amended summons for confirmation of grant dated 16th May, 2024 relating to the estate of the late Kiptoo Kiptanui alias Kiptoo Kiptanui . The Petitioners seek reliefs as hereunder:
 - a. That Christina Jepkoech Tanui be included as a Co-administrator of the estate of Kiptoo Kiptanui and an amended letter of administration be issued to both Hellen Jepkorir Kiptanui and Christina Jepkoech Tanui as the administrators of the estate of Kiptoo Kiptanui
 - b. The grant of Letters of Administration intestate to the estate of Kiptoo Kiptanui alias Kiptoo Kiptanui – deceased made to the applicants herein Hellen Jepkorir Kiptanui and Christina Jepkoech Tanui pursuant to the amended Letters of Administration be and is hereby confirmed.
 - c. The estate of the late Kiptoo Kiptanui alias Kiptoo Kiptanui be distributed as the schedule provided.
2. The summons is premised under section 71(3) and (4) of the *Law of Succession Act*, Cap 160 Laws of Kenya and Rule 40 of the *Probate and Administration Rules*.
3. The summons is based on the grounds on the face of it among others: that more than six months (6) have elapsed since the said grant was made; that the applicants are the administrators of the deceased’s estate and that the identification of all persons beneficially entitled to share the said estate and their



respective entitlements have been ascertained and determined and all the beneficiaries have agreed on the mode of distribution.

4. The summons is supported by an annexed affidavit sworn by Hellen Jepkorir Kiptanui in which she has deposed as follows regarding the estate of the late deceased:
 - a. That Grant of Letters of Administration Intestate to the estate of the said Kiptoo Kiptanui was made to me on 6th September, 2021.
 - b. That pursuant to family agreement, we have consensually agreed to be Co-administrators with Christina Jepkoech Tanui .
 - c. That the said grant is now ripe for confirmation to enable us to finally distribute the said estate amongst the beneficiaries.
 - d. That the deceased died on 25th August, 1998 Intestate and was survived by the following dependants.
 - i. Andrew Lagat – Son
 - ii. Mary Jepkoech – Daughter
 - iii. Paul Agui – Son
 - iv. John Tanui – Son
 - v. Joseph Chepkwony – Son
 - vi. Sammy Too – Son
 - vii. Elizamah Jemurgor – Daughter
 - viii. Hellen Jelimo – Daughter
 - ix. Sila Letting – Son
 - x. Leah Jeptum – Daughter
 - xi. Wilson Too – Son
 - xii. Nancy Jerotich – Daughter
 - xiii. Francis Chepkwony – Son
 - xiv. Elphas Kibet – Son
 - xv. Bethwel Tanui – Son
 - xvi. Mercy Jepkosgei – Daughter
 - xvii. Sheila Jemutai – (deceased)
 - e. That there are no other dependants surviving the deceased.
 - f. That the estate of the deceased comprised of;
 - i. Tulwet/Tulwet Block 1 Masaba (23)
 - ii. Tulwet/Tulwet Block 1 Masaba (12)
 - iii. Barclays Bank A/C 0003xxx



- iv. Kenya Commercial Bank A/C 0024xxx
- g. That the identification of shares of all persons beneficially or otherwise entitled to the estate of the deceased has been ascertained and determined as follows:



That the whole parcel of land known as Tulwet/Tulwet Block 1 Masaba (23) and Tulwet/Tulwet Block 1 Masaba (12) measuring to be shared and allocated to the beneficiaries as follows:

LR-Tulwet/Tulwet Block 1 Masaba (23)

Name	ID No	PROPERTY	SHARE
Christina Jepkoech Tanui	687xxxx	Plot 23	4 Acres
Andrew Lagat	686xxxx	Plot 23	10 Acres
Mary Jepkoech	1057xxxx		Nil
Paul Agui	1118xxxx		7.75 Acres
John Tanui	2142xxxx		7.75 Acres
Joseph Chepkwony	2310xxxx	Plot 23	7.75 Acres
Sammy Too	2533xxxx	Plot 23	7.75 Acres
Elizamah Jemurgor	2760xxxx	Plot 23	Nil
Hellen Jelimo	1452xxxx	Plot 23	4 Acres

LR-Tulwet/Tulwet/Block 1 Masaba (12)

NaMe	ID NO	Property	Share
Hellen Jepkorir Kiptanui	687xxxx	Plot 12	3 Acres
Sila Letting	2005xxxx	Plot 12	5 Acres
Leah Jeptum	2005xxxx	Plot 12	Nil
Wilson Too	2450xxxx	Plot 12	5 Acres
Nancy Jerotich	2450xxxx	Plot 12	Nil
Francis Chepkwony	2515xxxx	Plot 12	5 Acres
Elphas Kibet	2851xxxx	Plot 12	5 Acres
Bethwel Tanui	2945xxxx	Plot 12	5 Acres



Mercy Jepkosgei	3268xxxx		Nil
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- h. That all the beneficiaries have willingly consented to the mode of distribution indicated herein above.
5. The summons is further supported by the annexed affidavit of Christina Jepkoech Tanui in which she has deposed as follows regarding the estate of the deceased;
- a. That I am one of the Applicant/Petitioner herein and the administrator of the estate of the late Kiptoo Kiptanui alias Kiptoo Kiptanui -deceased who died on 25th August 1998 intestate and therefore competent and duly authorised to swear this affidavit.
- b. That I have read the affidavit of Hellen Jepkorir Kiptanui and hereby confirm its contents as true.
- c. That I make this Affidavit in further support of the application now before this court.
6. I have gone through the record and none has objected to the confirmation of the said grant. The beneficiaries have equally filed an executed consent to the confirmation of grant issued on 6th September, 2021.

Resolution

7. In the instant case, how should the distribution be done? The provisions of Section 40 of the Law of the Succession of Act gives a guide on how an intestate will be distributed where the deceased was polygamous and was survived by the wives and children. The Section states:
- “Section 40
1. Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children;
 2. The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”
8. In the case of *Lucy Nyaruai Gachoki v Loise Wambuo Gachoki* Succession Cause No 12 of 2006, the court underscored the fact that section 40 of the *Law of Succession Act* is a useful guide in the administration of the estate of a deceased person.
9. In the case of *Mpatinga Ole Kamuye v Meliyo Tipango & 2 others* (2017) eKLR the court opined
- “ this court’s view before distribution of the estate of the deceased under section 71 of the *Law of Succession Act* Cap 160, the court must satisfy itself that the beneficiaries of the estate are the legitimate beneficiaries of the estate: that there are assets that comprise of the deceased’s estate and are available for distribution after settling all liabilities and having the net estate for distribution.”



10. I have had occasion to peruse through the proposed mode of distribution as filed herein by both parties and consented to as per the consent dated 16th May 2024. This court is satisfied that the said mode of distribution as per the amended summons for confirmation dated 16th May, 2024 is in conformity with the principles of equity which is envisioned in the letter and spirit of the provisions of section 38 & 40 of the *Law of Succession Act*. As a consequence of the above findings, a Certificate of Confirmation of Grant shall be in full and true inventory of the properties exhibited clause (g) of the Affidavit by the Petitioner.
11. Consequent, upon my findings above, I therefore decide as follows:
- a. The Summons for confirmation of Grant dated 16th May, 2024 be and is hereby allowed.
 - b. A Certificate of Confirmation of Grant shall be generated by the Administrators for endorsement by this Court as a legal instrument to distribute the estate to the beneficiaries.
 - c. That pursuant to section 83(g) of the *Law of Succession Act*, the Administrators are bound by law to submit a probate account to this court within 6 months' form today's date.
 - d. In terms of Section 66 of the *Law of Succession Act*, Christina Jepkoech Tanui be and is hereby appointed a Co-administrator with Hellen Jepkorir Kiptanui .
 - e. That each party be at liberty to apply.
 - f. Costs of this probate be in the cause.
12. I so order.

DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET, THIS 23RD DAY OF AUGUST 2024

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R. NYAKUNDI

JUDGE

