



In re Estate of Ezekiel Kipruto Tele alias Kipruto A. Tele (Deceased) (Succession Cause 23 of 2019) [2023] KEHC 1412 (KLR) (24 February 2023) (Judgment)

Neutral citation: [2023] KEHC 1412 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 23 OF 2019
AN ONGERI, J
FEBRUARY 24, 2023**

**IN THE MATTER OF THE ESTATE OF THE LATE EZEKIEL
KIPRUTO TELE ALIAS KIPRUTO A. TELE (DECEASED)**

BETWEEN

JONATHAN KIPLANGAT RUTO OBJECTOR

AND

JOSEPH CHERUIYOT RUTO 1ST PETITIONER

JONATHAN KIPKORIR RUTO 2ND PETITIONER

JUDGMENT

1. The objector Jonathan Kiplangat Ruto raised this objection in respect of the Grant of letters of Administration issued to Joseph Cheruiyot And Jonathan Kipkorir Ruto on the basis that the objector is the son of the deceased.
2. The deceased herein Ezekiel Kipruto Tele alias Kipruto A. Tele died intestate on 9/12/2008.
3. The hearing proceeded by viva voce evidence. The objector called four witnesses while the petitioner had 3 witnesses.
4. The witnesses wrote written statements which they adopted which were as follows;
5. Ow1 Kipkemoi Soi Sewer stated that the Deceased Ezekiel Kipruto Telei took him in together with his siblings after the demise of his parents and that the deceased married the 2nd wife one Alice Chebet Telei around the year 1943 but did not build her a house which prompted the said Alice to leave her matrimonial home while she was expecting her 2nd child and that though the said Alice did not come back to claim for place to live in or cultivate from the Deceased, she continued bearing children for the deceased.



6. He added that he was aware that the objectors were also the beneficiaries and survivors of the estate of the late Ezekiel Kipruto Telei and were entitled to the share of the estate.
7. Ow2 Kiplangat Murusoi stated that he knew the objectors for a long period since their childhood before they relocated to Olenguruone and that they had equal rights as the children of the deceased two wives who had barred the objectors from accessing the properties of the deceased.
8. Ow3 Jonathan Kiplangat stated that he is the sEcond Born Son Of The Late Ezekiel Kipruto Telei (deceased) And the late Alice Chebet Telei (chemalel), that he was born around 1950 and that though he grew up at his uncle's place, his late father attended most of his function including cleansing t the shrine, initiation, fund drive for his school fees and marriage as well as seeing him off when he was moving from Bureti to the land that he (the OW1) had bought in Olenguruone.
9. Ow4 Richard Cheruiyot Ruto stated that he was one of the objectors and one of the sons of the late Ezekiel Kipruto Telei and that they moved to Olenguruone back in the year 1979 together with their mother Alice Chebet Telei when his elder brother bought land there.
10. That together with his brothers, they sought the distribution of properties of their late father after his demise in the year 2008 in vain.
11. Pw1 Alice Chepkosgei Telei that she was the 2nd widow of the deceased who died on 9/12/2008 and that the objectors and his brothers were strangers to her family since the said Alice Chebet Chemalel was not married to the deceased neither did she cohabit with the deceased during their lifetime.
12. That neither the objectors nor the objectors purported deceased mother attended any of the ceremonies and family gatherings that were held during the lifetime of the deceased and the 1st co-widow and therefore the objector claim was baseless and should be dismissed.
13. Pw2 Samwel Kibet Sang stated that the petitioners were his cousins and that they are immediate neighbors and that the objector was a stranger to him as he became aware of him when he filed the objection against the succession cause at hand and therefore the said objector and his purported brothers and mother were not beneficiaries of the deceased.
14. Pw3 Joseph Cheruiyot Ruto stated that the deceased had two wives that is Tepelgaa Chelangat Telei and Alice Chepkosgei Telei and did not have a wife known as Chebet Chemalel Telei neither did he cohabit with the said Chebet Chemalel Telei nor resided any of the deceased lands.
15. It was PW3 statement that the purported deceased mother of the objector was never married to the deceased and was not even buried in the estate land of the deceased as per the Kipsigis Customary Law if at all she was his widow and that the entire beneficiaries of the estate of the deceased were strangers to the objector and his entire family and strongly disputed the paternity of the objector and other children of the said Chemalel Telei.
16. He added that the objector lacked locus standi to institute the objection proceedings since he ought to have obtained the letters of representation of the estate of Chebet Chemalel Telei (deceased) to enable him pursue beneficial interest of her said mother and therefore the objection should be dismissed for lack of merits.
17. The parties filed written submission as follows;
18. The Objector submitted that the objector filed the objection on his own behalf as the legitimate son of the deceased and was not claiming through their mother hence they did not need to first obtain letters of Administration of the estate of their deceased mother.



19. It was the objector's further submissions that even though the objector did not live with the deceased, the issue of consanguinity with the deceased was confirmed, that the evidence of the first objector was overwhelming and therefore the petitioner ought to have included the objectors in their petition for letters of administration intestate.
20. The objector submitted that he had proved his case as required by the law and prayed that the objection be upheld together with costs.
21. The Petitioners on the other hand submitted that the Objector failed to demonstrate that he and his family were dependants as provided for under section 29(b) of the *Law of Succession Act* which demands proof of dependency. They cited the case of *R N M v R M N* [2017] eKLR, Machakos Succession Cause 1 of 2017.
22. It was the Petitioners submissions that the objector had totally failed to demonstrate that their deceased mother was married to the deceased as the evidence on when and how the said marriage took place was contradictory and unreliable and the said Objectors failed to produce minutes which shows that they had tried to handle the disputes before the elders or relatives or even produce photographs that linked them with the deceased family.
23. The petitioners further submitted that the objector did not mention any traditional marriage ceremony and payment of dowry and therefore it was clear that their deceased mother was not married to the deceased hence not a wife as envisaged under Section 3(5) as read with Section 40 of the *Law of Succession Act*. They cited the case of *Benjamin Kibiwot Chesulut v Mary Chelangat & another* [2015] eKLR, Nakuru ELC 561 of 2013.
24. The Petitioners reiterated that the objector did not have the locus standi as he ought to have obtained Limited grant purposely to represent his deceased mother who tend to clam her rights as 2nd wife from the second household.
25. It was the petitioners' submissions that the objector had not proved his case on the balance of probabilities and prayed that the entire objection be dismissed with costs.
26. I have considered evidence adduced together with submissions
27. The issues for determination in this case are as follows;
 - i. Whether the Objector's mother was married to the deceased herein.
 - ii. Whether the Grant of letters of Administration issued to Joseph Cheruiyot and Jonathan Kipkorir Ruto should be revoked
28. The law is clear that he who alleges a fact must prove they exists
29. Section 107, 108 and 109 of the *Evidence Act* states as follows:

Section 107: Burden of proof

 - (1) Whoever desires any court to give judgment as to any legal right or liability dependent on existence of facts which he asserts must prove those facts exist.



- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

Section 108: Incidence of burden

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Section 109: Proof of particular fact

The burden of proof as to any particular fact lies in the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of fact shall lie on any particular person.

30. In *Evans Otieno Nyakwana v Cleophas Bwana Ongaro* [2015] eKLR, Homabay Civil Appeal 7 of 2014 the Court stated that:

“As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as Section 108 of the *Evidence Act* provides the burden lies in that person who would fail if no evidence at all were given as either side.”

31. The objector has not proved how and when the deceased married his mother. The objector did not mention any traditional marriage ceremony and payment of dowry and therefore he has not proved that his deceased mother was married to the deceased herein.
32. On the issue as to whether the Grant of letters of Administration issued to Joseph Cheruiyot and Jonathan Kipkorir Ruto should be revoked, I find no basis for revoking the same.
33. The objection herein has no merit and the same is dismissed.
34. Each party to bear its own costs of this objection.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 24TH DAY OF FEBRUARY 2023.

A. N. ONGERI

JUDGE

