



**In re Estate of Edwin Kiptoo Koech alias Edwin Kiptoo Arap Koech (Deceased)
(Succession Cause 59 of 2020) [2023] KEHC 3608 (KLR) (26 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3608 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 59 OF 2020
RN NYAKUNDI, J
APRIL 26, 2023**

**N THE MATTER OF THE ESTATE OF EDWIN KIPTOO
KOECH ALIAS EDWIN KIPTOO ARAP KOECH (DECEASED)**

RULING

1. Before me are Summons for Confirmation of Grant dated September 16, 2021 in which the Applicant, Titus Sorobit Kiptoo seeks orders that:
 1. That the grant of letters of administration intestate granted to Salina Jeptum Keny and Titus Sorobit Kiptoo on November 19, 2020 be hereby confirmed.
 2. That costs of this application be provided for.
2. The application is premised on the grounds therein and it is further supported by the affidavit sworn by the Titus Sorobit Kiptoo on September 16, 2021.

The Applicant's Case

3. The Applicant is one of the administrators of the estate of the late Edwin Kiptoo Koech Alias Edwin Kiptoo Arap Koech who died intestate on January 29, 2012 and the grant of letters of administration intestate was made to him on November 19, 2020. That six months have lapsed since the said grant was issued and that there is no estate duty payable in respect to the estate herein.
4. The Applicant deposed that deceased died intestate and was survived by the following persons:



JEbore Koech	Widow	Deceased
Salina Jeptum Keny	Widow	Adult
Titus Sorobit Kiptoo	Son	Adult
Eliud Ngetich	Son	Adult
Erick Kiprono Too	Son	Adult
Thomas Koech	Son	Deceased
Magdaline Jebet	Daughter	Adult
Rael Jelagat Kiptoo	Daughter	Adult
Miriam Jerotich Koech	Daughter	Adult
Moses Kipkorir Koech	Son	Adult
Jonah Koech	Son	Adult
Ruth Jeruto Koech	Daughter	Adult
Mercy Sorobit	Daughter	Adult
Naomi Jelimo	Daughter	Adult
Bethwel Kirwa	Son	Adult
Jahazel Cheruiyot	Son	Minor
Noadiah Chebet	Daughter In Law	Adult
Bethuel Kibet Sorobiot	Grandson	Adult
Gilbert Kiplagat	Grandson	Adult
Nancy J Cheptirim	Purchaser	Adult
Wycliffe Mulikau Angolo	Purchaser	Adult
Loilo Eruwan Eregae	Purchaser	Adult
Joel K Kuragt	Purchaser	Adult
Sammy Kiplimo Melly	Purchaser	Adult
Isaac Kipkoech Kosgei	Purchaser	Adult



Edwin Kiplagat Biwott	Purchaser	Adult
Barnaba Kipkemboi Chumba	Purchaser	Adult
Samson Kimutai Komen	Purchaser	Adult
Gilbert Kibirir Kulei	Purchaser	Adult
Kibet Arap Rop	Purchaser	Adult
Wilfred Kiptanui Kipngetich	Purchaser	Adult
Mathew Kipsom Lemlem	Purchaser	Adult
Nixon Kipkorir Chelimo	Purchaser	Adult
Benjamin Cheruiyot	Purchaser	Adult
Caleb Kipchirchir Chepkwony	Purchaser	Adult
Hosea Kiptanui Maiyo	Purchaser	Adult
Cornelious Kiptoo	Purchaser	Adult
Jeol Kiptoo Miso	Purchaser	Adult
Daneil Kipkemboi Tanui	Purchaser	Adult
Kenneth Kipkoech Malakwen	Purchaser	Adult
Risper Jelagat Tomno	Purchaser	Adult
Sammy Kipngetich Keter	Purchaser	Adult
Philip Kipnyango Bitok	Purchaser	Adult
Isaac Kiptalam Chebet	Purchaser	Adult
Hellen Jerotich Kimeli	Purchaser	Adult
Maureen Jeptoo Ng'osei	Purchaser	Adult
Dickson Kiprono Kiptaraus	Purchaser	Adult
Irene Tirop	Purchaser	Adult
Simeon Some Kebenei	Purchaser	Adult
Joseph Kiptarus Mutai	Purchaser	Adult



Philemon Kipkemboi	Purchaser	Adult
Isaac Chebor	Purchaser	Adult
Nicholas Kiprotich Bunei	Purchaser	Adult
Job Chepyegon	Purchaser	Adult
Julius Kiplangat Yego	Purchaser	Adult
Joel Kipketer Tenai	Purchaser	Adult
Lucy Chepkosgei Tanui	Purchaser	Adult
James Kibet Lagat	Purchaser	Adult
Samuel Cheruiyot Ruto	Purchaser	Adult
Isaac Kiprotich Samoei	Purchaser	Adult
Samwel Kipsang Mutai	Purchaser	Adult
Emily Jepchirchir Bett	Purchaser	Adult
Petrolina Jesang Kipchoge	Purchaser	Adult
Tereza Chepkemoi Sugut	Purchaser	Adult
Tonny Kimutai Cheruiyot	Purchaser	Adult
Joseph Kiplimo Meli	Purchaser	Adult
James Tirop Atwele	Purchaser	Adult
Lucy Cherop Sambu	Purchaser	Adult
Mary Jepchumba Kibor	Purchaser	Adult
Gabriel Mamett	Purchaser	Adult
Korir Kibiegion Amos	Purchaser	Adult
John Maitui Onon	Purchaser	Adult
David Busienei	Purchaser	Adult
Ezekiel Kipruto Kimosop	Purchaser	Adult
Ruth Jebet Chelimo	Purchaser	Adult



Peter Kipchirchir Muati	Purchaser	Adult
Samuel Kiplagat Koech	Purchaser	Adult
Sammy Kiprono Chesanga	Purchaser	Adult
Samuel Kiplagat Arusei	Purchaser	Adult
Robert Kibet Kigen	Purchaser	Adult
Langat Henry	Purchaser	Adult
Christine Jeruiyot Keitany	Purchaser	Adult
Geoffrey Kipkemoi Mutai	Purchaser	Adult
Philomen Kimutai Kemboi	Purchaser	Adult
Silvester Kipchirchir Boit	Purchaser	Adult
Henry Kiprono Yego	Purchaser	Adult
Pauline Chepleting Bor	Purchaser	Adult
Lilian Jepkoech	Purchaser	Adult
Josphat Sang	Purchaser	Adult
Eunice Chepkorir Rotch	Purchaser	Adult
Eliud Kiptoo Koech	Purchaser	Adult
Haron Kiplagat Kimwal	Purchaser	Adult
Paul Kipkoech Rop	Purchaser	Adult
Gilbert Rop Metto	Purchaser	Adult
Elena Jepchai Kirior	Purchaser	Adult
David Kiplagat Cheruiyot	Purchaser	Adult
Paul Kipkemoi Korir	Purchaser	Adult
Peter Kibet Kiptim	Purchaser	Adult
Susan Jemtai Korir	Purchaser	Adult
Robert Kipkemei	Purchaser	Adult



Isaac Cheruiyot	Purchaser	Adult
Henry Kiprono Bor	Purchaser	Adult
David Tarus Chemei	Purchaser	Adult
Nathan Kibet Mutai	Purchaser	Adult
Samuel Kipkorir A Koech	Purchaser	Adult
Enock Kiplagat Tumo	Purchaser	Adult
Susan Akinyi Akello	Purchaser	Adult
Allan Kipruto Sigilai	Purchaser	Adult
Julius Kamaiyo Kibet	Purchaser	Adult
Wilson Kiprop Lagat	Purchaser	Adult
John Mwibanda Wesonga	Purchaser	Adult
Collins Kipkoech Seur	Purchaser	Adult
John Kiprono A Kirui	Purchaser	Adult
Carolyne Jerotich Koech	Purchaser	Adult
Douglas Kipkemboi	Purchaser	Adult
William Kipyego Sawe	Purchaser	Adult
Ruth Jepchirchir Kiplagat	Purchaser	Adult
Julius Kipkalia Yator	Purchaser	Adult
Julius Kiprotch Bett	Purchaser	Adult
Denis Kimuati Ronoh	Purchaser	Adult
Susan Chepchirchir Kirui	Purchaser	Adult
Rashid Kibiwott Hassan	Purchaser	Adult
Benjamin Ngengoi Kiprop	Purchaser	Adult
Sylvia Jelimo Chemjor	Purchaser	Adult
Henry Kipkesio Rop	Purchaser	Adult



Chesang Kipkurui Charles	Purchaser	Adult
Abraham Kipsang	Purchaser	Adult
Irene Jepkemei Kemboi	Purchaser	Adult
Bethuel Kiplagat Rugut	Purchaser	Adult
Rose Jerotich Maina	Purchaser	Adult
Lena Jepngetich Yego	Purchaser	Adult
Duncan Kipchirchir Kosgei	Purchaser	Adult
Joseph Kipchumba Kitur	Purchaser	Adult
Stanely Kipkosgei Kemboi	Purchaser	Adult
Jacob Hagai Kipkorir	Purchaser	Adult
Felister Wanyoike	Purchaser	Adult
Xavier Murgor Kosgei	Purchaser	Adult
Bismark Kibet	Purchaser	Adult
Abraham Barno	Purchaser	Adult
Stellah Rotich	Purchaser	Adult
Sharon Chepkorir Kipkalia	Purchaser	Adult
Julius Kipkoros Mutai	Purchaser	Adult
Chelangat Joyce Korir	Purchaser	Adult
Sarah Serem	Purchaser	Adult

5. The Applicant proposes that estate of the deceased known as LR NO Cheptiret/Cheplaskei BLK 5 (Chemenei) 87 be distributed as follows:



No. S	Name	Share
1	Salina Jeptum Keny Titus Sorobit Kiptoo	5.42ha Share Equally
2	Titus Sorobit Kiptoo	2.70ha
3	Nancy J Cheptirim	0.202ha
4	Wycliffe Mulikau Angolo	0.728ha
5	Loilo Eruwan Eregae	0.202ha
6	Joel K Kuragt	1.618ha
7	Sammy Kiplimo Melly	0.202ha
8	Isaac Kipkoech Kosgei	0.445ha
9	Edwin Kiplagat Biwott	0.404ha
10	Barnaba Kipkemboi Chumba	0.404ha
11	Samson Kimutai Komen	0.404ha
12	Gilbert Kibirir Kulei	0.486ha
13	Kibet Arap Rop	1.01ha
14	Wilfred Kiptanui Kipngetch	1.618ha
15	Mathew Kipsom Lemlem	0.425ha
16	Nixon Kipkorir Chelimo	0.202ha
17	Benjamin Cheruiyot	0.404ha
18	Caleb Kipchirchir Chepkwony	0.142ha
19	Hosea Kiptanui Maiyo	0.404ha
20	Cornelious Kiptoo	0.12ha
21	Joel Kiptoo Misoi	0.202ha
22	Daneil Kipkemboi Tanui	0.12ha



23	Kenneth Kipkoech Malakwen	0.283ha
24	Risper Jelagat Tomno	0.101ha
25	Sammy Kipngetich Keter	0.81ha
26	Philip Kipnyango Bitok	0.081ha
27	Isaac Kiptalam Chebet	0.81ha
28	Hellen Jerotich Kimeli	0.404ha
29	Maureen Jeptoo Ng'osei	0.202ha
30	Dickson Kiprono Kiptaraus	0.162ha
31	Irene Tirop	1.618ha
32	Simeon Some Kebenei	1.21ha
33	Joseph Kiptarus Mutai	0.890ha
34	Philemon Kipkemboi	0.202ha
35	Isaiah Chebor	1.699ha
36	Nicholas Kiprotich Bunei	2.549ha
37	Job Chepyegon	0.81ha
38	Julius Kiplangat Yego	0.850ha
39	Joel Kipketer Tenai	1.618ha
40	Lucy Chepkosgei Tanui	0.404ha
41	James Kibet Lagat	0.121ha
42	Samuel Cheruiyot Ruto	1.699ha
43	Samuel Cheruiyot Ruto	1.618ha
44	Isaac Kiprotich Samoei	3.64ha
45	Samwel Kipsang Mutai	0.526ha
46	Emily Jepchirchir Bett	0.81ha
47	Petrolina Jesang Kipchoge	1.295ha



48	Tereza Chepkemoui Sugut	0.202ha
49	Tonny Kimutai Cheruiyot	0.283ha
50	Joseph Kiplimo Meli	1.618ha
51	Joseph Kiplimo Meli	0.046ha
52	James Tirop Atwele	0.485ha
53	Lucy Cherop Sambu	0.81ha
54	Mary Jepchumba Kibor	1.295ha
55	Gabriel Mamett	1.21ha
56	Korir Kibiegon Amos	0.404ha
57	John Maitui Onon	0.445ha
58	David Busienei	0.81ha
59	Ezekiel Kipruto Kimosop	1.121ha
60	Ezekiel Kipruto Kimosop	1.21ha
61	Peter Kipchirchir Muati	0.688ha
62	Samuel Kiplagat Koech	0.404ha
63	Sammy Kiprono Chesanga	0.81ha
64	Samuel Kiplagat Arusei	0.890ha
65	Robert Kibet Kigen	0.607ha
66	Langat Henry	0.81ha
67	Christine Jeruiyot Keitany	1.618ha
68	Geoffrey Kipkemoui Mutai	0.607ha
69	Philomen Kimutai Kemboi	0.081ha
70	Silvester Kipchirchir Boit	1.01ha
71	Henry Kiprono Yego	0.202ha
72	Pauline Chepleting Bor	0.202ha



73	Lilian Jepkoech	0.404ha
74	Josphat Sang	0.607ha
75	Eunice Chepkorir Rotch	0.234ha
76	Eliud Kiptoo Koech	1.01ha
77	Haron Kiplagat Kimwal	0.607ha
78	Paul Kipkoech Rop	0.202ha
79	Gilbert Rop Metto	0.607ha
80	Elena Jepchai Kirior	0.081ha
81	David Kiplagat Cheruiyot	0.12ha
82	Paul Kipkemoi Korir	0.1618ha
83	Peter Kibet Kiptim	0.607ha
84	Susan Jemtai Korir	0.404ha
85	Robert Kipkemei	1.052ha
86	Eunice Chepkorir Rotich	0.8498ha
87	Isaac Cheruiyot	0.081ha
88	Moses Kipkorir Koech	1.65ha
89	Henry Kiprono Bor	0.202ha
90	David Tarus Chemei	1.21ha
91	Nathan Kibet Mutai	1.618ha
92	Samuel Kipkorir A Koech	0.404ha
93	Enock Kiplagat Tumo	0.404ha
94	Susan Akinyi Akello	0.404ha
95	Allan Kipruto Sigilai	0.12ha
96	Julius Kamaiyo Kibet	0.526ha
97	Wilson Kiprop Lagat	0.202ha



98	John Mwibanda Wesonga	2.873ha
100	Collins Kipkoech Seur	0.263ha
101	John Kiprono A Kirui	1.618ha
102	Carolyne Jerotich Koech	0.607ha
103	Douglas Kipkemboi	0.32ha
104	William Kipyego Sawe	0.81ha
105	Ruth Jepchirchir Kiplagat	0.404ha
106	Julius Kipkalia Yator	0.404ha
107	Julius Kiprotch Bett	0.404ha
108	Denis Kimuati Ronoh	0.38ha
109	Denis Kimuati Ronoh	0.202ha
110	Denis Kimuati Ronoh	0.38ha
111	Susan Chepchirchir Kirui	0.06ha
112	Rashid Kibiwott Hassan	0.404ha
113	Benjamin Ngengoi Kiprop	1.618ha
114	Sylvia Jelimo Chemjor	0.202ha
115	Henry Kipkesio Rop	0.688ha
116	Henry Kipkesio Rop	2.02ha
117	Chesang Kipkurui Charles	0.607ha
118	Abraham Kipsang	0.081ha
119	Irene Jepkemei Kemboi	0.607ha
120	Irene Jepkemei Kemboi	0.607ha
121	Bethuel Kiplagat Rugut	2.02ha
122	Rose Jerotich Maina	0.81ha
123	Nathan Kibet Mutai	0.081ha



124	Jacob Hagai Kipkorir Felister Wanyoike	0.607ha Share Equally
125	Xavier Murgor Kosgei	0.202ha
126	Bismark Kibet	0.202ha
127	Abraham Barno	0.046ha
128	Stellah Rotich	0.046ha
129	Bethuel Kibet Sorobiot	0.069ha
130	Sharon Chepkorir Kipkalia	0.046ha
131	Kibet Arap Rop	1.21ha
132	Joseph Kiplimo Melly	0.046ha
133	Ezekiel Kipruto Ruth Jebet Chelimo	0.046ha Share Equally
134	Gilbert Rop Metto	0.046ha
135	Denis Kimutai Ronoh	0.069ha
136	Henry Kipkesio Rop	0.046ha
137	Salina Cheptum Keny Johan Koech Noadiah Chebet	0.069ha Share Equally
	Julius Kipkoros Mutai	0.046ha
	Chelangat Joyce Korir Korir Kipyegon Amos	0.404ha Share Equally

6. The Applicant further proposes that estate of the deceased known as LR NO Cheptiret/Cheplaskei BLK 2 (Chemenei) 12 be distributed as follows:



No. S	Name	Share
1	Salina Cheptum Keny	4.04ha
2	Lena Jepngetich Yego	0.607ha
3	Duncam Kipchirchir Kosgei	0.404ha
4	Joseph Kipchumba Kitur	0.404ha
5	Stanley Kipkosgei Kemboi	0.607ha
6	Johah Koech	2.55ha
7	Sarah Serem	0.81ha

The 1st Petitioner's/ Respondent's Case

7. The application is opposed by Salina Jeptum Keny, the 1st Petitioner vide her affidavit of protest dated September 23, 2022.
8. The Respondent does not agree with proposed mode of distribution by the Applicant.
9. The Respondent maintains that the deceased herein was married to two wives, herself and one Nelly Chebore Koech (Deceased).
10. The Respondent deposed that she and the deceased solemnized their marriage on November 23, 1991 after the death of his first wife in the year 1990. That the deceased had (10) children with the first wife and (5) children with her.
11. The Respondent further maintains that the deceased herein owned two parcels of land which are the subject of distribution in this cause. Further that at the time of their marriage the she and the deceased resided in the house he had earlier on built which house she and her children continue to occupy to date.
12. The Respondent is aware that the during the lifetime of the deceased he sold portions of land constituting part of the estate.
13. According to the Respondent some of the beneficiaries from the 1st House have since sold portions of the estate of the deceased's estate after his demise. The Respondent admits to also having sold a portion of the estate so as to enable her meet her children's basic needs as they all solely depended on the deceased during his lifetime.
14. The Respondent contends that selling land belonging to a deceased person after his demise and before obtaining the grant is null and void ab nitio. The Respondent proposes that the purchasers who bought land from the deceased be deemed as beneficiaries and that the said purchasers do provide the requisite sale agreements as proof of their claims.
15. The Respondent proposes that the purchasers who purchased land after the death of the deceased herein do await the identification of the share of their vendors who will then effect transfers in their favour.



16. The Respondent wants the net residue estate to be identified first before the estate of the deceased can be distributed to the rightful beneficiaries.
17. According to the Respondent there is a likelihood of some of the beneficiaries being disadvantaged as others may have sold more than what would be their legal entitlement hence amounting to a miscarriage of justice.
18. The Respondent wants the estate to be distributed equally between the two houses in line with the provisions of Section 40 of the *Law of Succession Act*.

Determination

19. I have, considered the law applicable in this matter and all the proposals on the mode of distribution of the estate that have been placed before me.
20. From onset I must mention it is not in dispute that the deceased herein was a polygamous man having married two wives being the 1st Petitioner/Respondent herein and one Nelly Chebore Koech (Deceased).
21. From the facts presented before this Court is not also in dispute that during his lifetime the deceased sold part of the land forming his estate to third parties.
22. By admission both the Applicant and the Respondent have stated that they have intermeddled with estate of the deceased after his demise. That they have both sold part of the land forming the estate to third parties.
23. The Applicant herein wants the estate of the deceased to be distributed as per the above mode of distribution whereas the Respondent wants the estate to be distributed in accordance with the provisions of Section 40 of the *Law of Succession Act*.
24. While appreciating that part of the land forming the estate of the deceased had be sold. From the Applicant's proposed mode of distribution am not able to established from the long list of persons listed as purchasers which of the said purchasers are bona fide purchasers and those who are not.
25. Having found so, it is evident from the record that the parties herein do not agree on the mode of distribution that should be adopted by the Court in devolving the deceased's estate to the respective beneficiaries.
26. The law that guides this Court in such matters is Section 40 of the *Law of Succession Act* which primarily provides as follows;
 - (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 interest within each house shall then be in accordance with the rules set out in sections 35 to 38'
27. The Court *in Re Estate Of John Musambayi Katumanga – Deceased [2014] eKLR* held as follows:

'The spirit of Part V, especially Sections 35, 38 and 40, is equal distribution, of the intestate estate amongst the children of the deceased. There have been debates on whether the distribution should be equal or equitable. My reading of these provisions is that they



envisage equal distribution for the word used in Sections 35(5) and 38 is 'equally' as opposed to 'equitably'. This is the plain language of the provisions. The provisions are in mandatory terms – the property 'shall be equally divided among the surviving children.' Equal distribution is envisaged regardless of the ages, gender and financial status of the children.'

28. Further, *In the Matter of the Estate of Nelson Kimotho Mbiti (Deceased) HCSC NO 169 of 2000*, Koome J, directed that the estate of a polygamist be divided in accordance with the provisions of Section 40 of the Act. The estate was divided into units according to the number of children in each house with the widows being added as additional units. The same reasoning was also applied by Judge Ali Roni in the *Estate of Ainea Masinde Walubengo (Deceased) (2017) eKLR* stating that '*I am of the view that Section 40 of the Law of Succession Act will apply to the circumstances of this Case. Meaning that the Court will distribute the estate of the deceased according to each house taking into account the number of children in each unit including the surviving widow.*'
29. At this juncture it worth pointing out that Article 27 of the Constitution 2010 provides that every person is equal in the eyes of the law and before the law; and the Article goes further to state that there should be no discrimination on any ground including gender which encompasses marital status; the Constitution does not allow discriminatory rules and customs in matters of personal law, including inheritance.
30. There ought to be no classification into categories of male, female, married or unmarried; there ought to be no discrimination against the male or female children of a deceased person; nor discrimination between the married daughters and unmarried daughters of a deceased person.
31. Accordingly, as the parties were unable to agree on the distribution, I direct that the estate of the deceased be distributed as follows: -
 - a. That LR NO Cheptiret/Cheplaskei BLK 5 (Chemenei) 87 be distributed to the 1st House and 2nd House and be shared equally to the beneficiaries. Where a beneficiary is dead their respective share to be translated to a nominee in their estate.
 - b. That LR NO Cheptiret/Cheplaskei BLK 2 (Chemenei) 12 be distributed to the 1st House and 2nd House and be shared equally to the beneficiaries. Where a beneficiary is dead their respective share to be translated to a nominee in their estate.
 - c. The County Surveyor, Uasin Gishu County to conduct a survey for purposes of distributing parcels of land known as LR NO Cheptiret/Cheplaskei BLK 5 (Chemenei) 87 and LR NO Cheptiret/Cheplaskei BLK 2 (Chemenei) 12 respectively to the bona fide purchasers who meet the criteria in Section 93 of the Law of Succession Act.
 - d. Costs of the survey to be borne by the estate.
 - e. The grant of letters of administration granted to Salina Jeptum Keny And Titus Sorobit Kiptoo on November 19, 2020 be and is hereby confirmed. The Administrators do provide an addendum particularizing the number of beneficiaries in each unit.
 - f. Each party shall bear its own costs noting that the claim herein is a succession cause involving members of one family.

It is ordered so.

DATED AND DELIVERED AT ELDORET THIS 26TH DAY OF APRIL, 2023.



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R.NYAKUNDI

JUDGE

