



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Chepkwony Arap Rotich (Deceased) (Succession Cause
207 of 2002) [2023] KEHC 20864 (KLR) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20864 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 207 OF 2002**

JK SERGON, J

JULY 31, 2023

BETWEEN

JENIFFER CHEPKIRUI PROTESTOR

AND

ALEX LANGAT 1ST PETITIONER

JOSEPH NGENO 2ND PETITIONER

RULING

1. Jeniffer Chepkirui the protestor herein filed an affidavit of protest against confirmation of grant dated May 23, 2023.
2. She stated that she is one of the dependents in the estate of the late Chepkwony Arap Rotich (deceased), who died domiciled in Kenya on October 23, 1995, he died intestate and left the following beneficiaries;

1st House

- (i) Sarah C. Too - Daughter (Deceased)
- (ii) Rael C Koech - Daughter
- (iii) Jennifer C. Mberia - Daughter
- (iv) Alice Rotich Kirui - Daughter

2nd House

- (i) Richard Ngeno - Son (Deceased)
- (ii) Jane C. Rotich - Daughter



- (iii) Grace C. Sigei - Daughter
 - (iv) Gladys C. Rotich - Daughter
 - (v) James K. Ngenoh - Son
 - (vi) Joseph Ngenoh - Son
3. The protestor also stated that the 1st and 2nd Petitioners filed the mode of distribution dated 1 March 4, 2018 annexed hereto and marked as “JC-2” without the knowledge and consent of all the beneficiaries, included one Gilbert Langat who is deceased and did not leave behind any known beneficiaries and excluded the following beneficiaries Jane Rotich, Grace Sigei, Gladys C. Lelei, Irene Chepkurui (granddaughter) and Charles Kipkorir (grandson).
 4. The protestor also stated that Land Parcel No. Kericho/kipkelion/chepseon Block 4/791 which forms part of the estate of the deceased’s estate measures 15 acres whereas the Respondent’s mode of distribution indicates it measures 17 acres.
 5. The protestor stated that the children of Rael Chepkemei Koech (deceased) who is a daughter of the late Chepkwony Arap Rotich, have been included as direct beneficiaries of the estate of the deceased in the said mode of distribution, whereas they should have inherited from the estate of their deceased mother and further that the respondents had left out the following children of Rael Chepkemei Koech Robert Rotich, Leonard Kiplangat Rotich and Judith Chemutai.
 6. The protestor stated that it is in the interest of justice that the whole estate of the deceased be distributed equally among its beneficiaries and further that the Respondents would not be prejudiced should the application be granted.
 7. The parties filed written submissions which I have considered.
 8. The protestor submitted that the gist of her protest was that the summons for confirmation of grant together with the supporting affidavit filed on May 24, 2023 sought to distribute the estate of the deceased without proper observation of the [Law of Succession Act](#) together with subsidiary legislation, that the same were made without the consent of all beneficiaries, sought to disinherit some of the beneficiaries of the estate, included some beneficiaries who were deceased and did not leave any beneficiaries and that the acreage of some of the properties were incorrect.
 9. The protestor submitted that she was one of the administrators of the estate of the deceased and as an administrator she was duty bound to render accurate accounts of the estate of the deceased and further that by dint of section 40 of the [Law of Succession Act](#) the net intestate estate should be divided according to the houses according to the number of children in each house and that the summons filed on 24th May, 2023 sought to exclude some beneficiaries without indicating why they have been excluded from inheriting the estate as no affidavits of renunciation have been filed to show that the said beneficiaries have no interest in the estate.
 10. The protestor maintained that section 71 of the [Law of Succession Act](#) mandates the court to be satisfied as to the prospective identity and shares of all persons beneficially entitled before confirming a grant and cited [Re Estate of John Makara Muruiki](#) 2017 KLR.
 11. The protestor submitted that an accurate acreage of Land Parcel No. Kericho/kipkelion/chepseon Block 4/791 should be ascertained before this court proceeds to confirm distribution of the estate.



12. The protestor therefore beseeched the court to dismiss the mode of distribution suggested in the summons for confirmation of grant dated March 14, 2023 and proceed to confirm the summons for confirmation dated June 6, 2023.
13. The 1st and 2nd respondent submitted that the deceased died intestate on October 25, 1995 and was survived by the following dependents;

1st House

- (i) Sarah C. Too - Daughter (Deceased)
- (ii) Willy Kipkorir Rotich - Grandson (representing the deceased's late daughter Rael C. Koech - Daughter)
- (iii) Jennifer C. Mberia - Daughter
- (iv) Alice C. Rotich - Daughter
- (v) Victor Kiprono Chepkwony - Son
- (vi) Faith Chepkemai - Daughter

2nd House

- i. Alex Langat - Grandson (representing the deceased's late son, Richard Ngeno)
 - (ii) Jane C. Rotich - Daughter
 - (iii) Grace C. Sigei - Daughter
 - (iv) Gladys C. Rotich - Daughter
 - (v) James K. Ngenoh - Son
 - (vi) Joseph Ngenoh - Son
14. The 1st and 2nd respondent submitted that the deceased died intestate leaving behind 3 properties which are the subject matter of this succession proceedings in which the beneficiaries agree should be distributed as follows;
 - (i) L.R No Kericho /Kipkelion/Chepseon/Block 4/791 (17 acres) shall be distributed among the beneficiaries from the 1st House
 - (ii) L.R No Kericho/Kabianga/1543 (13.5) acres shall be distributed among beneficiaries from the 2nd House
 - (iii) L.R No Rongai Block 2/27 (6.8) acres shall be divided equally between the two houses
 15. The 1st and 2nd respondent maintained that all the beneficiaries from the 1st house represented by the protestor do not have any issues regarding distribution of the property allocated to the first house as well as the beneficiaries of the 2nd house represented by the 1st and 2nd respondent herein who have also agreed on the mode of distribution of the property allocated to the 2nd house.
 16. The 1st and 2nd respondent maintained that the reason why some beneficiaries were left out in the mode of distribution was that beneficiaries from both houses had in the past unanimously agreed on the mode of distribution and some from both houses had sold out their respective shares in the estate.



17. The 1st and 2nd respondent maintained that all the beneficiaries from the 2nd house had mutually agreed on the mode of distribution of 2 out of 3 of the properties forming the estate of the deceased in which they had an interest and as regard to the other property namely L.R No Kericho /Kipkelion/Chepseon/ Block 4/791 allocated to the first house, it was agreed that the administrator representing the first house (the protestor herein) would hold a meeting and put in their preferred mode of distribution of the said property.
18. The 1st and 2nd respondents contended that the protestor's allegations were a ploy to delay the conclusion of the instant succession cause, which matter has been dragging in court for the past 21 years and they therefore sought to have the instant matter brought to its conclusion, they urged this court to dismiss the protestors affidavit of protest against confirmation of grant dated May 23, 2023 with costs and that the temporary grant issued on April 18, 2013 be confirmed.
19. I have considered the written submissions by the parties herein and I find that both the 1st and 2nd houses have agreed on the mode of distribution, in the circumstances this court's intervention is not warranted. Accordingly, the affidavit of protest is not merited and I hereby dismiss it and confirm the temporary grant issued April 18, 2013. The estate to be distributed as proposed in the Affidavit filed in support of the summons for confirmation of Grant.
20. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 31ST DAY OF JULY, 2023.

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J.K. SERGON

JUDGE

In the presence of:

C/Assistant - Rutoh

Mutai for 1st & 3rd Petitioners

Kiletyen for 2nd Petitioner

