



REPUBLIC OF KENYA



**In re Estate of Tabargoror Kobot Rongoei (Deceased) (Succession Cause E096 of 2021) [2023] KEHC 21635 (KLR) (7 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21635 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E096 OF 2021  
RN NYAKUNDI, J  
AUGUST 7, 2023  
IN THE MATTER OF THE ESTATE OF TABARGOROR KOBOT RONGOEI  
(DECEASED)**

**BETWEEN**

**EZEKIEL ROTICH BARNGETUNY ..... PETITIONER**

**AND**

**ALBINA JEPKEMBOI ..... OBJECTOR**

**RULING**

- 1 Before me are summons dated February 8, 2023, in which the petitioner/applicant seeks orders that:
  1. The Grant of Letters of Administration Intestate to the estate of the above named Tabargoror Kobot Rongoei (Deceased) made to the said Ezekiel Rotich Barngetuny on the July 6, 2022 be confirmed.
  2. Costs of this application be in the cause
- 2 The application is premised on the grounds therein. The application is further supported by the affidavit sworn by Ezekiel Rotich Barngetuny, on February 8, 2023.

**The Applicant's Case**

- 3 The Applicant is the administrator of the estate of the late Tabargoror Kobot Rongoei who died on January 2, 1974.
- 4 The grant of letters of administration intestate with respect to the deceased's estate was made to the Applicant on July 6, 2022.
- 5 The Applicant deposed that the deceased herein was survived by the following persons:



- a. Rael Ayabei Seronei
- b. Salina Barngetuny
- c. Ezekiel Barngetuny
- d. Flomena Kemei
- e. Monica Singoei
- f. Elisha K. Seronei
- g. Albina Jepkemboi
- h. Nickson Kiplimo

6 The further deposed that the identification and shares of the said estate have been ascertained and determined as follows: -

Rael Ayabei Seronei .....Nandi/Kamoiywo/246 – 1.4 acres  
 Ezekiel Barngetuny..... Nandi/Kamoiywo/246 – 3.7 acres  
 Monica Singoei.....Nandi/Kamoiywo/246 – 0.4 acres  
 Albina Jepkemboi.....Nandi/Kamoiywo/246 – 1.4 acres

7 The Applicant maintains that all the beneficiaries of the deceased have signed the consent to confirm the said grant.

**The Objector’s Case**

8 The application is opposed by Objector vide her affidavit of Protest dated February 13, 2023.

9 The Objector deposed that she is a beneficiary of the deceased’s estate.

10 The Objector contends that the Petitioner herein has left out one Isaac Karonei, Musa Simotwo and Daniel Tiony who are also beneficiaries of the deceased herein.

11 The Objector is aggrieved by the proposed mode of distribution as the Petitioner did not consider the acreage of her share on the ground and maintains that estate as per what is on the ground is as follows:

Musa Simotwo .....Nandi/Kamoiywo/246 – 1.0 acres  
 Daniel Tiony .....Nandi/Kamoiywo/246 – 1.0 acres  
 Ezekiel Barngetuny..... Nandi/Kamoiywo/246 – 1.5 acres  
 Isaac Karonei..... Nandi/Kamoiywo/246 – 1.5 acres  
 Albina Jepkemboi.....Nandi/Kamoiywo/246 – 1.9 acres

12 The Objector contends that the Petitioner has allocated himself 3.7 acres while on the ground he is utilizing and using 1.5 acres only. The Objector further contends that the Petitioner has distributed shares to Rael Ayabei and Monica Singoei who are not on the subject land and have not been using the said land as they have their own shares somewhere else.



- 13 The Objector maintains that the Petitioner's actions are tainted with bad faith and thus Objector prays that she be appointed as a co-administrator in the estate of the deceased so as to safeguard her interest and that of the rest of the beneficiaries.
- 14 The Objector further deposed that she and the other beneficiaries listed herein above who were left out by the Petitioner stand to suffer loss if the grant herein is confirmed without their inclusion.
- 15 In a re-joinder, the Petitioner filed a Supplementary affidavit dated May 5, 2023, in which he deposed that in his proposed mode of distribution the Objector is getting a share of 1.4 acres in the estate of the deceased.
- 16 The Petitioner deposed that the allegations that one Isaac Karonei, Musa Simotwo and Daniel Tiony are beneficiaries of the estate of the deceased herein are untrue as there is no relationship between the deceased and the aforesaid persons. The Petitioner contends that the aforesaid persons are strangers to the estate of the deceased and have no right to inherit any share in the said estate. The Petitioner contends that the said persons are intermeddling with the estate herein.
- 17 The Petitioner further deposed that the deceased herein died in 1974 and was a blood brother to his grandfather one Kipruto Arap Tanui who were the only two children born of their mother. The Petitioner further deposed that the deceased dies intestate and was not married and thus the only person entitled to inherit from the said estate was his grandfather who also died before succession was done.
- 18 The Petitioner further deposed that his grandfather was a polygamous man having married two wives the first one being Chebutai Tanui Tabaikoi and Tecla Jelimo. That Chebutai Tanui gave birth to the Petitioner's father one Kiprotich Arap Barngetuny as an only child whereas Tecla Jelimo gave birth to two children that is Kipkemei Arap Ruto and Tarkwen Kili Tamutwol.
- 19 The Petitioner maintains that the land herein was thus divided into two and was shared between the two households of his grandfather. The Petitioner further deposed that Kipkemei Arap Ruto gave birth to two children Kibwambok Seronei and Monica Singoei. That Kibwambok Seronei is now deceased and that his wife consented to the Petitioner applying for the grant herein.
- 20 The Petitioner further deposed that Tarkwen Kili is also deceased and that she did not sire any children of her own but took in Albina Jepkemboi in a woman to woman relationship.
- 21 According to the Petitioner, the Objector's share is therefore under the share of Kipkemei Arap Ruto who gets half share with his father, Kiprotich Arap Barngetuny. The Petitioner maintains that their half share is to be shared equally amongst Rael Ayabei Seronei, Albina Jepkemei in place of Tarkwen and Monica Singoei.
- 22 The Objector also filed a further affidavit in support of her protest dated June 6, 2023.
- 23 The Objector reiterated that she is a beneficiary of the estate herein and that the late Tabargoror Kobot Rongoei was the biological blood sister to Kipngetich Arap Tanui (Deceased) and Kipruto Arap Tanui (Deceased). That the deceased herein was married to one Arap Letgoi (Deceased) who died in the year 1953 before the subject land was registered. The Objector maintains that the deceased never bought the subject land herein but inherited it from her late husband.
- 24 The Objector maintains that the subject land herein was never a share of the Petitioner's family or family tree as alleged but was for the family of the late Letgoi's family.
- 25 The Objector contends that the Petitioner's family was only considered by her late husband Tamutwol alias Tarkwen Kili (Deceased) by giving her two brothers a portion of the 3 acres to share equally.



- 26 The Objector maintains that when she got married to Tamutwol alias Tarkwen Kili (Deceased) in the year 1980 she found one Daniel Kiplagat Tiony, Musa Samitu and Isaac Kiptum Karonei in occupation and use of the respective shares and that she was settled on a portion measuring 1.9 acres which she is still in occupation up to now.
- 27 The Objector further deposed that the Petitioner herein only came to settle on the subject land sometimes in the year 2012 and found them living on the said land. The Objector maintains that she never objected to him settling on the subject land as she was aware that the Petitioner's late father's share was 1.5 acres which he currently occupies.
- 28 The Objector maintains that the Petitioner's family lineage is settled elsewhere and that they have never been in occupation and use of the subject land as the only share of their family is that of the late Kiprotich Arap Barngotuny (Deceased) which is approximately 1.5 acres and is being utilized by the Petitioner.
- 29 The Objector reiterated that she and other beneficiaries of the deceased stand to suffer loss if the grant herein is confirmed without the inclusion of their names.

### **Analysis and Determination**

- 30 I have read carefully considered the parties pleadings on record.
- 31 From the pleadings by the respective parties, it is evident that their dispute as to the proposed mode of distribution to be adopted by the Court. The Objector is opposed to the mode of distribution that has been proposed by the Petitioner herein.
- 32 The issue in contestation between the objector and the petitioner is whether the objector is a dependant as defined in law and capable of inheriting the estate of the deceased. The framers of the Succession Act in pursuance to Section 29 defined dependency as follows: " For purpose of this part dependant means (a) the wife or wives or former wife or wives and the children of the deceased whether or not maintained by the deceased immediately prior to his death. (b) Such of the deceased's parents, step parents, grandparents, grandchildren, step grandchildren, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters as were being maintained by deceased immediately prior to his death .
- 33 Whereas the rights of other relatives are set out in Section 39(1) which states as follows:- 39(1) where an intestate has left no surviving child or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority:
- a. Father, or if dead
  - b. Mother or if dead
  - c. Brother and sisters and any child or children of deceased brothers and sisters, in equal shares, or if none
  - d. Half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters in equal share, or if none
  - e. The relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.
- 34 The objector in his further affidavit averred as follows:
1. That I am a beneficiary to the estate of the Late Tabarngoror Kobot Rongoei (Deceased)



2. That the deceased Tabarngoror Kobot Rongie was the biological blood sister of Kipngetich Arap Tanui (deceased) and Kipruto Arap Tanui (deceased)
  3. That Tabarngoror Kobot Rongoei (deceased) was married to Arpa Letgoi (deceased) and her husband died in the year 1953 or thereabout before the land was registered and the estate land was not bought by Tabarngoror Kobot Rongoei (deceased) but inherited from her late husband
  4. That I wish to further state that, the estate land was never a share of the petitioner's family and his family tree as alleged but was for the late Letgoi's family where they had married Tabarngoror Kobot Rongoei (deceased)
  5. That, the family of the petitioner was considered by my late husband Tamutwol alias Tarkwen Kili (deceased) by giving her two brothers a portion of 3 Acres who shared 1.5 Acres Each.
  6. That I know of my own knowledge that when I got married to Tamutwol alias Tarkwen Kili (deceased) in the year 1980, I found Daniel Kiplgat Tiony, Musa Samitu Kipkerir and Isaac Kiptum Karonei in occupation and use of the estate land as per their respective shares and I was settled on a portion measuring 1.9 Acres where up to now I am still in that portion and the other beneficiaries are still utilizing, using and occupying their shares each.
  7. That the petitioner came to settle in the estate land sometime since the year 2012 and found us living on the land and I never objected him settling in since I was aware of his late father's share of 1.5 Acres of the estate land which he is currently settled in.
  8. That the action of the petitioner are suspicious of an act he intend to lock other beneficiaries out of the beneficial interest of the estate land number Nandi/kamoiywo/246 which they hold beneficial and other have a purchaser's interest over it.
  9. That the family lineage of petitioner are settled elsewhere and they have never been in occupation and use of the estate land as the only share for their family is that of the late Kiprotich Arap Barngetuny (deceased) measuring approximately 1.5 Acres and being utilised by the petitioner herein.
- 35 That being so, it is instructive to note that the petitioner controverted the evidence by the objector vide the letter of the Chief dated December 4, 2020 which listed the legitimate next of kin as follows:
1. Rael Ayabei Seronei
  2. Salina Barngetuny
  3. Ezekiel Barngetun
  4. Flomena Kemei
  5. Monica Singoei
  6. Elishah K Seroney
  7. Albina Jepkemboi
  8. Nickson KIplimo
- 36 The question that can be posed here in terms of consanguinity and affinity to which degree is the whole of this evidence by the objector roots his dependency. From the supporting affidavit, and the letter of the chief it would appear the petitioners family relationship to the deceased falls within the definition of



Section 29 of the Law of Succession Act. In that case, there is compelling evidence to view the aspect of capacity to inherit the estate of the deceased more inclined to that of the petitioner than the arguments advanced by the objector. What is the position of the instant case? assuming up as I have said this is a classic case of relatives asserting their rights to inheritance in circumstances which are suspicious in nature in the eyes of the law. I venture to say that the burden of proof on a balance of probabilities has been established by the petitioner in the affirmative to hold in his favour as a beneficiary alongside the named dependants in the Chief's letter of December 4, 2020.

37 For those reasons, the element of objections be and are hereby dismissed and in the court's assessment the summons of confirmation of grant dated February 8, 2023 and filed in court on February 9, 2023 be and is hereby allowed. The model of distribution be factored in consonant with the affidavit in support and consent to the making of the grant by the administrator Ezekiel Rotich Barngetuny. Costs be in the cause

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 7<sup>TH</sup> DAY OF AUGUST 2023**

.....

**R.NYAKUNDI**

**JUDGE**

