



**In re Estate of the Late Daniel Kiberenge Kibiwot Korir (Succession Cause  
136 of 2010) [2022] KEHC 11894 (KLR) (25 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 11894 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
SUCCESSION CAUSE 136 OF 2010**

**LK KIMARU, J  
JULY 25, 2022**

**BETWEEN**

**GRACE CHEMELI KORIR ..... PETITIONER**

**AND**

**RAEL CHEPKOECH KORIR ..... APPLICANT**

**JUDGMENT**

1. Daniel Kiberenge Kibiwot Korir, the deceased to whose estate these proceedings relate died on February 19, 2010. A petition for a grant of letters of administration intestate was filed in court on June 16, 2010. From the proceedings of the court, it is clear that the beneficiaries of the estate of the deceased have no dispute regarding the distribution of the estate of the deceased. Indeed, the beneficiaries, comprising of two widows and their children, agreed on the mode of distribution of the estate of the deceased. A certificate of confirmation of grant was issued by the court on March 15, 2012. The 1st widow, Lilian Korir and her children were settled. There is no dispute regarding the distribution of that part of the estate. Although initially the children of the 2<sup>nd</sup> widow, Grace Chemeli Korir agreed to have their mother inherit the entire portion of land which constitute their entitlement, ie LR No. Kitale Municipality Block 1/Lessos/2281 (suit parcel of land), measuring 22.300 hectares or 55 acres), it is apparent that over time, the relationship between the 2<sup>nd</sup> widow and her children, specifically the daughters, had deteriorated.
2. According to the daughters, whereas they had initially agreed to have the suit parcel of land to be registered in the name of their mother to hold in trust for all the children, over time, it became apparent that their mother was unwilling to distribute the land to the daughters. Infact, the relationship between the 2<sup>nd</sup> widow and her daughters had deteriorated so much that they are no longer in speaking terms. Matters have not been help by the perception build during this period that the 2<sup>nd</sup> widow favoured her two sons to the exclusion of the daughters. Indeed, it was the daughters' evidence that the reason their



mother is reluctant to distribute to them their respective shares of the suit parcel of land is because she favours her sons and does not want any of the daughters to inherit the land.

3. On the other hand, it is the 2<sup>nd</sup> widow's case that she is willing to distribute the land to the daughters provided they go to her and request her to do so. The 2<sup>nd</sup> widow asserted that she had not refused to distribute the suit parcel of land to the daughters but required time to do so. This court did on December 15, 2021 give the 2<sup>nd</sup> widow time to distribute the suit parcel of land to her children. It however became apparent that the 2<sup>nd</sup> widow was recalcitrant and unwilling to distribute the suit parcel of land to her children. This court then directed the dispute regarding the distribution of the suit parcel of land be undertaken by court upon hearing *viva -voce* evidence.
4. This court heard the oral testimony of Rael Jepkorch Korir (Rael), who testified on behalf of the daughters (being one of the daughters) and the 2<sup>nd</sup> widow Grace Chemeli Korir. Rael testified that they had initially agreed to have the suit parcel of land registered in their mother's name on condition that she would later distribute the land to them. Unfortunately, over time, it became evident that their mother was unwilling to distribute the land to the daughters. Matters came to a head when their mother refused them access to the land to cultivate the same. The stand taken by their mother was supported by their two brothers who reside with their mother. Rael reiterated that as the daughters of the deceased, whether or not married they were entitled to a share of their late father's estate. Rael proposed that each daughter inherits 4.8 acres while each son inherits 6.25 acres. From her testimony, it was clear that the daughters did not expect their mother to inherit anything from her late husband.
5. On her part, the 2<sup>nd</sup> widow testified that her two daughters, namely Rael and Peris had been given land by their father before his demise. Specifically, she testified that Rael had been given 4 acres of land while Peris had been given 3.5 acres. These parcels of land are in Soy area of Uasin Gishu county. She reiterated that she had not refused to distribute the land but rather wanted the daughters to accord her respect before she could distribute the same to them. She denied the assertion by the daughters that she had taken sides with her sons to threaten or chase away the daughters from the suit parcel of land. She was adamant that the daughters must make effort to be reconciled with her before she can give them their inheritance. She did not make any proposal regarding how the suit parcel of land should be distributed. However, in her submission, she proposed that the original distribution that was adopted by the court in the year 2012 should be maintained as it was based on the consent of all her children.
6. This court has carefully considered the evidence adduced by the disputants in this succession cause. It has also had the benefit of reading the final submission filed by the counsel for the parties herein. It was apparent from the evidence that the 2<sup>nd</sup> widow reluctance to distribute the suit parcel of land to the beneficiaries is partly influenced by the antipathy that she has developed towards her daughters.
7. It is also evident that in this refusal to distribute the suit parcel of land, she has been egged on by her two sons, perhaps in the hope that they shall be entitled to inherit the entire parcel of land to the exclusion of the daughters. Section 29 of the [Law of Succession Act](#) recognizes children of the deceased, irrespective of whether they are sons or daughters, married or unmarried as dependants of the deceased for the purpose of succession. In terms of distribution, the deceased, having been polygamous, his estate shall be distributed more or less in accordance with section 40(1) of the [Law of Succession Act](#) which provides that;

“where an intestate has married more than once under any system 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.”



Omolo JA in *Rono v Rono & another* [2005] eKLR held thus:

“.. Nor do I see any provision in the Act that each child must receive the same or equal portion. That would clearly work an injustice particularly in the case of a young child who is still to be maintained, educated and generally seen through life. If such a child, whether a girl or a boy, were to get an equal inheritance with another who is already working and for whom no school fees and things like that were to be provided, such equality would work an injustice and for my part, I am satisfied that the Act does not provide for that kind of equality.”

8. In *Eliseus Mbura M'thura v Harriet Gambaka & Another* [2012] eKLR the court held thus:

“The Law of Succession Act does not discriminate between gender in matters of succession or inheritance. Under the Law of Succession Act and in the Constitution a child is a child and every person has equal rights under the law irrespective of gender. The law of Succession Act does not discriminate between married and unmarried daughters but gives them equal rights to inheritance as the other children (sons) of the deceased.”

9. This court is guided by the above cited law and decisions of the superior courts.

10. In the present case, there is only one issue for determination: the mode of distribution to be adopted in the distribution of the 55 acres comprising the estate of the deceased available for distribution. The daughters, perhaps recognizing that their brothers should inherit more land than themselves proposed that they get lesser but significant acreage out of the property that comprise the estate of the deceased. The daughters in their proposal however left out their mother who is equally entitled to inherit the estate of her deceased husband. The 2<sup>nd</sup> widow did indicated that the issue of distribution had been resolved by the court in the year 2012 when the court issued the certificate of confirmation of grant granting her the entire parcel of land.

11. This court's agrees with the position taken by the daughters that their initial agreement to allow their mother to be registered as the owner of the suit parcel of land was so that she could hold it in trust for herself and all her children. It was not meant to confer sole proprietary rights over the suit parcel of land on the 2<sup>nd</sup> widow. Indeed, it was apparent from her testimony that the 2<sup>nd</sup> widow misunderstood her registration to mean that she was the owner and thus could determine who could inherit the suit parcel of land. The 2<sup>nd</sup> widow had no choice but to distribute the suit parcel of land once her children demanded that she does so.

12. In the premises therefore this court shall distribute the suit parcel of land being LR No Kitale Municipality Block 1/Lessos/2281 measuring 55 acres as follows:-

13.

- i) Grace Chemeli Korir -----10 acres
- ii. Meshack Korir -----10 acres
- iii. Abel Korir -----10 acres
- iv. Rael Jepkoech Korir, Peris Korir, Chesang Korir, Lenah Korir, Jane Korir, Leah Korir, Joyce Korir, Susan Korir and Brenda Korir - 2.75 acres each
- v) Each beneficiary shall contribute *prorata* for the survey, demarcation and the creation of road of access in the suit parcel of land.



14. This being a family dispute, there shall be no orders as to costs.

**Dated at Kitale this 25<sup>th</sup> day of July 2022.**

**L. KIMARU**

**JUDGE**

