



REPUBLIC OF KENYA



In re Estate of Benjamin Kimaiyo Kirwa (Deceased) (Succession Cause 3 of 2022) [2022] KEHC 16759 (KLR) (23 December 2022) (Ruling)

Neutral citation: [2022] KEHC 16759 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
SUCCESSION CAUSE 3 OF 2022
RN NYAKUNDI, J
DECEMBER 23, 2022**

BETWEEN

TELCA JERONO KIRWA PETITIONER

AND

RICHARD KIPCHUMBA MAIYO OBJECTOR

RULING

1. Before me are summons for confirmation of grant dated October 12, 2020 in which the Petitioner seeks orders that: -
 1. That the grant of letters of administration made to the petitioners by this court be confirmed.
 2. That there be an order of distribution of the estate property in terms of the supporting affidavit annexed to this application.
 3. That costs be provided for this application.
2. The summons are further supported by the affidavit of Tecla Jerono Kirwa sworn on October 12, 2020. The petitioner's/applicant's case is that the Grant of Letters of Administration in this matter was made to her. The applicant maintains that the objection lodged in this matter has since been compromised and currently there are two Co-administrators in the matter herein.
3. According to the applicant the deceased was survived by the following dependents: -
 - i. Tecla Jerono Kirwa - Widow
 - ii. Richard Kipchumba Maiyo - Son
 - iii. Anne Jelagat Sono (Deceased) - Daughter
 - iv. Margaret Jepngetich Rugut - Daughter



- v. Julies Kimeli Maiyo - Son
 - vi. Remmy Kiproop Maiyo - Son
 - vii. Zipporah Jepchirchir Boit - Son
 - viii. Sarah Jepkosgei - Daughter
 - ix. Thomas Kiprotich Maiyo - Son
 - x. Everline Jepkemboi - Daughter
 - xi. Lilian Jepkorir- Daughter
 - xii. Lucy Jebet - Daughter
 - xiii. Silvia Jepchumba - Daughter
 - xiv. Racheal Jemutai- Daughter (Deceased)
4. The applicant maintains that the deceased's estate comprised of the following assets; parcel of land known as Nandi/Kilibwoni/59 and parcel of land known as Ngeria/Chepyakwai Block 4 (Kilibwoni)84.
5. The applicant proposes that the parcel of land known as Nandi/Kilibwoni/59 be distributed as follows;



NO.	DESCRIPTION OF PROPERTY	NAME	SHARE
Nandi/Kilibwoni/59	Tecla Jerono Kirwa	1.966 Acres	
Nandi/Kilibwoni/59	Richard Kipchumba Maiyo	1.966 Acres	
Nandi/Kilibwoni/59	Anne Jelagat Sono (Deceased)	1.966 Acres	
Nandi/Kilibwoni/59	Margaret Jepnetich Rugut	1.966 Acres	
Nandi/Kilibwoni/59	Julies Kimeli Maiyo	1.966 Acres	
Nandi/Kilibwoni/59	Remmy Kiprop Maiyo	1.966 Acres	
Nandi/Kilibwoni/59	Zipporah Jepchirchir Boit	1.966 Acres	
Nandi/Kilibwoni/59	Sarah Jepkosgei	1.966 Acres	
Nandi/Kilibwoni/59	Thomas Kiprotich Maiyo	1.966 Acres	
Nandi/Kilibwoni/59	Everline Jepkemboi	1.966 Acres	
Nandi/Kilibwoni/59	Lilian Jepkorir	1.966 Acres	
Nandi/Kilibwoni/59	Lucy Jebet	1.966 Acres	
Nandi/Kilibwoni/59	Silvia Jepchumba	1.966 Acres	

6. The applicant further proposes that parcel of land known as Ngeria/Chepyakwai Block 4 (Kilibwoni) 84 be distributed as follows;



No.	Description of Property	Name	Share
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Tecla Jerono Kirwa	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Richard Kipchumba Maiyo	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Anne Jelagat Sono (Deceased)	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Margaret Jepngetich Rugut	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Julies Kimeli Maiyo	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Remmy Kiproop Maiyo	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Zipporah Jepchirchir Boit	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Sarah Jepkosgei	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Thomas Kiprotich Maiyo	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Everline Jepkemboi	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Lilian Jepkorir	0.496 Acres	



Ngeria/Chepyakwai Block (Kilibwoni)/84 4	Lucy Jebet	0.496 Acres
Ngeria/Chepyakwai Block (Kilibwoni)/84 4	Silvia Jepchumba	0.496 Acres

7. The application is however opposed by Richard Kipchumba Maiyo, the Objector herein. The Objector's case is that he is a son of the deceased and that the deceased herein had married two wives being his mother who was the 1st wife and the Applicant was the second wife.
8. The Objectors maintains that the Letters of the Administration with respect to the deceased's estate were issued to both him and the Petitioner. The Objector contends that the Petitioner has now decided to apply to this Court for the Confirmation of Grant using false information.
9. The Objector maintains that even before the demise of the deceased, he intended that the estate be divided equally amongst the two families and in accordance with the Nandi Customary law.
10. The Objector argues that the proposal by the Petitioner, seeks to have the estate be distributed to all the deceased's children which he argues is against the deceased's wishes and is against Nandi Customary Law which dictates that land should be distributed between the two households.

Determination

11. I have, considered the law applicable in this matter and the proposal on the mode of distribution of the estate that has been placed before me. The issue for determination by this Court is whether the proposed mode distribution of the estate ought to be adopted as proposed by the Petitioner/Applicant.
12. As per the letter of the Chief Kilibwoni Location on record it is without a doubt that the deceased herein was married to two wives and had issues from both houses. The 1st Wife one Marselina Jabor Kirwa (deceased) was blessed with two issues whereas Tecla Jerono Kirwa was blessed with ten issues.
13. I have also keenly looked at the mode of distribution proposed by Petitioner and from a cursory look, the same appears to be fair and just as it has catered for all the beneficiaries of the deceased.
14. The Objector on the other hand argues that the said proposal goes against the wishes of the deceased and it also goes against Nandi Customary Law. The Objector wants the property to be distributed as per household as opposed to all the children of the deceased. The Objector also relies on the witness statements by Richard Arap Barno, Michael Letting and Thomas Tenai who claim that they are village elders and were appointed to sit on panel of elders constituted by the District Officer Kilibwoni Division to arbitrate over the dispute herein. They however have not furnished the Court with any minutes to show what was discussed during that particular period, who were the parties present and the decision that was arrived at.
15. The Kenya Constitution 2010 is a fundamental written law and is superior to Kikuyu Customary law and is applicable in this instance; 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.



16. 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.
17. In the case of *Eliseus Mbura M'thara v Harriet Ciambaka & another* [2012] eKLR the court held as follow:

The *law of Succession Act* does not discriminate between gender in matters of succession or inheritance. Under the *law of Succession Act* and indeed under *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 or unmarried daughters but gives them equal rights to inheritance as the other children (sons) of a deceased person.
18. The law that guides this court is 40 the *Law of Succession Act*. Section 40 of the Act provides as follows;

40(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.
19. For purposes of this Succession proceedings, the 1st house is made up of 2 units and the 2nd house is made up of 11 units. I note that the deceased left behind a total of 13 units that are entitled to inherit equally from his estate.
20. In view of the foregoing, I find no need for this court to exercise its discretion to establish a mode of distribution that is contrary to the equal distribution mandated by section 40 of the *Law of Succession Act*. The mode of distribution proposed by the Petitioner captures the spirit of section 40 of the *Law of Succession Act* and thus need not be revised.
21. The court further takes judicial notice that this is an old matter and that litigation must come to an end.
22. Consequently, I hereby order distribution of the assets of the deceased as follows: -



NO.	DESCRIPTION OF PROPERTY	NAME	SHARE
Nandi/Kilibwoni/59	Tecla Jerono Kirwa	1.966 Acres	
Nandi/Kilibwoni/59	Richard Kipchumba Maiyo	1.966 Acres	
Nandi/Kilibwoni/59	Estate of Anne Jelagat Sono (Deceased) Parties to nominate one of her beneficiaries.	1.966 Acres	
Nandi/Kilibwoni/59	Margaret Jepngetich Rugut	1.966 Acres	
Nandi/Kilibwoni/59	Julies Kimeli Maiyo	1.966 Acres	
Nandi/Kilibwoni/59	Remmy Kiprop Maiyo	1.966 Acres	
Nandi/Kilibwoni/59	Zipporah Jepchirchir Boit	1.966 Acres	
Nandi/Kilibwoni/59	Sarah Jepkosgei	1.966 Acres	
Nandi/Kilibwoni/59	Thomas Kiprotich Maiyo	1.966 Acres	
Nandi/Kilibwoni/59	Everline Jepkemboi	1.966 Acres	
Nandi/Kilibwoni/59	Lilian Jepkorir	1.966 Acres	
Nandi/Kilibwoni/59	Lucy Jebet	1.966 Acres	
Nandi/Kilibwoni/59	Silvia Jepchumba	1.966 Acres	



NO.	DESCRIPTION OF PROPERTY	NAME	SHARE
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Tecla Jerono Kirwa	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Richard Kipchumba Maiyo	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Estate of Anne Jelagat Sono (Deceased) Parties to nominate one of her beneficiaries.	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Margaret Jepngetich Rugut	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Julies Kimeli Maiyo	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Remmy Kiprop Maiyo	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Zipporah Jepchirchir Boit	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Sarah Jepkosgei	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Thomas Kiprotich Maiyo	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Everline Jepkemboi	0.496 Acres	
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Lilian Jepkorir	0.496 Acres	



Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Lucy Jebet	0.496 Acres
Ngeria/Chepyakwai Block 4 (Klibwoni)/84	Silvia Jepchumba	0.496 Acres

23. Each party shall bear its own costs noting that the claim herein is a succession cause involving members of one family.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 23RD DAY OF DECEMBER, 2022.

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R. NYAKUNDI

JUDGE

(kipkosgeichoge@yahoo.com)

