



**In re Estate of Andrew Kibii Lagat (Deceased) (Succession Cause  
287 of 2007) [2022] KEHC 16876 (KLR) (23 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16876 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 287 OF 2007  
RN NYAKUNDI, J  
DECEMBER 23, 2022**

**IN THE MATTER OF THE ESTATE OF ANDREW KIBII  
LAGAT ALIAS ANDREW KIBII CHEBET (DECEASED)**

**BETWEEN**

**CLARA JEPCHIRCHIR LAGAT ..... 1<sup>ST</sup> PETITIONER**

**MARK KIPNGETICH BIY ..... 2<sup>ND</sup> PETITIONER**

**AND**

**FLORA JESEREM MURISHA ..... 1<sup>ST</sup> OBJECTOR**

**ELIZABETH JEMAIYO KIPTANUI ..... 2<sup>ND</sup> OBJECTOR**

**CATHERINE CHERONO CHEMWENO ..... 3<sup>RD</sup> OBJECTOR**

**RULING**

1. The matter herein relates to the estate of the late Adrew Kibii Lagat alias Adrew Kibii Chebet who died on 6<sup>th</sup> February, 1983.
2. The petition for the grant of letters of administration intestate of the estate of Andrew Kibii Lagat also known as Adrew Kibii Chebet were petitioned by his wife Clara Jepchirchir Lagat and his son Mark Kipngetich Biy (Deceased)
3. Upon petitioning for the grant of letters of administration with respect to the deceased estate, the Objectors Flora Jeserem Murisha, Elizabeth Jemaiyo Kiptanui and Catherine Cheronno Chemweno instituted Objection proceedings against the application for the grant herein.
4. The Objectors contend that parcel of land known as Irong/Korkitony/64 measuring approximately 40 acres listed as one of the assets of the deceased herein belonged to one Edward Chelagat Arap Chebet (Deceased) who was their father. The Objectors maintain that the said Edward Chelagat Arap Chebet



(Deceased) had nominated the deceased herein to hold the subject land in trust of the other family members.

5. The Objectors also maintain that the subject land does not belong to the deceased and that they have a beneficial interest in the subject land.

6. The Objectors deposed that the said Edward Chelagat Arap Chebet (Deceased) was a polygamous man having married three wives who sired both male and female children. The Objectors outlined the beneficiaries of the deceased as follows;

House A

Saniego Jeptoo Chelagat – widow (Deceased)

John Koech Chelagat – son (Deceased)

Andrew Kibii Lagat – son (Deceased)

Flora Jeserem Murisha – daughter

Salina Jerotich Karanei – daughter

House B

Kimoi Pauline Jepkemoi – widow (Deceased)

Elizabeth Jemaiyo Kiptanui – daughter (Deceased)

House C

Catherine Cheronno Chemweno – widow

Elizabeth Jepkorir Lagat – daughter

Angela Chebiego Kosgei – daughter

7. The 1<sup>st</sup> Petitioner on the other hand contends that the Objectors are neither dependants nor beneficiaries of the deceased herein. The 1<sup>st</sup> Petitioner maintains that parcel of land known as Irong/ Korkitony/64 belongs to the deceased herein and is registered in the deceased's name.

8. The 1<sup>st</sup> Petitioner contends that the Objectors are her sisters to the deceased herein. the 1<sup>st</sup> Petitioner submitted that the Objectors have not established any beneficial interest over the subject land. The 1<sup>st</sup> Petitioner contends that there is no indication whatsoever that the deceased held the suit land in trust of the Objectors herein.

9. The 1<sup>st</sup> Petitioner is ready and willing to give a portion of the subject land to one Elizabeth Jepkorir Lagat and Angela Chebiego Kosgey being sisters to the deceased herein who she has always treated as her own children.

10. The only issue that is currently pending before this Court is the issue of the distribution of the estate of the deceased. On record there are two proposed modes of distributions filed by the parties herein.

11. The Objectors propose that the estate of the deceased be distributed as follows: -



NO.	NAME	DESCRIPTION OF PROPERTY	SHARE
	Clara Talaa Kipkoech	Irong/ Korkitony/64	7 acres
	Clara Jepchirchir Lagat	Irong/ Korkitony/64	7 acres
	Flora Jeserem Kimutai	Irong/ Korkitony/64	4 acres
	Salina Jerotich Karanei	Irong/ Korkitony/64	4 acres
	Albert Kiplimo Kiptanui	Irong/ Korkitony/64	4 acres
	Elizabeth Jepkorir Lagat	Irong/ Korkitony/64	8 acres
	Angela Chebiego Kosgei	Irong/ Korkitony/64	4 acres
	Clara Jepchirchir Lagat	Chemichemi Farm Plot No. 155/579/96	96 acres
	Clara Jepchirchir Lagat	One storey building in Kariokor Race Course Nairobi (4bedroom house)	Whole
	Clara Jepchirchir Lagat	One storey building plan view (South B Nairobi)	Whole
	Clara Jepchirchir Lagat	Gratuity	Lumpsum Kshs.83,640/=
			Monthly Pension Kshs. 6,970.60/=

12. The 1<sup>st</sup> Petitioner on the other hand proposes that the estate of the deceased be distributed as follows: -



NO.	NAME	DESCRIPTION OF PROPERTY	SHARE
	Church	Irong/ Korkitony/64	2 acres
	Clara Jephchirchir Lagat	Irong/ Korkitony/64	10 acres
	Mark Biy (to is widow)	Irong/ Korkitony/64	4 acres
	Beatrice Chebet	Irong/ Korkitony/64	4 acres
	Ruth Jepkemboi Lagat	Irong/ Korkitony/64	4 acres
	Diana Jeruto	Irong/Korkitony/64	4 acres
	Audrey Jackline Jepakosgei Lagat	Irong/Korkitony/64	4 acres
	Elizabeth Jepkorir Lagat	Irong/ Korkitony/64	4 acres
	Angela Chebiego Kosgei	Irong/ Korkitony/64	4 acres

### Determination

13. I have, considered the law applicable in this matter, the oral evidence and the two proposals on the mode of distribution of the estate that has been placed before me. The issue for determination by this Court is which the proposed modes distribution ought to be adopted by this Court.
14. The only bone of contention in this matter is parcel of land known as Irong/Korkitony/64. On one hand the 1<sup>st</sup> Petitioner claims that the subject land belonged to her deceased husband and on the other hand the Objectors claim that the subject land belonged to their late father, one Edward Chelagat Arap Chebet (Deceased) and was held in trust by the deceased herein on behalf of the rest of the family members.
15. From onset I must point out that he who alleges must prove. The Objectors claim to have a beneficial interest on the subject land by virtue of a trust. In view of the foregoing allegations, this Court gave the parties latitude to tender viva voce testimony. At the hearing one thing that particularly stood out was the fact that all the Objectors did not have anything to shown that the deceased herein held the subject land in their trust. No evidence has been adduced of any such undertaking.
16. The 1<sup>st</sup> Petitioner on her part was able to produce a copy of green card that indicates that the subject land is in fact registered in the names of the deceased herein.



Section 29 of the *Law of Succession Act* defines a dependant as: -

- “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, grand-parents, grandchildren, step-children, 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 the deceased immediately prior to his death; and c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”

17. It is not disputed that the Objectors herein are sisters and a step-mother to the deceased, however there is nothing whatsoever on record that shows that the Objectors were dependants of the deceased. Without sufficient proof of disinheritance, the Court finds that the Objectors’ allegations do not hold water.
18. Having said so, I hereby direct that for purposes of bringing these proceedings to an end, the estate of the late Andrew Kibii Lagat alias Adrew Kibii Chebet be distributed as follows: -



NO.	NAME	DESCRIPTION OF PROPERTY	SHARE
	Church (did not specify the name)	Irong/ Korkitony/64	2 acres
	Clara Jepchirchir Lagat (shall enjoy a life interest and thereafter shall to devolve to her children)	Irong/ Korkitony/64	10 acres
	Mark Biy (did not indicate the name of his widow)	Irong/ Korkitony/64	4 acres
	Beatrice Chebet	Irong/ Korkitony/64	4 acres
	Ruth Jepkemboi Lagat	Irong/ Korkitony/64	4 acres
	Diana Jeruto	Irong/Korkitony/64	4 acres
	Audrey Jackline Jepkosgei Lagat	Irong/Korkitony/64	4 acres
	Elizabeth Jepkorir Lagat	Irong/ Korkitony/64	4 acres
	Angela Chebiego Kosgei	Irong/ Korkitony/64	4 acres

19. 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, SIGNED AND DELIVERED AT ELDORET VIA EMAIL THIS 23<sup>RD</sup> DAY OF DECEMBER, 2022.**

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**R. NYAKUNDI**

**JUDGE**

