



REPUBLIC OF KENYA



**In re Estate of Michael Rutto (Deceased) (Succession Cause 117 of 2023)
[2025] KEHC 2498 (KLR) (21 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2498 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 117 OF 2023
RN NYAKUNDI, J
FEBRUARY 21, 2025**

IN THE MATTER OF THE ESTATE OF MICHAEL RUTTO (DECEASED)

BETWEEN

MAGDALENA KWAMBAI PETITIONER

AND

HELENA JEPKANGOR KPIEGO 1ST OBJECTOR

ROSE JEPTANUI RUTO 2ND OBJECTOR

MONICA CHEROTICH BOIT 3RD OBJECTOR

MARY RUTO 4TH OBJECTOR

SALOME JEPKOECH RUTO 5TH OBJECTOR

JUDGMENT

Representation:

Chemwok & Co. Advocates

Seneti Oburu & Co. Advocates

1. Michael Ruto, who passed away on 31st May, 2021, left behind a contested estate that has drawn his family to the instant proceedings. At the time of his death, Michael was married to Magdaline Kwambai, who is now his widow. He was also father to seven children: Irene Jepkoech, Erick Kiptum, Leonard Kipkogei, Amos Kipchumba, Isaac Kiprop, Caroline Jebichii, and Judy Jeptoo.
2. The main asset in Michael's estate is a piece of land identified as Sergoit/Elgeyo Border Block 1 (Beliomo)/335, which is registered in his name. Following his death, Magdaline Kwambai petitioned the court for letters of administration intestate, seeking to manage her late husband's estate as his widow.



3. This petition, however, met resistance from several objectors who are Michael's siblings. They contest Magdaline's right to be the sole administrator on grounds that the land in question actually belonged to their father, the late Mr. Ruto Chelel Chebelyo. According to their account, Michael was merely holding the title in trust for himself and his siblings because their father was in poor health when the property was transferred into Michael's name.
4. The objectors, who are Magdaline's brothers and sisters-in-law, have proposed a compromise: they suggest that one of them should be appointed as a co-administrator to serve alongside Magdaline in managing the estate. This arrangement, they argue, would better protect the interests of all parties involved.

Petitioners' Case summary

5. PW1, Magdalene Kwambai testified that she is the administrator to the estate of the deceased in which a dispute has arisen with the objectors. She relied fully on her affidavit in which she explained that the deceased passed on 31st may, 2021 at Moi Teaching and Referral Hospital. During his lifetime he was survived 8 beneficiaries with the intestate referenced as Sergoit/Elgeyo Border Block 1 (Beliomo)/335. It was her evidence that the estate property belongs to her family and the objectors have no claim or right of inheritance as the same was never held in trust for their benefit. She placed reliance on the registration details of title deed Sergoit/Elgeyo Border Block 1 (Beliomo)/335 issued on 16.12.1997.
6. This line of evidence was opposed by the objectors whose evidence was as follows:

Objectors' case

7. DW1 Hellen Kipyego – gave her evidence on oath and was wholly dependent on the statement dated 8th June, 2024. From her testimony, Helena told the court that her father passed on in the year 1998 and prior to his death, a covenant was reached that she keeps the title deed for reason that their only brother Michael Ruto (the deceased) was an alcoholic and could not be trusted by their father. Helena went further to state before this court that in 2015, his brother Michael Ruto (now deceased) demanded for the title deed which he intimated it was to be for the sub-division for the parcel of land amongst the siblings. That according to the best of her knowledge, the late brother was to subdivide the parcel allocating her two acres, reserving seven acres for himself and proceeded further to dispose the remainder to third parties as purchasers. That unfortunately according to Helena on 31st may, 2021 her late brother was hit by a motor vehicle and that is when the petitioner and her children destroyed any buildings within the homestead including the ones which were constructed by their parents claiming that they are the rightful owners of the suit property. She therefore beseeched the court to revisit illegal activities of subdivision carried out by her late brother Michael Ruto depriving them of their inheritance rights.
8. The other witness was Musa Keitany who told this court that the land in question belonged to the entire family and not to the son Michael Ruto as currently being purported by the petitioner. He reiterated that in 1997, the original owner who is the father to Michael Ruto went to him and handed over the title deed so that he can take care of the siblings and his preference was that the daughter, one Helena be the caregiver. As a consequence of this dispute, Musa Keitany told the court that there was an agreement reached by the family to have distribution of the estate take effect but the petitioner seems not to follow through claiming that the entire parcel of land belongs to her late husband.
9. The other witness summoned and who recorded a statement was one Jane Ruto who testified as the sister to Michael Ruto. Essentially, her evidence was to the effect that the deceased brother Michael Ruto is not entitled to the entire parcel of land because it deprives the rest of them of a share of the



- only portion survived of their deceased father. That the parcel of land was never purchased, acquired or owned by Michael Ruto at any given time to claim land rights capable of being distributed to his heirs.
10. These witnesses captured the gist of this matter. The rest of the witnesses reiterated more less the same things.
 11. On record I have had sight of the Petitioner's submission dated t6th February, 2025 filed by learned counsel Mr. Oburu. Counsel submitted that the core element for determination is on legal ownership. He maintained that the property herein is owned by the deceased. He refuted claims that the deceased was holding the property in trust since there is no iota of evidence that has been tendered to that effect.
 12. Learned Counsel cited the provisions of Section 23(1) of the *Land Act*, 2012 which give indefeasible title to the owner of the property with only two circumstances when title may be challenged. The circumstances are:
 - a. When fraud is proved against the owner
 - b. Where there is misrepresentation and the owner of property is party to the same.
 13. Counsel submitted that none of the above elements have been established and as such the property belongs to the deceased

Analysis and determination.

14. Custom and tradition are often used to justify the oppression of women. In Kenya, like in most other former African colonies, the legal system is pluralistic. The sources of law include the Constitutions, statutes, received laws, religious laws and customary law. The intersection of customary practices and constitutional imperatives presents a complex judicial challenge in matters of inheritance, particularly where traditional patrilineal systems of property devolution conflict with fundamental rights to equality and human dignity. While customary law has historically favoured male inheritance of land, Article 2(4) of *the Constitution* explicitly invalidates any customary practices that contravene constitutional principles. This provides the Court with a clear mandate to scrutinize and where necessary, modify customary inheritance patterns that would otherwise perpetuate gender-based discrimination.
15. The hallmark of African Customary law is the dominance of patriarchal hierarchy of inheritance where the male members rank in prominence on devolution of property rights. As for the female gender, there is a presumption that they will leave their birth-right homes by dint of marriage to begin a family in another lineage. Allied to this, it is the centrality of the family in so far as inheritance of property rights is concerned as opposed to the individual heir and the definition of a family within this context and text in customary law in expansive terms includes ascendants within the definition of first degree extending to second degree and third degree family tree. On other significant definition dimension of family was that there was a shared value of polygamous unions. Therefore, from an outsider perspective, looking at the basic structure of our African families, he/she may infer or aver that women have no rights under customary law notwithstanding that women by virtue of their roles as the main actors in land use, cultivation, or maintenance can be said to be better off in terms of accessing resources although they did not exercise leadership and direct inheritance rights. The battle of the sexes of customary law on inheritance rights is in one sense therefore a struggle over scarce resources transcending generations and even in African communities there is control over all aspects of the lives of the male gender consolidating their authority underpinning it under customary law. The women have been relegated to their traditional roles of reproduction. There is no dispute that the country called Kenya has undergone transformative legal reforms on land, family laws and of more significance



on gender equality. However, I hold the view that the canons of gender equality cannot be achieved through legal reform alone. That is just one step of experiencing that reality and commitment. Why do I say so? When it comes to Land rights for women, more needs to be done by escalating measures to ensure their social legitimization, implementation and reinforcement. There is need of a paradigm shift of the male gender in accepting inheritance claim resolutions in favour of women. I see this everyday as a judge adjudicating family matters, may it be interpretation of *the Constitution*, the *Matrimonial Property Act* and the *Law of Succession Act* which fully recognize women's equal rights to own, co-own, access, control and inherit both immovable and movable property rights but the wider social cultural and customary attitudes still act as barriers for full enjoyment of these rights.

16. In reality, women are sometimes viewed as an addition to the family, clan or tribe by dint of marriage as opposed to equals in their own rights in society. Essentially once a woman is married under any legal system of marriage defined under the *Marriage Act* in Kenya, she becomes part of her husband's family falling under his guardianship and control as the head over her to provide the necessary leadership in promoting best interest and welfare during the lifetime of the marital union. It is even noticeable in many cases that even when the spouse/husband dies, particularly in cases of intestacy, she may be disinherited of any land her husband may have owned, any matrimonial properties including the home she lived in and other movable assets survived of the deceased. The male kinship of the husband often succeeds as successors to the deceased to control all such assets excluding the widow in every sphere of what can be defined as the testate or intestate of her a late husband.
17. For the application of this case, the members of the Ruto Chelel Chebelyo family as they struggle for inheritance rights survived of the deceased should take cognizance that a portion of the estate belonged to their late brother who was married and brought up a family in having a share devolved to his estate to accrue to his wife and family who is the petitioner in these proceedings.
18. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) provides clear guidance on this matter. Article 21 on the Right to Inheritance states unequivocally:
 - “ 1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.
 2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.”
19. Furthermore, Article 2(1) of the Protocol mandates that 'States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.' Article 2(2) requires States Parties to 'commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.
20. These provisions, read together with Article 8 on Access to Justice and Equal Protection before the Law, which provides that 'Women and men are equal before the law and shall have the right to equal protection and benefit of the law,' create a robust framework for protecting women's inheritance rights regardless of customary practices that might suggest otherwise.



21. The circumstances of this case are particularly compelling, as they illustrate the precise type of prejudice that constitutional protections seek to prevent. Though Michael Rutto held legal title to the property, the evidence suggests this was predicated on a customary understanding that he would safeguard his sisters' interests rather than exclude them. The traditional assumption that female siblings will secure property rights through marriage cannot justify rendering a vulnerable unmarried woman homeless, as this would fundamentally undermine her constitutional right to human dignity and security of shelter. As emphasized in the Maputo Protocol and progressive African jurisprudence, women's right to inherit must be protected regardless of their marital status.
22. The Constitutional framework establishes a clear position regarding discriminatory practices in Kenya. *The Constitution*, as the supreme law of the land, explicitly prohibits any form of discrimination. This principle has deep historical roots, dating back to the 1963 independence Constitution, and was reinforced in Article 27 of the 2010 Constitution, which specifically addresses discrimination based on gender and marital status. Given this constitutional foundation, any customary law that denies inheritance rights to women would be deemed discriminatory and therefore unconstitutional, as it directly contravenes these fundamental constitutional protections.
23. In our jurisdiction, in *Mary Rono v Jane Rono & another* [2005] eKLR, the Court of Appeal observed as follows:

“As a member of the international community, Kenya subscribes to international customary laws and has ratified various international covenants and treaties. In particular, it subscribes to the international Bill of Rights, which is the Universal Declaration of Human Rights (1948) and two international human rights covenants: The Covenant on economic, social and cultural rights and the Covenant on civil and political Rights (both adopted by the UN General Assembly in 1966). In 1984 it also ratified, without reservations, the Convention on the Elimination of All Forms of Discrimination Against Women, in short,

“CEDAW”. Article 1 thereof defines discrimination against women as: -

“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social cultural, civil or any other field.”

In the African context, Kenya subscribes to the African Charter of Human and Peoples' Rights, otherwise known as the Banjul Charter (1981), which it ratified in 1992 without reservations. In Article 18, the Charter enjoins member States, inter alia, to: -

“.....ensure the elimination of every discrimination against women and also ensure the protection of rights of the woman and the child as stipulated in international declarations and conventions.”

24. The court in *Re Estate of M'murungi M'bwiria* (supra) proceeded to note that the application of customary law is qualified by Section 3(2) of the *Judicature Act* which provides that:

“The High Court, the Court of Appeal and all subordinate courts shall be guided by African customary law in civil cases in which one or more of the parties is subject to it or affected by it, so far as it is applicable and is not repugnant to justice and morality or inconsistent



with any written law, and shall decide all such cases according to substantial justice without undue regard to technicalities of procedure and without undue delay.”

25. The dispute before this Court transcends a mere disagreement over administration; it represents a collision between formal legal title and customary understanding, a tension that frequently manifests in familial succession matters within our jurisdiction.
26. The objectors’ narrative weaves a compelling account of familial trust and shared inheritance expectations. However, the law of succession demands more than oral assertions when challenging documented proprietary rights. The deceased, Michael Ruto, stands as the registered proprietor of the parcel of land in question. The objectors, conversely, present themselves as beneficiaries of an unwritten trust arrangement allegedly orchestrated by their late father, Ruto Chelel Chebelyo.
27. For this Court to properly adjudicate this matter, it must navigate between two competing principles: first, the sanctity of registered title as embodied in our land laws; and second, the equity-based recognition that formal documentation sometimes fails to capture the nuanced reality of family property arrangements, particularly in rural settings where trust relationships may exist without written formalization.
28. The central legal question is whether the property known as Sergoit/Elgeyo Border Block 1 (Beliomo)/335 is solely owned by Michael Ruto’s estate or whether he held it partially in trust for his siblings based on their late father’s intentions. This parcel was created through the subdivision of the parent title Sergoit/Elgeyo Border Block 1 (Beliomo)/52, which resulted in parcels 330-335. The deceased, Michael Ruto, conducted the entire sale transaction for these subdivided parcels.
29. While Michael Ruto held legal title to the property, the circumstances surrounding the transfer and subsequent management of the land suggest a broader familial interest that cannot be ignored. The testimony of Helena Kipyego and other witnesses’ points to an understanding within the family that Michael’s registration as proprietor was not intended to exclude his siblings, particularly his sisters, from their rightful inheritance.
30. It would be contrary to the principles of equity and the constitutional imperatives of gender equality to allow rigid adherence to land registration to defeat the legitimate expectations of the deceased’s sisters. These women were not provided for in their father’s estate, and their brother’s registration as sole proprietor should not serve as an instrument to perpetuate their disinheritance. This estate in the legal dimension and definition does not fit into the spectrum of matrimonial property of the deceased Michael Ruto to exclusively devolve to Magdaline, the spouse. Therefore, there is need for a just definition of their father’s property with due provision being made to the widow of Michael Ruto and token shares to the named beneficiaries who are the objectors and daughters to Ruto Chelel Chebelyo. This Court, guided by Article 27 of *the Constitution* and the principles established in *Mary Rono v Jane Rono & another* [2005] eKLR, must ensure that customary practices do not result in the continued marginalization of women in matters of inheritance.
31. Consequently, this Court directs that the objectors and the petitioner shall, within 30 days of this judgment, present to the Court a proposed distribution model that recognizes both the widow’s rights as well as the legitimate interests of the deceased’s siblings, particularly his sisters. The parties are encouraged to engage in family mediation to arrive at an amicable arrangement that respects both the rights of the deceased’s immediate family and the inheritance claims of his siblings.
32. Should the parties fail to present an agreed-upon distribution model within the stipulated time, this Court shall exercise its discretion to determine an equitable distribution that protects the interests of all parties, with particular attention to ensuring that the deceased’s sisters are not denied their rightful



share of their father's inheritance merely because of their gender or the fact that the property was registered in their brother's name.

33. The costs of these proceedings shall be borne by the estate.

DELIVERED VIA CTS DATED AND SIGNED AT ELDORET ON THIS 21ST DAY OF FEBRUARY 2025

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R. NYAKUNDI

JUDGE

