



**In re Estate of David Kibor Rugut (Deceased) (Probate & Administration  
254 of 2007) [2025] KEHC 2028 (KLR) (14 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2028 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
PROBATE & ADMINISTRATION 254 OF 2007  
RN NYAKUNDI, J  
FEBRUARY 14, 2025**

**IN THE MATTER OF THE ESTATE OF DAVID KIBOR RUGUT (DECEASED)**

**BETWEEN**

**JOEL RUGUT ..... 1<sup>ST</sup> PETITIONER**

**MILKA RUGUT ..... 2<sup>ND</sup> PETITIONER**

**AND**

**PHILEMON KIPTANUI SITIENEI ..... APPLICANT**

**JUDGMENT**

1. In a ruling issued on December 16, 2019, the Court appointed Mr. Philemon Kiptanui Sitienei as administrator of the deceased's estate. Furthermore, the Court directed the Petitioners, Mr. Joel Rugut and Ms. Milka Rugut, to provide a comprehensive accounting of all estate income. The Court also mandated that a supplementary affidavit be filed detailing the complete inventory of the estate's assets and liabilities. Following the submission of this information, the beneficiaries were instructed to reach a mutual agreement regarding the method of estate distribution.
2. A grant was issued to the said Philemon Kiptanui Sitienei on 1<sup>st</sup> February, 2022 and he has approached this court for confirmation of the said grant, given that the statutory six months from the date of Grant of Letters of Administration Intestate has expired.
3. Mr. Philemon Kiptanui Sitienei, having been issued the Grant of Letters of Administration Intestate on 1<sup>st</sup> February, 2022, has petitioned this Court for confirmation of the grant, as the statutory six-month period following issuance has elapsed.
4. The summons for confirmation dated 25<sup>th</sup> January, 2022 indicate that the deceased was survived by the following:

1<sup>st</sup> House



Jelimo Tabarngetuny – wife (deceased)  
Philemon Kiptanui Sitienei – Son (Adult)  
Wilson Kipsang Bor – Son (deceased)  
Jonathan K. Sambu – Son (deceased)  
Stanley Kibor – son (adult)  
Edwin Bor – Son (deceased)  
Obadiah K. Bor – Son (adult)  
Monicah Jeptekeny Kosgei – Daughter (adult) now deceased.  
2<sup>nd</sup> House  
Milka Jeptarus Rugut – Widow (Adult)  
Eliab K. Lemeto – Son (Adult)  
Joel Rugut – son (Adult)  
Elisha Rugut – son (Adult)  
Bethwel K. Lemeto – son (Adult)  
Margaret Rugut – daughter (Adult)  
Everlyne Rugut – daughter (Adult)  
Julia Jepkorir Rugut – daughter (Adult)  
Esther Jepkemboi Rugut – daughter (Adult)

5. It was also indicated that the estate comprises of the following:
  - a. Eldoret Municipality Block 1/163
  - b. Standard Chartered Bank Kenya Limited Shares
6. The Petitioner proposed that the estate of the deceased be liquidated and distributed as follows:
  - a. That the Standard Chartered Bank Kenya Limited shares be shared equally among all the 16 beneficiaries.
  - b. That the Property known as Eldoret Municipality Block 1/163 be valued by a qualified and registered valuer.
  - c. That upon valuation, the property known as Title No. Eldoret Municipality/Block 1/163, the same be sold and the net proceeds therein upon settlement of the costs of these proceedings, valuation and costs of sale be shared equally amongst all the 16 beneficiaries subject to the following:
    - i. That a sum of Kshs. 15,570,037/= being the unaccounted and undistributed sum of the rental income received by the formed administrators namely Joel Rugut and Milka Rugut be recovered from their entitlement and be made available for equitable distribution among all beneficiaries subject to the allocation in priority of a sum of Kshs. 1,193,000/= being the petitioner's share of the las rental income that was not paid to him.



7. In support of this model of distribution, the petitioner opined that the aforesaid property which is the only land asset available for distribution is commercial in nature and measures 0.1350 Ha. and the same cannot be physically sub-divided into different parts to be shared by the beneficiaries.
8. That the logical hurdles that shall come with the management of the aforementioned commercial property particularly on collection, accounting and distribution of rental income among many beneficiaries does not allow the same be maintained and owned in its current state.
9. After reviewing the record, I find no evidence of opposing views or alternative proposals from any beneficiaries. I have examined the forensic audit report concerning the proceeds from the deceased's leased property, identified as Eldoret Municipality 1/163. The audit confirms that the distribution and allocation of proceeds were conducted fairly.
10. The financial records verify that the deposits made to account number 03XXXXXXXXXXXXXXXXXX4 align precisely with the terms and conditions specified in the three lease agreements. Following the deposits, the funds were withdrawn and distributed equitably among beneficiaries after accounting for expenses. This distribution process demonstrates adherence to principles of fairness and equity.

### **Analysis and determination**

11. Section 71 of the *Law of Succession Act* provides as follows:-

- “(1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.
- (2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may-
  - (a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or
  - (b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 inclusive, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be unadministered; or
  - (c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or
  - (d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares. (2A) Where a continuing trust arises and there is only one surviving administrator, if the court confirms the grant, it shall, subject to section 66, appoint as administrators jointly with



the surviving administrator not less than one or more than three persons as proposed by the surviving administrator which failing as chosen by the court of its own motion.

- (3) The court may, on the application of the holder of a grant of representation, direct that such grant be confirmed before the expiration of six months from the date of the grant if it is satisfied-
  - (a) that there is no dependant, as defined by section 29, of the deceased or that the only dependants are of full age and consent to the application;
  - (b) that it would be expedient in all the circumstances of the case so to direct.
- (4) Notwithstanding the provisions of this section and sections 72 and 73, where an applicant files, at the same time as the petition, summons for the immediate issue of a confirmed grant of representation the court may, if it is satisfied that-
  - (a) there is no dependant, as defined by section 29, of the deceased other than the petitioner;
  - (b) no estate duty is payable in respect of the estate; and
  - (c) it is just and equitable in all circumstances of the case, immediately issue a confirmed grant of representation.”

12. Similarly, rule 40 (4) of the *Probate and Administration Rules* provides as follows: -

“(4) Where the deceased has died wholly or partially intestate the applicant shall satisfy the court that the identification and shares of all persons beneficially entitled to the estate have been ascertained and determined.”

13. I have perused the Record and I am convinced that all beneficiaries were duly notified of these succession proceedings concerning the estate of David Kibor Rugut (deceased). The Record demonstrates that the Petitioner, Mr. Philemon Kiptanui Sitienei, has presented a mode of distribution that accounts for all sixteen beneficiaries from both households. This proposal specifically addresses the distribution of both the Standard Chartered Bank Kenya Limited shares and the commercial property identified as Eldoret Municipality Block 1/163.
14. The Petitioner’s proposed mode of distribution appears practical and equitable, particularly given the commercial nature of the property. I am of the view that in such scenarios where property cannot be physically subdivided, liquidation and equitable distribution of proceeds is an appropriate solution. This approach is especially relevant here given that the property measures only 0.1350 Ha. and is commercial in nature.
15. Regarding the rental income in question, the Court has examined the comprehensive forensic audit report covering the period 2009-2020, which reveals total collections of Kshs. 45,002,172 from the property. While the initial petition sought recovery of Kshs. 15,570,037 from the former administrators, this request has been superseded by the subsequent forensic audit findings. The audit report confirms that the deposits made to account number 03XXXXXXXXXXXX4 aligned with the lease agreements, and the funds were properly distributed among the beneficiaries after accounting for expenses. Therefore, the earlier concerns about unaccounted rental income have been



satisfactorily resolved through the forensic audit process, demonstrating that all beneficiaries received their appropriate share of the rental proceeds.

16. Consequently, I hereby make the following orders:

- a. The Grant of Letters of Administration Intestate issued to Philemon Kiptanui Sitienei on 1st February, 2022 is hereby confirmed.
- b. The estate shall be distributed as follows:
  - i. The Standard Chartered Bank Kenya Limited shares shall be divided equally among all sixteen (16) beneficiaries.
  - ii. The property known as Eldoret Municipality Block 1/163 shall be: Valued by a registered valuer within 60 days of this order, sold at market value within 120 days following valuation and the net proceeds, after deduction of costs, shall be distributed equally among all beneficiaries
- c. The sum of Kshs. 1,193,000/= shall be paid to the Petitioner as priority from the recovered rental income, being his unpaid share of the last rental income.

17. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 14<sup>TH</sup> DAY OF FEBRUARY 2025**

**R. NYAKUNDI**

**JUDGE**

