



**In re Estate of Michael Atonia Ikimat (Deceased) (Succession Cause 9 of 2015) [2025] KEHC 2140 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2140 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
SUCCESSION CAUSE 9 OF 2015  
RN NYAKUNDI, J  
FEBRUARY 14, 2025**

**IN THE MATTER OF THE ESTATE OF MICHAEL ATONIA IKIMAT (DECEASED)**

**BETWEEN**

**VERONICA AKUAM LOMOJONG ..... 1<sup>ST</sup> APPLICANT**

**MIRIAM NAWEET ATONIA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**ANN AKUNYEN ..... OBJECTOR**

**RULING**

1. This matter pertains to the administration of the estate of Michael Atonia Ikimat, who passed away on 12<sup>th</sup> January, 2009. Following his death, Letters of Administration were granted on 13<sup>th</sup> August, 2009 to Veronica Akuam and Miriam Nawet Atonia. On 8<sup>th</sup> November, 2018, the parties reached a partial consensus on the distribution of assets, though some properties remained in dispute. The contentious assets included two vehicles (registration numbers ExGK 623N, later changed to KAP 271T, and KLR 756) and a commercial property situated at Plot No. 92, Nakwamekwi Market (Reference: T.C.C. 14/6/IV).
2. The Honourable Justice Wakiaga presided over the proceedings to resolve the status of these disputed properties. Upon careful consideration of the evidence presented, the court determined that two of the contested assets were indeed part of the deceased's estate: the vehicle bearing registration number ExGK 623N (now KAP 271T) and the commercial property at Plot No. 92, Nakwamekwi Market (Reference: T.C.C. 14/6/IV). The court then proceeded to make the following determinations regarding these properties:

“Considering the prevailing circumstances, in the instant matter, the court finds it agreeable to grant the parcel of land at Nakwamekwi market Plot No. 92 REF T.C.C 14/6/IV to



Veronica Akuam Lomojong as per the summons for confirmation of grant issued on 6<sup>th</sup> November, 2018. However, this court acting on its discretionary powers, deems it fit to grant the land rover motor vehicle registration 271T (formerly Ex GK 623) to the estate of the late Ronald Acheriakal Atonia, keeping in mind that his (Ronald) siblings expressed no interest in the motor vehicle.”

3. The Objector has mounted a challenge against the aforementioned decision. However, a review of court records reveals procedural irregularities in how this challenge was initiated. No formal motion for review has been filed, nor has there been any documented intention to appeal the contested ruling through proper judicial channels. Instead, the only documented attempt to revisit the ruling appears in the form of a letter dated 13<sup>th</sup> April, 2023, from the Judicial Vicar to the session judge, requesting a review of the contested ruling. This is so perhaps because the objector does not have legal representation.
4. In an effort to gain first-hand understanding of the dispute, this court conducted a site visit on 28<sup>th</sup> February, 2024, to assess the contested parcel of land and better comprehend the parties' respective positions. Following this inspection, the court issued a directive to the County Surveyor to prepare a comprehensive report. This report was to document both the historical context of the land parcel and provide precise measurements of the property in question.
5. The report made the following findings:
  - “The disputed land parcel is surveyed under the name of Michael Atonia Ikimat (deceased) and covers a total area of 0.704 Hectares (Approx)
  - The parcel of land was surveyed in three parts as shown below
  - Part A covers an area of 0.361 hectares and is being occupied by the family of Michael Atonia Ikimati (deceased).
  - Part B covers an area of 0.14 hectares is being occupied by Mrs. Loburo Losuru Elur and her children. Mrs. Loburo Losuru Elur is the second wife of Mr. Elur (deceased).
  - Part C covers an area of 0.203 hectares. It's the part under dispute and where the late Mr. Elur was buried.”
6. I have also had sight of the Objector's submissions. The objector gave a background of the instant suit and submitted that she is the wife to the late Ronald Acheriakal who was the son of the deceased herein. She submitted that she was married to the late Ronald Atonia in 1995 and they were blessed with four children. She couched the following issues for determination:
  - a. Whether Ronald Atonia's children are entitled to claim their father's share.
  - b. Whether the gift given to the late Ronald Atonia by his aunt Alim should form part of the estate of Michael Atonia Ikimat.
  - c. Whether she is entitled to a share of the estate.
7. On the first issues, it was her submission that their children are entitled to a share of the estate of their grandfather as they substitute or take the position of their late father in claiming a share of the estate of the late Michael Atonia who was the father to their father who died intestate. On this she cited the decision in *Kosgei v. Cheronno (Family Appeal E002 of 2023)* where the court in making a determination made reference to the case of *Re Estate of Wahome Njoki Wakagoto (2013) eKLR*.



8. She further submitted that the sisters to the late Ronald Atonia Acheriakal made efforts to exclude her husband's name from the list of beneficiaries of their later father's estate while making an application to be granted with the letters of administration intestate, knowing very well that their late brother had children who were also supposed to benefit from the estate of their grandfather through their father through the principle of representation as encapsulated by section 41 of the *Law of Succession Act*.
9. As to whether the gift given to Ronald Atonia should form part of the estate of the late Michael Atonia Ikimat, she submitted that the aunt to her late husband left no apparent heirs to her estate since she never conceived. For this reason, she divided her property into two parcels of land and gave one part of her land to her niece Hilda and the remaining part to the late Ronald.
10. She submitted that before the passing of her husband, she used to be in actual possession of their matrimonial home and had even made developments thereon and it is only when she was chased away by the father-in-law and her sister-in-law who defrauded her and her children by transferring the said property to mzee Michael Atonia Ikimat and now forms part of the estate of the late Michael Atonia Ikimat. She urged the court not to allow such an injustice to the children of the late Ronald.
11. On costs, she urged the court to award her costs and damages given that the property meant for her late husband has been intermeddled, which would have in essence been in use by her children for purposes of investing.

### **Analysis and determination**

12. The present matter requires this court to revisit its previous determinations regarding the distribution of Michael Atonia Ikimat's estate, particularly in light of compelling evidence concerning familial relationships and equity in asset distribution. At the heart of this reconsideration lies the position of Ann Akuyen, whose marriage to the deceased's son, Ronald Atonia, and her role as mother to his children, presents this court with a duty to ensure fair and comprehensive provision for all legitimate beneficiaries.
13. This court has had the benefit of examining both the original grant of letters of administration and subsequent documentary evidence, including the surveyor's report, which provides crucial insights into the current occupation and potential distribution of the contested land. Furthermore, the Certificate of Confirmation of Grant issued on 8th November 2018 offers important context regarding prior distributions that must inform our present deliberations.
14. Section 47 of the *Law of Succession Act* vests court with wide discretion in granting protective powers of purposes of safeguarding the estate of a deceased person. It provides:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”
15. Likewise, Rule 73 of the Probate and Administration Rules provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
16. Having carefully considered the submissions before this court and upon review of the previous ruling in this matter, several critical considerations emerge that warrant a refinement of the earlier decision.



17. First, this court acknowledges that while the previous ruling made determinations regarding the ownership of the disputed assets, it did not fully address the position of Ann Akuyen, whose status as the deceased's daughter-in-law through her marriage to the late Ronald Atonia in 1995 is undisputed. She is not only a daughter-in-law but also the mother of Ronald's children, who are entitled to inherit their father's share of their grandfather's estate through the principle of representation.
18. Second, upon examination of the Certificate of Confirmation of Grant issued on 8th November 2018, it is evident that Veronica Akuam Lomojong has already received a substantial immovable property (Parcel of Land at California Market REF/341/99/104). This distribution context is significant when considering the equitable allocation of the remaining estate assets.
19. Third, the surveyor's report presents new evidence regarding the disputed land at Nakwamekwi Market, Plot No. 92, revealing three distinct portions: Part A (0.361 hectares) occupied by Michael Atonia Ikimat's family, Part B (0.14 hectares) occupied by Mrs. Loburo Losuru Elur's family, and Part C (0.203 hectares) which remains in dispute. While the status of Part B requires further clarification regarding the Elur family's interests, this should not prejudice the court's ability to make determinations regarding the remaining portions.
20. This court recognizes the importance of making reasonable provision for all eligible beneficiaries while considering their relationship with the deceased. The present circumstances call for a modification of the previous distribution to ensure that Ann Akuyen, as a daughter-in-law and mother to the deceased's grandchildren, receives appropriate consideration in the estate distribution. My appreciation of this dispute shows that the Applicant has not been treated fairly although she is a direct lineage to the intestate estate by virtue of the marriage union with the son of the deceased. In the distribution matrix should not claiming more of the estate save for that share which flows from her late husband whom if he was alive, he was to draw a portion of the deceased estate during his lifetime. The principles behind non-discrimination on inheritance rights are clearly articulated in the case of in the matter of the Estate of M'Ngarithi M'miriri alias Paul M'Ngarithi M'iriri (Deceased) (2017) KLR as follows:

#### Discrimination of daughters in inheritance

From the arguments coming through, it is clear issues to do with discrimination based on gender and sex have emerged. There were bad times in the heavily patriarchal African society; that being born as daughter disinherited you. And so, even the judicial journey to liberate daughters from being so down-trodden by the patriarchal society in Kenya on matters of inheritance has been long and painful. As a matter of fact, due to the constitutional architecture of our nation at the time, before 2010, we only saw pin-prick thrusts and rapier-like strokes by courts on these persistent patriarchal biases. But, things changed when *RONO vs. RONO* [2008] 1 KLR 803 delivered the downright bludgeon-blow on these discriminatory practices against women in inheritance; it splendidly paid deference to the international instruments against all forms of discrimination against women especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). And, I am happy to say that from thence, there are many cases- and the number is rising by the day as courts implement *the Constitution*- which state categorically that discrimination in inheritance on the basis of gender or sex or status is prohibited discrimination in law and *the Constitution*. More specifically I am content to cite the proclamation by the Court of Appeal



in the case of STEPHEN GITONGA M'MURITHI vs. FAITH NGIRAMURITHI [2015] eKLR that:-

“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried...”

Therefore, a son will not have priority over a daughter of the deceased simply because he is male; all- male and female siblings- are equal before the law and are entitled to equal protection of the law. See article 27 of *the Constitution*. Accordingly, the 3rd Administrator and her children who are claiming the inheritance of late Festus K. M'Ngaruthi, the son of the deceased are only entitled to the share of their late father. They are not, in the circumstances of this case entitled to more share than the distinct share of each of the two daughters of the deceased simply because the late Festus M'Ngaruthi was the son. The three children of the deceased are entitled to share the net intestate estate of the deceased equally.

21. Given our constitutional imperatives, in Article 27(4) the inheritance regime has no room to violate women fundamental rights to equality, property, adequate standard of living, dignity, and security as entrenched in *the constitution* and binding International and Regional conventions in Article 2 (5) & (6) of *the constitution*. The protocol to the African Charter to the Right of Women in Africa enforce since 2005 speaks directly to this issue that a widow shall have the right to an equitable share in the inheritance of the property of the husband. A widow shall have the right to continue to live in the matrimonial home which they established together with her husband during the subsistence of the marital union. In the case at bar, the Applicant's rights to inheritance are ringfenced by both the common law and African customary law. For those reasons therefore, the Application made by the Applicant succeeds with the following orders to abide:

- a. That: the Parcel of Land at Nakwamekwi Market, Plot No. 92, shall be subdivided to accommodate both the interests of Veronica Akuam Lomjong and Ann Akuyen, with specific portions to be determined through a family agreement under the supervision of this court within 60 days of this ruling.
- b. That: In the event that the family fails to reach an agreement within the stipulated period, this court shall proceed to allocate 30% of Part A to Ann Akuyen, with the remaining 70% to be retained by Veronica Akuam Lomjong.
- c. That the land rover motor vehicle registration KAP 271T (formerly Ex GK 623) shall remain allocated to the estate of the late Ronald Acheriakal Atonia, as previously determined.
- d. That the parties shall bear their own costs of this application.

22. Orders accordingly.

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

In the Presence of:

Applicant

.....

**R. NYAKUNDI**

**JUDGE**

