



**In re Estate of Isack Kimaiyo Keter alias Isaac Kimaiyo Keter (Deceased)
(Succession Cause 37 of 2019) [2025] KEHC 3489 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3489 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 37 OF 2019**

AC MRIMA, J

MARCH 21, 2025

**IN THE MATTER OF THE ESTATE OF ISACK KIMAIYO
KETER ALIAS ISAAC KIMAIYO KETER (DECEASED)**

BETWEEN

ELISHA KIPNGETICH MAIYO 1ST APPLICANT

JACOB KIKURGAT MAIYO 2ND APPLICANT

AND

SARAH JEPKEMOI MAIYO 1ST RESPONDENT

JOYCE KITAI 2ND RESPONDENT

MIRIAM MAIYO 3RD RESPONDENT

RULING

1. In its judgment of 14th March 2024, this Court invalidated the written Will of Isack Kimaiyo Keter, the deceased herein, for failing to adhere to Article 27 of the Constitution, the relevant provision prohibiting discrimination.
2. The Court was of the finding that, irrespective of the marital status of Sarah Jepkemoi Maiyo, Joyce Kitai and Miriam Maiyo, the Respondents herein, they were also children of the deceased just like their brothers, Elisha Kipng'etich Maiyo and Jacob Kipkurgat Maiyo, the Applicants herein.
3. As such, the deceased ought to have included and provided for them or stated how they were catered for in his Will. This Court observed that despite the Will being compliant with the Law of Succession Act, its failure to include and provide for the daughters discriminated against them in violation of Article 27 which guaranteed equality before the law.



4. With the foregoing, the Court ordered that the deceased's estate will be distributed under the rules of intestacy. To that end, and in order to achieve fairness, it directed a survey of the deceased's parcels of land namely Kaplamai/Sirende Block 2/Ngonyek/74 and Kaplamai/Sirende Block 2/Ngonyek/59 to be undertaken. Accordingly, a Survey Report dated 29th May 2024 which was compiled by Protus Muindi, Surveyor In-charge Trans-Nzoia was filed in Court on 16th May 2024.
5. This Ruling is, therefore, on the mode of distribution of the foregoing parcels of land.
6. On 19th November 2019, Grant of Letters of Administration was issued to Elisha Kipng'etich Maiyo and Sarah Jepkemoi Maiyo. According to the record, the deceased was only survived by the following children since the spouse predeceased him: -
 - i. Sarah Jepkemoi Maiyo (daughter)
 - ii. Elisha Kipng'etich Maiyo (Son)
 - iii. Ann Jebet Keter (deceased Daughter)
 - iv. Elizabeth Chepkoech Birgen (Daughter)
 - v. Joyce Kitai (Daughter)
 - vi. Miriam Maiyo (Daughter)
 - vii. Jacob Kipkurgat Maiyo (Son)
 - viii. Nelly Jeptanui Tegentany (Daughter)
7. In a scenario where only the children are the beneficiaries, the distribution of the estate is to be guided by Section 38 of the Law of Succession Act (hereinafter referred to as 'the Act') which provides as follows: -
 38. Where intestate has left a surviving child or children but no spouse:

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.
8. Sections 41 and 42 of the Act which were referred to above states as follows: -
 41. Property devolving upon child to be held in trust:

Where reference is made in this Act to the "net intestate estate", or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.
 42. Previous benefits to be brought into account:

Where-

 - (a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or



- (b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35 of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.

9. In discharging the above mandate, a Court also exercises inherent power provided for in Rule 73 of the *Probate and Administration Rules*. The provision states as follows: -

73. Saving of inherent powers of court:

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.

10. The property subject of distribution in this case comprises of two portions of land known as Kaplamai/Sirende Block 2/Ngonyek/74 and Kaplamai/Sirende Block 2/Ngonyek/59. In the judgment, this Court directed that a survey be undertaken to confirm the size of the two pieces of land and to identify the structures standing thereon and the portions they occupy. According to the Survey Report, Kaplamai/Sirende Block 2/Ngonyek/59 measures 3.926 Hectares which translates to around 9.7 acres and has a structure thereon being a permanent house surrounded by a live fence occupying about 0.340 Ha (0.84 acres). The house belongs to Jacob Maiyo. The unoccupied area is, hence, 8.86 acres.
11. Kaplamai/Sirende Block 2/Ngonyek/74 measures about 10.308 Hectares which is about 25.47 acres. The parcel has an old homestead that occupies an area of 0.324 Ha (0.80 acre). The home is occupied by Elisha Maiyo. The said parcel also contains a house built by the said Elisha Maiyo which is occupied by his workers. The house covers an area of 0.340 Ha (0.84 acres). Finally, the parcel also has the house belonging to Duncan Kigen who is Elisha Maiyo's son. The house occupies an area of 0.259 Ha (0.64 acres). The unoccupied area is 23.19 acres.
12. The evidence on record also has it that the son of Elisha Maiyo was allowed by the deceased to construct his house on the parcel of land. Since the said Elisha Maiyo's son built and occupied his house long before the death of the deceased, then Section 42(b) of the *Act* vests the portion of land where the house stands on the said Elisha Maiyo's son as opposed to treating the portion as part of Elisha Maiyo's share of the estate.
13. Deriving from the above, the size of the two parcels of land sum up to a total of 35.17 acres.
14. As per the dictates of Article 27 of the *Constitution* and Section 38 of the *Act*, there is no distinction as to the gender of the children of the deceased. The law also does not distinguish between married and unmarried children. It is the general legal position that in the circumstances of this case, the net estate of the deceased ought to be divided equally among the siblings.
15. Having said so, this Court's attention is drawn to Rule 73 of the *Probate and Administration Rules* which accords a Court the power to make orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. In this case, it is not lost to this Court that Jacob Maiyo and Elisha Maiyo have all along been living on the parcels of land. Their stay thereon cannot be said to be in vain. As a result of their occupation, they have taken care of the parcels of land and naturally kept intruders at bay. If, for instance, the two brothers also kept off the parcels of land, chances are that the estate may have been exposed to expenses in its protection and maintenance. Since the two brothers have offered such services to the estate to the exclusion of their sisters, it is only fair and reasonable and in line with equity as a constitutional imperative under Article 10(2)(b) of the *Constitution* that the two brothers be accorded slightly higher shares of the estate compared to their sisters.



16. Another important issue was conspicuous during the trial. The male siblings hold so much anger against their sisters. They cannot understand why their sisters who were married and have more successful lives than them should also have a share of their father's estate. To them the estate ought to solely devolve to the male children. The rationale behind considering the sisters alongside their brothers in the distribution of the estate was discussed at length in the judgment that annulled the Will. Given that the male siblings have been allocated slightly larger shares than their sisters for their role in safeguarding the estate and in the unique circumstances of this case, it is this Court's hope that the male siblings will find peace with their sisters going forward.
17. In effecting the sub-divisions, there will definitely be need for another survey to be undertaken. In the course of that assignment, the Surveyor shall exercise care and caution such that none of the houses on any of the two parcels of land is to be demolished unless on parties' consensus.
18. As I come to the end of this ruling, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and later elected to the Judicial Service Commission thereby mostly being away from the station. Apologies galore.
19. Having said as much and in the end, the following orders hereby issue: -
 - a. The estate of the deceased herein shall devolve as follows: -
 - i. Elisha Kipng'etich Maiyo - 6.765 acres.
 - ii. Jacob Kipkurgat Maiyo - 6.765 acres.
 - iii. Sarah Jepkemoi Maiyo - 3.5 acres
 - iv. Estate of Ann Jebet Keter - 3.5 acres
 - v. Elizabeth Chepkoech Birgen - 3.5 acres
 - vi. Joyce Kitai - 3.5 acres
 - vii. Miriam Maiyo - 3.5 acres
 - viii. Nelly Jeptanui Tegentany - 3.5 acres.
 - ix. Duncan Kigen - 0.64 acre
 - b. The allocation of 6.765 acres each to Elisha Maiyo and Jacob Maiyo shall include the portions where they have their respective houses and their workers houses, as the case may be.
 - c. The Administrators shall undertake a sub-division of the parcels of land known as Kaplamai/Sirende Block 2/Ngonyek/74 and Kaplamai/Sirende Block 2/Ngonyek/59 in line with the above distribution.
 - d. The cost of the sub-division and issuance of ownership documents shall be borne by all the beneficiaries in proportion to their respective shares.
 - e. If need be, the County Commander, Trans Nzoia County and/or any other police officer under his/her command shall provide security during the sub-division exercise.
 - f. There shall be no costs in these proceedings.



Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 21ST DAY OF MARCH, 2025.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Mr. Teti, Learned Counsel for the Applicants.

No appearance for Miss. Lelei, Learned Counsel for the Respondents.

Chemosop/Duke – Court Assistants.

Ruling - Kitale High Court Succession Cause No. 37 of 2019 Page 4 of 4

