



In re Estate of Tapelgaa Chepkosgei Mogor (Deceased) (Succession Appeal E046 of 2022) [2025] KEHC 3140 (KLR) (5 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3140 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION APPEAL E046 OF 2022
JK NG'ARNG'AR, J
MARCH 5, 2025**

IN THE MATTER OF THE ESTATE OF TAPELGAA CHEPKOSGEI MOGOR (DECEASED)

BETWEEN

DAVID KIPKEMOI APPELLANT

AND

CHEPKWONY ARAP RONO RESPONDENT

(Being an Appeal from the Ruling of Principal Magistrate, Kibelion K. at Principal Magistrate's Court at Bomet, Succession Cause Number 64 of 2019)

JUDGMENT

1. The Respondent (then Petitioner) filed for Petition of Letters of Administration Intestate and the Grant of Letters of Administration Intestate was awarded to him on 23rd September 2020. The Respondent filed for Summons for Confirmation of Grant on 29th July 2021. In response, the Appellant filed a Protest dated 6th October 2021 where he disputed the mode of distribution of the deceased's estate i.e. Kericho/Itembe/98.
2. The Protest was heard by viva voce evidence and the trial court delivered its Ruling on 16th November 2022 where it dismissed the Protest.
3. Being aggrieved with the Ruling of the trial court, the Appellant filed his Memorandum of Appeal dated 16th December 2022 and relied on the following grounds:-
 - i. That the learned Magistrate erred in law and fact when he arrived at an erroneous decision and in all circumstances failed to do justice to the Appellant.
 - ii. That the learned Magistrate erred in law and fact by misinterpreting the law in favour of the Respondent and other beneficiaries and hence arrived at a wrong finding.



- iii. That the learned Magistrate erred and misdirected himself in law ab I facts by failing to conclusively determine all the rights of the beneficiaries hence reaching a wrong decision.
 - iv. That the learned Magistrate erred in law and fact by failing to take into account the Protestor's submissions and authorities therein cited and thereby arriving at a grossly unfair decision.
 - v. That the learned Magistrate erred and misdirected himself in law and in fact by making a discriminatory and unfair decision against the Appellant contrary to the law.
 - vi. That the learned Magistrate erred and misdirected himself in law and in fact by failing to consider the evidence produced in court by the Appellant during the gearing of the suit.
 - vii. That the learned Magistrate erred in law and fact by considering extraneous issues instead of confining himself to the pleadings, issues and submissions placed before him by the parties.
 - viii. That the learned Magistrate erred in law and in facts by relying entirely on the evidence presented by the Respondent at the exclusion of that of the Appellant.
 - ix. That the learned Magistrate erred and misdirected himself in law and in fact by making discriminatory decision that led to inequality against the Appellant as to the distribution of the estate contrary to law.
 - x. That the learned Magistrate erred in law and in fact when he failed to distribute the estate of the deceased equally amongst the beneficiaries of the estate.
 - xi. That the learned Magistrate manifested clear bias against the Appellant's case by further allowing the unfair mode of distribution suggested by the Respondent without considering the evidence adduced.
 - xii. That the learned Magistrate erred in law and in fact in depriving the Appellant his rightful inheritance of the estate of Kericho/Itembe/98.
 - xiii. That the learned Magistrate erred in law and in fact in finding that there was subsequent acquisition of land by the family and the Appellant herein had settled in such parcels.
 - xiv. That the learned Magistrate erred in law and in fact in relying on assumptions that were agreements during the life of Tapelgaa Chepkosgei.
 - xv. That the learned Magistrate erred in law and in fact by failing to exercise his discretion in a judicial manner on the available evidence and his decision amounted to an error in principle.
 - xvi. That the learned Magistrate erred in law and in fact by failing to apply the law correctly.
4. My work as the 1st appellate court is to re-evaluate and re-examine the evidence of the trial court and come to my own findings and conclusions, but in doing so, to have in mind that it neither heard nor saw the witnesses testify. This principle was espoused in the Court of Appeal case of Abok James Odera T/A A.J Odera & Associates Vs John Patrick Machira t/a Machira & Co. Advocates (2013) eKLR

The Petitioner's/Respondent's case.

5. The Petitioner stated that his mother died on 18th August 2003 and was survived by Christine Chepkemoi Rono, David Kipkemoi Rono (Appellant), Chepkwony Arap Rono (Respondent) and Paul Kipkurui Rono. That the deceased's asset for succession was a parcel of land known as Kericho/Itembe/98 (subject land).



6. It was the Respondent's proposal that the subject land be subdivided in the following manner:-
 - i. Christine Chepkemoi Rono 10.07 acres
 - ii. David Kipkemoi Rono 0.9 acres
 - iii. Chepkwony arap Rono 10.63 acres
 - iv. Paul Kipkurui Rono 2.6 acres
7. In his submissions dated 23rd October 2024, the Respondent submitted that during the lifetime of their mother, David Kipkemoi Rono, Chepkwony Arap Rono and Paul Kipkurui Rono as brothers jointly bought different parcels of land in different places. That it was agreed that David Kipkemoi Rono (Appellant) and Paul Kipkurui Rono would not claim any share from Kericho/Itembe/98. He further submitted that the Appellant moved to Kimatisio within Bomet County and settled there and that he only came to claim a share of the deceased's estate after her death. He relied on section 42 of the [Law of Succession Act](#).
8. It was the Respondent's submission that the Appellant intended to ignore the arrangements the deceased made in her lifetime in which every beneficiary was provided for. That the Appellant should not claim an equal share in the subject land since he did not claim the same during the deceased's lifetime and that more than 20 years had since lapsed since the death of the deceased.
9. The Respondent submitted that the Appellant had sold part of his share of the subject land and remained with 0.9 acres.

The Appellant's case

10. The Appellant stated that he disagreed with the Respondent's proposed mode of distribution of the subject land. He proposed that each beneficiary should get an equal share as below:-
 - i. Christine Chepkemoi Rono 7.66 acres
 - ii. David Kipkemoi Rono 7.66 acres
 - iii. Chepkwony arap Rono 7.66 acres
 - iv. Paul Kipkurui Rono 7.66 acres
11. In his submissions dated 5th February 2024, the Appellant submitted that Kericho/Itembe/98 was the free property of the deceased and that Christine Chepkemoi Rono, David Kipkemoi Rono, Chepkwony Arap Rono and Paul Kipkurui Rono were the rightful beneficiaries of the deceased's estate. He further submitted that the deceased's estate should be shared equally and he relied on section 38 of the Law of Succession, Stephen Gitonga M'Murithi vs Faith Ngira Murithi (2015) eKLR and Re Estate of Chesimbili Sindani (Deceased) (2021) eKLR.
12. It was the Appellant's submission that the beneficiaries were not awarded land inter vivos by the deceased and hence section 42 of the [Law of Succession Act](#) did not apply. He relied on Re Estate of Marete Mbui alias M'Marete M'Mbui alias Justus Marete (Deceased) (2017) eKLR.
13. I have gone through and carefully considered the trial court record, the Record of Appeal dated 6th September 2023 and the respective parties' written submissions. The only issue for my determination was whether the trial court erred when it dismissed the Protest dated 6th October 2021.



14. As earlier indicated, the Protest was heard through viva voce evidence. The Appellant (the Protestor) testified that the subject land which measured approximately 31 acres should be divided equally among the four beneficiaries (Christine Chepkemoi Rono, David Kipkemoi Rono, Chepkwony arap Rono and Paul Kipkurui Rono). When he was cross examined, the Appellant stated that he purchased 1.5 acres of land in Kimatisio and that was where he lived. That they did not agree to reduce his share in the subject land based on his purchase of land in Kimatisio. The Appellant further stated upon cross examination that his brother Paul Kipkurui Rono also lived in a land that he purchased.
15. In response to the Protest, the Respondent (then Petitioner) testified that together with his brothers, they jointly purchased community land and agreed that other people reside on that land. He further testified that David Kipkemoi Rono (Appellant) went to Motisho (6.6 acres), Paul Kipkurui Rono occupied 5 acres and Richard occupied 7 acres.
16. It was the Respondent's testimony that he gave up his share in the community land. That in the subject land, David Kipkemoi Rono was to get 2.4 acres minus 1.25 acres that the tarmac road covered. That David Kipkemoi Rono sold his entire parcel and resided in his share in the community land. When he was cross examined, the Respondents stated David Kipkemoi Rono and Paul Kipkurui Rono lived in the community land which did not form part of the deceased's estate. He reiterated that David Kipkemoi Rono sold his entire share in the subject land.
17. Paul Kipkurui Rono testified as the second Petitioner's witness. He testified that they divided the subject land at home between the four brothers. That after the division, together with the Appellant David Kipkemoi Rono he left the subject land where he had 5 acres. He further testified that he left the subject land when their mother was alive and that the division of the subject land was not equal. He testified that he agreed with the mode of distribution as proposed by the Respondent. When he was cross examined, he stated that he lived in his parcel of land in Kapewa and that the Appellant owned the parcel of land that he lived in.
18. Christine Rono testified as the Petitioner's third witness. She testified that she was the wife to the late Richard Rono who was a brother to the Appellant, the Respondent and Paul Kipkurui Rono. That sometime in the year 1974, he husband and his brothers purchased parcels of land in Kimatisio, Kabewor and Tolilet. She further testified that it was agreed that some brothers would move to the other parcels, take their shares there and have their shares in the subject land reduced. That David Kipkemoi Rono (Appellant) moved to Kimatisio (6.5 acres), Paul Kipkurui Rono moved to Kabewor (4.1 acres) and her husband moved to Tolilet (7 acres).
19. It was Christine's testimony that the subject land was then divided as per the Petitioner's proposal. That the Appellant did not have a problem moving to Kimatisio and further did not have a problem with the Petitioner's mode of distribution when the succession suit was filed. It was her further submission that each beneficiary was allocated equal shares based on the agreements they had in the years 1974 and 1987. When she was cross examined, she stated that the suit land was registered in the name of the deceased and that the Respondent lived in a parcel registered in his name.
20. From the evidence tendered in the trial court, it is clear that Richard Rono, David Kipkemoi Rono (Appellant), Chepkwony arap Rono (Respondent), Paul Kipkurui Rono and Richard Rono purchased land in Kimatisio, Kabewor and Tolilet. The Respondent stated that the purchases were done jointly within the brothers and it was agreed that David Kipkemoi Rono (Appellant), Paul Kipkurui Rono and Richard Rono would take possession in the other parcels of land and have their shares in the subject land reduced as a consequence of the purchase. Further that the Respondent would remain in the subject land and not take any share in the other parcels of land. This testimony



was corroborated by Paul Kipkurui Rono and Christine Rono who were the Appellant's brother and sister in law respectively.

21. In further analysis, the Petitioner admitted upon cross examination that he lived in Kimatisio and his brother, Paul Kipkurui Rono testified that he lived in Kapewa. Christine Rono also testified that they moved with her husband to Tolilet.
22. The standard of proof in succession cases is similar to the standard of proof in civil cases i.e. that the standard was on the balance of probabilities and the burden in the present case lay with the Objector. The Court of Appeal in *Gitobu Imanyara & 2 others v Attorney General* [2016] KECA 557 (KLR) held:-

“.....The standard of proof in a civil case, on a balance of probabilities, does not change even in the absence of a rebuttal by the other side.....”
23. Having gone through the evidence, it is my finding that the Petitioners' case was more believable than the Objector's case. The Petitioner's evidence was corroborated by his two witnesses (Paul Kipkurui Rono and Christine Rono) and this was also buttressed by the fact that Paul Kipkurui Rono, Richard Rono and the Appellant moved out of the subject land during the lifetime of the deceased and the Appellant's admission that he resided in Kimatisio, a place he claimed to have purchased. This demonstrated that there was an agreement during the lifetime of the deceased as to the division of the subject land as alluded to by the Petitioner.
24. The existence of an agreement on subdivision of the subject land in my view, superseded the Appellant's argument that Kericho/Itembe/98 was the deceased's free property and was available for equal distribution.
25. In the final analysis, I agree with the trial court's finding that the Respondent was more truthful and that his proposed mode of distribution was informed by the acquisition of land by the brothers and subsequent relinquishing of their (Paul Kipkemoi Ruto, Christine Ruto and the Appellant) shares in the subject land.
26. In the end, the Appeal dated 16th December 2022 has no merit and is dismissed.

Orders Accordingly.

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 5TH DAY OF MARCH, 2025.

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HON. JULIUS K. NG'ARNG'AR

JUDGE

Judgement delivered in the absence of the Appellant, M/s Chirchir for the Respondent and Siele/Susan (Court Assistants).

