



**In re Estate of Francis Kimutai Too alias Francis Kimutai Kiptoo (Deceased)  
(Succession Cause E124 of 2023) [2025] KEHC 4084 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4084 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E124 OF 2023**

**RN NYAKUNDI, J**

**APRIL 2, 2025**

**IN THE MATTER OF THE ESTATE OF FRANCIS KIMUTAI  
TOO ALIAS FRANCIS KIMUTAI KIPTOO (DECEASED)**

**BETWEEN**

**CELESTINE CHEPCHIRCHIR MUTAI ..... PETITIONER**

**AND**

**DORCAS CHEPKORIR TOO ..... 1<sup>ST</sup> OBJECTOR**

**MARK MELI TOO ..... 2<sup>ND</sup> OBJECTOR**

**GIDEON KIPKOECH MUTAI TOO ..... 3<sup>RD</sup> OBJECTOR**

**CAROLINE JEROP TOO ..... 4<sup>TH</sup> OBJECTOR**

**FRIDAH CHEPCHIRCHIR TOO ..... 5<sup>TH</sup> OBJECTOR**

**RULING**

1. This matter is with respect to the estate of the late Francis Kimutai Too alias Kimutai Kiptoo who died intestate on 10/08/2022.
2. On 8/09/2023, Celestine Chepchirchir Mutai, the Petitioner petitioned this Court for the Grant of Letters of Administration with respect to the estate of the deceased in her capacity as a daughter of the deceased.
3. In her petition, the Petitioner stated that the deceased died intestate and was survived by the following persons:



Dorcas Too	Adult	Widow
Gideon K. Too	Adult	Son
Mark Meli Too	Adult	Son
Caroline Too	Adult	Daughter
Fridah Too	Adult	Daughter
Sammy Wanjala Mutai	Adult	Son
Winnie Grace Chebet	Adult	Daughter
Edward Kipkemboi Mutai	Adult	Son
Michael Kemboi Kimutai	Adult	Son
Lameck Kipyego Kogo	Adult	Son
Joseph Kiprugut Mutai	Adult	Son
Joy Jelagat Mutai	Adult	Daughter
Celestine Chepchichir Mutai	Adult	Daughter

4. On 16/10/2024, the Court issued the Petitioner with Letters of Administration Intestate of all the estate of the late Francis Kimutai Too alias Francis Kimutai Kiptoo.

### **The Objectors' Case**

5. On 31/05/2024, the Objectors herein filed an Objection to the Making of Grant. The Objection is premised on grounds that 1<sup>st</sup> Objector is the legal wife of the deceased, that the 2<sup>nd</sup> to the 5<sup>th</sup> Objectors are children of the deceased, being sons and daughter respectively and hence beneficiaries in his estate, that Objectors did not participate in the Succession proceedings herein and that the grant if any should be revoked and/or annulled. The Objectors contend that they did not consent to the Petition for the Grant of Letters of Administration by the Applicant herein, that the Objectors clearly did not sign Form 38 to show their express consent towards the filing of the Petition herein.
6. According to the Objectors the Petitioner has been elusive in answering questions pertaining to the filing of the succession proceedings in this estate. The Objectors are apprehensive that the Petition is tainted with malice to deprive them of the opportunity to actively participate in the distribution of the estate of the deceased herein.
7. The Objectors maintained that the deceased had (4) children namely:
- a. Mark Meli Too
  - b. Gideon Kipkoech Mutai Too
  - c. Caroline Jerop Too



- d. Fridah Too
8. The Objectors further contend that in her petition for the grant of representation with respect to the deceased's estate, the Petitioner herein has knowingly included strangers as beneficiaries of the deceased, that the strangers are Sammy Wanjala Mutai, Winnie Grace Chebet, Edward Kipkemboi Mutai, Michael Kemboi Kimutai, Lameck Kipyego Kogo, Joseph Kiprugut Mutai and Joy Jelagat Mutai whom the Objectors desire that they be subjected to a DNA test.
  9. According to the Objectors, Celestine Chepchirchir Mutai, Sammy Wanjala Mutai, Winnie Grace Chebet, Edward Kipkemboi Mutai, Michael Kemboi Kimutai, Lameck Kipyego Kogo, Joseph Kiprugut Mutai and Joy Jelagat Mutai are not biological children of the deceased.
  10. The Objectors deposed that on 12/09/2022, the Honourable Court issued an order directing Eldoret Hospital Limited to extract DNA samples from the deceased herein which was thereafter preserved. According to the Objectors it is just and fair that a paternity test be done to determine whether the deceased is the biological father of Celestine Chepchirchir Mutai, Sammy Wanjala Mutai, Winnie Grace Chebet, Edward Kipkemboi Mutai, Michael Kemboi Kimutai, Lameck Kipyego Kogo, Joseph Kiprugut Mutai and Joy Jelagat Mutai. The Objectors want the cost of the said DNA to be borne by Celestine Chepchirchir Mutai, Sammy Wanjala Mutai, Winnie Grace Chebet, Edward Kipkemboi Mutai, Michael Kemboi Kimutai, Lameck Kipyego Kogo, Joseph Kiprugut Mutai and Joy Jelagat Mutai.
  11. The 1<sup>st</sup> Objector reiterated that the Petitioner herein filed the instant Succession proceedings without informing her and her Co-Objectors and neither did she obtain their consent and that the Petitioner proceeded to file the same proceedings with an incomplete Form 38 the same having not been signed by them.
  12. According to the Objectors, the Petitioner is discriminating them with an ill intent of disinheriting them from the estate of the deceased herein, which acts are unconstitutional and unlawful.
  13. The Objectors do not approve Celestine Chepchirchir Mutai being an administrator of the estate, that the Objectors Dorcas Chepkorir Too, Mark Meli Too, Gideon Kipkoech Mutai Too, Caroline Jerop Too and Fridah Chepchirchir Too should be made administrators in the estate herein.
  14. The Objectors contend that the Death Certificate Serial Number 1414524 used by Celestine Chepchirchir Mutai was falsified and a forensic expert should authenticate the same.
  15. In conclusion, the Objectors want that all the deceased's properties be included in the list of assets under Form 5.

### **The Response**

16. In response to the Objection to the making of grant, the Petitioner filed a Replying Affidavit dated 24/07/2024.
17. In the Affidavit, she deposed that the objection is full of lies, made in bad faith and only meant to frustrate the succession proceedings filed herein. The Petitioner denied the allegation that the Objectors are the only family and beneficiaries of the estate of Francis Kimutai Too alias Francis Kimutai Kiptoo to whom these proceedings relate.
18. The Petitioner maintained that the deceased herein had two wives, Jane Nekesa Kimutai (Deceased) and the 1<sup>st</sup> Objector, that the 1<sup>st</sup> Objector sired 4 children with the deceased and they consist of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Objectors herein, that her mother Jane Nekesa Kimutai was the 1<sup>st</sup> wife and that she



had 6 children with the deceased, that her father also had two more children from other relationships namely; Lameck Kipyego Kogo whom they grew up together since childhood as their brother and Joy Jelagat Waithera whom they came to know that she was one of their father's children after his death.

19. The Petitioner denied the Objectors' allegations that they were not informed of the intention to institute succession proceedings and or were left out, that the family had a meeting with the agenda being the succession of their late father on 6/06/2023 and that all the Objectors were informed to be in attendance but they chose to be absent. According to the Petitioner, this was not the first time that the Objectors were refusing to co-operate in succession affairs of the estate of their late father, that numerous they had been asked to attend meetings on the same issues but they refused.
20. The Petitioner maintained that she is one of the children of the deceased and in equal ranking in priority to take out letters of administration of the estate of her father, especially due to the fact that her mother is now deceased, that all the children from her mother's house were brought up by their father Francis Kimutai and cared for as his own children during his lifetime and thus allegations that they are not children of the deceased and thus not beneficiaries of the estate of Francis Kimutai are falsehoods and should be disregarded by this court.
21. The Petitioner has no Objection to a Co-administrator being appointed to act with her in collecting and distributing the estate to the rightful beneficiaries.
22. The Petitioner is opposed to a DNA test being conducted on them in order to establish their paternity for reasons that; there are other ways of establishing whether or not they are children of the deceased for purposes of Succession which are efficient and cost effective rather than a DNA, the proposition for DNA to be conducted is made by the Objectors in trying to prove whichever fact they wish to, and they should thus the cost (if necessary) and whether or not they are biological children of the deceased is not an issue if it can be established that the deceased during his lifetime regarded all of them as his children and thus cared for them as his own.
23. The Petitioner denied the allegations of fraud in acquiring the Death Certificate. The Petitioner maintained that the Death Certificate was applied for and issued to the 3<sup>rd</sup> Objector herein , Gideon Koech Too. The Petitioner maintained that the mandate of Probate court is to identify beneficiaries of the estate of a deceased person, properties of the deceased and the shares of the beneficiaries. Additionally that falsifying documents is a criminal offence and the Objectors should thus pursue the allegation before the appropriate forum.
24. With regard to the signing of the Form 38, the Petitioner reiterated that the Objectors have always refused to co-operate in the filing of these proceeding which explains why they refused to sign the consent form. The Petitioner is not opposed to the Objectors including any other property of deceased which was left out and need to b included in these proceedings to avoid any subsequent applications after the confirmation of grant.
25. In conclusion, the Petitioner maintained that she has been transparent all through these succession proceedings and did not leave out the Objectors even though they did not co-operate. According to the Petitioner is thus unmerited and should be dismissed for being an abuse of Court process and waste of judicial time.

### **Submissions**

26. The Objection proceedings were canvassed vide written submissions. The Objectors filed their submissions dated 28/01/2024 while the Petitioner did not file any.



## The Objectors' Submissions

27. The Objectors presented a singular issue for consideration, namely, the appointment of an administrator for the estate of the deceased.
28. Counsel for the Objectors primarily anchored his submissions on the proviso of Section 66 of the Law of Succession noting that the 1<sup>st</sup> Objector herein is the widow of the deceased while the Petitioner is an alleged daughter and thus the 1<sup>st</sup> Objector ranks in higher priority than the Petitioner. Counsel also cited Section 26 of the *Law of Succession Act* before faulting the Petitioner herein for not following the outlined procedure in obtaining in the grant. Counsel relied on the holding *in re Estate of Magangi Obuki (Deceased)* [2020]eKLR where the Court in revoking the grant of Letters of Administration that had been issued therein relied on the pronouncements made in *Re Estate of Moses Wachira Kimotho (deceased)* Succession Cause No 122 of 2002 [2009] eKLR.

## Determination

29. The procedure for objection is addressed in Sections 67, 68 and 69 of the *Law of Succession Act* Cap 150 (Laws of Kenya). Rule 17 of the *Probate and Administration Rules* details how the objection is to be lodged at the registry, how the Petitioners and principal registrar are to be notified of the objection, the filing of answer and cross-petition by the Objector, the extension of time by the registrar where an application in that regard has been made and determined by the court of the petition and cross-petition. A person may object to issuance of letters of administration in respect of a deceased's estate within the period stipulated in the Kenya Gazette.
30. Section 67 (1) of the *Law of Succession Act* provides that:-

“No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for the grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired
31. Further, Section 68 of the Law of Succession provides that:-
  1. Notice of any objection to an application for a grant of representation shall be lodged with the court, in such form as may be prescribed, within the period specified by such notice as aforesaid, or such longer period as the court may allow.
  2. Where notice of objection has been lodged under subsection (1), the court shall give notice to the Objector to file an answer to the application and a cross-application within a specified period.
32. Section 69 of the *Law of Succession Act* further stipulates that:-
  1. Where a notice of objection has been lodged under subsection (1) of section 68, or no answer or no cross-application has been filed as required under subsection (2) of that section, a grant may be made in accordance with the original application.
  2. Where an answer and a cross-application have been filed under subsection (2) of section 68, the court shall proceed to determine the dispute.”
33. The procedure of how the Objection to a grant of letters of administration is to be made is given in Rule 17 of the *Probate and Administration Rules*. It states that:-



- a. Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person may do so by lodging within the period specified in the notice of the application published under rule 7(4), or such longer period as the court may allow, either in the registry in which the pending application has been made or in the principal registry, an objection in Form 76 or 77 in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection.
  - b. A request by an intending Objector for an extension under section 68(1) of the Act of the period specified in the notice under rule 7(4) shall be made to the registry at which the application for a grant was made or by which the notice was issued, as the case may be, by summons supported by an affidavit, if necessary, and upon notice to the applicant for the grant.
  - c. There shall be maintained at each registry a register of objections, answers and cross-applications in which the registrar shall enter particulars of every objection, answer and cross-application lodged under this rule in the registry and of every withdrawal of objection and withdrawal and amendment of every answer or cross-application under this rule.
  - d. Upon receipt of an objection in triplicate within the period referred to in subrule (1), or an extension thereof, the registrar shall forthwith file and retain the original thereof and cause an appropriate entry to be made in the register and shall transmit forthwith by registered post a notification in Form 61 of the receipt of the objection, together with a copy thereof, to the person or to each of the persons by whom the application for a grant has been made and also, save where the objection is lodged in the principal registry, transmit a copy of the notice and objection to the principal registrar by whom it shall be filed and retained.
  - e. The registrar of the registry in which the objection is lodged shall forthwith upon the lodgement of the objection cause a notice in Form 67 to be sent to the Objector, by registered post or otherwise as he may think fit, requiring him to file in the registry within such period as the registrar may specify in the notice an answer in Form 25 to the petition for a grant together with a petition by way of cross-application in Form 84, supported by affidavit, for a grant to the estate of the deceased to be made to the Objector.
  - f. If within the period specified in subrule (5) the Objector has filed in the registry in the proper form an answer to the petition for a grant, together with a petition by way of cross-application for a grant to himself, the registrar shall refer the matter to the court for directions, and shall notify the Petitioner and the Objector of the time and place set for the hearing of the petition, answer and cross-application.
34. The effect of Sections 68(2) and 69(1) of the *Law of Succession Act* is that Objection proceedings in which no answer and cross-petition are filed are incomplete and the Court may proceed to make a grant to the Petitioner.
  35. The process of placing the Objection herein before this Court was irregular because there was no answer or cross-petition that would have justified the Objection being placed before this Court. Rule 17(6) of the Probate and Administration Rules makes it clear that the Court will only intervene after an Objector has filed in the registry in the proper form an answer to the petition for a grant, along with a petition by way of cross-application for a grant to himself.
  36. Indeed, there was nothing on record to show that the Deputy Registrar had complied with the provisions of Rule 17 (4) and (5) of the *Probate and Administration Rules* before placing of the Objection before this court as envisaged in Rule 17(6) of the Probate and Administration Rules.



37. Concerning the issue of DNA. This Court observes that the matter has not been properly brought before it, and if any of the parties would like a DNA test to be performed, they must properly apply to this Court.
38. The Court equally notes that the claims that there was fraud in getting the death certificate in this case are still only unsubstantiated claims. The law states that the person making the charge must provide proof, and the Objectors have not provided any evidence at all to back up their claims.
39. With the foregoing in mind, the Objection to the Making of the Grant herein is hereby dismissed.
40. However, the dismissal of the Objection herein shall not in any way prejudice the Objectors rights as beneficiaries in the estate herein, under Section 47 of the *Law of Succession Act* and Rule 73 of the *Probate and Administration Rules*, the Court has the requisite jurisdiction to make such orders in succession matters as the ends of justice may require. To that end, this Court hereby orders as follows;
  1. The Petitioner, Celestine Chepchirchor Mutai and the 1<sup>st</sup> Objector, Dorcas Chepkorir Too are hereby appointed as administrators of the estate of Francis Kimutai Too alias Francis Kimutai Kiptoo (Deceased). A fresh grant be issued in their names.
  2. The new administrators are hereby directed to file Summons for Confirmation of the fresh grant within 45 days from the date hereof.
  3. This being a family matter each party shall bear their own costs.
41. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA CTS ON 2<sup>ND</sup> DAY OF APRIL 2025**

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**R. NYAKUNDI**  
**JUDGE**

