



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of Kiprono arap Birgen (Deceased) (Probate & Administration
E012 of 2022) [2025] KEHC 6717 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6717 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION E012 OF 2022**

JR KARANJA, J

MAY 22, 2025

IN THE MATTER OF THE ESTATE OF KIPRONO ARAP BIRGEN (DECEASED)

BETWEEN

JANUARIUS KIPKEMBOI BIRGEN PETITIONER

AND

KIPKETER ARAP LELEI 1ST OBJECTOR

BENSON KIPKALUM BIRGEN 2ND OBJECTOR

RULING

1. It is on record that the petition for letters of administration intestate respecting the estate of the Late Kiprono Arap Birgen [deceased] was filed on the June 29, 2022, by the Petitioner, Januarius Kipkemboi Birgen in his capacity as the son of the deceased who was survived by a widow Birgen Jebande Tapkigen [now deceased] and nine [9] children comprising of three [3] sons and six [6] daughters.
2. The estate property availed for distribution amongst the beneficiaries aforementioned included three parcels of land described as Nandi/Songoliet/340, 341 and 342 all valued at approximately Kshs. 24Million and said to belong to the deceased.

Pursuant to the application, the two objectors herein i.e. Kiptketer Arap Lelei and Benson Kipkalum Birgen filed a notice of objection to making of grant dated 30th January 2023.
3. The objection was made under Section 68 of the [Law of Succession Act](#) and Rule 17 of the [Probate and Administration Rules](#) and was argued in court by way of “viva-voce” or oral evidence.

The two Objectors testified as PW1 and PW2 respectively and called two witnesses, Jacob Kimosop Chepsiror [PW3] and Moses Cherwon Muge [PW4]. The Petitioner/Respondent testified as DW1 and called one witness, Paul Birech Ngetich [DW2].



4. Having considered the evidence in its totality together with the documents in support of the petition for grant of letters of administration it dawned upon this court that there is substantial variance with regard to the identity, hence ownership of the property held out as being available for distribution amongst the beneficiaries listed in the petition.
5. The witnesses from both sides referred to several parcels of land including Parcels No. Nandi/Songoliet/204 340, 341 and 342 as well as Nandi/Songoliet/273 and 287, but the record from the Land Registrar availed to the court by the petitioner in support of the petition refers to only one parcel of land registered in the name of the deceased on 10th June 1974 and a land certificate issued on 8th June 1979. This was Parcel No. Nandi/Songoliet/204 measuring 12.1 Hectares.
6. However, the same record shows that the title was closed on the 10th July 2014, after the deceased had died on the 3rd July 2004 as per the death certificate dated 13th June 2022. The record further shows that after the closure of the deceased's title to the Parcel No. Nandi/Songoliet/204, the parcel ceased to exist with the creation of new titles being Parcels No's. 340, 341 and 342.
7. That being the case, it appeared that the Petitioner held out a non-existent parcel of land as the estate property available for distribution, yet co-opted Parcels No. 340, 341 and 342 as the entire estate belonging to the deceased available for distribution to his heirs.

The list of assets contained in Form P&A 5 contains the three parcels of land and not the original Parcels No. 204.

8. There is nothing in the Petitioner's supporting documents to show that the aforementioned three parcels of land belonged to the deceased and if they did how could he have obtained the new titles when he was already dead and six [6] feet in the ground or could he have risen from the dead to appear at the Land Registry on 10th July 2014 to extinguish his previous single title and obtain three new separate titles.
9. The Petitioner did not avail the three new titles to identify the owners thereof but in the petition he listed them as the property of the deceased available for distribution to the heirs.

In the absence of proper identification of the property available for distribution the petition for grant of letters of administration is flawed and was dead on arrival at the court's registry when provoked the preliminaries attendant thereto.

10. In any event, the petition was pre-mature for any objection to be raised against it as it was yet to be formally gazetted and a gazette reference issued.

Section 67 of the Succession Act provides that: -

1. 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 such 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.
 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".
11. The publication contemplated in succession proceedings is by way of a gazette notice and if any action under the Act is un-gazetted as required then the action would be deemed invalid, null and void.

For all reasons foregoing, the present objection/application must and is hereby dismissed for being pre-mature with orders that the petition for grant of letters of administration dated 29th June 2022 and



filed herein on July 26, 2022 be and is hereby struck out and dismissed for being an abuse of the court process, incompetent and defective.

The parties shall bear own costs of the application.

Ordered accordingly.

DATED AND DELIVERED THIS 22ND DAY MAY OF 2025

HON. J. R. . KARANJAH,

JUDGE

