



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Kimeli Arap Lamai (Deceased) (Miscellaneous Application Probate & Administration 001 of 2022) [2025] KEHC 6692 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6692 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KAPSABET**  
**MISCELLANEOUS APPLICATION PROBATE & ADMINISTRATION 001 OF 2022**

**JR KARANJA, J**

**MAY 20, 2025**

**IN THE MATTER OF THE KIMELI ARAP LAMAI (DECEASED)**

**BETWEEN**

**RAEL JEPTEKENY LAMAI ..... 1<sup>ST</sup> PETITIONER**

**JEPKORIR RUTTO ..... 2<sup>ND</sup> PETITIONER**

**AND**

**SELLY JEROP ..... PROTESTOR**

**RULING**

1. The application at hand is actually a protest affidavit dated 11<sup>th</sup> October 2024 by Selly Jerop filed in opposition to the summons for confirmation of grant dated 9<sup>th</sup> May 2019 taken out by Rael Jепtekeny Lamai and Jepkorir Rutto, respecting the grant of letter of administration intestate issued to them on 9<sup>th</sup> March 2017 to faithfully administer the estate of the Late Kimeli Arap Lamai [deceased] according to the law and to render a just and two account thereof whenever required by law to do so.
2. The petition for the grant of the letters of administration was presented in court on 21<sup>st</sup> October 2015 by the two Petitioners/ Respondents, Rael and Jepkorir in their respective capacities as wife and daughter of the deceased. The other beneficiaries listed in the petition included Elizabeth Birgen, Selly Jerop [Petitioner] and Rosaline Jeruto [deceased] said to be daughters of the deceased.  
Musa Kimutai and David Kibor Yego were also listed as beneficiary sons of the deceased although there was indication that they were sons of the daughter of the deceased Rosaline Jeruto who was also deceased.
3. The Chief's letter dated 5<sup>th</sup> October 2015 confirmed that the deceased Rosaline Jeruto was survived by two sons [i.e. Musa & David]. The two were therefore the grandsons of the Late Kimeli Arap Lamai. It was also indicated in the letter that the deceased Arap Lamai was survived by the four daughters



aforementioned and two wives i.e. the Late Jelimo Lamai and Rael Jeptepkeny [1<sup>st</sup> Petitioner/ Respondent].

4. The sole estate property was the parcel of land described as Nandi/Kaptidil/91 which belonged to the deceased as per the search certificate dated 23<sup>rd</sup> September 2015, filed herein on 21<sup>st</sup> October 2015.

It was this property which was availed for distribution amongst the beneficiaries of the estate in the impugned summons for confirmation of grant dated 9<sup>th</sup> May 2019.

According to the search certificate the property measured 9.29 Hectares or 24.5123 acres as per valuation done in the year 2016.

5. The valuation report filed herein on 30<sup>th</sup> March 2016, indicates the value of the property to be Kshs. 19.5 million.

The impugned summons for confirmation indicates that the property is to be shared among the beneficiaries listed in the petition for the grant of letters of administration in the manner proposed in paragraph [8] of the supporting affidavit disposed by the first Petitioner/ Respondent.

6. Thus, the property was to be shared equally between Jepkorir [2<sup>nd</sup> Petitioner/ Respondent]. Musa Yego, Elizabeth Birgen and Selly Jerop [Protestor/Applicant]. Each was to be allocated 3.0 acres of the land, being half of the 12.0 Acres of the portion allocated to Rael Lamai as the surviving widow of the deceased.

The protestor [Selly] is described in the summons for confirmation of grant as wife to the deceased's late wife, Jelimo Lamai, pursuant to cultural rites or tradition of woman to woman marriage.

7. The mode of distribution of the estate as proposed by the first Petitioner/ Respondent in the summons for confirmation of grant was apparently what ignited the present protest by the beneficiary Selly Jerop.

The hearing thereof was by oral or "viva-voce" evidence with the protestor being treated as the plaintiff and the first and second Petitioners/ Respondents being treated as the Defendants.

8. Basically, the oral evidence from both parties was merely affirmation of their respective supporting and replying affidavits to the protest as well as their respective witness statements filed herein. All these were given due consideration by this court in the light of the oral testimonies from both sides and the rival written submissions filed herein by their respective advocates i.e Messrs. Kalya & Company Advocates and Messrs. Kipkosgei Choge & company Advocates.

9. Whereas, Learned Counsel Mr. Choge appeared for the Petitioners/ Respondents at the hearing of the protest, the Learned Counsel, M/s Kessei, appeared for the Protestor/ Applicant.

The evidence as adduced by the Protestor [PW1] and her witnesses Daniel Kiptanui Tarus [PW2] and Willy Kitur Sorgor [PW3] together with that adduced by the First Petitioner [DW1] and the Second Petitioner [DW2], clearly revealed the basic issue for determination by this court to be whether the protestor Selly Jerop being the wife of the first wife or the deceased Jelimo Lamai [deceased] under the Nandi Customary Law of "woman to woman" marriage was a beneficiary of the estate of the deceased and if so, in what capacity.

10. The Protestor's contention was that having been the wife of the deceased's first wife under Nandi Customary Law she was treatable as a wife of the deceased after the demise of his first wife. Therefore, her [Protestor's] children and the children of the first wife with the deceased were all regarded as the children of the deceased and ought to have been included as beneficiaries of the deceased's estate along with the children of the deceased's second wife i.e. first Petitioner/ Respondent.



11. The Protestor complains that some of the deceased's children mostly those belonging to her and the deceased were omitted as beneficiaries of the deceased's estate. She therefore prayed for their inclusion as such beneficiaries and for the distribution of the estate in the manner suggested in paragraph [25] of her affidavit of protest to the confirmation of the grant rather than in the manner suggested by the Petitioners.
12. The Petitioners apparent contention was that even though the Protestor was the wife of the first wife of the deceased under Nandi Customary Law and was included herein as a beneficiary of his estate she had no relationship with the deceased and could not directly inherit his property as her customary husband [Jelimo Lamai] had no property of her own. Further, that the identification and shares of all persons beneficially entitled to the estate of the deceased was determined and ascertained, hence the distribution of the estate in the manner suggested in the summons for confirmation of the grant.
13. Although woman to woman marriages are not explicitly legalized under the constitution and the marriage act, they may however, be regarded as aspects of culture protected under Article 11[1] of the Constitution of Kenya 2010 which provides that: -

“ this constitution recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation”.

Indeed , this was the court's opinion in the case of Monica Jesang Katam Vs. Jackson Chepkwony & Another[2011]eKLR

14. Such marriages are recognized and practiced by certain communities within Kenya including the Nandi Community to which the protestor and the Petitioners belong. In fact, it was herein shown that the Second Petitioner Jepkorir Rutto, is a daughter of the deceased with his deceased first wife who was the “female husband” of the Protestor by dint of their woman to woman marriage which basically involves a woman marrying another, particularly where a woman is barren or for one reason or the other was unable to have children.
15. Such practice among the Nandi people is referred to as “Kilal mat” and it enables a woman to marry another woman to procreate and ensure the continuation of lineage and inheritance of property.  
  
It would appear in this case that the Second Petitioner being a daughter of the deceased with her deceased's mother who was the female husband of the protestor could refer to the Protestor as her mother and both belonged to the first house of the deceased.
16. The Monica Jesang Katam case aforementioned showed that the court apparently applied the right of inheritance in a woman to woman marriage and therefore, the Protestor was a beneficiary of the estate of the deceased. It was in recognition of that right that she was included as a beneficiary of the estate in the impugned certificate of confirmation of grant more or less in her capacity as dependant of the deceased rather than a wife of the deceased. This explains why the estate property as per the Petitioner's proposal is to be shared equally between the two houses of the deceased only that the Protestor was included as a child of the first house whose share of the estate is to be divided equally at 3.0Acres amongst the children or grandchildren of the deceased's first house. The share of the second house to which the first Petitioner belonged is to be transmitted wholly to the first Petitioner.
17. However, the proposal made herein by the Protestor appears to treat her as the head of the deceased's first wife, thereby implying that she was the “wife” of the deceased having been married by the deceased's late first wife. Accordingly, the Protestor proposes that the estate property be shared equally between the two houses of the deceased, but the First Petitioner to have ten [10] acres of the estate together with her children as she had already sold part of her share. The Protestor proposes that the



share of the first house of the deceased be shared equally between herself and the children of the deceased with herself and with his late first wife [i.e. 1.26 acres each].

18. There being no dispute that the Protestor was the “wife” of the deceased’s first wife under the woman to woman marriage” arrangement practiced by the Nandi Community, it would follow that the Protestor and her children were amongst all those treatable as beneficiaries of the deceased’s estate.

In a woman to woman marriage in terms of the Monica Jesang case [supra] the wife is recognized as the successor to her female husband in matters of inheritance and must invariably inherit her “husband’s” property.

19. The *Law of Succession Act* recognizes customary law marriage such as woman to woman marriages and therefore a “wife” in such a marriage is considered a wife for succession purposes.

For all the foregoing factual and legal reasons, the protest herein is merited and is hereby allowed to the extent that the proposed mode of distribution in the impugned certificate of confirmation of grant is disallowed.

20. Even though both proposals by the Petitioners and the Protestor are more or less geared towards equal distribution of the estate between the two houses of the deceased they are framed in a manner which is not attractive to either side. In the circumstances, it is hereby ordered that the deceased estate be divided and distributed equally between the First Petitioner, Rael Jeptekeny Lamai and the Protestor, Selly Jerop, to respectively represent the two houses of the deceased and to equally divide and share their respective portions between themselves and all the children of the respective houses.

21. It is further ordered that a fresh certificate of confirmation of grant be taken out and be confirmed as indicated herein above.

A date shall forthwith be given to confirm compliance and confirmation of the grant.

**DATED AND DELIVERED THIS 20<sup>TH</sup> MAY OF 2025**

**HON. J. R. . KARANJAH,**

**JUDGE**

