



**In re Estate of Sitonik Melil (Deceased) (Succession Cause E009 of 2021) [2025] KEHC 5940 (KLR) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5940 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
SUCCESSION CAUSE E009 OF 2021  
JK NG'ARNG'AR, J  
MAY 12, 2025  
IN THE MATTER OF THE ESTATE OF SITONIK MELIL (DECEASED)**

**BETWEEN**

**GABRIEL KIPKURUI KOECH ..... PETITIONER**

**AND**

**MARGARET CHEPNGETICH ..... OBJECTOR**

**RULING**

1. The Petitioner petitioned this court for Letters of Administration Intestate for the estate of Sitonik Melil (deceased) on 16th February 2021. The Petitioner were issued with the Grant in his name on 24th March 2022. He filed Summons for Confirmation of the Grant on 3rd November 2022 together with his proposed schedule of distribution.
2. The Petitioner stated was the deceased's grandson and that the deceased's estate comprise of Kericho/Tegat/616 and Kericho/Tegat/627. The Petitioner proposed that Kericho/Tegat/616 be divided in two equal portions of 2.5 acres each between himself and his father Kimarta Sitonik and that the said Kimarta Sitonik would have the whole share of Kericho/Tegat/627.
3. Margaret Chepngetich filed her Objection dated 24th May 2023 on 25th May 2023 and this Objection is the subject of this Ruling.

**The Objector's case**

4. The Objector stated that she was married to Kimarta Sitonik's son, Matthew Cheruiyot Koech (deceased). She stated that she had been discriminated upon and left out of the distribution despite her late husband's share being vested in her father in law, Kimarta Sitonik.



5. It was the Objector's Case that there was a Mediation Agreement which indicated that a portion of the deceased's estate was to be given to her deceased's husband, Matthew Cheruiyot Koech. She prayed that a share of the deceased's estate be allocated to her and her children.
6. At the time of writing this Ruling, the Objector had not filed her written submissions as directed by this court.

**Response.**

7. The Objector filed his Replying Affidavit dated 31st August 2023 on 4th September 2023. He stated that the Protestor was his sister in law having been married to his deceased brother, Matthew Koech. The Objector further stated that the deceased was not survived by any daughter but only one son, Kimarta Sitonik.
8. It was the Objector's case that during the deceased's lifetime, the deceased agreed that the two parcels, Kericho/Tegat/616 and Kericho/Tegat/627 be bestowed upon his son, Kimarta Sitonik save for the piece of land measuring 2.5 acres that had been apportioned to him.
9. The Objector stated that he was not agreeable to the mode of distribution contained in the Mediation Agreement. That the Protestor failed to sign the said Agreement and that it did not contain the Title Numbers of the two parcels. He further stated that the Mediation Agreement was not binding.
10. In his written submissions dated 25th November 2024, the Petitioner submitted that he was the son of the Kimarta Sitonik, the deceased's surviving son. That the deceased's other son was Kipkelong Sitonik (deceased) who was survived by three widows i.e. Chepkirui Tapsabei Sitonik, Elizabeth Chepkoske Sitonik and Rusi Sitonik. He further submitted that the three widows above sold to him 2.5 acres in Kericho/Tegat/616.
11. It was the Petitioner's submission that the Objector was not a beneficiary of the deceased's estate but was the deceased's granddaughter in law and who was being maintained by her father in law, Kimarta Sitonik. That the deceased did not maintain or provide for the Protestor immediately before his death.
12. I have gone through and considered the court record, the Objection dated 24th May 2023, the Petitioner's Replying Affidavit dated 31st August 2023 and the Petitioner's written submissions. The only issue for my determination was whether the Objection was merited.
13. It was undisputed that the deceased Sitonik Melil died intestate and that he was survived by Kimarta Sitonik. It was also undisputed that the said Kimarta Sitonik was alive and had two sons, the Petitioner and the Matthew Cheruiyot Koech (deceased) who was the Objector's husband. Both the Petitioner and the Objector considered themselves beneficiaries of the deceased's estate and wanted a share of the deceased's estate.
14. Section 29 of the *Law of Succession Act* defined a dependant as:-

For the purposes of this Part, "dependant" means—

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and



- (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.

15. As earlier noted, both the Petitioner and the Objector were the grandson and granddaughter in law of the deceased and that their father and father in law respectively, Kimarta Sitonik was still alive. The question then was whether the Petitioner and Objector were entitled to a share the deceased's estate directly as his grandchildren or through their parents. *In the Matter of the estate of Veronica Njoki Wakagoto (Deceased)* [2013] KEHC 1930 (KLR), Musyoka J. held:-

“Under Part V, grandchildren have not right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents. In this case, the applicant's mother survived the deceased. She is the one entitled under Part V to inherit her mother, the applicant's deceased grandmother. The applicant clearly has no claim under Part V so long as his mother survived the deceased.” (Emphasis added)

16. Similarly *in re Estate of M'Ngarithi M'Miriti* [2017] KEHC 7904 (KLR), Gikonyo J. held:-

“.....I must state that, as a general rule, except where they are direct dependants under section 29(b) of the *Law of Succession Act*, the grandchildren of the deceased only claim the share of their deceased parent and not in equality or priority to the children of the intestate estate to whom these proceedings relate.”

17. From the above, it is evident that Kimarta Sitonik who was the deceased's son was alive and was the only one who was entitled to the deceased's estate. The Petitioner's and Objector's claim to the deceased's estate could only come through Kimarta Sitonik's share. That is to say only Kimarta Sitonik was the sole beneficiary of the deceased's estate and it was only him who could subdivide the estate in his lifetime to the Petitioner and Objector. Succession proceedings only commence upon death and not during somebody's lifetime. It is therefore my finding that the Petitioner and the Objector were not beneficiaries of the estate of the deceased.

18. Flowing from the above, it is my finding that the Objection dated 24th March 2023 has no merit and is dismissed.

**RULING DELIVERED, DATED AND SIGNED THIS 12<sup>TH</sup> DAY OF MAY, 2025.**

.....

**J.K.NG'ARNG'AR**

**JUDGE**

Ruling delivered in the presence of J.Koech for Kipngetich for Petitioner and in the Absence of Objector. Siele/ Susan (Court Assistants).

