



In re Estate of Magerer arap Chepkulul (Deceased) (Succession Cause E102 of 2022) [2025] KEHC 5795 (KLR) (9 May 2025) (Judgment)

Neutral citation: [2025] KEHC 5795 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E102 OF 2022
SM MOHOCHI, J
MAY 9, 2025**

BETWEEN

NANCY CHERONO CHEPKULUL 1ST ADMINISTRATOR

ALICE CHEPKULUL 2ND ADMINISTRATOR

AND

JONAH KATAM CHEPKULUL 1ST OBJECTOR

JOSEPH KIPNGETICH TOWETT 2ND OBJECTOR

JUDGMENT

1. The deceased herein Magerer Arap Chepkulul died intestate on 26th October, 2018. He had married five wives thus five houses and was survived by children and one surviving widow.
2. The Grant of Letters of Administration intestate was issued to Kipkorir A. Katam, Nancy Cheronon Chepkulul and Alice Chepkurui Chepkulul on 5th December, 2022. The Applicants filed Summons of Confirmation of Grant dated 19th July, 2024 seeking that the grant be confirmed in the manner suggested in the affidavit in support sworn by Nancy Cheronon Chepkulul together with the proposed mode of distribution all evenly dated.
3. As confirmed by the Chief's letter dated 2nd August, 2022, the deceased was survived by the following:-
First house
 - a. Tepletgo Chepkulul (widow) (deceased)
 - b. Alfred Ngasura Katam (son) (deceased)
 - c. Kipkorir A. Katam (son)
 - d. Rechal Chebet Katam (daughter)



- e. Ziporah Chepkemoi Maritim (Daughter)
 - f. Recho Chelangat Towett (daughter)
 - g. Julius Katam (son) (deceased)
 - h. Annah Cherotich Chepkulul (daughter)
 - i. Alice Chepkoech Chepkwony (daughter)
 - j. Joseph Chepkulul Koech (son)
 - k. Betty Chepngeno (daughter)
- Second House
- a. Tapsaga Chepkulul (widow) (deceased)
 - b. Alice Chepter Koimang (deceased)
 - c. Jonah C Katam Chepkulul (son)
 - d. Eunice C. Katam Chepkulul (daughter)
 - e. Stephen Towett (son)
 - f. Norah Chepkulul (Daughter)
 - g. Joseph Towett Chepkulul (son)
 - h. Rhodah Chepkulul (daughter)
- Third House
- a. Selina Chepkulul (widow) (deceased)
 - b. Emmy Chelang'at Chepkulul (daughter) (deceased)
 - c. Moses Kipkurui Towett (son)
 - d. Nancy Cheronno Chepkulul (daughter)
- Fourth House
- a. Alice Chepkurui Chepkulul (widow)
 - b. Agnes Mibei (daughter) (deceased)
 - c. Joyce Chebet (daughter)
 - d. Caroline Chelangat (daughter) (deceased)
 - e. Kibet Katam Benard (son)
 - f. Emmy Chepkemoi Katam (daughter)
 - g. Cheruiyot Kiprono Katam (daughter)
 - h. Cheruiyot Kiprono Francis (son)
 - i. Chepkemoi Zeddy (daughter)
 - j. Joan Chepngeno (daughter) (deceased)



- k. Winnie Chemutai Katam (daughter)
Fifth House
 - a. Joyce Kipkurui Chepkulul (widow) (deceased)
 - b. Erick Kibet Magenji (son)
 - c. Towett Kipkoech Evans (son)
 - d. Winny Chepng'etich (daughter)
 - e. Emmanuel Kiprotich Katam (son)
 - f. Fridah Cheronon Chepkulul (daughter)
 - g. Amos Kiplangat (son)
 - h. Victor Kipngetich (son)
 - i. Brenda Chepngeno (daughter) minor
4. The following are the list of assets left behind by the deceased: -
- a. Title No Njoro Block 4/1803 (Belbur)
 - b. Title No Kericho/Sigor 796
 - c. Title No Kericho/Sigor 774
 - d. Title No Kericho/Sigor 723

Determination.

- 5. The deceased died intestate and polygamous, and, therefore, his estate ought to be distributed in accordance with the provisions of Section 40 of the *Law of Succession Act*. The persons beneficially entitled to inherit the estate of the deceased and their shares must be ascertained as contemplated under Section 71(2) of the *Law of Succession Act* and Rule 40(4) of the *Probate and Administration Rules*.
- 6. The Summons for Confirmation of Grant appear unopposed as the Objectors nor any other family members have made an application challenging the proposed mode of distribution despite the Court presenting them with the opportunity to do so.
- 7. The Applicants in their Supplementary Affidavit sworn on 11th November, 2024, have exhibited a copy of the minutes of the family meeting that was held on 1st June, 2024. It was discussed that the estate shall be shared equally amongst the beneficiaries of the estate. There was even a provision for the minors' school fees as well.
- 8. The objector was in attendance in the meeting and duly signed the minutes of which informed the mode of distribution of assets as proposed. The Objectors' counsel on record on 3rd December, 2024 confirmed to the Court the position and intimated that they will not be filing any documents.
- 9. There is no objection as the list of beneficiaries and the assets left behind by the deceased with the foregoing in mind, the Court is at liberty to treat the Applicant's proposed mode of distribution as uncontested and adopt it if it finds it merited.
- 10. Of concern is that the deceased beneficiaries are represented by their spouses and only the share of the Estate of the late Alice Chepter Koimang has been indicated properly.



11. It is important to note that the share of a deceased beneficiary belongs to the estate of that deceased beneficiary. It is not clear if proper representation has been done for the other deceased beneficiaries but naming individuals as opposed to the estates of the deceased beneficiaries is not proper. It is not uncommon when a beneficiary stifles the rights of rest of other beneficiaries since they are named as survivors to the exception of the other beneficiaries.
12. In the case of *Kambora Mamau v Esther Nyambura Kirima* [2002] KEHC 1211 (KLR” the Court stated:-

“As I said in this court’s Succession Cause No 1086 of 1995, in the matter of the estate of Ndungu Kariuki (unreported); a certificate of confirmation of grant confers upon a beneficiary under it a beneficial interest. I stated:

“As a certificate of confirmation of grant, also referred to as a certificate of confirmation, confers upon a beneficiary under it a beneficial interest in the estate of the deceased person, where such a beneficiary subsequently dies before the executor or administrator of the estate for which the certificate of confirmation was issued transfers the resultant legal interest or title to the aforesaid beneficiary, it is not proper and lawful to proceed under rectification of that certificate of confirmation to replace the deceased beneficiary with a person other than a confirmed executor or administrator of the estate of the deceased beneficiary.”

I should add that that is the legal effect of sections 79, 82 and 83 of the *Law of Succession Act*, section 79 provides that property of a deceased person vests in his personal representative. Section 82 sets out powers of a personal representative while section 83 sets out duties of a personal representative. As stated earlier, a personal representative means the executor or administrator of the estate of a deceased person

To get to be a confirmed executor or administrator of the estate of a deceased beneficiary, the proper procedure would be for the person aspiring to replace the deceased beneficiary to start the ball rolling in separate proceedings being a petition for the grant of probate or letters of administration in the estate of the deceased beneficiary. The aspirant will start those proceedings either as a petitioner as well as a beneficiary or as a purely beneficiary influencing others interested to have the petition filed.

After confirmation of that grant, it is the executor or administrator of the estate of the deceased beneficiary also referred to as the second deceased, whether or not that executor or administrator is also a beneficiary, who should approach and ask the executor or administrator of the estate of the first deceased person, also referred to as the pre-deceased, to apply for rectification of the certificate of confirmation of grant in the estate of the pre-deceased person so that the executor or administrator of the estate of the deceased beneficiary (the second deceased) replaces the deceased beneficiary (the second deceased).

13. Similarly, *In Re Estate of Tuaruchiu Marete (Deceased)* [2019] eKLR the Court stated:

“Share of deceased beneficiary

- (14) The elephant in the room is that he replaced his father as the sole beneficiary of his share. Whereas a child of the deceased may take the share of his deceased parent directly, but this should be done in clear cases and with much circumspection. Trouble may come when one of the children of the deceased beneficiary takes the whole of the estate of the deceased beneficiary. This is fraught with many dangers.



Consider these dilemmas;

- (1) you may disinherit other dependants of the deceased;
- (2) the court may not be in a position to identify the rightful beneficiaries of the estate of the deceased beneficiary;
- (3) the cause does not relate to the deceased beneficiary, thus, the safeguards in law say gazetting of the cause to invite objections may not be available in that kind of transmissions;
- (4) in case of disputes amongst the beneficiaries of the deceased beneficiary, those may not be resolved in the original cause. I have seen in my practice as a judge, many causes being unduly delayed by wrangles amongst the beneficiaries of the estate of deceased beneficiary. Of significance to note is that the share of the deceased beneficiary belongs to his estate and therefore, to all the beneficiaries of the deceased beneficiary. A more creative way which is supported by law is to indicate that the share shall go to the estate of the deceased to be shared equally by all his children. Such share is held in trust by the administrators of the original cause for transmission to the estate of the deceased beneficiary. ...

(15) Consequently, I direct that the share of the deceased beneficiary, the father of the 1st administrator shall revert back to his estate to devolve to all the beneficiaries of his estate in equal shares. The certificate of confirmation herein shall be so amended. Meanwhile, my understanding of the law is that the said share shall be held by the administrators herein in trust for the benefit of his estate. The name of the 1st administrator as a beneficiary shall be removed forthwith. However, he remains an administrator of the estate as his father's share is at stake. There is absolutely no ground for or point in revoking the grant. It is so ordered.”

14. The effect of naming individuals as opposed to stating the estate of the deceased beneficiary means that the named individual is replacing the deceased beneficiary as a sole beneficiary of that share and not to hold in trust as contemplated by the law. Allowing the same is to risk disinheriting other survivors of the deceased beneficiary.
15. If not yet done, the proposed survivors or beneficiaries of the deceased beneficiaries ought to initiate separate proceedings to obtain grant of representation. The shares of the deceased beneficiaries by law can only vest in his or her estate. The shares are then held in trust by the administrators of those estates on behalf of the rest of beneficiaries.

Final Orders.

16. In the result I find merit in the Summons for Confirmation of Grant dated 19th July, 2024. The same is allowed subject to the following conditions:
 - a. The estate of the deceased herein shall forthwith be distributed as proposed vide paragraph 6 of the Applicant's supporting affidavit sworn on 19th July, 2024.
 - b. The shares of the deceased beneficiaries in the distribution at paragraph 6 of the Applicant's supporting affidavit sworn on 19th July, 2024 shall be to the estate of the individual deceased beneficiary and not the individual proposed survivor.



- c. The distribution in paragraph 6 of the deceased beneficiaries shall only be transmitted upon proper obtaining of grant of representation.
- d. The shares as proposed shall be held by the appointed administrators in trust for the benefit of the beneficiaries of the deceased beneficiaries.
- e. This being a family matter, there shall be no orders as to costs.
- f. Any party aggrieved with these orders has leave of thirty days to challenge the same at the Court of Appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 9TH DAY OF MAY, 2025.

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MOHOCHI S.M.

JUDGE

