



REPUBLIC OF KENYA



In re Estate of the Late Joseph Kiprotich Arap Kamoing (Deceased) (Succession Cause 13 of 2018) [2025] KEHC 5855 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5855 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 13 OF 2018**

JK SERGON, J

MAY 8, 2025

**(IN THE MATTER OF THE ESTATE OF THE LATE
JOSEPH KIPROTICH ARAP KAMOING (DECEASED))**

BETWEEN

ANNE CHEPNGENO KOSKE 1ST OBJECTOR

SAMSON KIPRONO 2ND OBJECTOR

AND

PAUL KIPTANUI BOR 1ST PETITIONER

MARTHA CHEROTICH MAIWA 2ND PETITIONER

RULING

1. The application coming up for determination is a chamber summons dated 26th November, 2024 seeking the following orders;
 - (i) Spent.
 - (ii) That the will dated the 22nd day of February, 2012 purportedly prepared by Joseph Kiprotich Kamoing (Deceased) be and is hereby revoked.
 - (iii) That the 1st Applicant together with her siblings be declared as bonafide dependants of the estate of Joseph Kiprotich Kamoing (Deceased) in accordance with Section 29 of the [Law of Succession Act](#).
 - (iv) That reasonable and commensurate provision be provided to the Applicants out of the estate of the deceased.
 - (v) That the costs to the application be provided for.



2. The application is supported by the grounds on the face of it and the supporting affidavit of Anne Chepngeno Koske the 1st Objector/ Applicant with the authority of the 2nd Objector/Applicant.
3. She avers that she is the widow to the late Paul Kiprugut Bor the third son to Joseph Kiprotich Kamoing (Deceased) whose estate is the subject matter in these proceedings.
4. She avers that she got married to her late husband in the year 2005 under the Kipsigis Customary Laws the marriage ceremony having been conducted at the home of one DANIEL BOR who is her brother in law and that they had been blessed with four children who are all grown up.
5. She avers that at time she got married Joseph Kiprotich Kamoing (deceased) was alive and personally paid dowry to her family and identified a place for them to set up their matrimonial home and they lived in harmony till the time of his demise.
6. She avers that upon his demise at the age of 96 years her brothers in law led by Paul Kiptanui Bor purportedly produced a document in the form of a will which completely disinherited her late husband and his family which document was allegedly prepared on the 22nd day of February, 2012 and witnessed by bodaboda riders who are young men and total strangers to the family
7. She avers that her mother in law Martha Cherotich Maiywa who is still alive personally disowned the document where she had allegedly been placed as one of the executors of the will and even filed an affidavit of protest alongside her which affidavit is in the court file and remains unprosecuted to date.
8. She avers that her husband being a legitimate son to Joseph Kiprotich Kamoing (deceased) is a bonafide and lawful beneficiary to his estate in accordance with Section 29 of the [Law of Succession Act](#), Cap 160 Laws of Kenya. She attached a copy of the letter from the chief indicating the list and status of the beneficiaries of the deceased.
9. She avers that the WILL before this court is a forged document for the reason that her late father in law was not in a position to make one and further the witnesses were not competent as required by the provisions of Section 11 of [Law of Succession Act](#) and the same should be revoked by this court and the estate be administered intestate.
10. She avers that one the sons to the 1st Petitioner herein have publicly declared and stated that the said will was not prepared by their father and therefore is a forged and fraudulent document.
11. Paul Kiptanui Bor the 1st Petitioner/Executor filed a replying affidavit in response to the application with the consent of 2nd Petitioner/Executor in response to the Applicants' application dated 26th November, 2024.
12. He avers that from the outset the orders sought in the instant application are untenable as the will in question was gazetted in the year 2018 and Grant of Probate with written Will annexed issued.
13. He avers that the Will was executed by the deceased about five years prior to his demise, which Will was executed before an Advocate and two competent witnesses.
14. He avers that in as much as the Objectors claim that the deceased lacked testamentary capacity while executing the Will, they have not adduced any evidence to demonstrate the same.
15. He avers that in response to the assertion that the Will was witnessed by two boda boda riders who are strangers to the family, he avers that the law does not place an obligation on the testator to disclose to the family who the witnesses to his Will were and neither is there a requirement in law that they be known to the family.



16. He avers that contrary to the assertion that some dependants were left out of the deceased's Will, he reiterated that the said Will provides for all the dependants of the deceased.
17. He avers that in response to paragraph 7 of the supporting affidavit, he avers that his mother is aged more than One Hundred and Ten years (110) thus could not have sworn the purported Affidavit of Protest.
18. He avers that as borne by the court record, that the 1st Objector had withdrawn her purported Protest on 31st January, 2022 having acknowledged that she was not a beneficiary of the estate of the deceased.
19. He avers that after the demise of their father Joseph Kiprotich Arap Kamoing, the 1st Objector and the 2nd Objector together with his siblings began disturbing their peace on claims that they are entitled to a portion of the estate on allegations that the 1st Objector was married to one of his brothers namely Reuben Bor (deceased).
20. He avers that the assertion that the 1st Objector was married to his late brother Reuken Bor could not be further from the truth. In any event, the 1st Objector has not provided any documentation as proof of marriage, nor were they as his family invited to any traditional ceremony to mark the rite of marriage.
21. He avers that the purported marriage ceremony never took place as neither his late father nor brother ever paid dowry to the 1st Objector's family.
22. He avers that the 1st Protestor has never been in any lawful occupation of any part of the estate and conversely, that the 1st Protestor has been trespassing onto their father's property, L. R. No. Kericho / Ainamoi/446, even during his lifetime while claiming that she was married to his brother, Reuben Bor(deceased).
23. He avers that their father had instructed Counsel to issue a demand notice directing the 1st Objector herein to cease cultivating the land parcel that she did heed to the said Demand Notice only to come back sometime in the year 2017 after their father's demise.
24. He avers that further to the above, the 1st Objector acting on the strength of the fact that she has several grown sons, has been unlawfully invading the said parcel and cultivating on it without the consent of the administrators on several occasions only to leave after being served with Demand Notices
25. He avers that sometime in the year 2022, the Objectors once again trespassed onto the suit property necessitating filing of the application dated 29th March, 2022 under a Certificate of Urgency ,seeking inter alia restraining orders against them; which Orders were granted on 30th March, 2022.
26. He avers that despite having served with the Orders of the Honourable Court, the Objectors blatantly disobeyed the said Orders. Consequently, they were constrained to file the application dated 25th April,2022 seeking inter alia leave to institute contempt proceedings, however, the Objectors voluntarily moved out of the suit property before the application could be heard and determined.
27. He avers that in view of the foregoing, the Objectors' assertion that they are dependants of the estate of the deceased is only aimed at misleading this Honourable court.
28. The matter came up for inter partes hearing and the court directed the parties to exchange and file their written submissions.
29. At the time of writing this ruling, the Objector/Applicants had not uploaded their submissions on the case tracking system, therefore this court considered the material on record to arrive at a fair and just determination of the dispute at hand.



30. The petitioners submitted that they would place reliance on section 11 of the [Law of Succession Act](#) which provides for the requirements of the validity of a written will as follows:

“No written will shall be valid unless-

- (a) the testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;
- (b) the signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;
- (c) the will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of that person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.” They reiterated that by the foregoing, it is evident that for a will to be valid, it must have been duly executed by the testator and attested by two competent witnesses. The Petitioners reiterated that the deceased had the requisite testamentary capacity to duly execute the Will by affixing his thumbprint ; which Will was attested by two competent witnesses namely Joseph Kipngetich Ruto (ID No. 21XXXX70) and Kimutai Emmanuel (ID No. 21XXXX99). The petitioner cited the findings of the court in *In re Estate of Edith Nduta Gichanga (Deceased) (Succession Cause 1626 of 2016) [2022]* where the court in upholding the Will and dismissing the Summons for revocation of Grant held as follows:- “No evidence has been adduced by a document examiner to prove that the signatures and/or thumbprints on the document are not genuine. In short, all that the objector has presented to this court are a series of unproven allegations...Where a Deceased has left a Written Will then the court will uphold and enforce the mode of distribution set out in the Will. To do otherwise would be tantamount to interfering with the wishes of the testator and would amount to rewriting the Will... I find that the Written Will dated March 10, 2015 is a genuine document properly executed and witnessed, which reflects the wishes of the Deceased...”

31. The petitioners contended that the Objectors have not made a case for revocation of the Grant of Probate, from a cursory perusal of the prayers sought in the instant application, the Objectors appear to be pursuing relief under Section 26 of the [Law of Succession Act](#) for reasonable provision.

32. The petitioners contended that for one to qualify as a dependant, it is required that the person claiming dependency must prove that he/she was being maintained by the deceased immediately prior to his death. In that regard, the Petitioners rely on *Re Estate of Munyua Mbeke (Deceased) 2015 eKLR* where the Learned Judge in dismissing a similar application for incompetence held that:- “The clear wording of Section 29 of the Act does not include daughters in law of the deceased. Daughters-in-law are not children of the deceased, and therefore they do not fall within the category of the children of the deceased. They therefore cannot mount an application under Section 26 of the Act as the applicant has done in this case.”



33. The petitioners In view of the foregoing, the Petitioners wish to humbly urge this Honourable court to dismiss the Affidavit of Protest and proceed to allow the Summons for Confirmation of Grant of Probate dated 8th February, 2022.
34. I have considered the application, replying affidavit and submissions by the parties and I find that the sole issue for determination is whether the will dated the 22nd day of February, 2012 purportedly prepared by Joseph Kiprotich Kamoing (Deceased) should be revoked and whether the objectors should be declared as bonafide dependants of the estate of Joseph Kiprotich Kamoing (Deceased) in accordance with Section 29 of the *Law of Succession Act* and reasonable and commensurate provision be provided to the objectors out of the estate of the deceased.
35. On the issue as to whether the will dated the 22nd day of February, 2012 purportedly prepared by Joseph Kiprotich Kamoing (Deceased) should be revoked. On one part, the objector contended that the will dated the 22nd day of February, 2012 was a forged document for the reason that the deceased was not in a position to make one and further that the witnesses were not competent as required by the provisions of Section 11 of *Law of Succession Act*, therefore the same should be revoked by this court and the estate be administered as intestate.
36. On the other part, the executor of the will countered that the will in question was valid and reiterated that the deceased had the requisite testamentary capacity to duly execute the will by affixing his thumbprint and that the will was attested by two competent witnesses.
37. This court has considered the arguments put forward by both parties and finds that the applicant has not tendered to this court evidence in support of the assertion that the will was not prepared by the deceased and therefore it is not a forged and fraudulent document.
38. This court is of the view that mere allegations are not enough to make this court to invalidate the will.
39. In the case of Elizabeth Kamene Ndolo v George Matata Ndolo [1996] eKLR) the court held that the standard of proof for forgery and fraud, being criminal offences, is higher than what is expected in ordinary civil cases.
40. This court finds the assertion that the deceased lacked testamentary capacity at the material time to understand the contents of the purported will, the law equally places duty on the Applicant to discharge the burden of proof of this allegation however in my view of this Court, the Applicant failed to do so.
41. It is further the finding of this court that the deceased had testamentary freedom to bequeath his property to his family. That freedom was sanctioned by Section 5(1) of the *Law of Succession Act* which provides that: "Subject to the provisions of this Part and Part III, every person who is of sound mind and not a minor may dispose of all or any of his free property by will, and may thereby make any disposition by reference to any secular or religious law that he chooses."
42. It follows that the deceased/testator had freedom of testation and the testator is not obliged to dispose of his assets to any particular person. In re Estate of Timothy Mwaura Ndichu (Deceased) [2020] eKLR) it was held that the fact that a will does not name some family members, or make provision for them, does not render it invalid.
43. It is therefore the finding of this court that the will dated the 22nd day of February, 2012 was valid.
44. On the issue as to whether the objectors should be declared as bonafide dependants of the estate of Joseph Kiprotich Kamoing (Deceased) in accordance with Section 29 of the *Law of Succession Act* and reasonable and commensurate provision be provided to the objectors out of the estate of the deceased.



On one part, the objector contended that her husband being a legitimate son to Joseph Kiprotich Kamoing (deceased) is a bonafide and lawful beneficiary to his estate in accordance with Section 29 of the Law of Succession Act, Cap 160 Laws of Kenya.

45. On the other part, the executors countered that the objectors were neither beneficiaries or dependants of the deceased as purported marriage ceremony never took place as neither his late father nor brother ever paid dowry to the objector's family.
46. This court has considered the arguments by both parties and finds that the objectors have not established dependency or that they were being maintained by the deceased prior to his demise in accordance with Section 29 of the Law of Succession Act, Cap 160 Laws of Kenya.
47. In the case of *Beatrice Ciamutua Rugamba v Fredrick Nkari Mutegei & 5 others* [2016] eKLR, it was observed that "a dependent under section 29 (b) and (c) must prove that he or she was being maintained by the deceased immediately prior to his demise. It is not the mere relationship that matters, but proof of dependency that counts."
48. Having taken into account the material placed before this Court, it is clear that the instant Application lacks merit. Consequently, the chamber summons dated 26th November, 2024 is dismissed with each party bearing its own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 8TH DAY OF MAY, 2025.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Sang for the Petitioners

R. K. Langat for the Applicant

