



In re Estate of Peter Kiplangat Koech - Deceased (Succession Cause 22 of 2020) [2025] KEHC 11053 (KLR) (23 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11053 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 22 OF 2020
JK NG'ARNG'AR, J
JULY 23, 2025**

IN THE MATTER OF THE ESTATE OF PETER KIPLANGAT KOECH - (DECEASED)

BETWEEN

ROBERT KIPKIRUI SANG PETITIONER

AND

JUDY CHEPKEMOI KOECH 1ST OBJECTOR

GEOFFREY LANG'AT KOECH 2ND OBJECTOR

KENNETH LANG'AT KOECH 3RD OBJECTOR

VALERIE CHEROTICH KOECH 4TH OBJECTOR

JUDGMENT

1. The Petitioner herein, while claiming to be a son of the deceased, filed a Petition for grant of letters of administration intestate for the Estate of Peter Kiplangat Koech on 18th August 2020 without involving the Objectors, who are the children of the deceased and the same was published on 2nd October 2020 in the Kenya Gazette.
2. The Objectors, being aggrieved by this, filed an objection to the making of the grant, answer to petition of a grant and a petition by way of cross application on 7th June 2021.
3. The matter was heard and the Court directed that it be determined by way of written submissions.

Issues for Determination

- i. Whether the Petitioner and Philimon Cheruiyot are beneficiaries of the Estate.
- ii. Whether the Petitioner and Philimon Cheruiyot are entitled to a share of the deceased's estate.



- iii. Whether the objectors are the only beneficiaries of the estate. iv. Who should be appointed to administer the estate of the deceased?
- iv. Who pays the costs of the objection proceedings?

Analysis and Determination

Whether the Petitioner and Philimon Cheruiyot are beneficiaries of the Estate

4. The deceased died intestate on 4th August 2017. He was survived by 4 children, the Objectors herein and one wife, Priscilla Cheptoo Koech who died on 7th January, 2021.

5. The Petitioner, while claiming that he and his brother, Philemon Cheruiyot are sons of the deceased, petitioned the Court for grant of letters of administration for the estate of the deceased.

Section 3 (2) of the *Law of Succession Act* defines a child to include a child conceived but not yet born (as long as that child is subsequently born alive) and in relation to a female person, a child born to her out of wedlock, and in relation to a male person, any child whom he has recognized or in fact accepted as a child of his own or of whom he has voluntarily assumed permanent responsibility.

6. Section 29 of the *Law of Succession Act* clearly defines a dependent to mean:

- i. 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;
- ii. such of the deceased's parents, step-parents, grandparents, grandchildren, stepchildren, 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
- iii. where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.

7. It is trite that the burden of proof lies in the alleging party. This is clearly provided for under Sections 107-109 of the *Evidence Act* as follows:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

8. When a person is bound to prove the existence of any fact it is their burden of proof lies on that person. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

9. The Petitioner therefore bears the burden of proving that he and his brother are children of the deceased or that the deceased had assumed permanent responsibility over them for them to be deemed as dependants under Section 29 of the *Law of Succession Act*.

10. I find that the Petitioner and Philimon Cheruiyot have not provided any evidence in Court to support their allegations of being children and/or dependants of the deceased.



11. For instance, there are inconsistencies with the birth certificate provided. It indicates that the Petitioner was born on 15th January 1979 while his identification report indicates that he was born on 1st January, 1979.
12. I note that the birth certificate was issued on 27th October 2008. No explanation has been advanced as to why he took that long to apply for the same or how he acquired a National Identity Card without a birth certificate.
13. I Further note that the extract of the Petitioner's details and his identification report and which were produced as the Objector's exhibit 3 and 6 respectively indicates his father as one Kipsumei Chebaige and not the deceased.
14. Without any credible evidence that the deceased was the Petitioner's and his brother's biological father, or evidence that he was involved in payment of their school fees, welfare and upkeep or that the deceased had taken them in to raise them as his own, the petitioner may not be a child of the deceased.
15. It is claimed by the Petitioner that his mother was the second wife of the deceased and that the deceased and his mother, Jane Chepkoros had lived together for a long time.
16. The Supreme Court in the case of *Mary Nyambura Kangara v Paul Ogari Mayaka* [2023] KESC 2 (KLR) laid out a strict criterion which a Court may use to establish a presumption of marriage as follows:
 - That parties must have had the capacity to enter a marriage and they did so in effect;
 - i. That there is a long cohabitation of a man and woman with general reputation as husband and wife;
 - ii. That there must be consent by both parties to contract the relationship;
 - iii. The onus of proving the presumption was on the party alleging it;
 - iv. The parties must have held out themselves to the outside world as being a married couple; and
 - v. That parties must have intended to marry.
17. The Petitioner has not provided any evidence that the deceased had another wife or other children. It is my finding that the essential elements of a marriage had not been fulfilled such that the deceased never paid dowry for the late Jane Chepkoros in her lifetime. This is clear proof that he never intended to marry her. I note that no evidence was produced to prove that the Petitioner, his brother Philimon Cheruiyot or his late mother were living with the deceased prior to his death or that they were being maintained by the deceased during his lifetime.
18. The late Jane Chepkoros was buried in Koitab Silibwet on the Petitioner's grandfather's land and not on the deceased's land as was the case of his wife, Priscilla Cheptoo Koech and if indeed Jane Chepkoros was the deceased's second wife, she would have been buried on the deceased's land. The deceased also had no capacity to marry the late Jane Chepkoros as he was already in a subsisting marriage with the late Priscilla Cheptoo Koech.
19. There is no clear evidence that the deceased and the Petitioner's mother were ever married or presumed to be married. As such, the Petitioner cannot claim that his mother was the second wife of the deceased.



20. The Petitioner and Philimon Cheruiyot have not discharged the burden of proving that they are the deceased's children or that the deceased had assumed permanent responsibility over them.

Whether the Petitioner and Philimon Cheruiyot are entitled to a share of the deceased's estate

21. Under Section 29 of the [Law of Succession Act](#), children can be dependants of the deceased by:
- i. Being biological children of the deceased;
 - ii. Not being biological children of the deceased, the deceased had accepted them during his lifetime as his children;
 - iii. The deceased assumed permanent parental responsibility of the children.
22. Both the Petitioner and Philimon Cheruiyot have not provided sufficient proof that they qualify to be dependants of the deceased.

Whether the Objectors are the only beneficiaries of the estate

23. The Court in *Re Estate of JOO – deceased* [2014] eKLR while discussing the issue of who ought to benefit from the estate of the deceased stated that:

“Where a deceased person is survived by a spouse and child or children, the other relatives are not entitled to a share in the estate of such a person. The spouse and children are entitled to the estate to the exclusion of all others.”

24. The evidence adduced in court by the Objectors' witnesses and even the Petitioner's witnesses was that the Objectors herein are the known children of the deceased.

Who should be appointed to administer the estate of the deceased

25. Section 66 of the [Act](#) provides for the order of priority of persons who qualify to apply for a grant of letters of administration intestate as follows:
- a. surviving spouse or spouses, with or without association of other beneficiaries;
 - b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
 - c. the Public Trustee; and
 - d. creditors:
26. Rule 7(7) of the [Probate and Administration Rules](#) requires that when a person who is not a person in the order of preference set out in section 66 of the [Act](#) seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having prior preference to a grant by virtue of that section has –
1. Renounced his right generally to apply for grant; or
 2. Consented in writing to the making of the grant to the applicant; or
 3. Been issued with a citation calling upon him to renounce such right or apply for a grant.



27. Rule 26(1) of the *Probate and Administration Rules* provides that letters of administration shall not be granted to any applicant without notice to every person entitled in the same degree as or in priority to the applicant.
28. Rule 26 (2) provides that an application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall in default of renunciation or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.
29. In the case of *Antony Karukenya Njeru v Thomas M. Neru* [2014] KEHC 6398 (KLR), the Court held that:
- “The proceedings used to obtain the grant were defective in substance as it was obtained when one of the son’s of the deceased had neither renounced their right of administration nor executed consent to the making of the grant. As such, the grant was annulled as it was obtained by means of untrue allegations of facts essential in point of law.”
30. From the record, the applicant did not notify objectors about the petition thus they never consented to the same and only found out about it after the same had been published in the gazette.
31. Section 51 provides for the process of applying for a grant of representation. Sub section (2) (g) mandates the Petitioner to disclose the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased and of the children of any child of his or hers then deceased.
32. It follows that the Petitioner had no intention of involving the Objectors who are heirs of the deceased in the proceedings.
33. I therefore find that the Petitioner is not a child of the deceased, it is in the interest of justice that only the Objectors who are the only children and the rightful beneficiaries of the deceased are appointed as the administrators of the deceased’s estate.
34. Based on the foregoing I am persuaded to allow the Objectors’ objection and petition by way of cross application herein and appoint the Objectors as Administrators of the estate.

Each party to bear their own costs

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 23RD DAY OF JULY, 2025.

HON. JULIUS K. NG’ARNG’AR

JUDGE

Judgement delivered in the absence of the parties.

Siele/Susan (Court Assistants).

