



In re Estate of the Late Esther Chelengat Kigen (Deceased) (Succession Cause E014 of 2023) [2025] KEHC 10244 (KLR) (17 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10244 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE E014 OF 2023**

JK SERGON, J

JULY 17, 2025

THE MATTER OF THE ESTATE OF THE LATE ESTHER CHELENGAT KIGEN (DECEASED)

BETWEEN

GRACE RONO 1ST PETITIONER

MARY RONO 2ND PETITIONER

ZEDDY LANGAT 3RD PETITIONER

AND

JANE CHEPKOECH TARE PROTESTOR

JUDGMENT

1. There are two applications coming up for determination by this court; summons for confirmation of grant filed by the petitioners and an affidavit of protest against the summons for confirmation of grant as the succession proceedings were conducted in secrecy and some of the beneficiaries were neither consulted and/or involved in the entire succession process and the mode of distribution of the estate of the deceased as it did not reflect the wishes of the deceased.
2. The petitioners of the estate of the deceased herein filed a summons for confirmation of grant dated 19th June, 2024 seeking the following orders;
 - (i) That the grant of letters of administration intestate made to the said Grace Rono, Mary Cherono Kigen And Zeddy Langat on 12th October, 2023 be confirmed.
 - (ii) That the costs be in the cause
3. The summons is supported by the grounds on the face of it and the affidavit of Grace Rono the 1st petitioner and on behalf of the co-petitioners.



4. She avers that letters of administration intestate in respect of the estate of the deceased were issued to Grace Rono, Mary Cheronno Kigen And Zeddy Langat on 12th October, 2023.
5. She avers that the deceased left several surviving dependents and was the owner of (i) Kericho/Kimulot/343 - 17.4 HA and (ii) Nakuru/Municipality/Block 24/87 - 0.2540 HA.
6. She avers that the identification and distribution of the shares of all persons beneficially entitled to the estate of the deceased has been ascertained and determined as follows;

Kericho/Kimulot/343 - 17.4 HA

Sally Mosonik - 1 acre

Grace Rono - 2 acres

Norine C Mutai, Janeth Chelangat, Anita Chemutai, Robert Kiprono Kemei, Benard Koskei, Justus Kipkoech Kemei - 2 acres

Zeddy C. Langat - 3 acres

Jane Chepkoech Tare, Drufena W. Nganga - 14.996 acres

Mary C. Kigen - 2 acres

Grace Cheronno - 3 acres

Bornes Koech - 2 acres

Eunice Chepchirchir - 13 acres

Nakuru/Municipality/Block 24/87 - 0.2540 HA.

To be shared equally among all the beneficiaries

Barclays and Family Bank Account

Mary Cheronno Kigen - absolutely

7. She avers that no dependent of the deceased within the meaning of section 29 of the [Law of Succession Act](#) is opposed to the mode of distribution.
8. She avers that the mode of distribution takes into consideration of the legal fees incurred in distributing the estate amongst the beneficiaries and further that no estate duty is payable (or remains unpaid) in respect to the estate of the deceased.
9. Grace Rono the 1st petitioner and her co-petitioners filed a supplementary affidavit dated 2nd October, 2024 stating that they had reconsidered the mode of distribution on the summons for confirmation of grant dated 19th June, 2024 and were of the view that the shares due for each beneficiary were not distributed equitably and therefore filed the mode of distribution of the estate as follows;

Kericho/Kimulot/343 - 17.4 HA

Sally Mosonik - 4.35 acres

Grace Rono - 4.35 acres

Norine C Mutai to hold in trust for herself and Janeth Chelangat, Anita Chemutai, Robert Kiprono Kemei, Benard Koskei, Justus Kipkoech Kemei - 4.35 acres

Zeddy C. Langat - 4.35 acres



Jane Chepkoech Tare- 4.35 acres

Drufena W. Nganga - 4.35 acres

Mary C. Kigen - 4.35 acres

Grace Cherono - 4.35 acres

Bornes Koech - 4.35 acres

Eunice Chepchirchir - 4.35 acres

Nakuru/Municipality/Block 24/87 - 0.2540 HA.

Mary Cherono Kigen to hold in trust for herself and Sally Mosonik, Grace Rono, Norine C Mutai, Zeddy C. Langat, Jane Chepkoech Tare, Drufena W. Nganga, Mary C. Kigen, Grace Cherono, Bornes Koech and Eunice Chepchirchir

Family Bank Account No. 022000012976

Mary Cherono Kigen - absolutely

10. Jane Chepkoech Tare filed an affidavit of protest in opposition to the summons for confirmation of grant.
11. She avers that she is the daughter -in -law of the deceased as she was married to Kimutai Langat Kigen who was the son of the deceased.
12. She avers that she is protesting against the summons for confirmation of grant as the succession proceedings were conducted in secrecy and some of the beneficiaries were neither consulted and/or involved in the entire succession process.
13. She avers that the proposed mode of distribution does not reflect the wishes and intentions of the deceased, who in her lifetime had clear intentions on how she desired her estate to be divided among her heirs and that the proposed distribution of the estate is neither equitable, fair or just.
14. She avers that some properties included in the proposed distribution had been bequeathed to specific beneficiaries by the deceased, and that these beneficiaries had already taken possession, occupied and developed them in accordance to the wishes of the deceased and therefore these properties were not part of the free estate available for distribution.
15. She avers that several properties that formed part of the estate of the deceased had not been included in the proposed mode of distribution.
16. She avers that the proposed mode of distribution included strangers to the estate of the deceased and further that there were lawful beneficiaries who had been excluded from the proposed mode of distribution despite their legitimate entitlement to a share of the estate of the deceased.
17. She avers that there are certain beneficiaries who had made substantial contribution to the acquisition, development and/or maintenance of the estate of the deceased and that these contributions have not been considered in the proposed distribution and it was therefore imperative that the protest be heard and determined before the distribution of the estate of the deceased.
18. Mary Cherono Kigen and her co-petitioners filed a reply to the protest.
19. She avers that the succession proceedings were within the knowledge of the beneficiaries of the estate and that the late husband of the protestor was one of the petitioners in the instant succession cause.



20. She avers that petitioners had filed a supplementary affidavit distributing the estate of the deceased equally to all the beneficiaries.
21. She avers that the deceased died intestate without any will and none of the properties had been gifted inter vivos and therefore the estate is subject to distribution as per section 38 of the [Law of Succession Act](#).
22. She avers that they included all the properties that constituted the estate of the deceased within their knowledge at the time of filing the petition.
23. She avers that no stranger had been included in the instant succession proceedings.
24. She avers that the protestor occupies a substantial part of the estate and is earning hefty earnings from the tea proceeds to the exclusion of the other beneficiaries of the estate.
25. She avers that this court should therefore dismiss the protest and confirms the grant based on the supplementary affidavit sworn by Grace Rono.
26. This court directed that the protest be canvassed via oral evidence.
27. Pw. 1 daughter in law to the deceased and the protestor herein testified and stated that she filed an affidavit of protest and that she would be relying on the contents of the affidavit of protest as her evidence in chief. On cross examination, she confirmed that in the supplementary affidavit filed by the petitioners, the parcels of land listed were owned by the deceased and beneficiaries listed were family members of the deceased.
28. Pw. 2 a son to the protestor, adopted his witness statement as evidence in chief. On cross examination, he confirmed that Esther Chelangat Kigen, the deceased herein, who was his grandmother did not leave a will.
29. Pw. 3 a step son to the deceased, adopted his witness statement as evidence in chief. On cross examination, he confirmed the protestor had a co-wife and that he was not opposed to the protestor and her co-wife inheriting from the estate of the deceased, rather, he was opposed to the daughters of the deceased inheriting from the estate of the deceased.
30. At the close of the protestors case the petitioners testified.
31. Dw. 1 testified that she filed the summons for confirmation of grant and that she would be relying on the contents of the summons as her evidence in chief. She confirmed that she filed a supplementary affidavit in which the petitioners proposed equal distribution of the estate. On cross examination, she confirmed that while their mother was alive, she gave them the homes in Nakuru whereas their brothers lived at homestead.
32. Dw. 2 adopted the supplementary affidavit filed as her evidence in chief and maintained that her mother did not leave any will and therefore her estate ought to be distributed as per the terms of the supplementary affidavit. On cross examination, she confirmed that their mother told them to inherit the Nakuru property. On re-examination, she confirmed that the deceased had expressed these wishes orally and that the wishes were not documented.
33. At the close of the respective parties' case, this court directed the parties to file written submissions which this court has considered in order to arrive at a fair and just determination.
34. The protestor filed submissions and maintained that evidence tendered before this Court clearly demonstrates that the deceased, Esther Chelangat, made deliberate and effective gifts inter vivos to her



children, including the allocation of 30 acres of Kericho/Kimulot/343 to her late son, David Langat, and 10 acres to her daughter, Eunice Chepchirchir, as well as specified rooms in Nakuru/Municipality/Block 24/87 to her other daughters. These gifts were perfected by delivery, possession, and long-term development by the beneficiaries. The said allocations were not contested during the lifetime of the deceased and were corroborated by both the Protestor's and the Petitioners' own witnesses. The protestor cited High Court Succession Cause No. 15 of 2015 In the Estate of the Late Gichunge M'itwerandu alias Githungu M'Nthiiri wherein he held: "A person can deal with his property as he wills during his lifetime. Whoever feels aggrieved on how his/her parents had dealt with his property should at the earliest opportunity question such a person during his/her lifetime. He/She cannot wait until such a person dies to raise issues of discrimination or unfairness. Such issues can only validly be raised in cases of a will since wills are kept secret until the testator passes on. However bequests that are given as gifts inter vivos are openly so given and in my view whoever is dissatisfied is at liberty to question the same before the demise of the giftor." She therefore urged this court to uphold the gifts inter vivos made by the deceased to the respective beneficiaries as valid and enforceable and dismiss the proposed mode of distribution by the Petitioners insofar as it disregards the valid gifts made by the deceased.

35. The petitioners filed submissions and contended that the deceased died intestate leaving behind a substantial estate comprising both land and residential property and therefore the property of the deceased should be subjected to intestacy rules and cited section 38 of the *Law of Succession Act* requires equal distribution among children of a deceased person. It provides as follows: "Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children."
36. The petitioners contended that the assertion that the deceased had made deliberate and effective gifts inter vivos to her children, was untenable and contended that for a gift inter vivos to be valid, all the essential elements must be established; intention to gift; actual delivery or transfer of ownership and acceptance be done and completed in the lifetime of the deceased. The petitioners cited the case of *Koimbori & another v Kamau & 4 others* [2025] KEELC 412 (KLR), where the court in referring to the case of *In re Estate of The Late Gedion Manthi Nzioka (Deceased)* [2015] KEHC 944 (KLR) held as follows: "In the above decision, the court stipulated that there are several avenues through which a gift inter vivos can be made, including through an instrument in writing or by way of delivery. What is non-negotiable is that gifts of land must be by way of registered transfer and the gift inter vivos must be completed in the lifetime of the donor." The petitioners argued that these gifts were NOT perfected and neither has the protestor demonstrated evidence of the deceased's intention to gift. There was no registered transfer and neither in writing nor any declaration of trust in writing.
37. This court has considered the summons for confirmation of grant and the affidavit of protest filed and finds that the issue (s) for determination is whether the affidavit of protest is merited. The petitioners argued that the deceased died intestate and therefore her estate is subject to the rules of intestacy whereas the protestor is adamant that the deceased gifted portions of her estate inter vivos to the beneficiaries of the estate. This court has considered the respective cases of the parties and evidence tendered before this Court which demonstrates that the deceased, Esther Chelangat, made attempts to distribute her property during her lifetime, however, the same cannot be regarded as gift inter vivos, as the same was not perfected/completed in her lifetime. The protestor has not aptly demonstrated evidence of the deceased's intention to gift. There was no registered transfer nor any declaration of trust in writing.



38. It is therefore the finding of this court that the wishes of the deceased regarding the distribution of property in her lifetime were not recorded and/or documented and in the absence of a will, which is position is confirmed in the witness accounts of Pw. 2 and Dw. 2, the deceased died intestate and therefore her estate is subject to the rules of intestacy and more specifically the provisions of section 38 of the Law of Succession Act which prescribe equal distribution of the estate of a deceased person among surviving children.
39. It is further the finding of this court that the most fair and equitable way to distribute the estate of the deceased among the surviving children is espoused in the supplementary affidavit filed by the 1st petitioner which is as follows;

Kericho/Kimulot/343 - 17.4 HA

Sally Mosonik - 4.35 acres

Grace Rono - 4.35 acres

Norine C Mutai to hold in trust for herself and Janeth Chelangat, Anita Chemutai, Robert Kiprono Kemei, Benard Koskei, Justus Kipkoech Kemei - 4.35 acres

Zeddy C. Langat - 4.35 acres

Jane Chepkoech Tare- 4.35 acres

Drufena W. Nganga - 4.35 acres

Mary C. Kigen - 4.35 acres

Grace Cherono - 4.35 acres

Bornes Koech - 4.35 acres

Eunice Chepchirchir - 4.35 acres

Nakuru/Municipality/Block 24/87 - 0.2540 HA.

Mary Cherono Kigen to hold in trust for herself and Sally Mosonik, Grace Rono, Norine C Mutai, Zeddy C. Langat, Jane Chepkoech Tare, Drufena W. Nganga, Mary C. Kigen, Grace Cherono, Bornes Koech and Eunice Chepchirchir

Family Bank Account No. 022000012976

Mary Cherono Kigen - absolutely

40. Consequently, the affidavit of protest is hereby dismissed and the summons for confirmation of grant dated 9th June, 2024 is hereby allowed and the estate of the deceased to be distributed as proposed in the supplementary affidavit dated 2nd October, 2024 sworn by Grace Rono, the 1st petitioner herein. Each party to meet their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 17TH DAY* OF JULY, 2025.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh



Lang'at holding brief for Petitioner

Kiletyen for the Protestor

