



REPUBLIC OF KENYA



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In re Estate of the Late Kipyegon arap Chepkwony (Succession Cause E018 of 2020) [2025] KEHC 10243 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10243 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE E018 OF 2020**

JK SERGON, J

JULY 17, 2025

THE MATTER OF THE ESTATE OF THE LATE KIPYEGON ARAP CHEPKWONY

BETWEEN

RAEL CHELANGAT NGENO PETITIONER

AND

DAVID KIPTONUI OBJECTOR

RULING

1. The crux of the dispute at hand is that the beneficiaries of the estate of the late Kipyegon Arap Chepkwony have not been able to agree on an appropriate mode of distribution in respect to the estate of the deceased. The matter was referred to court annexed mediation, parties agreed and filed a mediation settlement agreement and the grant in respect to the estate of the deceased was confirmed on 24th May, 2024 as per the terms of the mediation settlement agreement. However, the objector filed summons for revocation of grant, citing the procedure culminating in towards the confirmation of grant as defective. The parties agreed to have the matter resolved by a panel of elders under the alternative justice system, however, the petitioner objected to the resolution made by the panel of elders on the mode of distribution as the same was discriminatory. This court upheld the petitioner's objection and directed that the estate of the deceased ought be distributed under the supervision of the court to ensure strict compliance with the provisions of the *Law of Succession Act*.
2. Rael Chelangat Ngeno the petitioner of the estate of the deceased herein filed a summons for confirmation of grant seeking the following orders;
 - (i) That the grant of letters of administration intestate made to Rael Chelangat Ngeno in this matter on 10th January, 2022 be confirmed.
 - (ii) That the costs of this application be in the cause



3. The summons is supported by the grounds on the face of it and the affidavit of Rael Chelangat Ngeno the administrator/ petitioner of the estate.
4. She avers that she is the administrator of the estate of the late Kipyegon Arap Chepkwony who died intestate and that letters of administration intestate in respect of the estate of the deceased were issued to her on 10th January, 2022.
5. She avers that the deceased left several beneficiaries and was the sole owner and proprietor of land parcel LR Kericho/Sosiot/334.
6. She avers that the identification and distribution of shares of all persons beneficially entitled to the estate of the deceased has been ascertained and determined as follows; LR Kericho/Sosiot/334 4.8 Ha to be shared equally among Rael Chelangat Ngeno, Rachel Biegon, Esther Chepkorir Chesarmat, Alice Chebet Koros, Lydiah Chepkemoi, David Kiptonui Biegon, Eunita Aketch Otieno, Kiprono Keneth & Kiprotich Denis.
7. She avers that no other application for dependants is pending.
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. The beneficiaries could not agree on the mode of distribution and the matter was referred for court annexed mediation, the parties agreed to have the estate measured by a surveyor and divided among eight siblings and therefore arrived at a mediation settlement agreement dated 9th March, 2023 and the same was adopted as the decision of this court. This court confirmed the grant and ordered that the mode of distribution be done as per the mediation settlement on 24th May, 2023.
10. David Kiptonui Biegon filed a summons for revocation of grant seeking to have the grant of letters of administration intestate of the late Kipyegon Arap Chepkwony issued and confirmed by this court 24th May, 2023 revoked on the grounds that the grant was obtained and confirmed by reliance on false statements, non-disclosure and concealment of material and relevant facts surrounding the mediation settlement agreement and that the same has tainted the proceedings leading to the dubious confirmation of grant by the petitioner thereby rendering the proceedings defective in substance.
11. Rael Chelangat Ngeno filed a replying affidavit in which she maintained that the allegations that the proceedings to obtain the grant were defective in substance due to non-disclosure and concealment of material facts were unfounded and baseless.
12. David Kiptonui Biegon filed a further affidavit in support of the revocation of the confirmed grant, he contended that the petitioner misled this court on the mutuality of the mediation settlement agreement which formed the basis for confirmation of grant.
13. On 20th March, 2024 this court referred the instant succession cause for resolution by a panel of elders under alternative justice system, whereby a panel of elders was tasked with identifying the rightful beneficiaries of the estate of the deceased. On 3rd June, 2024 the panel of elders convened a meeting and resolved that the daughters of the deceased should not inherit any of the properties constituting the estate of the deceased; rather the panel decided that the daughters of the deceased were to be awarded a cow each. Rael Chelangat Ngeno, the petitioner being aggrieved by the said resolution, filed an affidavit of objection against the resolution by the panel of elders. On 26th February, 2025 this court upheld the affidavit of objection against the resolution by the panel of elders and directed that the estate of the deceased be distributed under the supervision of the court to ensure strict compliance with the provisions of the [Law of Succession Act](#) and directed parties to file their preferred mode of distribution.



14. On 29th May, 2025 this matter came up for mention to confirm whether the parties had filed the respective modes of distribution.
15. Rael Chelangat Ngeno filed an affidavit with her preferred mode of distribution and stated that the identification and shares of the persons beneficially entitled to the estate has been ascertained and determined as follows;
- LR Kericho/Sosiot/334 4.8 Ha
- a. Rael Chelangat Ngeno - 1.4 acres
 - b. Rachel Byegon - 1.6 acres
 - c. Alice Chebet Koros -1.4 acres
 - d. David Kiptonui Byegon - 2 acres
 - e. Lydiah Chepkemoi -1.6 acres
 - f. Eunita Aketch Otieno - 1.6 acres
 - g. Dennis Kiprotich - 1.6 acres (to hold in trust for his siblings Kiprono Kenneth, Kipkirui Joach and Chepkirui Sharon)
16. David Kiptonui Biegon filed an affidavit on the distribution of the estate in which he maintained that this court should uphold the decision by the panel of elders to have the estate shared equally among the five sons who had settled on distinct portions of the estate during the lifetime of the deceased and further proposed to issue portions of land measuring two points to each of this three sisters instead of the proposal for the award of one (1) cow each by the panel of elders.
17. This court finds that the issue (s) for determination is what constitutes a fair and equitable mode of distribution of the estate of the deceased and whether the summons for revocation of grant have merit.
18. On the issue as to what constitutes a fair and equitable mode of distribution of the estate of the deceased, this court has considered the respective modes of distribution filed by the parties, it is evident that the the beneficiaries are not in agreement on the mode of distribution even after having referred the matter for court annexed mediation and resolution by a panel of elders under the alternative justice system, in the circumstances this court is duty bound to distribute the estate of the deceased as prescribed under the strict provisions of the *Law of Succession Act*. The deceased having been survived by his children, it is paramount that the estate of the deceased should be distributed in accordance with section of 38 the *Law of Succession Act* which 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.” The said section mandates equal inheritance for all the children of the deceased irrespective of gender. *In re Estate of Francis Andachila Luta (Deceased)* (Succession Cause 875 of 2012) [2022] KEHC 16900 (KLR) (23 December 2022) (Judgment) Musyoka J stated as follows; “Let me revisit section 38 of the *Law of Succession Act*. It provides for equal distribution of the estate amongst the children. The language of section 38 is gender neutral. It does not classify children into male and female, nor sons and daughters, nor men and women. There is no discrimination nor differentiation nor classification nor categorization along gender lines. That would mean that sons and daughters of a dead person are entitled on equal basis to a share in the estate of their dead parent. Section 38 does not make marriage a factor in the distribution of the estate of a dead parent. Gender and marital status are factors under customary law, but not under the *Law of Succession Act*. The estate herein is not subject to



customary law, for the reasons that I have discussed in paragraphs 13, 14 and 15 a foregoing. The estate is subject to the Law of Succession Act, which is blind on biases founded on gender and marital status.” In the circumstances, it is this court’s finding that the most fair and equitable mode of distribution is that LR Kericho/Sosiot/334 be shared equally among the 8 surviving children of the deceased as per the terms of the mediation settlement agreement dated 9th March, 2023.

19. On the issue as to whether the summons for revocation of grant is merited, this court finds that whereas the objector has cited that the grant was confirmed by reliance on false statements, non-disclosure and concealment of material and relevant facts surrounding the mediation settlement agreement and therefore the proceedings culminating to the the confirmation of grant were defective, the objector has not aptly demonstrated any wrong doing on the part of the petitioner warranting revocation of grant and neither has the objector raised any grounds that would warrant setting aside of the mediation settlement agreement.
20. Consequently, the grant of letters of administration issued by this court on 10th January, 2022 and confirmed by this court 24th May, 2023 as per the terms of the mediation settlement agreement dated 9th March, 2023 still stands and the certificate of confirmation of grant shall be issued accordingly.

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

Rael Ngeno – Present in Person

Davd Kiptonui – Absent

