



REPUBLIC OF KENYA



In re Estate of Augustine Kipsang Kiptoo (Deceased) (Probate & Administration E099 of 2021) [2025] KEHC 10448 (KLR) (16 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10448 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

PROBATE & ADMINISTRATION E099 OF 2021

RN NYAKUNDI, J

JULY 16, 2025

IN THE MATTER OF THE ESTATE OF AUGUSTINE KIPSANG KIPTOO (DECEASED)

IN THE MATTER OF

JOSEPH KIPRONO SANG 1ST ADMINISTRATOR

RAPHAEL KIPRUTO ROTICH 2ND ADMINISTRATOR

RULING

1. What is pending before this court for determination are summons for confirmation of grant dated 27th June 2023 premised under Section 71 of the [Law of succession Act](#) and Rule 40 of the [Probate and Administration Rules](#) in which the Applicants are seeking the following orders:
 - a. The grant of letters of administration intestate of the estate of Augustine Kipsang Kiptoo issued on 20/12/2021 to Joseph Kiprono Sang and Raphael Kipruto Rotich be confirmed.
 - b. Costs be in the cause.
2. The Application is based on the following grounds among others: -
 - a. The grant of letters of administration intestate of the estate of Augustine Kipsang Kiptoo was issued on 20/12/2021
 - b. The administrators are eager to utilize the estate of the deceased Augustine Kipsang Kiptoo
3. The Application is supported by the annexed affidavit dated 27th June 2023 sworn by Raphael Kipruto Rotich who states as follows:
 - a. That the grant of letters of administration intestate of the estate of Augustine Kipsang Kiptoo was issued on 20th December, 2021 by this Honorable court.
 - b. That it is now over six months since the grant of letters of Administration intestate was issued and we would like the same to be confirmed.



- c. That at the time of death, the late Augustine Kipsang Kiptoo left behind the following dependents
1. Silvina Jemisto Kipsang Widow
 2. Mary Chepkosgei Koima Daugther
 3. Josphine Chirchir Kipsang Daugther
 4. Clement Kiplagat Sang Son
 5. Joseph Kiprono Sang Son
 6. Margaret Jepkemoi Kipsang Daugther
 7. Raphael Kipruto Rotich Son
 8. Thomas Cheruiyot Kipsang Son
 9. Flora Jepchumba Rotich Daugther
 10. Everlyne Jepkogei Kipsang Daugther
 11. Jane Jemutai Sang Daugther
- d. That there is no dependency or any other application for provision for dependants over the estate of the deceased.
- e. That the estate of the deceased Augustine Kipsang Kiptoo is not indebted to any one or any institution.
- f. That the estate of the late Augustine Kipsang Kiptoo comprised the following properties.
1. LR No. Iten Township/96 Measuring Approximately 0.0372 Ha
 2. LR No. Tembelio /Elgeyo Border Block 9/komba Emit/11 Measuring Approximately
 3. LR No. Tembelio /Elgeyo Border Slock 9 (komba Emit/11 Measuring Approximately 7.091 Ha
 4. LR No. Sergoit /koiwaptaoi Block 10(Karo) 265 Measuring Approximately 20.23 Ha
 5. LR No. Eldoret Muu/block 23(King'ong'o)249 Measuring Approximately 7.737 Ha
 6. LR No. Uasing Gishu/Elgeyo Border Township/3 Measuring Approximately 0.0567 Ha
 7. LR No. Kiplombe /kiplombe Block 10(Growel)343 Measuring Approximately 0.036 Ha
 8. LR No. Elgeyo Border Settlement Scheme/342 Measuring Approximately 8.32 Ha
 9. LR No. Kiplombe/kiplombe Block 10(Growel) 71measuring Approximately 0.7900 Ha
 10. LR No. Kiplombe /kiplombe Block 10(Growel) 81 Measuring Approximately 0.3900 Ha



11. LR No. Kiplombe /kiplombe Block 10 (Growel)74 Measuring Approximately 0.3900 Ha
12. LR No. Eldoret Municipality Block 28 (Eatec)75 Measuring Approximately 1.011 Ha
13. LR No. Sergoit /karuna Block 3 (Tugen)115 Measuring Approximately 11.72 Ha.
14. LR No. Outspan Trading Centre /5 Measuring Approximately 0.0338 Ha
15. LR No. Soy /Soy Block 10 (Navilus) 143 Measuring Approximately 40.47 Ha.
16. LR No. Uasin Gishu/Elgeyo Border Settlement Scheme /342 Measuring Approximately 8.23 Ha
17. LR No. Eldoret Municipality /block 21(King'ong'o) 2360 Measuring Approximately 0.20 Ha
18. LR No. Sergoit /koiwoptaoi Block 10(Karo)/268 measuring approximately 20.23 ha

g. That the above parcel of land be shared among the dependents in the following proportions.

1. Sivilina Jemisto Kipsang
 1. Sergoit Koiwoptaoi Block 10/265 Measuring Approximately 20.23 Ha
 2. Eld/mun/block 23(king Ogo)249 Measuring Approximately 7.737 Ha
 3. Eld/mun Block 28 (Eatec)/75 Measuring Approximately 1.011 Ha
 4. E/border Settlement Scheme/342 Measuring Approximately 8.32 Ha
 5. Eld/mun Block 21(kingo Ngo)2360 Measuring Approximately 0.20 Ha
 6. Sergoit /koiwoptao Block 10/Karo/268 Measuring 20.23ha
 7. LR No Soy/Soy/Navilus/143 Measuring Approximately 40 Acres
2. Mary Chepkosgei Koima
 1. LR No. Soy/Soy/Navilus/143 Measuring Approximately 5 Acres
3. Josphine Chirchir Kipsang
 - A. LR No. Soy/Soy/Navilus/143 Measuring Approximately 5 Acres
4. Clement Kiplagat Sang
 1. Tembelio/Elgeyo Border 9 (komba Emit/164 Measuring 0.045 Ha
 2. Tembelio/Elgeyo Border Block 9(kombaemit/11 Measuring 7.091ha
 3. Soy/Soy Block 10(Navilus/143 Measuring Approximately 10 Acres
 4. Kiplombe/kiplombe Block 10(Growel)342 Measuring 0.036 Ha
 5. Kiplombe/kiplombe Block 10(Growel)74 Measuring 0.3900 Ha
5. Joseph Kiprono Sang
 - A. Kiplombe/kiplombe Block 10(Growel)343 Measuring 0.036 Ha



- B. LR/ No. Kiplombe/kiplombe Block 10 (Growel) 81 Measuring Approximately 0.3900 Ha.
- 6. Margaret Jepkemoi Kipsang
 - A. Outspan Trading Centre 15 Measuring Approximately 0.033 Ha
 - B. Soy/Soy Block 10(Navilus/143 Measuring Approximately 5 Acre
- 7. Raphael Kipruto Rotich
 - A. Iten Township/96 Measuring Approximately 0.0372 Ha
 - B. Sergoit/karuna Block 3 (Tugen) 115 Measuring Approximately 11.72 Ha
 - C. Kiplombe/kiplombe Block 10(Growel) 71 Measuring 0.7900 Ha
- 8. Thomas Cheruiyot Kipsang
 - A. Uasin Gishu Elgeyo/border Township/3 Measuring 0.0567 Ha
 - B. Soy/Soy Block 10 (Navilus) 143 Measuring Approximately 20 Acres
- 9. Flora Jepchumba Rotich
 - A. Soy/Soy Block 10(Navilus) 143 Measuring Approximately 5 Acres
- 10. Everlyne Jepakogei Kipsang
 - A. Soy/Soy Block 10 (Navilus)143 Measuring Approximately 5 Acres
- 11. Jane Jemutai Sang
 - A. Soy/Soy Block 10 (Navilus) 143 Measuring approximately 5 Acres
- 4. This affidavit in support of confirmation is also supported by the consent of all the beneficiaries who have a claim of the deceased inheritance. From the material evidence it appear that this is a non-polygamous family survived of eleven siblings being daughter and sons of the deceased. The administrators are Joseph Kiprono and Raphael Kipruto who are seeking leave of the court to issue a certificate of confirmation of grant in favor of the beneficiaries as identified in the affidavit and other corresponding instruments.

Decision

- 5. In order to lay the foundation of this certificate of confirmation of grant under section 71 of the *Law Succession Act* and Rule 40 of the *Probate and Administration Rules* it is necessary to reflect on the provisions of the law and guiding principles in case law. In so far as the rights of the surviving spouse is concern the provisions of section 35 (1), 36(1), 37 of the Act gives the legislative scheme on the distribution as herein expressly stated:

The *law of Succession Act* grants certain rights to the surviving spouse. These are set out in sections 35(1), 36(1) and 37 of the *Law of Succession Act*. Cases numbers 121,122 and 246 deal with the rights of a surviving spouse.

Section 35(1) provides:

‘Subject to the provisions of section 40, where an intestate has left a surviving spouse and a child or children, the surviving spouse shall be entitled to:



- a. The personal and household effects of the deceased, absolutely; and
- b. A life interest in the whole residue of the net intestate estate:
Provided that, if the surviving spouse is a widow, that interest shall determine upon remarriage.’

Section 36(1) provides:

Where the intestate has left one surviving spouse but no child or children, the surviving spouse shall be entitled out of the net intestate estate to:

- a. The personal and household effects of the deceased absolutely; and
- b. The first ten thousand shillings out of the residue of the net intestate estate, or twenty per centum thereof, whichever is the greater; and
- c. A life interest in the whole of the remainder:

Provided that if the surviving spouse is a widow, the life interest shall be determined upon her remarriage to any person.

Section 37 provides:

‘A surviving spouse entitled to a life interest under the provisions of section 35 or 36, with the consent of all co-trustees and all children of full age, or with the consent of the court, may, during the period of the life interest, sell any of the property subject to that interest if it is necessary for his own maintenance:

- 6. In the case of *Tau Kakungi v Margrethe Thorning Katungi & another* [2014] eKLR the court made the following observations in so far as section 35 is concerned as it relates to spousal rights:

“The effect of section 35(1) is that the children of the deceased are not entitled to access the net intestate estate so long as there is a surviving spouse. The children’s right to the property crystallizes upon the determination of the life interest following the death of the life interest holder or her remarriage. Prior to that, the widow would be entitled to exclusive right over the net estate....The device is designed to safeguard the position of the surviving spouse. The ultimate destination of the net intestate estate where there are surviving children is the children. It is the children who are entitled of right to the property of their deceased parent. However, if the property passes directly to the children, in cases where there is a surviving spouse, he or she is likely to be exposed to destitution. This would particularly be the case where the surviving spouse was wholly dependent in the departed spouse. She would be left without any means of sustenance.”

- 7. In the case at hand besides the spouse the deceased was blessed with sons and daughters under section 29(a) of the *Law of Succession Act*. There entitlement from the estate is provided for in section 35(2) (3) (5) as read with section 38 of the same statute:

- a. The rights of children are encapsulated in sections 35(2) (3) (5) and 38 of the *Law of Succession Act*. Section 35(2) (3) (5) provides as follows:
 - i. ‘35(2) A surviving spouse shall, during the continuation of life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking effect among the surviving child or children, but



that power shall not be exercised by will nor in such manner as to take effect at any future date.

- ii. (3) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or, if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.
- iii. (5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.'

Section 38 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 be equally divided among the surviving children.'

8. The law was further clarified on inheritance of children *In the Matter of the Estate of Mariko Marumbi Kiuri (Deceased)* Nairobi High Court succession cause number 2011 of 1997 (Anga'wa J) (all the children who survive the deceased, including daughters, should inherit the land making up the estate, but the daughters may renounce their right to the land if they so wish) The dispute was on the mode of distribution of the estate between the two houses of the deceased intestate polygamist who died in 1997. The court, after identifying the assets making up the estate and the persons who survived the deceased and entitled to a share in the estate, stated that the estate was to be shared out in accordance with sections 40 and 41 of the [Law of Succession Act](#), all the children of the deceased were to get an equal share in the estate (including daughters), and daughters are entitled to a share unless they renounce their right. The court postponed the decision on apportionment of the estate pending the disclosure of all the children of the deceased, especially the daughters
9. In conclusion therefore I find the justification in adopting the proposed distribution which should be in accordance with section 35, 36, 37 & 38 of the [Law of Succession Act](#). As regards the property over which the surviving spouse holds a life interest it is held by such surviving spouse entrust for the children of the deceased. Having said so, the summons for confirmation shall be in consonant with the following distribution matrix:



Names	Block	Acres
Silivina Jemisto Kipsang	Sergoit Koiwoptaoi Block 10/265	20.23ha
	Eld/mun/block 23(king'ogo)249	7.737 Ha
	Eld/mun/block 28 (Eatec)/75	1.011 Ha
	Elgeyo Border Settlement Scheme/342	8.32 Ha
	Eld/mun/block 21(king'ogo) 2360	0.20 Ha
	Sergoit/koiwoptao Block 10/ Karo/268	20.23 Ha
	LR No. Soy/Soy/navilis/143	40 Acres
Mary Chepkosgei Koima	LR No. Soy/Soy/Navilus/143	5 Acres
Josephine Chirchir Kipsang	LR No. Soy/Soy/Navilus/143	5 Acres
Clement Kiplagat Sang	Tembelio/Elgeyo Border 9 Komba Emit/164	0.045 Ha
	Tembelio/Elgeyo Border 9 Kombaemit/11	7.091 Ha
	Soy/Soy Block 10(Navilus/143)	10 Acres
	Kiplombe/kiplombe Block 10 (Growel) 342	0.036 Ha
	Kiplombe/kiplombe Block 10 (Growel) 74	0.3900 Ha
Joseph Kiprono Sang	Kiplombe/kiplombe Block 10 (Growel) 343	0.036 Ha
	Kiplombe/kiplombe Block 10 (Growel) 81	0.3900 Ha
Margaret Jepkemoi Kipsang	LR No. Outspan Trading Center 15	0.033 Ha



	LR No. Soy/Soy Block 10 Navilus/143	5 Acres
Raphael Kipruto Rotich	LR No. Iten Township/96	0.0372 Ha
	LR No. Sergoit/karuna Block 3 (Tugen)115	11.72 Ha
	Kiplombe/kiplombe Block 10 (Growel) 71	0.7900 Ha
Thomas Cheruiyot Kipsang	Uasin Gishu Elgeyo/border Township/3	0.0567 Ha
	LR No. Soy/Soy Block 10 (Navilus) 143	20 Acres
Flora Jepchumba Rotich	LR No. Soy/Soy Block 10 (Navilus) 143	5 Acres
Everlyne Jepkogei Kipsang	LR No. Soy/Soy Block 10 (Navilus) 143	5 Acres
Jane Jemutai Sang	LR No. Soy/Soy Block 10 (Navilus) 143	5 Acres

10. In the case at bar the deceased has left behind a spouse and children. As a consequence is entitled to the personal and household effects of the deceased absolutely and in addition a residue of the estate of the deceased and a life interest in the intestate estate. This means that the surviving spouse has the right to use and benefit from the estate of the deceased for the course of their lifetime but ownership does not pass to them, and is instead held in trust for the children. My appreciation of the *Law of Succession Act* with specifics on intestate protocol can be mutually interpreted to incorporate the following scenarios:
- A. Giving priority to certain individuals or types of relationship – including priority for spouses or other partners to inherit, priority to provide for children or priority to other groups or individuals who could reasonably expect to inherit in particular circumstances, such as parents when there is no surviving spouse or children
 - B. Maintaining lineage through the bloodline – reflecting a principle of inheritance as something that is ‘passed down’ to those with ‘blood ties’, with inheritance for children being seen as a ‘birthright’, that retains the estate within the family lineage
 - C. Maintaining family stability – ensuring that a group of certain individuals is provided for and can remain together rather with the aim that the estate remains ‘in the immediate family’ or the ‘family unit’
 - D. Minimizing the change and the impact of death – minimizing the impact on the loved ones of the deceased by, where possible, removing uncertainty and maintaining the status quo in respect of the deceased’s responsibilities and family ties



11. The right to inherit as an heir to the estate of the deceased either as a son or daughter is not about the Constitution 2010 as I hear the echoes of the male child in certain communities. The right to own and inherit property traverses the spheres of civil, political, economic, social, customary and cultural rights. Kenyan families ought to inculcate the value of human rights, security, dignity, right to life a shared right by all members of a community whether first degree, second degree or third degree family tree. The sharing of property is inter-generational in order to safeguard the basic survival rights within the scope of economic, social and cultural rights as an entitlement of our humanity.
12. As I pen off the only conundrum in the intestacy judicial matrix is what I find to be lack of clear criterion on the dimensional definition of a life interest reserved for surviving spouses. It is very difficult to set the spouse's entitlement at the right level if it is to high children would be effectively excluded from most intestate estate distribution and again if two low spouses may still not be adequately be provided for as co-creators of the estate wealth.
13. For the reason set out elsewhere in this ruling with regard to summons of confirmation of grant dated 27th June 2023 an order be and is hereby made for a certificate of confirmation of grant being a final decree in matters of probate be issued to Joseph Kiprono Sang and Raphael Kipruto Rotich forthwith. This decision will be incomplete without reminding the administrators their noble roles while discharging the mandate on behalf of the deceased as clearly outlined in the law and precisely articulated in the case of Re Estate of Julius Mimamo (deceased) [2019] eKLR held as follows:
 - “ 58. The personal representative of a deceased person holds a unique position in law. The property of the dead person is vested in them by virtue of section 79 of the *Law of Succession Act*. The effect of section 79, read together with section 82 of the Act, is that the same puts the personal representative on the same footing with an owner of the property, in the sense that he exercises the powers that the legal owner of the property would have exercised were they alive, and suffered the same burden of duties and obligations over the property as the legal owner would have been under were they to be alive. Yet, the property, although vested in them by law, would not be theirs. Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of intestacy. They would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and, indeed, the *Trustee Act*, Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned, and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over estate property when the same vests in the personal representative to hold on behalf of the beneficiaries.
14. It is a vow they have taken if this paragraph in P & A 80 dated 2nd September 2021 is anything to go by that:

I will faithfully administer according to law all the estate which by law devolves upon and vests in his personal representative of the deceased and I will render a just and true account of



such estate whenever required by law so to do and I will when required by this court deliver up thereto the said grant.

15. Drawing from the maxim of the Armchair rule applicable to the last testamentary with God's speed put yourselves in the position of the deceased when he/she armed with resources and knowledge acquired the assets now at your disposal to distribute amongst the surviving heirs to the estate.
16. As a result, the summons for confirmation is meritorious and allowed as proposed by the administrators with no orders as to costs.

SIGNED, AND DELIVERED AT ELDORET THIS 16TH DAY OF JULY 2025

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R. NYAKUNDI

JUDGE

