



**In re Estate of Tapnyobi Maiga (Deceased) (Succession Cause
E025 of 2022) [2025] KEHC 10018 (KLR) (14 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10018 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE E025 OF 2022
JK NG'ARNG'AR, J
JULY 14, 2025**

BETWEEN

PASCALIA CHEPKORIR KILEL APPLICANT

AND

JOSEPH KIBISYO KILEL 1ST RESPONDENT

DAVID KIPLANGAT KILEL 2ND RESPONDENT

RULING

1. The applicant herein made an application for revocation dated 5th March 2025 having initially filed protest to confirmation grant which was not heard.
2. The application is anchored on the principle that the proposed mode of distribution which is claimed to violate the of the deceased, disregards the rights and contributions of the Protestor, and unjustly disinherits her and her children, contrary to the law and equity.
3. The applicant states that she had an active protest dated the 13th of June 2024 and another one dated the 4th of March 2025 and that the grant was confirmed despite the existence of the said affidavits of protest.
4. The Respondent claims that a perusal of her protest reveals that she is an estranged wife to the 1st petitioner herein and is laying claim on her deceased father - in - law's estate under the umbrella of matrimonial property.
5. It is claimed that the applicant herein is a daughter - in - law of the deceased by virtue of being the 1st petitioner's wife and a daughter - in - law and that she is only a beneficiary of the estate of the deceased father - in - law in a situation where she has survived her deceased husband who is a child of the deceased to whose estate the matter relates.
6. It is contended that the applicant is not a beneficiary to the estate herein.



7. It is further claimed that the applicant has not proven any of the grounds contained in Section 76 of the [Law of Succession Act](#) regarding revocation of grants and the instant application is an afterthought and an abuse of court process aimed at delaying the fair distribution of the estate as per our mode of distribution which is inclusive of all the legal beneficiaries who are in agreement and are desirous of obtaining their fair share as per the confirmed grant.

Determination

8. The issues for this Honourable Court's determination are: Whether the Applicant was a dependent of the deceased within the meaning of Section 29 of the [Law of Succession Act](#). Whether the deceased made inter vivos gifts or allocations to the Applicant. Whether the grant unjustly disinherits the Applicant and her children.
9. Section 29(b) of the [Law of Succession Act](#) (Cap 160) defines a dependent to include:
- “...such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, 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;
10. I am guided by the decision applied in the case of *Beatrice Ciamutua Rugamba v Fredrick Nkari Mutegei 5 others 2016*
11. The Protestor, being both a wife of the Respondent and a daughter-in-law of the deceased, and having lived on and derived income from the estate with the knowledge and consent of the deceased, qualifies as a dependent. Also in *In Rono v Rono & another* [2005] eKLR, the Court of Appeal held:
- “The law of succession in Kenya is designed to protect and provide for all dependents. Equity and justice demand that every dependent gets a fair share of the estate.”
12. The Protestor asserts that she was allocated a portion of land by the deceased during her lifetime and constructed a home and business structures thereon.
13. In *Gitau and Two others v Gichuru* [2002] 2 KLR 421, the court held:
- “Where a gift inter vivos is established, such a gift is not available for distribution upon the deceased's demise as it no longer forms part of the estate.” The Protestor's occupation, investment, and long-term use of Plot No Kericho/Silibwet/1385, with the knowledge of other beneficiaries, is clear evidence of a prior allocation or gift inter vivos.
14. Article 27 of the [Constitution](#) of Kenya guarantees equality and freedom from discrimination. Disinheriting the Applicant and her children while allocating her developed share to other siblings would amount to discrimination and violate her constitutional rights. *In Re Estate of M'Mugambi M'Murithi (Deceased)* [2017] eKLR, the court stated:
- “Disinheriting a dependent without justifiable reason is not only unfair but illegal in the face of the [Law of Succession Act](#).”
15. As stated, the estate is vast and includes unoccupied land. Displacing the Protestor and allocate her occupied portion to other beneficiaries inequitable.



16. *In Re Estate of Kabawa Njiru (Deceased)* [2016] eKLR, the court ruled:

“A beneficiary who is already settled and has developed part of the estate should not be displaced unless there are compelling reasons.”

17. The Protestor has demonstrated to be a legal dependent within the meaning of Section 29 of the *Law of Succession Act* who was allocated a portion of the estate during the deceased’s lifetime has developed and as and still is depended on the said portion for her livelihood and that of her children.

18. In light of the foregoing, I am persuaded to allow the protest dated 5th March 2025.

19. Being a family matter each Party to bear their own costs.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 14TH DAY OF JULY, 2025.

.....

HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling delivered in the presence of C. Kosgei for the Applicant and Mugumya for the Petitioner. Siele/Susan (Court Assistants).

