



**In re Estate of Ezekiel Kiprof Birech (Deceased) (Succession Cause
35 of 2018) [2025] KEHC 12821 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12821 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 35 OF 2018
JRA WANANDA, J
SEPTEMBER 19, 2025**

BETWEEN

NAHOR CHEPTILE 1ST PETITIONER

JOHN CHERUIYOT 2ND PETITIONER

AND

SUSAN JEPKEMBOI TANUI OBJECTOR

JUDGMENT

1. Ezekiel Kiprof Birech [hereinafter “the deceased”], was a prominent bishop of the African Inland Church [AIC] well known in Kenya. He died on 30/11/2010 at the age of 84 years. On 23/08/2018, the Petitioners, as his sons, jointly petitioned for Grant of Letters of Administration over his estate. The Petitioners listed 6 survivors/beneficiaries. Listed as assets comprising the estate were fund held in a bank account, and the parcel of land described as Plateau/Baharani Block 1 [Baharani] 164, measuring 41.01 Hectares.
2. There is indication in the Objector’s pleadings that a Grant of Letters of Administration was issued but I have not come across any in the Court file. I also found indication that the Petitioners/Administrators subsequently applied for confirmation of the Grant but similarly, I could not also trace a copy of the Application. For this reason, I instructed my office to request for copies of the Grant of Letters of Administration, and also the Summons for Confirmation of Grant. After some delay, the Advocates for the Petitioner/Administrators, Messrs Cheruiyot Melly & Associates, eventually supplied only a copy of the Summons for Confirmation dated 4/12/2023. Although it refers to a “Temporary” Grant of Letters of Administration, no copy thereof is exhibited to the Summons, and the date of such “Temporary” Grant is also not disclosed.



3. Since neither party supplied a copy of the alleged Grant of Letters of Administration, despite repeated requests, and there being no copy in the Court file, I presume that none has ever been issued in this matter.
4. I note that in the Summons for Confirmation of Grant, apart from the bank account and the parcel of land Plateau/Baharini Block 1 [Baharani] 164, earlier listed in the Petition, a second parcel of land described as Nandi/Kaptel/574, presumably measuring about 50 acres, has been added.
5. However, before the Summons for Confirmation of Grant could be heard, the Objector, by her own Summons dated 3/06/2024, filed through Messrs Rugut & Co. Advocates, applied for Revocation of the alleged Grant. The grounds alleged were basically that the Objector is the widow of a son of the deceased but had been left out in the list of beneficiaries, and that the Petition was filed without her involvement, nor was her consent obtained in filing the same. According to her therefore, the Grant was obtained fraudulently.
6. The Objector, in her Affidavit filed in support of the Summons, deponed that she obtained a Limited Grant for the estate of her late husband, Peter Kipngetch Rop, who was the 1st born child of the deceased. She contended that in the Summons for Confirmation of Grant filed by the Petitioners, only one of her children had been provided for by being allocated 2 acres of the suit land, and that herself and her 2 other children of the deceased had been left out.
7. The Summons for Revocation of Grant was opposed by the Petitioners by way of the Replying Affidavit sworn on 22/10/2024 sworn by the 2nd Petitioner, John Cheuiyot, and filed through Messrs Cheruiyot Melly & Co. Advocates, which law firm had now come on record for the Petitioners. The 1st Petitioner deponed that their late brother, Peter Kipngetch Rop, [the Objector's husband], pre-deceased their father, the deceased herein, and that although the Objector was married to their late brother, their union was not blessed with any children. He stated further that when the Objector got married to his late brother in the year 1970, she already had one daughter, Grace Jephchirchir, from another relationship, and that in 1975, the Objector abandoned the marriage and left her matrimonial home with all her children, who never returned despite pleas from the deceased, Bishop Ezekiel Kiproop Birech. According to him therefore, his late brother did not leave any beneficiaries, and the Objector did not even attend his burial. He contended further that when his late brother died in 1986, the Objector had already moved on with her life conducting herself as a single woman, and having her own children with other men. According to him, the marriage between the Objector and his late brother had irretrievably broken down by desertion of the Objector and she cannot purport to be a widow only for purposes of succession to inherit a man she deserted in their early years of marriage, and never treated as her husband during his lifetime. Further according to him, the Objector was not a dependent of his said brother in the year 2000 when the deceased, Bishop Ezekiel Kiproop Birech died, as she was already gone for 25 years and also did not attend his burial. He however stated that only one Hellen Jeptanui Rop, one of the Objector's children from other relationships, was partly maintained by the deceased, Bishop Ezekiel Kiproop Birech, prior to his death. He thus denied that the Petitioners obtained the Grant by non-disclosure or concealment of material facts as to beneficiaries.
8. He then contended that divorce pertains to the intention and conduct of parties, and if parties in a marriage show an intention not to continue with the marriage, or conduct themselves as unmarried persons, then the same should be treated as such, and also that the law cannot attach obligations upon persons who have decided to part ways but have failed to formalize the separation. In the end, he urged that the Objector therefore stopped being the daughter-in-law of the deceased when she separated from their late brother.



9. The matter was then directed to be canvassed by way of viva voce trial upon which the parties filed Witness Statements and documents.
10. The Objector, in her Statement dated 3/03/2024, reiterated the matters stated in her Affidavit aforesaid and added that she got 3 children [all now adults] with her said late husband, Peter Kipngetich Rop, who died in 1986, and that she wants the estate to be distributed equally among the beneficiaries. She stated further that there was no divorce in their marriage, and that she had tried to negotiate with the Petitioners but they have refused to give her a share of the estate. She then stated that the deceased, Bishop Ezekiel Kiprop Birech, had 8 children, 4 boys and 4 daughters, and that the Petitioners want to give 3 sons large share of the suit land and 3 acres to each of the daughters who have accepted the same.
11. Hellen Jeptanui Rop referred to above, in her Statement also dated 3/03/2024 in support of the Objection, echoed her description as being a daughter of the late Peter Kipngetich Rop, and the Objector being her mother. She basically then reiterated the matters stated by the Objector.
12. The 1st Petitioner, Nahor Cheptile, in his Statement dated 20/03/2025, basically also reiterated the matters already deponed to in the 2nd Petitioner's Replying Affidavit.
13. The matter then proceeded to viva voce trial. The Objector called 2 witnesses while the Petitioner called 1. All the witnesses testified before me on 24/03/2025.

Objector's testimony

14. PW1 was the Objector, Susan Jepkemboi Tanui. Led by her Counsel, Mr. Rugut, she stated that she is a retired teacher and lives in Mutwot. She then adopted her Statement and produced the 6 documents in her bundle. Under cross-examination by Ms. Cherop, she stated that her late husband was buried at Kaptei and insisted that she attended the burial, although she agreed that at the time of her husband's death, she was still living in Mutwot.
15. She stated further that she was living with her late husband before his death but that his parents used to live in Kaptei, and that she had a "small" disagreement with her late husband and so she stayed in Mutwot while her late husband lived in Kaptei. She then conceded that they separated in 1976 and since then, she has never returned to the Kaptei home, and also conceded that she never again lived with her late husband since 1976. She insisted that she also attended the burial of the deceased, her father-in-law, and contended that the family has not been inviting her for family meetings. When asked to produce evidence that her late husband is the father to her children, she responded that she had such evidence but she had not brought it to Court. Regarding the dates of birth for her children, she stated that the 1st was born in 1971, 2nd in 1973 and 3rd born in 1976, and that she has been living with all 3 in Mutwot. She however conceded that she had not produced any Certificates of Birth. She contended further that between 1976 and 1986, she and her late husband got back together and he went back and lived with her in Mutwot and were living together when he died. She stated that her late husband died in a road accident on his way back from Nairobi where he had gone for treatment, and was no longer living in Kaptei by then, and that he had lost his job and so it is her [the Objector] who used to provide for the family. She therefore denied that they were surviving on the property of the deceased herein, Bishop Ezekiel Kiprop Birech. In re-examination, she maintained that she reconciled with her late husband and resumed living together, and that there was no issue about the paternity of her children, and insisted that the deceased, her father-in-law, had not shared out his estate.
16. PW2 was the said Hellen Jeptanui Rop. She, too, adopted her Statement. In cross-examination, she stated that she was born in 1973 and she is the 2nd born child. She stated that she was brought up in Mutwot although she was born in Kaptei from where they relocated, although his father, the said Peter



Kipngetch Rop, was buried in Kaptei. She stated that during her youth, the deceased, Bishop Ezekiel Kiprof Birech, her grandfather, used to live in Nairobi so her father, Peter Kipngetch Rop, used to go to Nairobi very often.

Petitioners' testimony

17. DW1 was the 2nd Petitioner, John Kiplagat Cheruiyot who also adopted his Witness Statement. Under cross-examination by Mr. Rugut, he reiterated that although his late brother, Peter Kipngetch Rop, was married to the Objector, her children were not from the union as the Objector brought them later. He insisted that his brother separated from the Objector, and stated that his brother died from an accident that took place in Mutwot and he was a pedestrian. He also maintained that he included his brother's children in the distribution since he gave 4 acres to one Agnes, and that this is in the Summons for Confirmation.
18. He agreed that the property situated in Nandi-Kaptei is 50 acres and the one in Plateau-Uasin Gishu is 95 acres. She stated that the family, in deciding on the mode of distribution, considered that the Objector had been away for about 40 years, and that he proposes to give the Objector 4 acres. Regarding the Mutwot property where the Objector lives, he stated that it was purchased by the Objector on her own after she deserted, or separated from, his brother. In re-examination, he reiterated that the Objector came into the marriage with her 1st born child, Chepchirchir, and also reiterated that they have included one child in the distribution, namely, Hellen, on behalf of her mother, the Objector.
19. DW2 was the 1st Petitioner, Nahor Cheptile who stated that he is the 7th born child of the deceased, and who then adopted his Witness Statement. Under cross-examination by Mr. Rugut, he reiterated that his late brother never lived with his family, and stated that the mode of distribution they adopted was in accordance with what their parents used to say. He then recited the mode of distribution set out in the Summons for Confirmation.

Written Submissions

20. The trial was then closed and the parties filed Submissions. The Objector filed the Submissions dated 1/04/2025, while the Petitioners filed the Submissions dated 4/04/2025.

Objector's Submissions

21. Counsel for the Objector pointed out that the Objector produced copies of identity cards for her children, a Limited Grant allowing her to represent the estate of her late husband, and the Chief's letter indicating the Objector to be the widow of the late Peter Kipngetch Rop, and minutes of family meeting indicating that the Objector is a member of the family of the deceased, Bishop Ezekiel Kiprof Birech. He also pointed out that the Objector produced copies of Certificates of Search indicating the parcel of land in Kaptei, Nandi County measuring 50 acres, and the parcel of land in Plateau Kipkabus, Baharini measuring 101 acres, as both belonging to the deceased. According to him therefore, the estate has total land aggregating to approximately 150 acres, and that all the children of the deceased, except the Objector's family, were given shares in the proposed distribution yet the Petitioners have not proven that the Objector is not a beneficiary in accordance with Section 29 of the *Law of Succession Act*. Counsel urged that based on the said provision, the Objector qualifies to inherit from her husband's share, and her children too, as dependents since they were accepted and maintained by their father. On the Petitioners' contention that the Objector came into the marriage with one child, he responded that the late Peter Kipngetch Kiprof accepted to marry the Objector with her child, and supported her thus she cannot now be rejected.



22. Counsel also observed that the 2nd Petitioner testified that they gave a share of 4 acres to Hellen Rop, daughter to the Objector, but the Petitioners were now changing that as being to the Objector. He observed further that the 2nd Petitioner also conceded that there was no divorce or legal separation, but the Objector was not given any share. He also recited the mode of distribution the 2nd Petitioner alleged to have been adopted by the family. According to him, the Petitioners were not able to prove that the Objector was not a wife and “dependent” since the law recognizes that children of the deceased accepted at the time of marriage, and the child brought by the wife, automatically become “dependents”. He urged further that the other children have not been contested as pertains to their paternity. He also recited the mode of distribution the 1st Petitioner alleged to have been adopted by the family, and which he pointed out, is different from the one alleged by the 2nd Petitioner. In the end, he urged the Court, to avoid discrimination, to distribute the estate the estate fairly and ensure that justice is done to all the dependents. He cited the case of *Kisumu HC Succession Cause No. E012 of 2023 - In the estate of Dalmasius Okello Ong’are alias Dalmas Otengo; Relex Ogola & 5 Others v Meda Okello & 4 Others* [2024] KEHC 3740 [KLR].

Petitioners’ Submissions

23. Counsel for the Petitioners, on her part, in respect to the prayer for revocation of grant pointed out that the Objector’s Application is not a Protest to confirmation of Grant. On the principles applicable in dealing with applications for Revocation of Grant, he cited the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016]. He then contended that the late Peter Kipngetich Rop having predeceased his father, the deceased herein, and thus not surviving him, is not a beneficiary of his father, and that, as was held in the case of *Eddah Wangu & Another v Sacilia Magwi Kivutiu [Deceased] substituted with Ribereta Ngai* [2021] eKLR, what would have been his share in the estate would benefit his widow who will have a life interest therein which reverses to the estate upon her death or remarriage, or his children. He however put the rider that whether or not the late Peter Kipngetich Rop left behind a wife and/or children is a question of fact. He submitted that to the best of the Petitioners’ knowledge, the children do not belong to their late brother, and that the Objector did not provide any proof that indeed the children belong to the Petitioners’ late brother, and thus beneficiaries to inherit from him. He cited the case of *Gatirau Peter Munya v Dickson Mwenda Kithinji & 3 Others* [2014] eKLR on burden of proof. He then urged that the least the Objector would have done is to provide Certificates of Birth for the children. He also reiterated that a widow only enjoys life interest in the residual estate, and thus the late Peter Kipngetich Rop died leaving no beneficiaries.
24. In respect to the burden of proving that the children were the biological children of the late Peter Kipngetich Rop, Counsel cited the case of *FWK [Guardian ad Litem and SN Minors] v MWM & Another [Succession Cause E012 of 2021 [2022] KEHC 16610 [KLR] [20 December 2022] [Ruling]*, and also the case of *EMM v IGM & Another* [2014] eKLR. Regarding the allegation of “widowhood”, she submitted that the Objector left her husband only 5 years into the marriage and relocated, and that even at the time of her husband’s death, she was not dependent upon the estate of her father-in-law, that the Objector even failed to attend the burial of their late brother, and that the Objector conceded that she has never been involved in family meetings since she left her home in 1975. According to Counsel therefore, the Objector had completely cut ties with the family, and to date she has never returned. She pointed out the Objector’s own testimony that her late husband never used to provide for her or her children during his alleged periodic visits, and that it is her who would provide for him whenever he visited. She thus submitted that, whereas it is disputed whether the husband used to visit the Objector after she left him, it is clear that she was not maintained by him or the estate of the deceased. She cited the case of *Jecinter Njoki Okoth [Deceased] [2020] eKLR*.



25. She submitted that divorce proceedings are only to document parties' intentions when they are married and do not intend to continue living as husband and wife, that the law only gives effect to the parties' intentions, and in the present case, the Objector neither had any meaningful interactions with the husband after she abandoned him, and has only come back to claim inheritance 49 years later. According to her therefore, the Objector was no longer a "wife", and not a daughter-in-law. In respect to the Objector's alleged "dependency", Counsel submitted that the Objector testified that after she left her husband and her matrimonial home in Kaptei, which forms part of the estate herein, she purchased her own land in Muwot. In the end, she therefore contended that the Objector does not have locus standi to raise any claim in the estate herein, and has also failed to prove grounds for revocation of Grant.

Determination

26. There being no evidence of any Grant of Letters of Administration having been issued in this matter, the issues that arise for determination can be summarised as follows:

- i. Whether the Objector, a "wife" to a late son of the deceased, thus a daughter-in-law of the deceased, and who separated from her husband before his death, is entitled to inherit from the estate of the deceased, who is her father-in-law, together with her children, and therefore, whether the Petitioners concealed this fact when they applied for the Grant of Letters of Administration herein.
- ii. Who should be appointed the Administrator of the estate.

27. The fate of the validity of a claim by a daughter-in-law to inherit as a beneficiary in the estate of her father-in-law now been settled. The position is that the wording of Section 29 of the Law of Succession Act does not include "daughters-in-law" of a deceased as being among beneficiaries of his estate. Daughters-in-law are not children of the deceased and therefore they do not fall within the category of the phrase "children of the deceased" as used in the said provision. A daughter-in-law can only therefore make a claim, not in her own right as a direct beneficiary, but as a legal representative of the estate of the deceased son, her husband.

28. Regarding this issue, Odunga J [as he then was], in the case of In Re Estate of Catherine Nduku Malinda [Deceased] [2020] eKLR, held as follows:

"176. In my view a daughter in law may lay a claim as a beneficiary not in her own right but as a legal representative of a deceased son. In other words, the legal representatives of a deceased's dependants may properly stake a claim to the estate of a deceased person on behalf of legally recognized dependants. However, that is not the Protestor's claim in these proceedings. My view is reinforced by the decision in the case of Re Estate of Munyua Mbeke [Deceased] [2015]"

29. Similarly, W. Musyoka J, in the case of In Re Estate of Cecilia Wanjiru Kibicho[Deceased] [2016] eKLR, stated that:

"20. I should also add that a daughter-in-law is not listed in section 29[b] of the Act as being among persons who may move the court under section 26 for reasonable provision and who the court may declare to be a dependant.

.....



26. The applicant in the confirmation application is a daughter-in-law of the deceased, by dint of her having had married the deceased's son, She is not a blood relative of the deceased. She, therefore, does not qualify to be among the survivors of the deceased as defined in Part V. She is, consequently, not entitled to a share in the deceased's estate. However, her children with the deceased's son would be blood relatives of the deceased in their capacity as grandchildren of the dead.

.....

28. However, in view of what I have stated with respect to the applicant, the fact that the protestor had been married to the deceased's son may not be a relevant fact in determining whether she was a survivor of the deceased in terms of Part V of the Act. She was not a blood relative of the deceased, and the fact of having been a spouse of the deceased's son does not make her a survivor of the deceased. She is therefore not entitled to a share in her estate. However, her biological children with the deceased qualify automatically to be survivors of the deceased, by virtue of being the biological grandchildren of the deceased.”

30. W. Musyoka J, again, in the case of *In re Estate of Francis Andachila Luta [Deceased]* [Succession Cause 875 of 2012] [2022] KEHC 16900 [KLR] [23 December 2022] [Judgment], went even further by stating as follows:

“29. One of the sons of the deceased is dead, and that is to say the husband of the protestor. I have mentioned section 41 above, in connection with how the share of a dead child of a deceased parent is to be handled. When a child of the deceased dies, and is survived by offspring, their entitlement is not extinguished or diminished. It should go to their offspring or to his/her estate. Section 41 says that the offspring step into the shoes of their dead parent, and take the share that is due to such dead parent. That share should be equal to the shares taken by the surviving children of the deceased. More importantly, section 41 talks of the offspring of the dead child of the deceased and not the spouse of the dead child. In intestate succession, the estate passes to the kindred of the deceased, that is to say the blood relatives of the deceased, except for the surviving spouse of the deceased. In-laws, be they parents-in-laws or children-in-laws, are not blood relatives of their children-in-law or father-in-law. They have no right or entitlement to the intestate estate of their dead in-law. The *Law of Succession Act* does not recognize them or their rights. Indeed, the *Law of Succession Act* does not even mention them. They can only claim on behalf of others. A daughter-in-law, for example, can only claim the share due to her late husband, otherwise she has no direct right. For her to access the share due to her late husband, she has to obtain representation to his estate first, by way of a grant of letters of administration intestate. Pursuing the interest due to her late husband without first obtaining the grant in his estate would amount to intermeddling, and her activities would run afoul of section 45 of the *Law of Succession Act*.

30. The protestor is not a child of the deceased. She is a daughter-in-law. In terms of rights or entitlement to a share in the estate, she had none at all. She is not in the same league with the applicant nor the son, Andrew Muchenditsi. Nor any



of the other daughters of the deceased. She has zero right or entitlement. It is her children, with her late husband, who have right or entitlement to a share of the estate, by dint of section 41, by way of stepping into the shoes of their late father. The protestor can only agitate a claim on behalf of her late husband, and she can only agitate the same upon obtaining a grant of representation to his estate, for it only that grant that would clothe her with authority to speak on behalf of her husband, speaking for her husband without obtaining a grant to his estate amounts to intermeddling into his estate, which is a criminal offence under section 45[2] of the *Law of Succession Act*. The mere fact that she is his surviving spouse clothes her with no authority whatsoever to claim that which accrues to her late husband. The protestor has not provided any proof that she holds such a grant with respect to the estate of her husband.”

31. I fully agree and associate myself with the above sentiments. I, too, find that the Objector, claiming as a daughter-in-law, is so far removed from, and is too remote to the estate of the deceased herein. The law does not recognize a daughter-in-law to be a direct beneficiary in the estate of her father-in-law. As aforesaid, she can only sustain a claim, as a legal representative, on behalf of her children since it is only they, the children, who are permitted in law, to “step into” the position of their late father, and claim his share of the inheritance.
32. Fortunately, in this case, the Objector has exhibited a copy of the Limited Grant Ad Litem which she claims to have obtained on 24/04/2024 in Eldoret Chief Magistrate’s Court Probate and Administration Cause No. E073 of 2014 authorizing her to represent the estate of her late husband, the late Peter Kipngetich Rop. There being no challenge raised on the authenticity of the copy exhibited, I accept it as so.
33. Regarding inheritance by the Objector’s children, as grand-children of the deceased, the first port of call will be Section 41 of the *Law of Succession Act*, which provides as follows:

“ 41. Property devolving upon child to be held in trust

Where reference is made in this Act to the “net intestate estate”, or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.” [emphasis mine].

34. The question of whether grand-children can inherit from their grandfather’s estate was addressed by the Court of Appeal in the case of Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others [2014] eKLR in which it was held as follows:

“Although Section 35 and 38 of the *Law of Succession Act* is silent on the fate of surviving grand children whose parents predeceased the deceased, the rate of substitution of a grandchild for his/her parent in all cases of intestate known as the principle of representation is applicable. The Law is section 41. If a child of the intestate has pre-deceased the intestate then that child’s issue alive or in centre as mere on that date of the intestate’s death will take in equal shares per stirpes contingent on attaining the age of majority. Per stirpes means that



the issue of a deceased child of the intestate take between them the share their parents would have taken had the parent been alive at the intestate's death”.

35. On the same question, Hon. W. Musyoka J, in the case of *Re Estate of Wahome Njoki Wakagoto* [2013] eKLR, also held as follows:

“Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

36. Similarly, H.K. Chemitei J in the case of *In re Estate of Hellen Wangari Wathiai [Deceased]* [2021] eKLR, found as follows:

“52. The evidence on record suggest that the Applicant herein brought these proceedings on behalf of his father; Abdi Ibrahim Hassan [deceased] who was the beneficiary to his father's estate. The Applicant's interest emanates from the fact that his father was a beneficiary to the suit property, thus the Applicant being dependent to his father Abdi Ibrahim Ibrahim's estate within the provisions of Section 29 of the *Law of succession Act*, he acquires an interest in his grandfather's estate; the suit property by virtue of his father's share. Therefore, in the court's view, the instant Application is properly before this court.

53. In my humble view, therefore, it is clear that the applicant had the locus standi and he was rightfully before the court to fight for the interests of the estate of his late father with regard to the deceased grandmother's estate. The fact that he was a grandchild of the deceased taken care of by his deceased grandmother prior to her death and a dependant of his father's estate has not been disputed.

54. This therefore supports the fact that he and his sister acquired interest over the deceased's grandmother's estate and thus he had the necessary locus standi.”

37. It is therefore evident that Section 41 of the *Law of Succession Act* provides that where one of the children of the deceased is himself/herself deceased, and such deceased child is survived by a child or children of his/her own, then the share due to him/her ought to devolve to his/her said child, and where they are more than one, the children would take equally.

38. Regarding the definition of a “child” or “children” of a deceased person eligible to inherit from his estate, the *Law of Succession Act* in Section 3[2], contains the following explanations in its interpretation provision:

“[2] References in this Act to “child” or “children” shall include a child conceived but not yet born [as long as that child is subsequently born alive] and, in relation to a female person, any child born to her out of wedlock, and, in relation to a male person, any child whom he has expressly recognized or in



fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility.

[3] A child born to a female person out of wedlock, and a child as defined by subsection [2] as the child of a male person, shall have relationship to other persons through her or him as though the child had been born to her or him in wedlock."

39. On the definition of a "dependent", the relevant provisions of Section 29 of the [Law of Succession Act](#) are then premised as follows:

"[a] 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;

[b] such of the deceased's parents, step-parents, grandparents, 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; and

[c]

40. Regarding the provisions of the [Law of Succession Act](#) guiding the handling of a claim of paternity of a child for purposes of inheritance from the estate of a deceased person, the Court of Appeal, in the case of *E.M.M v I.G.M & Another* [2014] eKLR, stated as follows:

"The real issue before us on this appeal is whether the appellant proved before the High Court on a balance of probabilities that he is a child of the deceased. Under section 29[a] of the [Law of Succession Act](#), if the appellant is able to prove that he is a biological child of the deceased, he would be a dependant of the deceased without having to prove that he was maintained by the deceased immediately prior to his death.

Independent of being a biological child of the deceased, and therefore an automatic dependant, the appellant would also qualify as a dependant of the deceased if he can prove that he is a child whom the deceased had taken into his family as his own, and who was being maintained by the deceased immediately prior to his death. Unlike the dependant under section 29[a], the dependant under section 29[b] has to establish that the deceased had taken him or her into his family as his own child and that he or she was being maintained by the deceased immediately prior to his death."

41. It is therefore clear that a person claiming under Section 29[a] of the [Law of Succession Act](#), does not need to also prove that he/she was being maintained by the deceased prior to his death. However, unlike Section 29[a], proof of "dependency" is a condition precedent to the exercise of the Court's powers under Section 29[b].

42. In respect to the above, Mabeya J, in the case of *Beatrice Ciamutua Rugamba. v. Fredrick Nkari Mutegi & 5 Others*, 2016 eKLR, held as follows:

"From the foregoing, a dependent under section 29 [b] and [c] must prove that he/she was being maintained by the deceased immediately prior to his demise. It is not the mere relationship that matters, but proof of dependency."



43. The question now is whether the Objector's children have been proved, on a balance of probabilities, to be indeed "children" of the late Peter Kipngetich Rop, the late son of the deceased herein, Bishop Ezekiel Kiprop Birech.
44. In this case, the Objector's marriage to the late Peter Kipngetich Rop, and their subsequent informal separation has not been refuted by the Petitioners. They, in fact, acknowledged these facts. The Objector, as aforesaid, produced copies of her 3 children's National Identity Cards, a Limited Grant Ad Litem authorizing her to represent the estate of the late Peter Kipngetich Rop, and also the Chief's letter indicating her to be the widow of the late Peter Kipngetich Rop, She also produced minutes of a family meeting indicating that the family of the late Peter Kipngetich Rop, was acknowledged by the larger family of the deceased as being in existence.
45. From the testimonies on record, there is really no dispute that the Objector got married to the late Peter Kipngetich Rop, around 1970 but they informally separated around 1975-1976 after some disagreements and were still living apart even when the late Peter Kipngetich Rop died about 10 years later in 1986. This account has also not been challenged or controverted. The Objector also testified that during the marriage, they were blessed with 3 children born around 1971, 1973 and 1976, respectively. These alleged dates of birth were also not challenged and definitely fall within the period when the Objector alleges to have been living with the late Peter Kipngetich Rop as her husband. Although the Objector seems to acknowledge that she never had any further contact with the family of the deceased since her separation around 1976, she claims that the late Peter Kipngetich Rop used to regularly visit her and the children.
46. As correctly observed by the Objector's Counsel, I also note that the 2nd Petitioner testified that they gave a share of 4 acres to Hellen Rop, a daughter to the Objector, and also that there was no divorce or legal separation between the Objector and their late brother.
47. From the above narration, I find that nothing that could disqualify the Objector's children from inheriting the share due to the late Peter Kipngetich Rop as their presumed father has been presented as there is no evidence whatsoever that they were not accepted by the late Peter Kipngetich Rop as being his children. Regarding the contention that the Objector came into the marriage with one child, there is also no evidence, or even any allegation for that matter, that the late Peter Kipngetich Kiprop at any time rejected that particular child when she married the Objector. I thus agree with Counsel's submissions that the law recognizes that children brought into a marriage by the wife and accepted by her husband at the time of marriage, automatically become the "children" of that husband, and/or his "dependents" for purposes of the law of inheritance. The issue of such children's paternity cannot therefore be brought up after the death of the husband to disinherit the children yet such issues were never raised during his lifetime. The fact that, in this case, contact between the Objector and her children, on one part, and the family of the deceased, on the other part, may have been "cut-off" or was non-existent since 1976, and that the Objector only re-appeared after the death of her husband in 1986, does not change the fact that the Objector's children were at not point, at least from the evidence on record, rejected or denied by the late Peter Kipngetich Kiprop at being his own. In any case, his disagreements with the Objector cannot be imported to the children.
48. It is not in dispute that the estate herein comprises of two parcels of land, namely, Plateau/Baharini Block 1 [Baharani] 164, and Nandi/Kaptel/574, aggregating to approximately 150 acres. There is also a hefty bank account. There is therefore enough for the beneficiaries, including the estate of the late Peter Kipngetich Kiprop, to share.



49. On the question of who to now appoint as Administrator or Administrators, there being no evidence that any Grant of Letters of Administration has so far been issued in this matter, the order of preference or priority to be applied is Section 66 of the Law of Succession Act which provides as follows:

“When a deceased has died intestate, the court shall save as otherwise expressly provided, have a final discretion, as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference:

- 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;

50. Under Section 66 therefore, the Court has the final discretion as to whom a Grant shall, in the best interests of all concerned, be made. As is also apparent, the order of preference set out above is only a guide and the Court retains a discretion thereon. Priority is thus given to surviving spouses, followed by the other beneficiaries entitled in intestacy as set out in Part V of the Act, then the Public Trustee and creditors. The persons entitled in intestacy according to Part V, in their order of preference, include children [and grandchildren where their own parents are dead], parents, siblings, half-siblings and other relatives who are in the nearest degree of consanguinity up to and including the sixth degree.

51. In this case, the deceased did not leave behind a widow, and his children are therefore the persons eligible to be appointed Administrators of the estate of the deceased. The Petitioners are such children. The Objector, on her part, is only a daughter-in-law, not a child of the deceased, and as aforesaid, she is not even eligible to inherit as one of the beneficiaries. Her children, as aforesaid, although only grand-children, are eligible to inherit as they are allowed to “step into” their father’s shoes. In the circumstances, I will appoint the Petitioners and one adult child of the Objector to serve as joint Administrators.

Final Orders

52. The upshot of my findings is that the Summons dated 3/06/2024 only partially succeeds, and I rule and order as follows:

- i. There being no evidence that a Grant of Letters of Administration has ever been issued in this matter, and presuming that to be the correct position, and appreciating that notice of filing of the Petition had already been published in the Kenya Gazette dated 21/08/2020, I now appoint as 3 joint Administrators, the 1st and 2nd Petitioners, Nahor Cheptile and John Cheruiyot, and one adult child of the Objector, to be nominated by the Objector’s family.
- ii. It is hereby declared that the Objector, being an alleged daughter-in-law, is not eligible to directly inherit from the estate of the deceased herein, Bishop Ezekiel Kiprop Rop. However, being the legal representative of the late Peter Kipngetich Rop under a Limited Grant Ad Litem, she possesses the *locus standi* to lodge a claim on behalf of the estate of the late Peter Kipngetich Rop, a late son of the deceased herein in regard to whom the Objector claims to be the widow.



- iii. It is then also declared that there being no sufficient evidence to disprove or controvert the claim that the Objector's children are indeed "*children*" of the late Peter Kipnetich Rop, a son of the deceased, the Objector's children are eligible to "step into the shoes" of the late Peter Kipnetich Rop, as their presumed father, and take up the inheritance from the estate of the deceased herein, Bishop Ezekiel Kiprop Birech, which would have devolved to the late Peter Kipnetich Rop, were he alive.
- iv. For avoidance of doubt therefore, in distribution of the estate of the deceased, Bishop Ezekiel Kiprop Birech, the estate of his late son, Peter Kipnetich Rop, shall be also included and provided for.
- v. With the Court having now ruled as above, a date shall now be fixed for the Objector's family to present the name of its proposed co-Administrator for adoption by the Court, and for the parties to take directions on the Summons for Confirmation of Grant, or to proceed for Court Annexed Mediation on the issue of distribution.
- vi. Each party shall bear his/her own costs of the Application herein.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 19TH DAY OF SEPTEMBER 2025.

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WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Mr. Rugut for the Objector

Ms. Cherop for the Petitioners

Court Assistant: Brian Kimathi

