



In re Estate of John Kipkemoi Arap Miringo (Deceased) (Succession Cause 586 of 2005) [2024] KEHC 129 (KLR) (15 January 2024) (Ruling)

Neutral citation: [2024] KEHC 129 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 586 OF 2005
SM MOHOCHI, J
JANUARY 15, 2024
IN THE MATTER OF THE ESTATE OF JOHN KIPKEMOI ARAP
MIRINGO (DECEASED)**

BETWEEN

MICHAEL LANGAT OBJECTOR

AND

NAOMI WAMBUI MIRIGO ADMINISTRATOR

RULING

1. This Succession Cause relates to estate of John Kipkemoi Arap Miringo (the deceased). The deceased died (23) twenty-three years ago on 6th January, 2000.
2. On 1st November, 2005 Naomi Wambui Mirigo the surviving widow filed a Petition for letters of administration of the estate of the deceased who died intestate and set out the following as the survivors of the deceased: Naomi Wambui Mirigo (Widow 2nd House), David Langat- 43 year (Son 2nd House), Esther Milgo- 41 years(Daughter 2nd House), Joseph Langat – 39 years (Son 2nd House), Ruth Milgo 35 years(Daughter 2nd House),and Michael Langat(Son 1st House).
3. Two Children of the deceased, Ms Mary Cherotich Ngeno (Daughter 1st House) and Mary Cherotich (Daughter 2nd House), were never formally acknowledged and were never included in the petition.
4. On Petitioning for letter of Administration intestate only one asset commonly referred to as Solai/ Ndungiri Block 1/257 was declared as forming part of the estate of the deceased.
5. The grant was confirmed on the 13th December 2018 and subsequently rectified on the 6th of February 2019 wherein the estate of the deceased Solai/Ndungiri Block 1/257 was to be distributed to David Langat 5 acres, Joseph Langat Milgo 5 Acres, Michael Lagat-Objector 5 Acres, Esther Chepkemoi Milgo 5 Acres, and Ruth Chepkoech Milgo 4 Acres.



6. The Objector-Applicant contends that he is entitled to 12 acres out of 24 acres according to Kalenjin customary law where the deceased property is to be divided equally to the two widows of the deceased and that thereafter offspring of each widow, would get their share from their respective mothers' half. And that, the Rectified grant as confirmed, should be revoked for not having been involved during petitioning and that not all beneficiaries were provided for and that the proceedings were conducted in secrecy.
7. This Court had on the 25th April 2023, directed that the Summons for revocation of confirmed grant shall heard by way of "viva voce evidence" with witnesses tendering oral evidence in addition to the filed sworn affidavits. This court equally stayed and set aside measures undertaken towards transmission pursuant to the confirmed grant of probate dated 6th February 2019.
8. The Objector-Applicant was equally restrained from prohibiting and or interfering with the use of the Sacre parcels the other beneficiaries control.

Objector/Applicant's Case and Submissions

9. The Summons for Revocation of Confirmed Grant dated 18th March 2023 was filed pursuant to Section(s) 47 and 76(a) and (c) of the Law of Succession Act and Rule 17 (2) of the Probate and Administration Rules, and sought the following orders and reliefs;
 - i. Spent
 - ii. Spent
 - iii. This Honourable Court be pleased to nullify and revoke the grant of the letter of Administration (intestate) issued on 6th February 2019 as confirmed in the matter of John Kipkemoi Arap Miringo who died on 6th January 2000.
 - iv. That this Honourable Court be pleased to issue a temporary injunction restraining the petitioner/Respondent herein from transferring, intermeddling, alienating, sub-dividing all that parcel of land known as Solai/Ndungiri Block 1/257 or dealing with the entire Estate of the deceased John Kipkemoi Arap Miringo in any manner whatsoever pending the hearing and determination of this application inter-parties or until further of this Orders of this Court.
 - v. Costs to be borne by Naomi Wambui Miringo.
10. The Objector proceedings are premised upon the fact that, Michael Milgothe Objector-Applicant is one of the beneficiaries to the estate of the deceased who had 2 wives namely; Leah Cheptanui Milgo-Deceased and Naomi Wambui Mirigo the Administrator-Respondent.
11. That the Estate has not been distributed in accordance to Kalenjin Customary Law and the 1st house has been excluded with some beneficiaries and dependants being excluded in the Distribution and her sister Mary Cherotich the daughter to the deceased was excluded; the proceedings were conducted in secrecy. The objector was been invited to attend Court; The D.C is seriously biased against the 1st house and she does not even want to hear them and is using the police to intimidate and harass them; That the Administrator-Respondent is using the police and the County Commissioner Nakuru North to intimidate objector and that the D.C is purporting to distribute the Estate without involving all the parties.
12. The Objector, admits to receiving a notice by the Deputy County Commissioner Nakuru North Sub-County, to attend a subdivision meeting on the 14th March 2022 where he was given 1 day notice, the land was sub-divided and that the proceedings are intended to evict him.



13. The Objector testified and adopted his sworn affidavit dated 18th March 2022, regurgitating the fact that, he and his sister Mary , were from the 1st House and that, the deceased's sole asset should be divided equally amongst the two houses that had previously shared the same on 50:50 basis. That the Administrator was married into the subsisting asset of the deceased.
14. That the Land in Kericho belonged to the Objector's grand father and not the deceased and had no title deed and he prayed that his application be allowed and the estate be distributed afresh in a fair manner.
15. The objector called his sister as a witness, Ms Mary Cherotich Ngeno (Daughter 1st House) who relied on her sworn further replying Affidavit dated 26th July 2023 and testified that she was married, over 60 years old, that her deceased father had an intention to split Solai/Ndungiri Block 1/257 into two equal parcels for each of the deceased houses, that the will allegedly produced was fraudulent, that the Administrator failed to include her as a beneficiary together with the Administrator's daughter Mary Njeri.
16. The witness further renounced her interests in the assets of the deceased in advantage to the Objector.

Administrator-Respondent's Case

17. The Administrator in "pro se" representation, has opposed the Application by filing a sworn affidavit dated 6th April 2022 together with a written statement by one George Opondo Odalo a retired chief Dungiri Sub-location Kitur Village- Saolasi Location dated 17th May 2022, urging its dismissal, she contends that,
 - i. The Deceased only asset has been sub-divided according to the Will of the deceased.
 - ii. That the Objector's Deceased mother had another property Ainamoi Boywek 9/Block 3 Gate Kayese in kericho county where he the Objector was the only beneficiary.
 - iii. That, the Kalenjin customary law is converted as proscribed in the succession Act and that all subject beneficiaries to the estate of the deceased have been provided for as per the written will and that the objector has been and is harassing and intimidating the Administrator and 2nd House and has all along been un-cooperative as to the conclusion of this probate and
 - iv. That for nineteen (19) years from the year 2000 to the year 2019 the Objector never moved court and had to await the confirmation of the grant to derail the process taking advantage of the advanced age of the Administrator.
18. The Statement by George Opondo Odalo dated 17th May 2022 and affidavit dated 6th April 2022, purports to introduce a written will of the deceased dated 26th December 1997. The Said will does not disclose from whence it was prepared and is unwitnessed and is purportedly signed by the deceased only. George Opondo Odalo was never called to offer his *viva voce* evidence.
19. The Administrator admitted leaving out two beneficiaries whom according to her and the allegedly produced will, were married daughters of the deceased at the time and had their own land.
20. That she and her children, worked picking coffee to pay for the Acquisition of the deceased land Solai/ Ndungiri Block 1/257.
21. She admitted not involving the Objector when petitioning for the confirmed grant of letters of administration intestate.
22. She claimed that, she had been fair to the Objector who she had given 3 acres. And urged the court to allow the distribution as per the attached written will.



23. The Administrator never complied with the court's direction(s) and file his written submissions as directed by the court.

Analysis & Determination

24. I have considered evidence adduced, pleadings and submissions filed. There is no dispute that the deceased left behind 2 houses, a widow (the Administrator) and seven (7) children two (2) of which were from the 1st House.
25. There is also no dispute that, the deceased left behind one parcel of land; measuring approximately 24 acres being Solai/Ndungiri Block 1/257.
26. What I consider to be in issue is, the mode of distribution of the deceased's property. The Objector's proposal is for him to inherit 50% of parcel Solai/Ndungiri Block 1/257 according to Kalenjin Customary Law.
27. This court is of the considered view that the only issue at hand is if the Objector has made out a case for revocation of grant and the mode of distribution of the estate of the deceased.
28. This Probate and Administration was initiated pursuant to section 34 of the *Law of Succession Act*, that the deceased died without leaving a written will, and that the belated attempt at presenting the Will is irregular and illegal and that the court is of the opinion that the alleged written will is voidable and is prima facie a nullity.
29. Its production by the Administrator is an afterthought, and the said alleged will is thus disallowed in these proceedings and is of no consequence. The Land in Kericho has not been shown to belong to the deceased and as such does not form part of the estate of the deceased.
30. Section 38 of the *Law of Succession Act* provides that,
- “Where intestate has left a surviving child or children but no spouse 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.
31. In a case such as of this nature where the deceased died intestate and was a polygamously survived by one widow and children the anchor on distribution of his estate is Section 40 of the *Law of Succession Act* which primarily provides as follows;
- “(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate, shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.
- (2) The distribution of the personal and household effects and the residue of the net interest within each house shall then be in accordance with the rules set out in sections 35 to 38”
32. The basic scheme is in line with the principles expounded in the following cases *Rono v Rono* Civil Appeal No 66 of 2002, where Waki JA stated inter alia that;—“ More importantly, section 40 of the Act which applies to the estate makes provision for distribution of the net estate to the “houses according to



the number of children in each house, but also adding any wife surviving the deceased as an additional unit to the number of children.” A “house” in a polygamous setting is defined in section 3 of the Act as a “family unit comprising a wife and children of that wife.”

33. In addition, in the *Matter of Re Estate of Benson Ndirangu Mathenge(deceased)* Nakuru HCSC No 231 of 1998(Ondeyo J),

“the deceased was survived by his two widows and their children. The first widow had four children, while the second widow had six children. The court stated that the first house was comprised of five units while second had seven units. The two houses of the deceased combined and looked at in terms of units made up twelve units. The court distributed the estate to the children and the widows treating each as a unit. The land available for distribution was forty acres, which was divided by the court into twelve units. Out of the twelve units, five were given to the first widow and her four children, while the remaining seven units went to the second widow and her six children”.

34. Further, *In the Matter of the Estate of Nelson Kimotho Mbiti(deceased)* HCSC No 169 of 2000, Koome J directed that, the estate of a polygamist be divided in accordance with the provisions of Section 40 of the Act. The estate was divided into units according to the number of children in each house with the widows being added as additional units. The same reasoning was also applied by Judge Ali Roni *in the Estate of Ainea Masinde Walubengo(deceased)* (2017) eKLR stating that

“I am of the view that Section 40 of the *Law of Succession Act* will apply to the circumstances of this Case. Meaning that the Court will distribute the estate of the deceased according to each house considering the number of children in each unit including the surviving widow.”

35. This Court is of the view that the Objector whose age is similar to his step-mother has postured of his entitlement to half of the deceased estate according to Kalenjin Customary Law without offering any evidence in this regard.

36. The circumstances in which a grant may be revoked or annulled are set out in section 76 of the *Law of Succession Act* as follows:

- “76. Revocation or annulment of grant a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—
- a. that the proceedings to obtain the grant were defective in substance;
 - b. that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
 - c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
 - d. that the person to whom the grant was made has failed, after due notice and without reasonable cause either—



- i. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - ii. To proceed diligently with the administration of the estate; or
 - iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- e. that the grant has become useless and inoperative through subsequent circumstances.

37. Section 76 of the *Law of Succession Act*, provides for revocation or annulment of grant which may be suo moto by a court or on the application of any interested party. It is, however, worth noting that it is not every situation where transgressions or failings by the administrator, will lead to revocation of grant. The court still retains the power to make orders as are fit to meet the ends of justice.
38. The Administrator's own admission of not including the Objector in the participation of the Probate and administration notwithstanding including him as a beneficiary, is sufficient for revocation of the confirmed grant however this court shall craft appropriate reliefs under the circumstances.
39. Right to inheritance is provided in law. However, the *Law of Succession Act* is largely silent on instances where a beneficiary or dependant may choose to renounce the right. The law only touches on lapse, forfeiture of inheritance by the murderer of a testator or renunciation of executorship. See Section 23, 96 and 59 *Law of Succession Act* Cap 160 Laws of Kenya.
40. In the absence of statutory provision, the subject of renunciation of right to inheritance has been left to jurisprudence and the discretion of the court.
41. According to W. Musyoka (J), *Law of Succession*, Law Africa Publishing Ltd, Chapter 21, p.317 (2006), a beneficiary may effect a disclaimer by informing the personal representative of his intention to disclaim either orally or in writing.
42. Ang'awa J *in the Matter of the Estate of Mariko Marumbi Kiuru (Deceased)* Nairobi HCSC No 201 of 1997 observed that under the *Law of Succession Act*, in intestacy, daughters are taken into account in the distribution of the estate unless they have issued a disclaimer to their right to inheritance.
43. In this particular instance Ms Mary Cherotich Ngeno in her evidence-in-chief renounced her right to inherit from the estate of the deceased in favour of the Objector/Applicant, urging that her share be taken up by the Objector/Applicant and for this reason the court shall deem the beneficiary to have renounced her right.
44. This Court is unconvinced that, the Objector is entitled to 50% of the estate of the deceased or that Kalenjin Customary law is Applicable in this instance. No evidence on applicability of the Kalenjin Customary law was presented.



45. Section 40 of the *Law of Succession Act* shall apply in the distribution of parcel Solai/Ndungiri Block 1/257 to be distributed according to each house of the deceased considering the number of children in each unit including the surviving widow.
46. That in this particular instance and for avoidance of doubt, this court finds that the estate of the deceased comprises of two houses with seven (7) beneficiaries and the Administrator (Surviving widow) all being eight (8) units and that Solai/Ndungiri Block 1/257 shall be equally divided into eight (8) units
47. That the Unit entitlement to Ms Mary Cherotich Ngeno is assigned to the Objector by virtue of her renunciation in the objector's favour and as such the Objector shall receive two (2) units share in the distribution.
48. The Beneficiary hitherto omitted for the probate is hereby included as a distinct unit together with the Administrator who was initially receiving no share from the estate of the deceased.
49. Accordingly, the Court partially allows the Summons for Revocation, of grant by directing the distribution of Solia/Ndungiri Block 1/257 (24 Acres) on the following terms: -
 - a. Beneficiary and Share;
 - i. Naomi Wambui Mirigo 3 Acres
 - ii. Mary Cherotich Tingas 3 Acres
 - iii. David Langat 3 Acres,
 - iv. Joseph Langat Milgo, 3 Acres,
 - v. Michael Lagat-Objector 6 Acres,
 - vi. Esther Chepkemoi Milgo 3 Acres, and
 - vii. Ruth Chepkoech Milgo 3 Acres.
 - b. A fresh survey and Sub-Division be undertaken by the Administrator and requisite transmission forms be prepared to each beneficiary for transmission and registration.
 - c. The Nakuru county Land Registrar, and the Nakuru County Commissioner Nakuru North Sub-County Nakuru ensure the Survey and sub-division occurs without interference and that adequate security is provided in implementation of this ruling.
 - d. A Further Rectified Certificate of confirmed grant of letters of Administration intestate is hereby issued reflecting the Distribution.
 - e. Any Aggrieved Party has forty-five (45) days stay to Appeal this decision.
 - f. This Being a family matter, parties shall bear their own Costs.

DATED, SIGNED AND DELIVERED AT NAKURU. ON THIS DAY OF 15TH DAY OF JANUARY, 2024.

S. MOHOCHI

JUDGE

