



REPUBLIC OF KENYA



In re Estate of Estate of Kiptoo Kiptanui (Deceased) (Succession Cause 026 of 2021) [2024] KEHC 1578 (KLR) (16 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1578 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 026 OF 2021
RN NYAKUNDI, J
FEBRUARY 16, 2024
IN THE MATTER OF THE ESTATE OF KIPTOO KIPTANUI (DECEASED)**

IN THE MATTER OF

HELLEN JEPKORIR KIPTANUI 1ST PETITIONER

CHRISTINA JEPKOECH TANUI 2ND PETITIONER

RULING

1. Before me are Summons for Confirmation of Grant dated 12th October, 2023 in which the Petitioner, Hellen Jepkorir Kiptanui seeks orders that: -
 - a. That Christina Jepkoech Tanui be included as co- administrator of the estate of Kiptoo Kiptanui and an amended letter of administration be issued incorporating both Hellen Jepkorir Kiptanui and Christina Jepkoech Tanui as the administrators of the estate of Kiptoo Kiptanui.
 - b. The grant of Letters of Administration Intestate to the estate of Kiptoo Kiptanui deceased be made to the Applicants herein, Hellen Jepkorir Kiptanui and Christina Jepkoech Tanui pursuant to the amended Letters of Administration be and is hereby confirmed.
 - c. The estate of the late Kiptoo Kiptanui be distributed as per the schedule provided.
2. The Summons are further supported by the affidavit sworn on 12th October, 2023 by Hellen Jepkorir Kiptanui. The Petitioner deposed that the grant of Letters of Administration Intestate to the estate herein was made to her on 6th September, 2021. She further deposed that pursuant to a family agreement, they have consensually agreed to be co-administrators with Christina Jepkoech Tanui. The Petitioner maintains that the said grant is now ripe for confirmation so as to enable them distribute the estate herein amongst the beneficiaries.



3. The Petitioner further deposed that the deceased herein died intestate on 25th August 1998 and was survived by the following dependants;
 - a. Christina Jepkoech Tanui – Widow
 - b. Hellen Jepkorir Kipatui – Widow
 - c. Andrew Lagat – Son
 - d. Mary Jepkoech – Daughter
 - e. Paul Agui – Son
 - f. John Tanui – Son
 - g. Joseph Chepkwony- Son
 - h. Sammy Too – Son
 - i. Elizamah Jemurgor- Daughter
 - j. Hellen Jelimo – Daughter
 - k. Sila Letting- Son
 - l. Leah Jeptum – Daughter
 - m. Wilson Too – Son
 - n. Nancy Jerotich – Daughter
 - o. Francis Chepkwony – Son
 - p. Elphas Kibet – Son
 - q. Bethwel Tanui – Son
 - r. Mercy Jepkosgei – Daughter
4. The Petitioner deposed that the estate of the deceased comprises of the following parcels of land;
 - i. Tulwet/Tulwet Block 1 Masaba(23)
 - ii. Tulwet/Tulwet Block 1 Masaba (12)
5. The Petitioner wants the estate herein to be distributed as follows;



LR – Tulwet/Tulwet Block 1 Masaba (23)			
Name	ID No.	Property	Share
Christina Jepkoech Tanui	[particulars withheld]	Plot 23	4 Acres
Andrew Lagat	[particulars withheld]	Plot 23	10 Acres
Mary Jepkoech	[particulars withheld]	Nil	
Paul Agui	[particulars withheld]	Plot 23	9 Acres
John Tanui	[particulars withheld]	Plot 23	9 Acres
Joseph Chepkwony	[particulars withheld]	Plot 23	9 Acres
Sammy Too	[particulars withheld]	Plot 23	9 Acres
Elizamah Jemurgor	[particulars withheld]	Nil	
Helen Jelimo	[particulars withheld]	2 Acres	
LR- Tulwet/Tulwet/Block 1 Masaba (12)			
Name	ID No.	Property	Share
Hellen Jepkorir Kiptanui	[particulars withheld]	Plot 12	3 Acres
Sila Letting	[particulars withheld]	Plot 12	5 Acres
Leah Jeptum	[particulars withheld]	Plot 12	Nil
Wilson Too	[particulars withheld]	Plot 12	5 Acres
Nancy Jerotich	[particulars withheld]	Plot 12	Nil
Francis Chepwony	[particulars withheld]	Plot 12	5 Acres
Elphas Kibet	[particulars withheld]	Plot 12	5 Acres
Bethwel Tanui	[particulars withheld]	Plot 12	5 Acres
Mercy Jepkosgei	[particulars withheld]	Plot 12	Nil

6. In response to the said Summons, Hellen Tanui equally filed her affidavit of proposed mode of distribution dated 22nd November, 2023. In the said affidavit she deposed that she a beneficiary and a



daughter of the estate of the deceased herein. She maintained that the deceased had three household whose members she outlined as follows;

First Household

1. Tabwogo Chemasigo – Wife (Deceased)
2. Evelyne Jemesunde – Deceased
3. David Kipyama Too – Son
4. Magdalene Chebwambok Kogo – Daughter
5. Lazaro Kimeli Too – Son (Deceased)
6. Domtila Tarkwen – Daughter (Deceased)
7. Andrew Kipkemboi Lagat- Son

Second Household

1. Christine Jepkoech Tanui – Wife
2. Mary Jepkoech – Daughter
3. Paul Kipkemboi Agui- Son
4. John Kipkoech Birech – Son
5. Hellen Jelimo Tanui – Daughter
6. Joseph Kiprop Chepkwony – Son
7. Sheila Jemutai – Daughter (Deceased)
8. Sammy Kipkosgei Too – Son
9. Elizamah Jemurgor – Daughter

Third Household

1. Hellen Jepkorir Tanui – Wife
2. Sila Kiplimo Letting – Son
3. Leah Jeptum – Daughter
4. Wilson Kimutai Too – Son
5. Nancy Jerotich – Daughter
6. Francis Chepkwony – Son
7. Elphas Kibet – Son
8. Bethwel Tanui – Son
9. Mercy Jepkosgei – Daughter

7. She proposed that the estate herein be distributed as follows;



Name	Description Of Property	Share Of Heirs
Andrew Lagat	Tulwet/Tulwet Bk 1 (Masaba) 23 (49 Acres)	10 Acres
1. Christine Tanui 2. Mary Chepkoech 3. Paul Kipkemboi Agui 4. John Birech 5. Hellen Jelimo Tanui 6. Joseph Chepkwony 7. Sammy Too 8. Elizamah Chemurgor 9. Hellen Jelimo Tanui – Sister To The Deceased Sheila Jemutai	Tulwet/Tulwet Bk 1 (Masaba) 23 (49 Acres)	39 acres to be shared equally by nine beneficiaries so that each can get 4.33 acres 4.33 acres to be held in trust by Hellen Jelimo Tabui For DC, CJ and MJ being children of Sheila Jemutai (Deceased)
David Kipyma Too	Eldoret Airport Land	30 Acres
Ernest Meli – Son Of Lazarus Kimeli (Deceased)	Masaba/Tulwet Land Parcel	15 acres to be held in trust by Ernest Meli For Noah Too, Dorcas Jepkorir, Edward Kiplimo, Rael Jelangat, Caroline Jepchumba And Caroline Jerotich Too Being of Lazarus Kimeli Too (Deceased)
1. Hellena Jepkorir 2. Sila Letting 3. Leah Cheptum 4. Wislon Too 5. 5. Francis Chepkwony 6. Nancy Cherotich 7. Elphas Kibet 8. Bethel Tanui 9. Mercy Jepkosgei	Tulwet/Tulwet Bk 2 (Masaba) (30 Acres)	30 acres to be shared equally by the nine beneficiaries so that each get 3.33 Acres
1. Christine Tanui 2. Mary Chepkoech	¼ Plot In Huruma Estate Under Sirgoi Holdings By The Name Kurget	That it should be sold and the proceeds be shared equally by the eighteen beneficiaries



<ol style="list-style-type: none"> 3. Paul Kipkemoi Agui 4. John Birech 5. Hellen Jelimo Tanui 6. Joseph Chepkwony 7. Sammy Too 8. Elizamah Jemurgor 9. Hellena Jepkorir 10. Sila Letting 11. Leah Cheptum 12. Wilson Too 13. Francis Chepkwony 14. Nancy Cherotich 15. Elphas Kibet 16. Bethwel Tanui 17. Mercy Jepkosgei 18. Hellen Jelimo Tanui-Sister To The Deceased Sheila Jemutai 		<p>Hellen Jelimo Tanui To Hold In Trust The Proceeds For DC, CJ and MJ Being Children Of Sheila Jemutai (Deceased)</p>
<ol style="list-style-type: none"> 1. Christine Tanui 2. Mary Chepkoech 3. Paul Kipkemoi Agui 4. John Birech 5. Hellen Jelimo Tanui 6. Joseph Chepkwony 7. Sammy Too 8. Elizamah Jemurgor 9. Hellena Jepkorir 10. Sila Letting 11. Leah Cheptum 12. Wilson Too 13. Francis Chepkwony 14. Nancy Cherotich 15. Elphas Kibet 16. Bethwel Tanui 	<p>¼ Plot In Chuiyat Centre</p>	<p>That it should be sold and the proceeds be shared equally by the eighteen beneficiaries</p> <p>Hellen Jelimo Tanui to hold in trust the proceeds for DC, CJ and MJ being children of Sheila Jemutai (Deceased)</p>



17. Mercy Jepkosgei 18. Hellen Jelimo Tanui- Sister To The Deceased Sheila Jemutai		
1. Christine Tanui 2. Mary Chepkoech 3. Paul Kipkemoi Agui 4. John Birech 5. Hellen Jelimo Tanui 6. Joseph Chepkwony 7. Sammy Too 8. Elizamah Jemurgor 9. Hellena Jepkorir 10. Sila Letting 11. Leah Cheptum 12. Wilson Too 13. Francis Chepkwony 14. Nancy Cherotich 15. Elphas Kibet 16. Bethwel Tanui 17. Mercy Jepkosgei Hellen Jelimo Tanui- Sister To The Deceased Sheila Jemutai	Shares In Absa Bank (Formely Barclays Bank)	To be shared equally by the eighteen beneficiaries Hellen Jelimo Tanui to hold in trust the proceeds for DC, CJ and MJ Being children of Sheila Jemutai (Deceased)
Andrew Kipkemoi Lagat	Shares In KCB BANK	To be shared solely by Andrew Kipkemoi Langat

Determination

8. I have read carefully considered the pleadings on record. From the pleadings by the respective parties, it is evident that their dispute as to the proposed mode of distribution to be adopted by the Court. The deceased's daughter, Hellen Tanui is opposed to the mode of distribution that has been submitted by the Petitioners herein. According to her the deceased herein was a polygamous man having been married to three wives an assertion that the Petitioner has not pointed to in her model of distribution.
9. I have also keenly looked at the proposed mode of distribution by Hellen Tanui and note that the same contains beneficiaries and assets that have not been listed in the proposed mode of distribution by the Petitioner. I further note that from the respective proposed modes of distribution on record, there is a variance in terms of the names of the beneficiaries therein as the Petitioner does not indicate any deceased persons as beneficiaries whereas Hellen Tanui indicates some beneficiaries as deceased



and even further points out nominees to represent the said estates. I also note that there is lack of proper land referencing in the proposal by Hellen Tanui. A cursory perusal of Hellen Jepkorir Kiptanui and Christina Jepkoech Tanui dated 12/10/2023 joint affidavit identifies only two parcels of land namely Tulwet/Tulwet Block 1 Masaba (23), Tulwet/Tulwet Block 1 Masaba (12) as a substantive immovable properties survived of the deceased. In the same affidavit the model of distribution has been set out under paragraph 8 detailing the beneficiaries and shareholding. In the same vein the following beneficiaries namely Mary Jepkoech, Elizamah Jemurgor, Leah Jeptum, Nancy Jerotich and Mercy Jepkosgei are totally left out of the scheme of distribution. I find no accompanying notes or affidavits to that effect whether the renounced there right to inheritance.

10. On the part of Hellen Tanui in her affidavit filed in court on 22/11/2023, under paragraph 3 she provides a whole inventory as to the beneficiaries based in section 40 of the Law of Succession Act. Whereas in the averments by Hellen Jepkorir Kiptanui and Christina Jepkoech Tanui there is no mention that the deceased Kiptoo Kiptanui during his lifetime was polygamous. In the same affidavit there is no mention as to what happened to the beneficiaries who have passed on namely Tabwogo Chemasigo, Everlyne Jemesunde, Lazaro Kimeli Too, Domtila Tarkwen and Sheila Jemutai. As if that is not enough in the affidavit of Hellen Tanui the following properties are listed as part of the free estate of the deceased capable of being shared out among the beneficiaries.

Eldoret Airport Land

Masaba/Tulwet land parcel

Tulwet/Tulwet BK Masaba (30 acres)

¼ plot in Huruma Estate under Sirgoi Holdings by the name Kurget

¼ plot in Chuiyat centre

Shares in Absa Bank (Formerly Barclays Bank)

Shares in KCB Bank

11. These proceedings and the evidence adduced by the administrators and that of Hellen Tanui normally looked at for the purposes of drawing an inference on the nature and structure of the estate together with the legitimate beneficiaries is at variance with each other. On my part I see no reason in principle why both affidavits raise more questions than answers and does so in a manner which tends to confuse the court in delivering a fair and just decision. I am concerned with the question of whether certificate of confirmation of grant could properly be made in respect to the assets of the deceased and the heirs to that estate without better particulars being supplied by the applicants and Hellen Tanui. Some of the facts which have emerged in this case are disturbing as it borders on non-disclosure of cogent evidence to allay any fears on the part of the court that it is not acting on non-existence facts with regard to the intestate estate
12. I therefore, cannot conclusively tell at this juncture who exactly are the beneficiaries of the estate herein and what exactly are the assets with respect to the deceased's estate in order to make a just finding on how the estate herein should be distributed.
13. Bearing in mind that the mode of distribution in the instant cause is the main bone of contention, the Court can only determine the issues aforementioned if parties were to tender further affidavit evidence on the issues framed elsewhere in this ruling within 21 days from today's date. The issues being raised herein are weighty that would naturally require clarification by the administrators delving into Hellen Tanui's affidavit. In order to track the events of this case, a status conference be and is hereby scheduled for the 14th March, 2024.



14. Orders accordingly.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 16TH DAY OF FEBRUARY, 2024

R. NYAKUNDI

JUDGE

