



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Johanna Kipruto Mosonik (Deceased) (Probate & Administration
348 of 2013) [2024] KEHC 3421 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3421 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 348 OF 2013
RN NYAKUNDI, J
APRIL 11, 2024**

**IN THE MATTER OF
SARAH JEPKEMOI MOSNIK PETITIONER**

RULING

1. What is pending in this matter is the distribution of the estate. The petitioner is the 2nd widow to the deceased and the Grant of Letters of Administration of the estate intestate were granted to her on 17.03.2014. Further, the same have been pending confirmation. The probate is uncontested as the application for revocation of grant dated May 7, 2015 was dismissed for want of prosecution.
2. The deceased was survived by the following beneficiaries;

1st House

1. Ruth Mosonik (Deceased) 1st Widow
2. Leah Tuwei (Deceased)
3. Daniel Kipng'eno Ruto (Deceased)
4. Willy Kipkemboi Ruto (Deceased)
5. Joseph Ruto (Deceased)
6. Sarah Maritim
7. David Kiplagat Mosonik
8. Rebecca Jepkirui Kipruto
9. Richard Kipkirui Ruto
10. Isaiah Ruto Mosonik



11. Emily Jelagat Mosonik

2nd House

1. Sarah Jepkemboi Mosonik 2nd widow

2. Eunice Jepchumba Mosonik

3. Noah Kipngetich Ruto

4. Joel Ruto Mosonik

5. Mathew Kipsang Mosonik

6. Nancy Jemeli

7. Selly Jepchirchir Mosonik

8. Irene Jemutai Mosonik

9. Erick Kipkorir

3. The deceased left behind one property known as Moi's BridgE/Sirikwa Block 1 (Ziwa)/447 measuring 30.08 acres. Pursuant to the directions of the court, the petitioner filed her affidavit proposing the mode of distribution as follows;

The first house to get 15.04 acres to be shared among the children of Leah Tuwei (Deceased); Sarah Maritim, the wife and children of Willy Kipkemboi Ruto, David Kiplagat Mosonik, Rebecca Jepkirui Kipruto, Richard Kipkirui Ruto, Isaiah Ruto Mosonik and Emily Jelagat Mosonik in equal shares.

4. The 2nd house to get 15.04 acres which will be shared as follows; Sarah Jepkemboi Mosonik – 3 acres, Eunice Jepchumba Mosonik 0.5 acres, Noah Kipngetich Ruto – 2.51 acres, Joel Ruto Mosonik – 2.51 acres, Mathew Kipsang Mosonik – 2.51 acres, Nancy Jemeli – 0.5 acres, Selly Jepchirchir Mosonik – 0.5 acres, Irene Jemutai Mosonik – 0.5 acres and Erick Kipkorir – 2.51 acres.

Analysis & Determination

5. The issue for determination herein is

Whether the proposed mode of distribution should be allowed

6. Distribution where the deceased was polygamous is governed by section 40 of the [Law of Succession Act](#) which states;

" 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."

7. Considering a similar scenario, the Court [In Re Estate of John Musambayi Katumanga – Deceased](#) [2014] eKLR held as follows:

“The spirit of Part V, especially Sections 35, 38 and 40, is equal distribution, of the intestate estate amongst the children of the deceased. There have been debates on whether the



distribution should be equal or equitable. My reading of these provisions is that they envisage equal distribution for the word used in Sections 35(5) and 38 is 'equally' as opposed to 'equitably'. This is the plain language of the provisions. The provisions are in mandatory terms – the property “shall ... be equally divided among the surviving children.” Equal distribution is envisaged regardless of the ages, gender and financial status of the children.”

8. It follows that the property of the deceased should be distributed considering each member of the family as a unit. Further, each unit is to receive an equal share of the property. The petitioner's proposed mode of distribution clearly distributes the property of the deceased unequally among the beneficiaries.



Name of Heir	Share of Estate
Leah Tuwei (estate)	1.6 acres
Daniel Kipng'eno Ruto (estate)	1.6 acres
Willy Kipkemboi Ruto (estate)	1.6 acres
Joseph Ruto (estate)	1.6 acres
Sarah Maritim	1.6 acres
David Kiplagat Mosonik	1.6 acres
Rebecca Jepkirui Kipruto	1.6 acres
Richard Kipkirui Ruto	1.6 acres
Isaiah Ruto Mosonik	1.6 acres
Emily Jelagat Mosonik	1.6 acres
Sarah Jepkemboi Mosonik	1.6 acres
Eunice Jepchumba Mosonik	1.6 acres
Noah Kipngetch Ruto	1.6 acres
Joel Ruto Mosonik	1.6 acres
Mathew Kipsang Mosonik	1.6 acres
Nancy Jemeli	1.6 acres
Nancy Jemeli	1.6 acres
Selly Jepchirchir Mosonik	1.6 acres
Irene Jemutai Mosonik	1.6 acres
Erick Kipkorir	1.6 acres

9. In the premises, I proceed to confirm the grant of letters of administration dated 17.03.2014 issued to the petitioner. The estate of the deceased shall be distributed as follows;
10. It is my considered view that this distribution is in tandem with the provisions of the [Law of Succession Act](#).



11. The administrators shall provide the court with the accounts of the estate after six months to confirm the distribution of the estate has been concluded.

12. It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 11TH DAY OF APRIL 2024

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R. NYAKUNDI

JUDGE

