



In re Estate of Kipkoske Arap Sigira (Deceased) (Succession Cause 80 of 2015) [2024] KEHC 9484 (KLR) (12 June 2024) (Ruling)

Neutral citation: [2024] KEHC 9484 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 80 OF 2015**

RL KORIR, J

JUNE 12, 2024

IN THE MATTER OF THE ESTATE OF KIPKOSKE ARAP SIGIRA (DECEASED)

BETWEEN

SAMWEL CHEPKWONY KOSGEI PETITIONER

AND

ROBERT KOSGEI OBJECTOR

RULING

1. This succession cause involves the estate of the late Kipkoske arap Sigira being Kericho/Kaplimolwa/988 and Kericho/Kaplimolwa/517. The deceased's son, Samwel Chepkwony Kosgei petitioned this court for Letters of Administration Intestate. A Grant was issued in the name of Samwel Chepkwony Kosgei (Petitioner) on 30th June 2016.
2. The Petitioner then filed Summons for Confirmation of the Grant through the Application dated 24th January 2017. This court (Muya J.) confirmed the Grant on 3rd May 2017 with the following schedule of distribution:-

Kericho/Kaplimolwa/517

- i. Philip Kosgei 5.02 acres.
- ii. Dickson Kosgei 5.02 acres.
- iii. Robert Kosgei 5.02 acres.
- iv. Samwel Chepkwony Kosgei 5.02 acres.
- v. Zephania Kosgei 5.02 acres.
- vi. Joseph Kosgei 5.02 acres.



Kericho/Kaplimolwa/988

- i. Daniel Kosgei 2.076 acres.
- ii. Wilson Kosgei 2.076 acres.
- iii. Richard Kosgei 2.076 acres.
- iv. Betty Chepkoech 2.076 acres.
- v. Samwel Kosgei 2.076 acres.

3. Robert Kosgei, who was the son to the deceased and brother to the Petitioner, filed Summons for Revocation of the Grant dated 12th September 2017. This Application was heard by way of viva voce evidence. This court (Ongeri J.) delivered its Judgement on 4th August 2020 where it dismissed the Summons for Revocation of the Grant dated 12th September 2017. The court further ordered that the Administrator (Samwel Chepkwony Kosgei) file Summons for Confirmation of the Grant and to involve all the beneficiaries of the estate and to take into account the current settlement of the beneficiaries in the distribution of the estate.
4. Samwel Chepkwony Kosgei (Petitioner and Administrator) filed Summons for Confirmation of Grant dated 31st August 2020 with the following proposed mode of distribution:-

Kericho/Kaplimolwa/517

- i. Kipkorir Koskei 5.02 acres
- ii. Dickson Kiprono Kosgei 5.02 acres
- iii. Robert Kipsang Koskei 5.02 acres
- iv. Samwel Chepkwony Kosgei 5.02 acres
- v. Judy Chelangat 5.02 acres
- vi. Wesley Koskei 5.02 acres

Kericho/Kaplimolwa/988

- i. Daniel Kiplangat Kosgei 2.076 acres
- ii. Wilson Kipngeno Kosgei 2.076 acres
- iii. Richard Kosgei 2.076 acres
- iv. Betty Chepkoech 2.076 acres
- v. Samwel Kibet Kosgei 2.076 acres

5. The Objector, Robert Kosgei filed an Affidavit dated 21st September 2020 in opposition to the Petitioner's proposed mode of distribution. He stated that the Petitioner allocated members of the 1st household bigger portions of land than the second household. That section 40 of the [Law of Succession Act](#) provided for equal distribution of an intestate deceased's estate.
6. The Objector's proposed mode of distribution was as follows:-

Kericho/Kaplimolwa/517

- i. Kipkorir Koskei 3.681 acres



- ii. Dickson Koskei 3.681 acres
 - iii. Robert Kipsang Koskei 3.681 acres
 - iv. Samwel Chepkwony Koskei 3.681 acres
 - v. Judy Chelangat 3.681 acres
 - vi. Wesley Koskei 3.681 acres
 - vii. Daniel Koskei 1.605 acres
 - viii. Wilson Koskei 1.605 acres
 - ix. Richard Koskei 1.605 acres
 - x. Betty Chepkoech 1.605 acres
 - xi. Samwel Koskei 1.605 acres
- Kericho/Kaplimolwa/988
- i. Daniel Koskei 2.076 acres
 - ii. Wilson Koskei 2.076 acres
 - iii. Richard Koskei 2.076 acres
 - iv. Betty Chepkoech 2.076 acres
 - v. Samwel Koskei 2.076 acres
7. The beneficiaries were unable to agree on the mode of distribution and this court referred the matter to Mediation on 10th February 2022. The Mediation Agreement dated 29th March 2022 was adopted as an order of this court on 24th May 2023.
8. The Mediation Agreement dated 29th March 2022 stipulated as follows:-
- i. The two households to remain in their respective parcels of land i.e. the first family in Kericho/Kaplimolwa/517 and the 2nd family on KERICHO/KONGOTIK/988.
 - ii. That Kericho/Kaplimolwa/517 be surveyed in terms of the current settlement and placements and adjust equal portions to Kipkorir Koskei, Dickson Kiprono Koskei, Samuel Chepkwony Koskei, Judy Chelangat and Wesley Koskei. Further the portion of land occupied by Robert Kipsang Koskei to be equalized the portions occupied by Kipkorir Koskei, Dickson Kiprono Koskei, Samuel Chepkwony Koskei, Judy Chelangat and Wesley Koskei.
 - iii. The parties to identify a suitable qualified surveyor to undertake the survey and the costs of the Surveyor be borne by the six sons.
9. The parties seemed to abandon the Mediation Agreement as soon as it was adopted. They stated that they did not agree on the mode of distribution and wished to submit on the same. I directed the parties to file their submissions on the issue of the mode of distribution.

Petitioner's submissions

10. Through his written submissions dated 16th October 2023, the Petitioner submitted that the deceased had two households. That the second household had agreed on how to distribute Kericho/Kaplimolwa/988 and the only issue was with the distribution on Kericho/Kaplimolwa/517. It was



his further submission that Robert Kipsang Koskei (Objector) and Dickson Kiprono Koskei who were members of the 1st household wanted a bigger share of Kericho/Kaplimolwa/517 than the other members of the 1st household.

11. It was the Petitioner's submission that when the Surveyor visited the parcel Kericho/Kaplimolwa/517, Robert Kipsang Koskei and Dickson Kiprono Koskei dictated to the Surveyor on how they wanted the subdivision to be done and it resulted in them taking larger portions of Kericho/Kaplimolwa/517.
12. The Petitioner urged this court to distribute Kericho/Kaplimolwa/517 equally among the members of the 1st household. He relied on sections 35(5) and 38 of the Law of Succession Act. That the division should be done in accordance to the Mediation Agreement and not section 40 of the Law of Succession Act.
13. The Objector's counsel did not file his submissions despite being granted extension of time.
14. I have considered the Summons for Confirmation of Grant dated 3rd August 2020 and the Objector's Affidavit dated 21st September 2020. The only issue for my determination was the mode of distribution of Kericho/Kaplimolwa/517.
15. In my view, there was no issue with the mode of distribution of Kericho/Kaplimolwa/988, a parcel in which the beneficiaries of the 2nd household resided. The Objector contradicted himself when he stated in his Affidavit dated 21st September 2020 that the Petitioner had failed to distribute the entire estate of the deceased equally among the two households yet on the other hand, his proposed mode of distribution focused majorly on Kericho/Kaplimolwa/517. His proposed mode of distribution on Kericho/Kaplimolwa/988 was in consonance with the Petitioner's mode of distribution.
16. The relevant law to the circumstances of this case is Section 35 of the Law of Succession Act which provides:-
 - (1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—
 - (a) the personal and household effects of the deceased absolutely; and
 - (b) a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow that interest shall determine upon her re-marriage to any person.
 - (2) A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.
 - (3) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or, if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.
 - (4) Where an application is made under subsection (3), the court shall have power to award the applicant a share of the capital of the net intestate estate with or without variation of any appointment already made, and in determining whether an order shall be made, and if so what order, shall have regard to—
 - (a) the nature and amount of the deceased's property;



- (b) any past, present or future capital or income from any source of the applicant and of the surviving spouse;
 - (c) the existing and future means and needs of the applicant and the surviving spouse;
 - (d) whether the deceased had made any advancement or other gift to the applicant during his lifetime or by will;
 - (e) the conduct of the applicant in relation to the deceased and to the surviving spouse;
 - (f) the situation and circumstances of any other person who has any vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under his will (if any); and
 - (g) the general circumstances of the case including the surviving spouse's reasons for withholding or exercising the power in the manner in which he or she did, and any other application made under this section.
- (5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children. (Emphasis mine)
17. The law contemplates equal sharing of inheritance among the beneficiaries. Equality is guaranteed even in a scenario where the deceased left behind children but no spouse. Section 38 of the [Law of Succession Act](#) provides:-
- 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.
18. Section 40 of the [Law of Succession Act](#) provides:-
- (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 intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.
19. 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.”



20. The Court of Appeal in *Scolastica Ndululu Suva vs. Agnes Nthenya Suva* (2019) eKLR stated:-
- “In *Mary Rono vs Jane Rono & another* (supra), Waki JA in the leading judgment, accepted the proposition that the Court had the discretion in ensuring a fair distribution of the deceased’s estate but that the discretion must be exercised judicially on sound legal and factual basis.....It is therefore evident, that, although section 40 of the *Law of Succession Act* provides a general provision for the distribution of the estate of a polygamous deceased person, the court has discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.”
21. Similarly in *re Estate of Nzolove Kisuke alias Daudi Nzolove Kisuke (Deceased)* (2022) eKLR, Odunga J. (as he then was) held:-
- “It is therefore clear on judicial authority that the strict application of section 40 of the *Law of Succession Act* may well lead to an absurdity and I associate myself with the opinion of the Court of Appeal that the said section only provides a general provision for the distribution of the estate of a polygamous deceased person. However, the court has discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.....”
22. Having stated the law and the authorities above, it is the finding of this court that the parcel Kericho/Kaplimolwa/517 be shared equally among the beneficiaries from the 1st household being:-
- i. Kipkorir Koskei
 - ii. Dickson Kiprono Kosgei
 - iii. Robert Kipsang Koskei
 - iv. Samwel Chepkwony Kosgei
 - v. Judy Chelangat
 - vi. Wesley Kosgei
23. Before I pen off, I have to state that the Mediation Agreement dated 29th March 2022 was adopted as an order of this court on 24th May 2023. That meant it had legal force and was a valid and enforceable. The only way to challenge the said order was through an Appeal or a Review. Neither party appealed or applied for a Review of the court order (Mediation Agreement).
24. The contents of the Mediation Agreement confirmed the equal distribution of Kericho/Kaplimolwa/517 between the members of the 1st household listed above.
25. Flowing from the above, it is clear that I have come to the same conclusion as the distribution contained in the Certificate of Confirmed Grant dated 3rd May 2017 by Muya J. The objection by Robert Kosgei dated 21st September 2020 has no merit and is dismissed.
26. In the end, I make the following Orders:-
- i. The Certificate of Confirmation of Grant dated 3rd May 2017 remains valid and is upheld.
 - ii. For avoidance of doubt, the mode of distribution of Kericho/Kaplimolwa/157 is as follows:-



Kipkorir Koskei	5.02 acres
Dickson Kiprono Kosgei	5.02 acres
Robert Kipsang Koskei	5.02 acres
Samwel Chepkwony Kosgei	5.02 acres
Judy Chelangat	5.02 acres
Wesley Kosgei	5.02 acres

iii. The mode of distribution of Kericho/Kaplimolwa/988 is as follows:-

Daniel Koskei	2.076 acres
Wilson Koskei	2.076 acres
Richard Koskei	2.076 acres
Betty Chepkoech	2.076 acres
Samwel Koskei	2.76 acres

27. Each party shall bear their costs.

RULING DELIVERED, DATED AND SIGNED THIS 12TH DAY OF JUNE, 2024.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the absence of the parties and in the presence of Siele(Court Assistant)

