



In re Estate of Kiplaigong Korio (Deceased) (Succession Cause 355 of 2015) [2024] KEHC 9234 (KLR) (1 August 2024) (Judgment)

Neutral citation: [2024] KEHC 9234 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 355 OF 2015**

JK SERGON, J

AUGUST 1, 2024

**IN THE MATTER OF THE ESTATE OF KIPLAIGONG KORIO (DECEASED)
ANNAH CHEROTICH KOROS.....1ST PETITIONER/PROTESTOR
LUDIAH CHEPNGENO KOROS.....2ND PETITIONER**

**IN THE MATTER OF
ANNAH CHEROTICH KOROS 1ST PETITIONER
LUDIAH CHEPNGENO KOROS 2ND PETITIONER**

JUDGMENT

1. Ludiah Chepngeno Koros the petitioner, filed summons for confirmation of grant dated 22nd January, 2024 seeking the following orders;
 - (i) That the grant of letters of administration intestate made to Annah Cherotich Koros and Ludiah Chepngeno Koros by the Honourable Court on 15th October, 2016 be confirmed.
 - (ii) That costs of this application be paid out of the estate.
2. The application is supported by grounds on the face of it and the affidavit in support of the summons for confirmation of grant sworn by Ludiah Chepngeno Koros the 2nd petitioner herein.
3. The 2nd petitioner avers that the grant of letters of administration of the estate of the deceased were issued on 15th October, 2016.
4. The 2nd petitioner avers that the deceased died intestate and had several dependents surviving the deceased upon his demise. She further avers that the deceased left L.R No. Kericho/Tebesonik/32 measuring 29.5 acres, the only property comprising the estate of the deceased.



5. The 2nd petitioner avers that following a meeting convened by clan elders and family members on 8th November, 2023, it was resolved that L.R No. Kericho/Tebesonik/32 measuring 29.5 acres, the only property comprising the estate of the deceased be divided as follows;

Name	Property	Share
Ludiah Chepngeno Koros	L.R No. Kericho/ Tebesonik/32	11.5 acres
Alice Chepkoech Koros	L.R No. Kericho/ Tebesonik/32	11.5 acres
Annah Cherotich Koros	L.R No. Kericho/ Tebesonik/32	4 acres
Tapkili Cherotich Koryo	L.R No. Kericho/ Tebesonik/32	2 acres

6. Annah Cherotich Koros, the 1st petitioner/objector filed an affidavit of protest against the summons for confirmation of grant.
7. The objector avers that the deceased had two wives, Taprire w/o Korio deceased and Teresia w/o Korio deceased and further that she was married by Teresia w/o Korio (second wife of the deceased) under Kipsigis Customary Law in a woman to woman marriage for the purpose of child bearing and that she was therefore a beneficiary of the estate of the deceased.
8. The objector avers that the first wife Taprire w/o Korio now deceased and that she had two sons; Christopher Koros who is deceased and survived by his wife Ludiah Chepngeno Koros (the 2nd petitioner) and Stanley Koros who is deceased and survived by his wife Alice Chepkoech Koros.
9. The objector avers that seven children were borne out of the said union and therefore the mode of distribution proposed by her co-administrator in the summons for confirmation of grant was not equitable and that it was not compliant with the laws governing distribution of an estate of a polygamous household whereby the deceased was intestate.
10. The objector avers that L.R No. Kericho/Tebesonik/32 measuring 29.5 acres, the only property comprising the estate of the deceased ought to be divided equally among the surviving beneficiaries of the deceased;



Name	Property	Share
Ludiah Chepngeno Koros	L.R No. Kericho/ Tebesonik/32	7.38 acres
Alice Chepkoech Koros	L.R No. Kericho/ Tebesonik/32	7.38 acres
Annah Cherotich Koros	L.R No. Kericho/ Tebesonik/32	7.38 acres
Tapkili Cherotich Koryo	L.R No. Kericho/ Tebesonik/32	7.38 acres

11. The parties urged this Court to determine the protest against summons for confirmation of grant by viva voce evidence. The objector testified in support of her case, she did not avail any witnesses.
12. Annah Cherotich Koros (Pw. 1) stated that she had executed a witness statement and that she wished to adopt the same as evidence-in-chief. She stated that the deceased's wife married her in a woman to woman marriage and that seven (7) children were borne out of the said union. She stated that she attended the elders meeting, however, she did not know how the elders would share the land and that she did not contribute anything towards the deliberations on the distribution of the estate's property. She stated that whereas she initially wanted the estate property to be shared equally, she now wanted the estate property to be divided into 3 equal portions each 9.16 acres as Tapkili the deceased's married daughter only wanted to be given 2 acres. During cross examination, Pw. 1 she said that soon after she had filed the protest against summons of confirmation grant, she learnt that the daughter of the deceased only wanted 2 acres of the estate property. Pw. 1 confirmed that the remaining portion should be shared equally as she, Lydia and Alice are of the same status. Pw.1 confirmed that she attended the elders meeting on 8th November, 2023. Pw. 1 said that she had only recently learnt that Teresia, wife of the deceased, had been given 4 acres of the estate property. On re-examination, Pw. 1 confirmed that the change of heart on mode of distribution was informed by the fact that the daughter to the deceased had ceded her share and only wanted to have 2 acres of the estate property.
13. After the close of the objectors case, the petitioner testified and availed two witnesses in support of her case.
14. Ludiah Chepngeno Koros (Dw. 1) stated that she had executed a witness statement and that she wished to adopt the same as evidence-in-chief. She stated that she attended the meeting convened by the elders on 8th November, 2023, whereby the elders met and proceeded to distribute the estate of the deceased. She stated that Teresia's wife to the deceased was given 4 acres of the deceased's property. On cross examination, Dw. 1 said that in her witness statement she stated that she and Alice ought to get 11.5 acres each, whereas the objector was entitled to 4 acres and the married daughter to the deceased was entitled to 2 acres of the estate property. She confirmed that she had a co-wife and that she did not have documents on the Belgut land; the deceased had informed them about the said parcel by word of mouth.



15. Ezekiel Maritime A. Chepkwony (Dw. 2) stated that he had executed a witness statement and that he wished to adopt the same as evidence-in-chief. He stated that he attended the meeting held on 8th November, 2023, the meeting was convened by elders in order to distribute the property of the deceased. He stated that the objector attended the first meeting but declined to attend the second meeting. On cross examination, Dw. 2 said the objector did not attend the second meeting as she disputed the acreage given to her and that there were allegations that the deceased had given Teresia 4 acres of land in Belgut. He stated that the daughter of the deceased expressed that she was content with 2 acres of the property of the deceased. On re-examination Dw. 2 stated that those in attendance of the said meetings were satisfied that the deceased had bequeathed 4 acres of land to Teresia, prior to his demise.
16. Tapkili Cherotich Koiyo (Dw. 3) stated that she had executed a witness statement and that she wished to adopt the same as evidence-in-chief. She stated that she was a daughter to the deceased, the objector was married to her mother who was called Teresia in a woman to woman marriage and further that Ludiah (the 2nd petitioner) and Alice were her sisters-in-law. On cross examination, Dw. 3 stated that she was not aware of the 4 acres of land that were purportedly given out.
17. Having considered pleadings and the viva voce evidence by the parties, the issue for determination by this court is whether to adopt the mode of distribution preferred in the summons for confirmation of grant or the affidavit of protest.
18. Ludiah Chepgeno Koros (Dw. 1) filed her preferred mode of distribution in the summons for confirmation of grant in the instant succession cause. Dw. 1 in her evidence-in-chief narrated to this Court that she attended the meeting convened by the elders on 8th November, 2023, whereby the elders met and proceeded to distribute the estate of the deceased. Dw. 1 therefore proposed that the estate of the deceased be divided as follows;
 - (i) Ludiah Chepgeno Koros and Alice Chepkoech Koros, widows of the deceased sons of the first house were entitled to get 11.5 acres each.
 - (ii) Annah Cherotich Koros (Pw. 1) the objector, who was married to Teresia w/o Korio in a woman to woman marriage, was entitled to 4 acres of the estate property because the deceased had bequeathed Teresia additional land in Belgut during his lifetime. Dw. 1 and Dw. 2 testified that the deceased had bequeathed Teresia 4 acres of land in Belgut in his lifetime whereas Tapkili Cherotich Koryo (Dw. 3) daughter to the deceased, testified that she was not aware of the 4 acres of land that were purportedly given out.
 - (iii) Tapkili Cherotich Koryo, the married daughter to the deceased was entitled to 2 acres of the estate property. Dw. 2 testified that the married daughter of the deceased had expressed that she was content with 2 acres of the property of the deceased.
19. Annah Cherotich Koros (Pw. 1) filed her preferred mode of distribution in the affidavit of protest. However, in her evidence-in-chief, she testified that whereas she initially wanted the estate property to be shared equally among the surviving beneficiaries with each getting 7.38 acres as per the contents of her preferred mode of distribution in the affidavit of protest, she now wanted the estate property to be divided into 3 equal portions each 9.16 acres as Tapkili Cherotich Koryo the married daughter of the deceased had conceded and only wanted to 2 acres of the estate property. Pw. 1 testified that soon after she had filed the protest against the summons of confirmation grant, she learnt that the married daughter of the deceased only wanted 2 acres of the estate property. Pw. 1 testified to this Court that the change of heart on her preferred mode of distribution was informed by the fact that the married daughter to the deceased had ceded her share and only wanted to have 2 acres of the estate property. Pw.



I was adamant that in the prevailing circumstances the remaining portion should be shared equally among herself, Ludiah Chepngeno Koros and Alice Chepkoech Koros.

20. This Court has considered the two modes of distribution as preferred by the petitioner and the objector and the evidence by the parties. This Court finds that the mode of distribution preferred by the objector is just and equitable in the circumstances and more so in the absence of tangible proof that Teresia w/o Korio was bequeathed with 4 additional acres of land in Belgut.
21. In light of the foregoing, the protest against summons for confirmation of grant is hereby allowed and L.R No. Kericho/Tebesonik/32 measuring 29.5 acres, the only property comprising the estate of the deceased ought to be divided among the surviving beneficiaries of the deceased as follows;

Name	Property	Share
Ludiah Chepngeno Koros	L.R No. Kericho/ Tebesonik/32	9.16 acres
Alice Chepkoech Koros	L.R No. Kericho/ Tebesonik/32	9.16 acres
Annah Cherotich Koros	L.R No. Kericho/ Tebesonik/32	9.16 acres
Tapkili Cherotich Koryo	L.R No. Kericho/ Tebesonik/32	2 acres

22. Each party to meet their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 1ST DAY OF AUGUST, 2024.

.....
J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Kirui for the Petitioner

Bii for the beneficiary.

