



REPUBLIC OF KENYA



KENYA LAW

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**In re Estate of William Kiptanui Chepkwony (Deceased) (Probate & Administration
39 of 2022) [2024] KEHC 10951 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10951 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 39 OF 2022
RN NYAKUNDI, J
SEPTEMBER 20, 2024**

IN THE MATTER OF THE ESTATE OF WILLIAM KIPTANUI CHEPKWONY (DECEASED)

BETWEEN

JOSEPH KIPTUM 1ST PETITIONER

RUTH JEPKOECH TANUI 2ND PETITIONER

AND

DANIEL CHERUIYOT TANUI 1ST APPLICANT

ROSBELLA CHEPKOSKEI CHEPKWONY 2ND APPLICANT

RULING

1. An amended Grant of Letters of Administration was issued to Ruth Jepkoech Tanui, Josphat Kiptum and Daniel Cheruiyot Tanui on 14th November, 2023.
2. The parties subsequently filed their proposed modes of distribution. The Petitioners identified assets, liabilities of the estate and also proposed their model as follows:

List of all Assets



| L.R NO | Hectares | Acres |
|--|----------|-------|
| Uasin Gishu/Tapsagoi Settlement Scheme/805 | 7.29 | 18 |
| Uasin Gishu/Tapsagoi Settlement Scheme/806 | 3.21 | 7.93 |
| Uasin Gishu/Tapsagoi Settlement Scheme/807 | 3.76 | 9.29 |
| Motor Vehicle Registration No. Kca 0851 | | |
| Money Held In Co-operative Bank Eldoret Branch Account Number 01116441500000 | | |

Liabilities

| Name | |
|----------------------------|-----------------------|
| Naashon Tanui | 50 Bags Of Maize |
| Kimwogoi Kosgei Kipkemboi | Kshs. 80,000/= |
| Estate Of Jane Chepkwony | Kshs. 30,000/= |
| Sammy Choge | Kshs. 5,000/= |
| Sarah Jacobo | Thirty Pipes Of Water |
| Philemon Tarus | Kshs. 1,400/= |
| Lena And Gogo Bot Jepkemoi | One Cow |
| Kipsang | One Cow |
| Kiprono Keino | One Cow |

The Petitioners proposed their mode of distribution in the following manner:



| Description Of Property | Beneficiary | Share Of Heirs |
|--|--|---|
| Uasin Gishu/Tapsagoi Settlement Scheme/805 Measuring | Yohana Kipkorir Muse Ruth Jepkoech Tanui Caroline Jepngetich, Eunice Jebet, Josphat Kiptum And Getrude Chebichii Daniel Cheruiyot Tanui To Hold In Trust For Himself And The 2 Nd House | 1 Acre 5.72 Acres To Hold In Trust For Herself And The Estate Of John Kirwa Tanui From The 1 st House. 5.72 Acres To Be Shared Equally 5.57 Acres |
| Uasin Gishu/Tapsagoi Settlement Scheme/806 Measuring | David Kimutai Ngetich And Esther Cherop Pyeko Josiah Kipruto Kurgat Vincent Kipkemei Lagat Paul Kipngetich Rono Joseph Kipngetich Kebenei John Kipkorir Seurey | 4.5 Acres To Be Held Jointly 2 Points 1/1/2 Acre 1 Acre 2 Points 1.3 Acres |
| Uasin Gishu/Tapsagoi Settlement Scheme/807 Measuring 9.29 Ha | Edward Kiplimo Teresa Chebet Three 3 points which Teresa Chebet failed to pay for to be sold to pay off the debt incurred by the estate Teresia Chebet remain with a balance of Kenya Shillings One Hundred and Fifty Thousand (Kshs. 150,000) which the court should compel her to pay before 3 acres is transferred to her | 6 Acres 3 Acres |
| Motor Vehicle Registration Number Kca 0851 | Daniel Cheruiyot Tanui | To Hold In Trust For The 2 Nd House |
| Money Held In Cooperative Bank Account Number 01116441500000 | Ruth Jepkoech Tanui And Josphat Kiptum | To be shared equally among the 1 st house and 3 rd house |

3. The Applicants in response filed a replying affidavit in which Daniel Cheruiyot Tanui deposed as follows:



- a. That I am one of the Administrator of the Estate of William Kiptanui Chepkwony (deceased) and a representative of the beneficiaries of the 2nd House.
- b. That the Estate of the late William Kiptanui Chepkwony comprises of the following assets
 - i. Uasin Gishu/Tapsagoi/805 measuring 7.29 Hectares
 - ii. Uasin Gishu/Tapsagoi/806 measuring 3.21 Hectares
 - iii. Uasin Gishu/Tapsagoi/807 measuring 3.76 Hectares
 - iv. Motor Vehicle Registration No. KCA 085L
 - v. Money in Co-operative Bank Account No. 0116441500000
- c. That the Estate of the late William Kiptanui Chepkwony has liabilities that comprise the purchasers of portion of land which is part of the Estate from the deceased.
 - i. Theresa Chebet Seroney – 4.3 acres in Uasin Gishu/Tapsagoi/807.
 - ii. Edward Kiplimo Cheruiyot – 6 Acres in Uasin Gishu/Tapsagoi/807
 - iii. Yohana Kipkorir Muse – 1 Acre
 - iv. Joseph Kipngetch Kebenei – 2 Acres
 - v. Vincent Lagat – 1.5 Acres
 - vi. David Kipkorir Kitur – 2 Acres
 - vii. John Kipkorir Seurey – 1.5 Acres
 - viii. Nanyeri Maraba – 1 Acres

Total is 19.3 Acres
- d. That Theresa Chebet Seroney who has purchasers interest of a portion measuring Four Decimal Three (4.3) acres is entitled to the same and ought to complete payment of the balance of the purchase price by paying the same to the Administrators of the Estate of William Kiptanui Chepkwony (deceased).
- e. That we object to the liabilities that have been listed by the 1st & 2nd Administrators in their proposed mode of distribution in that there is no proof and evidence of existence of the said liabilities.
- f. That the parcel of land available for distribution comprises a portion in Uasin Gishu/Tapsagoi/805 and Uasin Gishu/Tapsagoi/806 measuring Sixteen Decimal Nine Four Five Five (16.9455) Acres.
- g. That the remainder of the estate of the deceased be equally divided among all the beneficiaries.
 1. The Petitioners proposed to have the estate distributed as hereunder:
 - A. 1st House
 - a. Ruth Jepkoech Tanui Daughter 1.059 Acres
 - b. Milka Chemosbei and Sarah Jelagat Kipkemboi 1.059 Acres
(Widows of John Kirwa Tanui)



B. 2nd House

- a. Rosebellah Jepkosgei Chepkwony 2nd widow 1.059 Acres
- b. Pauline Jepkemboi Daughter 1.059 Acres
- c. Daniel Cheruiyot Son 1.059 Acres
- d. Elizabeth Jepleting Daughter 1.059 Acres
- e. Abraham Chepkwony Son 1.059 Acres
- f. Caleb Kipkirui Son 1.059 Acres
- g. Noah Kipkoech Son 1.059 Acres
- h. David Kipruto Son 1.059 Acres
- i. Joyce Jebet Sitienei 1.059 Acres
(Widow of Wilson Kipkemei)
- j. Beatrice 1.059 Acres
(Widow of Simion Kipchirchir)

C. 3rd House

- a. Caroline Jepngetich Daughter 1.059 Acres
- b. Eunice Jebet Daughter 1.059 Acres
- c. Josphat Kiptum Son 1.059 Acres
- d. Getrude Chebichii Daughter 1.059 Acres

1. Motor Vehicle Registration No. KCA 085L
Daniel Cheruiyot Whole
2. Money in Co-operative Bank Account No. 0116441500000
To be shared equally among the 16 Beneficiaries

5. The issue currently in contest is the mode of distribution of the deceased's assets as well as the liabilities of the estate. Two different proposed modes of distribution were filed by Ms. Tum and Ms. Chepseba.

Analysis and Determination

6. Distribution of the assets of a deceased person in an intestate polygamous family is governed by the provisions of Section 40 of the *Law of Succession Act* (Cap.160), which provides as follows –

“ 40.

- (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 section 35 and 38.”

7. Let me point out at this stage that before a grant is confirmed and properties are distributed accordingly, there are two principal matters for the court to consider, appointment of the administrators and distribution of the estate. Section 71 of the *Law of Succession Act*, Cap 160, Laws of Kenya, says:

“Confirmation of Grants

71. Confirmation of grants

- (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.
- (2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may —
 - (a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or
 - (b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 of this Act, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be administered; or
 - (c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or
 - (d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.”

8. When reading the provisions of Section 71 of the *Law of Succession Act* together with section 83, it sets out the duties of an administrator. One of such duties is that to render accounts within six months of the making of the grant. That duty coincides with that set out in section 71 requiring that confirmation of grant be sought within the same period. Presumably, the summons for confirmation of grant ought



to include an account on the administration. That should include a full and accurate inventory of the assets.

Section 83 states as follows:

“83. Duties of personal representatives

Personal representatives shall have the following duties—

- (a) to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;
- (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
- (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
- (d) to ascertain and pay, out of the estate of the deceased, all his debts;
- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”

9. In the instant case, the administrators bear a duty to give a proper account of the estate for the court to ascertain the assets and liabilities given that the parties are in a push and pull on the liabilities of the estate. The duty of this court is not to go on a mission ascertaining the assets and liabilities of the estate of the deceased. That is the duty of an administrator. In the interest of justice therefore orders are issued as follows:

- a. That Ruth Jepkoech Tanui, Josphat Kiptum and Daniel Cheruiyot Tanui do produce to the Court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith of the estate within 30 days of the date hereof;
- b. That this matter be mentioned on 30.9.2024 to confirm compliance and for directions;



c. That costs shall be in the cause.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 20TH DAY OF SEPTEMBER 2024

R. NYAKUNDI

JUDGE

In the Presence of

Mitei for the Applicant and

Holding brief for Tecla for one of the beneficiaries

