



In re Estate of Thomas Kipserem Koech (Deceased) (Succession Cause E100 of 2021) [2024] KEHC 12228 (KLR) (11 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12228 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E100 OF 2021
RN NYAKUNDI, J
OCTOBER 11, 2024**

BETWEEN

ESTHER JEPKORIR RONO PETITIONER

AND

CHRISTOPHER KIPLAGAT SEREM OBJECTOR

RULING

1. What is pending before this court is the distribution of the estate. The protestor filed an affidavit in protest to the mode of distribution dated 19/12/2022. The objector deponed that the petitioner failed to disclose that his father had subdivided and allocated some portions of the estate to St Thomas Chebarus Catholic Church, one of his nephews, David Kiprotich Keino and center plots to some of his sons in the land parcel known as Uasin Gishu/kormaet/91. The church was built in 1984 and has been operating since then. David Kiprotich Keino was allocated his portion in 1988 and has been residing on it since 1988. The deceased also allocated the objector center plots for his commercial use.

Objector's Submissions

2. The objector filed submissions on 30/05/2023. He reiterated the contents of his affidavit of protest and submitted that he filed his proposed mode of distribution dated 4 /5/2023 proposing the land parcels belonging to the estate herein, be apportioned to the sons of the estate four (4) acres each and the daughters to the estate be apportioned one and a half (1.5) acres each, except the petitioner herein who was to be apportioned two and a half acres (2.5). Further, that David Kiprotich Keino, be apportioned 4 acres being 2.4 acres that he had been apportioned by the late Thomas Kipserem Koech plus 1.6 acres that had been apportioned to the mother of David Kiprotich Keino. The objector also proposed that 1 acre be apportioned to St Thomas Chebarus Catholic Church.
3. The objector submitted that their late father during his lifetime, had settled each of his sons to occupy and utilize four acres each in the land parcels of the estate and that their late father also wished that his



daughters utilize and/or occupy 1.5 acres each in the land parcels of the estate. Additionally, that the family of the deceased are well aware that the late Thomas Kipserem Koech, had expressed his wishes on how he wished his estate to be distributed after his demise and no one raised a complaint during the lifetime of the deceased. This is because the family of the deceased, held a meeting on 11/2/2020 where the agenda of the meeting was in respect to the distribution of the estate herein and the family members agreed that the estate of the deceased be distributed as per the deceased's wishes that the sons of the estate be apportioned 4 acres each and the daughters be apportioned 1.5 acres each and the members signed the minutes of the said meeting.

4. As per the petitioner's amended mode of distribution dated 11/4/2023, the petitioner agrees that the late Thomas Kipserem Koech during his lifetime, had apportioned 1 acre to St Thomas Chebarus Catholic Church and also apportioned a share to David Kiprotich Keino, this clearly concurs with the objector's proposed mode of distribution. The objector cited the case of [*Re Estate Of Nzolove Kisuke Alias Daudi Nzolove Kisuke \(deceased\)*](#) [2022] eKLR, where the court held that based on the evidence adduced by all parties, the deceased had in his lifetime, demarcated the land on the ground by use of sisal fences and that there was no complaint during his lifetime about the manner in which he had settled his four sons in support of this submission. He urged that the evidence did not bring the deceased's action within the ambit of an oral will but it showed that the deceased had during his lifetime distributed his land to his beneficiaries, which they all acknowledged and where they are all settled. Without objecting, the court's finding was that they obeyed what the deceased did. The court then held that the blind application of section 40 of the [*Law of Succession Act*](#) Laws of Kenya may be absurd.

Petitioners' Submissions

5. The petitioner filed submissions on 30/05/2023 through the firm of Messrs. Chemweno & Company Advocates. Counsel for the petitioner submitted that the deceased married Rosebella Chepkoech in 1971. Further, that he had an adulterous relationship with Rosalin Chebwamok who had been hired as a house help on or about 1983.
6. The deceased had gifted St. Thomas Chebarus Catholic church 1 acre and gifted his nephew David Kiprotich Keino 2.4 acres. Urging that the deceased's wishes should be respected, the petitioner submitted that the estate should be distributed equally among the 17 children the deceased left behind. He faulted the objectors' mode of distribution as it did not give explanations as to why the daughters were to get 1.5 acres while the men would get 4 acres each. Counsel cited Article 27 of the [*Constitution*](#) on Equality and Freedom and further, relied on the case of *Rono v Rono & Anor* (2008) IKLR in support of this submission
7. Counsel submitted that the petitioner had presented the fairest mode of distribution. Additionally, he cited section 38 of the [*Law of Succession Act*](#) in support of the submission that death without a will means that the property of the deceased is divided under Part V on intestacy. He urged the court to consider the determination in [*Re Estate of John Musambayi Katumanga – Deceased*](#) (2014) eKLR in support of this submission.
8. Counsel further submitted that unless there is good reason, the court should not depart from the conventional and legal manner of distribution. He relied on the case of In [*Re Estate of Joseph Eric Owino \(Deceased\)*](#) 2022 eKLR where the court stated that there must be a good reason before the court departs from equal distribution as per the act. He urged the court to confirm the grant in the manner proposed with costs awarded to the Petitioner.
9. There are submissions on record, purportedly filed by the Petitioner through the firm of Jepkemoi Irene & Co. Advocates and dated 07/08/2023. The heading of the submissions names one Ambrose



Kibitok Serem as the petitioner. I note that the Petitioner in this cause is Esther Jepkorir Rono and therefore I shall not consider these submissions as the party is a stranger to these objection proceedings.

Issues for determination

10. The only issue pending is; Distribution of the intestate estate of the late Thomas Kipserem Koech. It is not in dispute that this was a polygamous family entity bringing into perspective Section 40 of the *Law of Succession Act* which provides as follows:

“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.”

11. 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.”

12. The Rights of the Children even in a polygamous household is stipulated in Section 35 and 38 of the *Law of Succession Act* as read with Section 41 and 42 of the same Act. It is also the principal guideline in the case of *Scholastic Ndululu Sura v Agnes Nthenya Sura* (2019) eKLR where the Court of Appeal held 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 the discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.”

Distribution of the estate

The estate of the deceased comprises of the following properties;

- a. Uasin Gishu/kormaet/91 14.13 Ha (34 Acres)
- b. Nandi/ndalat Settlement Scheme/405 6.5 Ha (16 Acres)
- c. Cheptil/kilagan Centre Plot No. 33
- d. Motor Vehicle Registration No. Kbp 112n
- e. 2 Acres Mature Blue Gum Trees
- f. 20 Dairy Cows
- g. 15 Merino Sheep

The deceased was survived by the following dependants



- a. Rosebella Jepkoech 1st Widow (Deceased)
- b. Veronica Jepngetich Sirma Daughter
- c. Silvester Kiprop Serem Son (Deceased)
- d. Esther Jepkorir Rono Daughter
- e. Michael Kiptum Keter Son
- f. Flora Njeru Daughter
- g. Christopher Kiplagat Serem Son
- h. Matayo Kipsang Serem Son
- i. Angeline Jepkosgei Koech Son
- j. Emily Songok Daughter
- k. Mark Cheruiyot Serem Son
- l. Barnaba Kibiwott Serem Son (Deceased)
- m. Caroline Jemutai Kogo Daughter
- n. Rosaline Jebwambok Koech 2nd Widow
- o. Martin Kipchirchir Koech Son
- p. Gladys Jelimo Daughter
- q. Hellen Jepkorir Daughter
- r. Ambrose Kibitok Serem Son
- s. Margaret Jepkemboi Daughter
- t. Sheila Jeruto Granddaughter

It is not in dispute that the deceased had 17 children. It is also not in dispute that he had allocated the church 1 acre of land. I have considered the proposed modes of distribution and I find that the proposed mode of distribution filed by the Petitioner on 12/04/2023 is the most appropriate as it distributes the estate of the deceased equally.

I therefore distribute the estate of the deceased as follows;



NAME	DESCRIPTION OF PROPERTY	OF	SHARE OF HEIRS
Veronica Jepngetich Sirma	UASIN KORMAET/91	GISHU/	3 ACRES
Esther Jepkorir Rono	UASIN KORMAET/91	GISHU/	3 ACRES
Flora Njeru	UASIN KORMAET/91	GISHU/	3 ACRES
Christopher Kiplagat Serem	UASIN KORMAET/91	GISHU/	3 ACRES
Mark Cheruiyot Serem	UASIN KORMAET/91	GISHU/	3 ACRES
Martin Kipchirchir Koech	UASIN KORMAET/91	GISHU/	3 ACRES
Gladys Jelimo	UASIN KORMAET/91	GISHU/	3 ACRES
Hellen Jepkorir	UASIN KORMAET/91	GISHU/	3 ACRES
Ambrose Kibitok Serem	UASIN KORMAET/91	GISHU/	3 ACRES
Margaret Jepkemboi	UASIN KORMAET/91	GISHU/	3 ACRES
Estate of barnabas Kibiwott Serem	UASIN KORMAET/91	GISHU/	3 ACRES
St. Thomas Chebarus – Catholic Church	UASIN KORMAET/91	GISHU/	3 ACRES
David Kiprotich Keino	UASIN KORMAET/91	GISHU/	2.4 Acres
Caroline Jemutai Kogo	UASIN KORMAET/91 LR. NO. NANDI/NDALAT SETTLEMENT SCHEME/405	GISHU/	2 Acres 1 Acre



Michael Kiptum Keter	LR. NO. NANDI/NDALAT SETTLEMENT SCHEME/405	3 ACRES
Matayo Kipsang Serem	LR. NO. NANDI/NDALAT SETTLEMENT SCHEME/405	3 ACRES
Angeline Jepkosgei Koech	LR. NO. NANDI/NDALAT SETTLEMENT SCHEME/405	3 ACRES
Emily Songok	LR. NO. NANDI/NDALAT SETTLEMENT SCHEME/405	3 ACRES
Estate of Silvester Kiproprop Serem	LR. NO. NANDI/NDALAT SETTLEMENT SCHEME/405	3 ACRES
Estate of Silvester Kiproprop Serem Veronica Jepngetich Sirma Esther Jepkorir Rono Michael Kiptum Keter Flora Njeru Christopher Kiplagat Serem Matayo Kipsang Serem Angeline Jepkosgei Koech Emily Songok Mark Cheruiyot Serem Estate of Barnaba Kibiwott Serem Caroline Jemutai Kogo Martin Kipchirchir Koech Gladys Jelimo Hellen Chepkorir Ambrose Kibitok Serem Margaret Chepkemoi	CHEPTIL/KILAGAN CENTER PLOT NO. 33 MOTOR VEHICLE REGISTRATION NO. KBP 112N 2 ACRES MATURE BLUEGUM TREES 20 DAIRY COWS 15 MERINO SHEEP	



13. For the above reasons the Estate of the deceased who died intestate be duly shared out in conformity with the above matrix which is within the scope of Section 40 as read with Section 38 of the [Law of Succession Act](#). As a consequence, a certificate of confirmation of grant be issued for endorsement by this court as an instrument for onward transmission of the intestate estate of the deceased.

14. It is so ordered.

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

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R. NYAKUNDI

JUDGE

