



**In re Estate of Alexander Machi Kebenei (Deceased) (Succession Cause 125 of 2019) [2023] KEHC 1077 (KLR) (6 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1077 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 125 OF 2019  
RN NYAKUNDI, J  
FEBRUARY 6, 2023  
IN THE MATTER OF THE ESTATE OF ALEXANDER MACHII  
KEBENEI (DECEASED)**

**JUDGMENT**

1. What is before this court is the distribution of the estate of the deceased. The administrators were granted letters of administration on May 3, 2021 and the ascertainment of all the shares of all persons beneficially entitled to the estate has since been completed.
2. The beneficiaries consented to the proposed mode of distribution and the protestors were invited by the court to file their proposed mode of distribution but failed to do so to this point. Whereas I note that the administrators filed an affidavit in response to the affidavit of Mary Chepchirchir sworn on January 16, 2023, there is no such affidavit on record. In the premises, the court is duty bound to analyse the proposed mode of distribution and establish whether it is in consonance with the law before determining whether to allow the same or order otherwise. For reasons unknown to the court some of the beneficiaries blatantly ignored or neglected to endorse the mode of distribution as proposed by the administrators, namely: Josphine Jebitok Kebenei and Sammy Kiprono Kebenei
3. This was a genuine and serious intestate dispute with a decisive outcome in the language of the *law of succession Act* under section 35, 36, 37, 38, and 40.
4. The provisions concerns the division of a deceased persons intestate estate among the heirs. The dispute which relate to the existence of a right of inheritance and also the scope or the manner of distribution calls upon each beneficiary to canvass his or her a grievances before a probate court. The starting point is usually for the parties to build consensus around the question of the estate survived by the deceased and the model of distribution in a comprehensive and convincing manner to the court. It should be noted that the rights asserted by the beneficiaries in the probate proceedings must be assessed within the existing provisions of the *Succession Act* and the *Constitution* as a whole. The court reiterates that any dependant or beneficiary who ignores the direction of the court to file a protest or participate in a formal way may be considered to have abdicated his or her claim to a right on inheritance. Those factors once found sufficient by the court has to proceed to comply in making a final declaration on



distribution as protected and guaranteed in the *Law of Succession Act*. In the determination of any matters arising against the distribution of the deceased estate everyone within that lineage is entitled to a fair hearing by a legally constituted competent, independent, and impartial Probate Court. However, it is recognised that a fair trial has a fundamental right requires each claimant or beneficiary for that matter to observe and conduct themselves fairly without prejudicing the rights of other rights holder. The real test is whether there exists circumstances in which the court shall be held hostage by a class or a member of the inheritance so as to impair fair administration of justice. The answer to me is in the negative in view of the fair trial rights concept that a person is only given adequate opportunity to defend himself or to lay his or her case before a competent probate court as enshrined under Article 50(1) of the *constitution*. In the determination of this cause. I will rely on the information provided by the administrators notwithstanding the contribution by some of the beneficiaries. The major bone of contention relates to the distribution of the Assets and Liabilities of the intestate estate.

### **The Decision**

5. The matter relates to the provisions of Section 29 of the *Law of Succession Act* which defines a dependant to include the wife or wives or former wife or wives and the children of the deceased whether or not maintained by the deceased immediately prior to his death.
6. From the material advanced before this court it is undisputed fact that the deceased never discriminated any of his children on account of sex or gender. I think in the circumstances of this case, section 40 of the Act is of considerable force as deduced from the language which provide as follows:

“That where a polygamous man dies, his estate shall 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. The practice of plural marriage gives rise to families of mammoth size and byzantine structure. Given the number of potentially competing interests in a polygamist decedent’s estate, one might expect to find an abundance of estate litigation pitting family members against one another. It is therefore not surprising to find a distinct dearth of probate cases involving intestate estates of polygamous family in this region.
8. That might explain the reasons behind non-endorsement of the consent by some of the beneficiaries to this cause of action. But this does not imply that court of law have no legal tools to unlock the distribution.
9. This court has inherent powers under Rule 73 of the *Probate and Administration Rules*. Rule 73 provides as follows;

‘Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.’

10. Section 38 provides as follows;

“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”.



11. Upon considering the mode of distribution dated December 9, 2022, I find that the estate shall be distributed as per the mode proposed by the administrators. The deceased's estate shall be distributed as follows;
1. Moi's Bridge Sirikwa/Block 3/248 - Peter Kiplimo
  2. Moi's Bridge Sirikwa/Block 3/248- Caroly Kibiwot
  3. Moi's Bridge Sirikwa/Block 3/250- Julius Kirwa Kosgey
  4. Moi's Bridge Sirikwa/Block 3/251- Richard Kipchumba Kebenei
  5. Moi's Bridge Sirikwa/Block 3/252- John Kipkemboi Maiss
  6. Moi's Bridge Sirikwa/Block 3/253- Henry Kiprop Kebeney
  7. Moi's Bridge Sirikwa/Block 3/254- Matthew Kimutai Kebenei
  8. Moi's Bridge Sirikwa/Block 3/255- Josphinejebhok Kebenei
  9. Moi's Bridge Sirikwa/Block 3/121 (approximately 15 acres) To be shared equally among:-
    1. Sammy Kiprono Kebenei 5 Acres
    2. Pracilykiplagat Kebenei 5 Acres
    3. Simon Kibet Kebenei 5 Acres
  10. Moi's Bridge Sirikwa/Block 3/266 (Approximately 1.800 Hectares)
    1. Peter Kiplimo 150 x 100 FT
    2. Caroly Kibiwot 150 x 100 FT
    3. Julius Kirwa Kosgey 150 x 100 FT
    4. Richard Kipchumba Kebenei 150x100 FT
    5. Henry Kiprop Kebeney 100 x 100 FT
    6. John Kipkemboi Maiss 150 x 100 FT
    7. Matthew Kimutai Kebenei 150 x 100 FT
    8. Pracilykiplagat Kebenei 150 x 100 FT
    9. Simon Kibet Kebenei 100 x 100 FT
    10. Sammy Kiprono Kebenei 150 x 100 FT
    11. Paul Kipngetich Kebenei 150 x 100 FT
  11. Moi's Bridge Sirikwa/Block 3/257 – Administrators to hold in trust on behalf of all beneficiaries
  12. Moi's Bridge Sirikwa/Block 3/267 (Approximately 6 Acres)
    1. Peter Kiplimo 150 x 100 FT
    2. Caroly Kibiwot 150 x 100 FT



3. Julius Kirwa Kosgey 150 x 100 FT
  4. Richard Kipchumba Kebenei 150 x 100 FT
  5. Henry Kiprop Kebeney 150 x 100 FT
  6. John Kipkemboi Maiss 150x100 FT
  7. Irene Chepkoech 150 x 100 FT
  8. Matthew Kimutai Kebenei 150 x 100 FT
  9. Pracily Kiplagat Kebenei 150 x 100 FT
  10. Simon Kibet Kebenei 150 x 100 FT
  11. Sammy Kiprono Kebenei 150 x 100 FT
  12. Paul Kipngetich Kebenei 150 x 100 FT
  13. Lucy Cherotich 150 x 100 FT
  14. Mary Chepchirchir 150 x 100 FT
  15. Margaret Jeruto Kebenei 150 x 100 FT
  16. Maurine Jepkorir 150 x 100 FT
  17. Grace Jepkemboi Kebenei 100 x100FT
13. Moi's Bridge Sirikwa/Block 3/240
1. Grace Jepkemboi Kebenei 40 x129ft
  2. Lucy Cherotich 40 x129 ft
  3. Henry Kiprop Kebeney 40 x129ft
  4. Grace Jepkemboi Kebenei &
  5. Mary Chepchirchir 40 x129ft
  6. Portions sold to purchasers to be transmitted to the administrators who will thereafter transfer to the purchasers. The remainder shall be held in trust by the administrator for themselves & beneficiaries in equal shares.
14. Moi's Bridge Sirikwa/Block 3/256
1. Peter Kiplimo 0.7 of an Acre
  2. Paul Kipngetich Kebenei 0.7 of an Acre
  3. Sammy Kiprono Kebenei 0.7 of an Acre
  4. Caroly Kibiwot 0.7 of an Acre
  5. Margaret Jeruto Kebenei 0.7 of an Acre
  6. Irene Chepkoech 0.7 of an Acre
  7. Maurine Jepkorir 0.7 of an Acre



15. Ziwa Sirikwa LR No. 11701/45  
Josphine Jebitok Kebenei Whole
16. Ziwa Sirikwa LR No 11701/46 Simion Kibet Kebenei Whole
17. Moiben/Moiben Block 2 (Segero) 518 Paul Kipngetich Kebenei Whole
18. Moiben/Moiben Block 2 (Segero) 515
  1. Paul Kipngetich Kebenei 1 Acre
  2. Grace Jepkemboi Kebenei 2.3 Acres
19. Moiben Township Plot 21 To be shared equally by:-
  1. Peter Kiplimo
  2. Paul Kipngetich Kebenei
  3. Sammy Kiprono Kebenei
  4. Caroly Kibiwot
  5. Margaret Jeruto Kebenei
  6. Irene Chepkoech
  7. Maurine Jepkorir
20. Moiben/Moiben Block 1/18
  1. Mary Chepchirchir 2.5 ACRES
  2. Catholic Church 0.5 OF AN ACRE
  3. To be sold and proceeds used to offset estate fees & duties 1 acre
21. Moi's Bridge 858/17  
Simion Kibet Kebenei Whole
22. Eldoret Municipality/Block 14/1374 – Hill School To be shared equally by the following beneficiaries:-
  1. Sammy Kiprono Kebenei
  2. Pracily Kiplagat Kebenei
23. Uasin Gishu/Kimumu/1251  
To be shared equally by the following beneficiaries:-
  1. Matthew Kimutai Kebenei
  2. Richard Kipchumba Kebenei
24. Eldoret Municipality block 14/283  
To be shared equally by the following beneficiaries:-
  1. John Kipkemboi Maiss



2. Henry Kiprop Kebeney
3. Julius K1rwakosgei
25. A portion in Langas Farm LR No 8500 measuring a quarter of an acre To be shared equally by the following beneficiaries: -
  1. Caroly Kibiwot
  2. Paul Kipngetich Kebenei
26. Eldoret Municipality/Block 15/1001  
Pracily Kiplagat Kebenei Whole
27. Shares in Kenya Commercial bank, DTB, ABSA, NCBA bank  
Josphine Jebitok Kebenei Whole
28. Safaricom Lease  
Administrators to hold in trust on behalf of all beneficiaries and themselves in equal shares
29. Ziwa Machine Plot No. 15  
To be shared equally by the following beneficiaries:-
  1. Peter Kiplimo
  2. Paul Kipngetich Kebenei
  3. SAMmy Kiprono Kebenei
  4. Caroly Kibiwot
  5. Margaret Jeruto Kebenei
  6. Irene Chepkoech
  7. Maurine Jepkorir
30. Moiben/Moiben Block 2 (Segero) 513  
Grace Jepkemboi Kebenei - Whole

It is so ordered.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 6<sup>TH</sup> DAY OF FEBRUARY 2023**

**In the presence of Matekwa for the Chemoiyai for the 2<sup>nd</sup> petitioner**

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**R. NYAKUNDI JUDGE**

**([info@chemoiyaiadvocates.co.ke](mailto:info@chemoiyaiadvocates.co.ke), [birechrutoadvcoaes@gmail.com](mailto:birechrutoadvcoaes@gmail.com))**

