



**In re Estate of Kipkosgei Arap Moita (Deceased) (Succession Cause
25 of 1995) [2023] KEHC 17628 (KLR) (22 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17628 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 25 OF 1995
RN NYAKUNDI, J
MAY 22, 2023
IN THE MATTER OF THE ESTATE OF KIKPKOSGEI ARAP MOITA**

BETWEEN

CORNELIUS BUNGEI KIRORYO APPLICANT

AND

JOSEPH KIPSANG KOSKEI 1ST RESPONDENT

HENRY KIPRONO KOSGEY 2ND RESPONDENT

RULING

1. What is pending before this court is the application dated 15th July 2022 seeking the following orders;
 1. Spent
 2. Spent
 3. Spent
 4. That upon the appointment of the administrators under paragraph 3 above this Honourable Court be pleased to distribute the estate of the deceased as per the proposed mode of distribution in the summons for confirmation grant dated 16th April, 2021 and as per paragraph 10 of the Supporting Affidavit herein.
 5. That the Nandi County Surveyor and the Nandi County Land Registrar do visit survey and subdivide parcel numbers Nandi/Lessos/185, Nandi/Lessos/636, Nandi/Lessos/510 and Meteitei/Kaplamaiywo Block2/2 as per the Certificate of Confirmation of grant.
 6. The OCS Lessos Police Station do provide security and ensure compliance with the orders aforesaid during the survey exercise with respect to parcel numbers Nandi/Lessos/185, Nandi/Lessos/636. Nandi/Lessos/510.



7. The OCS Songhor Police Station do provide security and ensure compliance with the orders aforesaid during the survey exercise with respect to parcel number Meteitei/Kaplamaiywo Block2/2.
8. That the costs of this application shall be provided for.
2. The application is premised on the grounds set out therein and the contents of the Supporting Affidavit of Cornelius Kiroryo Bungei and the annexures attached thereto.
3. The prayer to have the applicant appointed the administrator of the estate was granted by the court and what remains is distribution of the estate. The applicant had filed a mode of distribution together with the summons dated April 16, 2023. The respondents, despite being directed by the ruling of the court dated April 19, 2023 to make submissions on any matters arising and has not filed any responses.

The Decision

4. The law: The *Law of Succession Act* provided for polygamous wives and children with intestate inheritance rights in section 38 & 40 which I consider to be a probate code on distribution. The language in the sections appear to be signed to govern the distribution of any movable or immovable property of the deceased among the heirs of either monogamist or polygamist decedents. In absence of any other compelling or substantial circumstances shown by way of cogent evidence maxim applicable is for the property to descend in equal shares to the children or heirs survived of the deceased. The only confusing language which ought to be construed and interpreted purposively is that is that of the legitimate rights of a spouse. The scheme of distribution described by section 40 indeed does not give prominence to the ranking rights of a spouse of either gender. I have in mind the homestead occupied more specifically by the widow or any portion of it at the demise of the deceased. The true principle in my view unless there is a dispute as to the existence of a marriage all that share in possession of the widow in which the matrimonial home has been formerly erected by the deceased should be held free to her use in exclusion of her children or heirs to the estate. It is necessary to differentiate that share with any other claims against the said estate. It is essential that a safety net for those spouses from a polygamous status be expressly reflected to purpose plural marriages. A more plausible explanation gleaned from section 40 of the Act is suggestive to address that imbalance. The legislative generosity speaks of “ 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 ”.
5. The is off course nothing in the formulation to affect the fundamental rule but under our intestate or testate distribution, the widows / wives matrimonial inheritance as a whole must be authenticated in applying the formulae of either household or unit. It is common knowledge that unless existence of evidence to the contrary married wives union with their respective husband varies as to time and season when the union became solemnised. This presumption amount ordinarily for the 1st wife to claim additional share of entitlement in comparison to her co-wives who joined the family at a much later date during the survivorship of the deceased. This is a specific claim of shares earning some kind of dividends from the investment made between the 1st wife and the deceased in the subsistence of the marriage before invitation by the deceased for the other co-wives to join the deceased on account of marriage. It follows therefore, that the distribution of this estate shall be governed by the provisions of Section 38 & 40 of the *Law of Succession Act*.



6. I have considered the mode of distribution proposed by the applicant and it is my considered view that the same is in consonance with section 40 of the *Law of Succession Act*. Therefore, the estate shall be distributed as follows;



NAME	DESCRIPTION	SHARE OF HEIRS
1ST HOUSE		
	Nandi Lessos Lr No. 185	
Lucas Koskei		22.85 Acres
Cornelius Bungei		22.85 Acres
Estate of Julius Kirorei	Sochoi Land	60 Acres (Whole)
Molo Farm		
Lucas Koskei		13.3 Acres
Cornelius Bungei		13.3 Acres
Estate of Julius Kirorei		13.3 Acres
	Nandi/Lessos/636 (Mogoon)	
Kibor Bungei - deceased		9.5 Acres
Joseph Koskei		9.5 Acres
Estate of Fredrick Kipchumba Koskei		9.5 Acres
Estate of Ambrose Koskei Deceased		9.5 Acres
	Molo Farm 45 Acres	
Kibor Bungei - deceased		11.25 Acres
Joseph Koskei		11.25 Acres
Estate of Fredrick Kipchumba Koskei		11.25 Acres
Estate of Ambrose Koskei Deceased		11.25 Acres
3RD House		



	Cheptiret LR 8798/11	
Henry Kiprono Koskei		74.5 Acres
Estate of Kimurgor Ngelechei - deceased		74.5 Acres
4TH House		
	Lelwak LR No. 510 Nandi/Lessos	
Paul Koskei		15.7 Acres
Reuben Koskei		15.7 Acres
Thomas Koskei		15.7 Acres
William Koskei		15.7 Acres
	Meteitei Farm Kaplamiwo Block 2/2	
Paul Koskei		8.75 Acres
Reuben Koskei		8.75 Acres
Thomas Koskei		8.75 Acres
William Koskei		8.75 Acres
5th House		
	Kipkabus Farm	
Bot Karonei		To be shared equally amongst herself and children John Kirwa, Philip Kipkemei, Christine Jelagat, Cheptoo and Jepleting

7. Further, I order as follows;

1. The Nandi County Surveyor and the Nandi County Land Registrar do visit survey and subdivide parcel numbers Nandi/Lessos/185, Nandi/Lessos/636, Nandi/Lessos/510 and Meteitei/Kaplamiwo Block2/2 as per the Certificate of Confirmation of grant.



2. The OCS Lessos Police Station do provide security and ensure compliance with the orders aforesaid during the survey exercise with respect to parcel numbers Nandi/Lessos/185, Nandi/Lessos/636. Nandi/Lessos/510.
3. The OCS Songhor Police Station do provide security and ensure compliance with the orders aforesaid during the survey exercise with respect to parcel number Meteitei/Kaplamaiywo Block2/2.
4. Each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 22ND DAY OF MAY 2023

In the Presence of:

Mr. Sambu Advocate

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R. NYAKUNDI

JUDGE

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succession cause no 25 of 1995	0
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