



In re Estate of Ayub Kiprono Chepkwony (Deceased) (Succession Cause 106 of 2014) [2023] KEHC 18831 (KLR) (15 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18831 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 106 OF 2014
JK SERGON, J
JUNE 15, 2023**

IN THE MATTER OF THE ESTATE OF AYUB KIPRONO CHEPKWONY (DECEASED)

IN THE MATTER OF

**PAULINE CHEPCHIRCHIR CHEPKWONY 1ST ADMINISTRATOR
JOSEPHINE CHEMUTAI CHEPKWONY 2ND ADMINISTRATOR
IRENE CHEPKWONY 3RD ADMINISTRATOR
STELLA CHEBET CHEPKWONY 4TH ADMINISTRATOR**

RULING

1. The 1st and 2nd administrators petitioned the Estate of the Deceased herein Ayub Kiprono Chepkwony who died intestate on November 7, 2011 and were issued with grant of Letters of Administration Intestate on October 9, 2014.
2. Subsequently by consent of parties the grant of representation was amended and issued in favour of four Administrators namely Pauline Chepchirchir Chepkwony, Josphine Chemutai Chepkwony, Stella Chebet Chepkwony and Irene Chepwony after which an Amended Grant of Letters of Administration dated June 22, 2016 was issued to the said four Administrators.
3. Even after the issuance of the grant, parties did Not agree on the mode of distributing the estate giving rise to many Applications and on November 29, 2022 the matter was referred to the Court annexed mediation for screening and being placed before the mediator.
4. On January 9, 2023 the mediation report was filed in court and on January 24, 2023 the original file was forwarded back to the court with the Partial Mediation Agreement after the matter went through the mediation process successfully. Subsequently on January 30, 2023, the court adopted the Partial Mediation Agreement dated January 9, 2023 as the decision of the court. On March 30, 2023, the Court directed that the remaining dispute be stood over to May 11, 2023 for hearing.



5. It is worth Noting that parties had No dispute concerning the beneficiaries of the estate and the assets of the estate.
6. The deceased herein Ayub Kiprono Chepwony had two (2) wives, namely Mirriam Chepwony as the first wife and Pauline Chepwony as the second wife with the first wife having ten (10) children while the second wife had three (3) children. The said deceased left the following dependents surviving him: -

First House

- i. Margret Cherotich
- ii. Liliy Chepkemoi
- iii. Irene Chepkoech
- iv. Lucy RoNo wife of Raymond RoNo (deceased son)
- v. Josephine Chemutai
- vi. Winnie Chepkirui
- vii. Stella Chebet
- viii. Caroline Chepchumba
- ix. Isabella Chelangat
- x. Doris Chepkorir Chepwony.

Second House

- i. Pauline Chepchirchir Chepwony (Widow)
- ii. Deflah Chepngetich
- iii. Mildred ChepngeNo
- iv. Mitchell Cheruto.

7. From the Mediation Report, the deceased had the following Assets
 - i. LR No Kericho/kipkelion/North/block 1 Blue Hills/20 (approximately 27 acres)
 - ii. LR No Kericho/kipkelion/North/block 1 Blue Hills/22 (Approximately 43 acres)
 - iii. LR No Kericho/kapsuser/952
 - iv. Unsurveyed Commercial Plot No 3 Kericho Municipality (sawmill)
 - v. LR No 631/394 Kericho Municipality (Chekan Estate)
 - vi. Unsurveyed Commercial Plot No 40 Kericho Municipality
 - vii. LR No Block 4/213 Kericho Municipality
 - viii. LR No 3667 Situate in Mombasa
 - ix. LR No 3668/VI/MN
 - x. Plot Number 133 Bararini Settlement Scheme situate in Uasin Gishu Municipality.



- xi. Parcel of Land Situate at Nandi County at Kimwani
 - xii. Shares held at Kenya Airways -Share Certificate No xxxxx
 - xiii. Shares held at Sinendet Tea Multipurpose Society-Share Certificate No xxxxx new form No xxxxxx
 - xiv. Monies at Co-operative Bank Account No xxxxxxxxxxxxxxxx
8. During the mediation both parties agreed that plot No 3 Kericho Municipality (Sawmill) be retained and divided among the fourteen (14) beneficiaries of the deceased herein while Parcel of land plot LR No 631/394 Kericho Municipality (Cheken Estate) be sold and the proceeds be divided among the fourteen (14) beneficiaries of the deceased.
 9. Parties further agreed during the mediation that the Unsurveyed Commercial plot No 40 Kericho Municipality, Plot LR No 4/213 Kericho Municipality and Land Parcel LR No 3667 situate in Mombasa be sold and the proceeds divided among the fourteen (14) beneficiaries of the deceased while Land Parcel LR No 133 Baharini Settlement Scheme situated in Uasin Gishu be retained and divided among the fourteen (14) beneficiaries of the deceased.
 10. The parties further agreed that Parcel of Land LR No 3668/VI/MN in Mombasa and Parcel of Land situated in Nandi County at Kimwani be sold and the proceeds be divided among the fourteen (14) beneficiaries of the deceased.
 11. It was the parties agreement that Shares at Kenya Airways Share Certificate No xxxxx and Shares at Sinendet Tea Multipurpose Society Share Certificate number xxxxxx be retained and divided among the fourteen (14) beneficiaries while the monies at Co-operative Bank Account No xxxxxxxxxxxxxxxx be divided among the fourteen (14) beneficiaries of the deceased.
 12. The Parties did Not agree on how the distribution of the following properties will be done, that is:-
 - i. LR No Kericho/Kipkelion/North/Block 1 Blue Hills/20 (approximately 27 acres)
 - ii. LR No Kericho/Kipkelion/North/Block 1 Blue Hills/22 (Approximately 43 acres)
 - iii. LR No Kericho/Kipkelion/North/Block 1 Blue Hills/21 (Approximately 52 acres)
 - iv. LR No Kericho/Kapsuser/952
 13. The unresolved matter/properties were referred back to the court. On 11th May 2023, when the matter came up for hearing of the disputed properties, Mr. Mwita, learned Counsel holding brief for Mrs. Bett for the 1st Petitioner submitted that the parties had agreed to put the following properties in abeyance, that is: -
 - i. LR No Block 4/213 (Unsurveyed Plot No 40 Kericho Municipality)
 - ii. Plot No 133 Baharini Settlement Scheme in Uasin Gishu County.
 The court ordered that the aforesaid properties be set aside.
 14. Learned Counsel Mr. Mwita further submitted that the only properties which had dispute as to the mode of distribution were:
 - i. LR No Kericho/Kapsuser/952 measuring 10 acres
 - ii. LR No Kericho/Kipkelion/North/Block 1 Blue Hills/21 (Approximately 52 acres)



15. He submitted that the 1st Petitioner would Not wish to litigate on the Kipkelion property since it is a dispute between the children of the first house. He further submitted that prior to his demise, the deceased had settled the two wives in two distinct parcels of land, that is the first family in Kericho/ Kipkelion North Block 1 (Blue Hills) Nos 20, 22 and the disputed No 21 while the second family was settled in LR No Kericho/Kapsuser/952 and that the 1st Petitioner was the only surviving widow of the deceased.
16. It was Mr. Mwita's submission that there was a contention that Stella Chebet wanted a share in the Kapsuser land and he urged the court to find that the said desire was Not made in good faith since she is the only one who raised that query and that there was No contest as to the settlement of the two houses.
17. He submitted that the Affidavit sworn by Stella dated 4th February, 2016, 12th May, 2016 and 20th February, 2019 had No such claim and that whereas the 1st Petitioner has a life interest, she has chosen to be contented with only 10 acres hence it will be unfair for a beneficiary from the first house to claim part of the said 10 acres belonging to the second house.
18. Mr. Mwita further submitted that Stella Chebet has never filed any protest on the Kapsuser property and that there were minutes of the family meeting giving the second house 10 acres in Kapsuser land, that the first house has over 100 acres in Kipkelion and therefore it will be unfair for them to come and claim part of the 10 acres Kapsuser land. He prayed for the grant to be confirmed save for the properties to be held in abeyance.
19. Mr. Kigen Learned Counsel for Victor Metelong the objector submitted that his client is interested in plot No 133 Baharini Settlement Scheme and that his client did Not participate in the mediation proceedings.
20. Mr Morata learned Counsel holding brief for Mr. Nyadimo for Paul Maina Chege the protestor submitted that Mr. Nyadimo's client is interested in LR No Block 4/213 (Unsurveyed plot number 40 Kericho Municipality) and that they had No objections on Mr. Mwita's submissions.
21. Mr. Kefa Learned Counsel for the 2nd Petitioner stated that the 2nd Petitioner is interested in LR No Kericho/Kipkelion/North/Block 1 Blue Hills/21 and that there is a contestation that the said parcel of land belongs to the deceased estate. He further submitted that the said land had been charged to KCB Bank and later registered in the name of Wiste Investments Limited. That the said land is currently registered in the name of Josephine Chemutai Chepkwony and there is No dispute about that.
22. Mr. Kefa submitted that the said land was never registered in the deceased's name hence it did Not form part of the deceased's estate and that the green card produced attested to that fact. He further submitted that there is No dispute that the two families were settled separately.
23. I find that as per the Partial Mediation Agreement, both parties agreed on the assets that form part of the estate of the deceased and how the same should be distributed. I also find that both parties agree that the two houses were settled separately, that is the first house in Kericho/Kipkelion North Block 1 (Blue Hills) Nos 20, 22 and the disputed No 21 while the second family was settled in LR No Kericho/ Kapsuser/952.
24. The parties herein have already agreed to keep in abeyance the two properties that have third party claim, that is plot No 133 Baharini Settlement Scheme in Uasin Gishu and LR No Block 4/213 (Unsurveyed plot number 40 Kericho Municipality) and the court has already set aside the two properties.



25. As concerning Stella Chebet Claim of a share of LR No Kericho/Kapsuser/952, I agree with Mr. Mwita that this claim is unfair since she is a daughter in the first house, and the deceased having settled the first house in Kipkelion and the second house in Kapsuser, a beneficiary of the first house cannot lay claim on the property of the second house especially so where it is Not disputed that indeed the deceased settled the two houses separately. Therefore, this claim is dismissed and land parcel LR No Kericho/Kapsuser/952 is retained as the property of the second house.
26. With regards to Josephine Chemutai Chepkwony the 2nd Petitioner herein interest in LR No Kericho/Kipkelion/North/Block 1 Blue Hills/21, I agree with Mr. Mwita that this is a dispute between the beneficiaries of the first house and should therefore Not be litigated in this matter. Upon my study of the green card attached with regard to the said property, it is true that the said property is currently registered in the name of Josephine Chemutai Chepkwony.
27. *In Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR Musyoka J. elucidated the role of a probate court as follows:
- “.....The *Law of Succession Act*, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.
28. In *Adan Chuda Sode v Madina Oshe Jira & another* [2021] eKLR, the court stated as follows:
- “Section 3 of the *law of Succession Act* defines an “estate” to mean the free property of a deceased person, while “free property” in relation to a deceased person is defined to mean the property of which that person was legally competent freely to dispose during his lifetime and in respect of which his interest has Not been terminated by his death. In *In re Estate of Job Ndunda Muthike (Deceased)* (2018) eKLR the court (Odunga J) while expounding on the said section stated that:
- It is therefore clear that any property which the deceased was Not legally competent freely to dispose during his lifetime and in respect of which his interest had been terminated by his death cannot form part of his estate and cannot be the subject of an application for confirmation of grant.
- In my considered view, I would think that “free property” of a deceased person such as land can be proved by documents such as a title deed, allotment letter, lease agreement, sale agreement etc. (emphasis supplied)
29. From the foregoing, it is clear that LR No Kericho/Kipkelion/North/Block 1 Blue Hills/21 does Not form part of the deceased’s property.
30. Consequently, I find that the following properties forms part of the estate of Ayub Kiprono Chepkwony hence available for distribution amongst the beneficiaries.
- i. LR No Kericho/Kipkelion/North/Block 1 Blue Hills/20 (approximately 27 acres)
 - ii. LR No Kericho/Kipkelion/North/block 1 Blue Hills/22 (Approximately 43 acres)
 - iii. LR No Kericho/kapsuser/952



- iv. Unsurveyed Commercial Plot No 3 Kericho Municipality (sawmill)
 - v. LR No 631/394 Kericho Municipality (Chekan Estate)
 - vi. LR No 3667 Situate in Mombasa
 - vii. LR No 3668/VI/MN
 - viii. Parcel of Land Situate at Nandi County at Kimwani
 - ix. Shares held at Kenya Airways -Share Certificate No xxxxx
 - x. Shares held at Sinendet Tea Multipurpose Society-Share Certificate No xxxxx new form No xxxxxx
 - xi. Monies at Co-operative Bank Account No xxxxxxxxxxxxxxxx
31. There is No dispute as to the beneficiaries and the beneficiaries are as earlier listed herein.
32. The upshot is that the Partial Mediation Agreement is adopted for the distribution of the estate of Ayub Kiprono Chepkwony, deceased save for LR No Block 4/213 (Unsurveyed Plot No 40 Kericho Municipality) and Plot No 133 Baharini Settlement Scheme in Uasin Gishu County which are held in abeyance and set aside. Consequently, the Grant is confirmed and the Estate of Ayub Kiprono Chepkwony, deceased should be distributed as per the Partial Mediation Settlement December dated 9th January, 2023 save for property LR No Block 4/213 (Unsurveyed Plot No 40 Kericho Municipality) and Plot No 133 Baharini Settlement Scheme in Uasin Gishu County as follows:-
- a. Unsurveyed Commercial Plot No 3 Kericho Municipality (sawmill) be retained and divided among the fourteen (14) beneficiaries of the deceased
 - b. LR No 631/394 Kericho Municipality (Chekan Estate) be sold and the proceeds be divided among the fourteen (14) beneficiaries of the deceased.
 - c. LR No 3667 situate in Mombasa be sold and the proceeds divided among the fourteen (14) beneficiaries of the deceased.
 - d. LR No 3668/VI/MN situate in Mombasa be sold and the proceeds divided among the fourteen (14) beneficiaries of the deceased.
 - e. Parcel of land situate in Nandi County at Kimwani be sold and the proceeds divided among the fourteen (14) beneficiaries of the deceased.
 - f. Shares at Kenya Airways Share Certificate No xxxxx be retained and divided among the fourteen (14) beneficiaries of the deceased.
 - g. Shares at Sinendet Tea Multipurpose Society Share Certificate number xxxxxx be retained and divided among the fourteen (14) beneficiaries of the deceased.
 - h. Monies held at Co-operative Bank Account No xxxxxxxxxxxxxxxx be divided among the fourteen (14) beneficiaries of the deceased.
 - i. LR No Kericho/Kipkelion/North/Block 1 Blue Hills/20 (approximately 27 acres) be retained by the first house.
 - j. LR No Kericho/kipkelion/North/Block 1 Blue Hills/22 (Approximately 43 acres) be retained by the first house.



k. LR No Kericho/Kapsuser/952 be retained by the second house.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 15TH DAY OF JUNE, 2023.

.....

J.K. SERGON

JUDGE

In the presence of:

C/Assistant - Rutoh

Miss Akech holding brief for Matelong

Kefa for 2nd Petitioner

Mwita for 1st Petitioner

