



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Kipkoech Arap Maina (Succession Cause
E077 of 2021) [2023] KEHC 20629 (KLR) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20629 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E077 OF 2021
RN NYAKUNDI, J
JULY 21, 2023**

IN THE MATTER OF THE ESTATE OF KIPKOECH ARAP MAINA JOHN KIPSANG

BETWEEN

JOHN KIPSANG KORIR PETITIONER

AND

MARY JEBET KIPKOECH OBJECTOR

RULING

1. What is pending before this court is distribution of the estate of the deceased. The grant of letters of administration was issued to John Kipsang Korir, Abraham Koech Maina and Mary Jebet Koech on December 20, 2021. As per the contents of the affidavit in support of the letters of administration, the deceased left behind the following beneficiaries;
 1. Bot Arusei - widow (deceased)
 2. Joseph Kipyego Maina - son (deceased)
 3. Dinah Chebichii Maina - daughter (deceased)
 4. Paul Koech - son
 5. Eunice Maina - daughter
 6. Rusi Kangogo - daughter
 7. John Korir - son
 8. Philip Keter - son
 9. Teresa Maina - daughter



10. Shadrack Maina - son
 11. Ann Maina - daughter
 12. Victor Koech - son
 13. Mary Jebet Koech - daughter
 14. Pauline Jepkorir - daughter
 15. Tecla Maina - daughter
 16. Leonida Maina - daughter
 17. Benjamin Maina - son
 18. Daniel Maina - son
 19. James Maina - son
 20. Peter Maina - son
 21. Esther Cheptarus Maina - widow (deceased)
 22. Rebecca Jepkemboi Maina - daughter
 23. Abraham Koech Maina - son
 24. Janet Jerotich Maina - daughter
 25. Cleophas Kimeli Korir - son
 26. Isaiah Kiptoo Maina - son
 27. Ivy Jepleting Maina - daughter
2. The deceased left behind the following properties;
1. LR Plateau/cHepkogony Block 3(Zirwa)23 – 31.32 Ha
 2. Olare/Burnt Forest Block 7 (Chemngoror – Kipkabus) 17 – 15.48 Ha

Petitioners’ Mode of Distribution

3. The petitioner filed a mode of distribution alongside the application dated December 14, 2021 and the supporting affidavit sworn by John Kipsang Korir. He proposed the estate be distributed as follows;
- LR Plateau/Chepkogony Block 3(Zirwa)23
1. Mary Jebet Koech – nil
 2. Pauline Jepkorir – 2 acres
 3. Leonida Maina – 2 acres
 4. Janet Jerotich Maina – 2 acres
 5. Rebecca Jepkemoi Maina – 2 acres
 6. Brian Kiptoo – 2 acres
 7. Shadrack Maina – 9.27 acres



8. Benjamin Maina – 9.27 acres
 9. Daniel Maina – 9.27 acres
 10. James Maina – 9.27 acres
 11. Chelang’at Kibiego – 3.27 acres
 12. John Korir – 3.87 acres
 13. Philip Keter – 3.87 acres
 14. Victor Koech – 3.87 acres
 15. Abraham Koech – 3.87 acres
 16. Isaiah Kiptoo – 3.87 acres
 17. Cleophas Kimeli – 3.87 acres
 18. Caroline Jepkemboi – 1 acre
 19. Ann Maina – 1 acre
 20. Tecla Mina - 1 acre
 21. Ivy Jepleting Maina – 1 acre
- Olare/Burnt Forest Block 7 (Chemngoro – Kipkabus) 17 – 15.48 Ha
1. Chelang’at Kibiego – 6 acres
 2. John Korir – 5.45 acres
 3. Philip Keter – 5.45 acres
 4. Victor Koech – 5.45 acres
 5. Abraham Koech – 5.45 acres
 6. Isaiah Kiptoo – 5.45 acres
 7. Cleophas Kimeli – 5.45 acres
- Kipkabus Settlement Scheme
1. Paul Koech – 9.27 acres

Objectors’ Proposed Mode Of Distribution

4. The objector, being one of the administrators, Mary Jebet Kipkoech swore an affidavit in objection to the proposed mode of distribution filed on August 1, 2022. She stated that long before the demise of the deceased LR Plateua/chepkogony Block 3 (Zirwa)23 measuring 31.32Hactares is in possession of the following:-
 1. Mary Jebet Kipkoech
 2. James Kiprotich Maina son
 3. Paulina Maina son
 4. Tecla Maina daughter



5. Jelagat Maina daughter
 6. Ben Maina son
 7. Daniel Maina son
 8. Peter Maina deceased
5. She stated that the land parcel known as Olare/burnt Forest Block 7 (chemngoror –kipkabus) 17 is in the possession of the following;
1. Joseph Kipyego Maina – deceased
 2. Chelagat Kipyego Maina - son
 3. Ann Maina – daughter
 4. David Koech – son
 5. Eunice Maina – deceased
 6. Shadrack Maina – son
 7. Victor Koech - son
 8. Abraham Koech - son
 9. Rebecca J. Maina - daughter
 10. Janet Jerotich Maina – daughter
 11. Isaiah Kiptoo Maina- son
 12. Cleophas Kimeli Maina- son
 13. Ivy Jepleting Maina – daughter
6. She intimated that Paul Koech is in possession of land Kipkabus Settlement Scheme and they have all lived in this manner without any problem. Further, that the proposed mode of distribution is biased, not merited because it is giving others more to the detriment of the rest and she has not been allocated any portion. She stated that in respect of the movable assets some of the deceased daughters and sons have sold tractor, trailer, harrower and plough without involving the rest, the proceeds therefrom should be shared equally. She urged that the shares at Standard Bank, Kenya Commercial Bank, National Bank, Safaricom and Family Bank account No. 1010xxxx should be followed up since they have been forwarded to the unclaimed assets and similarly shared equally.

Analysis & Determination

7. In a case of this nature where the deceased died intestate and was a polygamous man survived by two widows and children the anchor on distribution of his estate is section 40 of the [Law of Succession Act](#) which primarily provides as follows;
- “(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 interest within each house shall then be in accordance with the rules set out in sections 35 to 38”
8. In distributing the estate of a deceased person, the court must take into account the families involved and the parts of the estate that they may have occupied before the death of the deceased. The deceased was survived by 27 dependants and from the affidavit in support of the petition for grant of letters of administration intestate, only 20 of them are alive. Thus it is evident from both our constitution and the Succession Act that any act or conduct by an administrator to discriminate a beneficiary on grounds stated in article 27 (4) contravenes not only the Constitution, International and Regional Instruments but also the law of Succession Act. In article 2(5) of the Constitution Kenya has further bound itself to various International/Regional Human Rights Conventions. The most important ones for purposes of this ruling include: the International Conventions on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights(ICESCR.), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the African Charter on Human and Peoples Rights. (African Charter) and the African Charter on the Rights and Welfare of the Child. (“African Charter on the Rights of the Child.”).
9. It is in our Constitution imperatives to protect the rights to equality in article 27, article 28 on h article, article 40 on protection of right to property, article 43(1) on economic and social rights, article 45 on family rights.
10. Prominent on the surface of it within some ethnic groups in Kenya on widows or daughter’s inheritance rights is the division of property on the premise that men or sons alone have superior rights under customary law to inherit the estate survived by their parents. Particularly in a country such as Kenya women and daughters belonging to certain tribes have suffered unfair discrimination on inheritance a differentia based on gender/sex. This has handicapped this class of persons economically and socially. It seems puzzling when canvassed in court daughters of the deceased who happen to be married of to another family ought to be deprived of inheritance by the operation of the marriage. The idea of equality in succession matter is so difficult controversial that most of the succession matters in Kenya are delayed to await a favourable forum which bears a rational connection to deprive the women and girls right to inheritance. Notwithstanding the Constitution imperative and firm jurisprudence in Kenya that any law or custom that grants men a right to a greater share of property at the end of a marriage or the death of a relative is discriminatory and has serious impact on women’s/girls right to inheritance on account of this same custom and culture that perpetuates discrimination.
11. It is sufficient for purposes of this judgment to say that on the face of the law currently as ordained in Kenya, I accede to the summons for confirmation of grant based on the central role of human dignity, equality, right to own property, which is intrinsic worthy of human beings dealt in greater detail in our Constitution 2010. It has never been understood by this court why deprivation of the means of survival by the male gender as against the female gender despite of the preserved and upheld rights of equality in accordance with the spirit of the Constitution. It is therefore fundamental that courts in Kenya stay on the fulcrum that culture, customs, and religious beliefs cannot be used as an excuse to trample, demean, deprive, infringe, violate, deny or create barriers over women rights. It is for that reason that women’s rights to land and property with regard to this estate be enforced.
12. Guided by the affidavit in support of the petition for letters of grant of administration, it is my finding that the deceased is survived by the following;
1. Paul Koech – son



2. Eunice Maina – daughter
 3. Rusi Kangogo – daughter
 4. John Kipsang Korir – son
 5. Philip Keter – son
 6. Teresia Maina – daughter
 7. Shadrack Maina – son
 8. Ann Maina – daughter
 9. Victor Koech – son
 10. Mary Jebet Koech – daughter
 11. Pauline Jepkorir – daughter
 12. Tecla Maina – daughter
 13. Leonida Maina - daughter
 14. Benjamin Maina – son
 15. Daniel Maina - son
 16. James Maina – son
 17. Peter Maina – son
 18. Rebecca Jepkemoi Maina – daughter
 19. Abraham Koech Maina – son
 20. Jane Jerotich Maina - daughter
 21. Cleophas Kimeli Korir – son
 22. Isaiah Kiptoo Maina – son
 23. Ivy Jepleting Maina – daughter
 24. Estate of Eunice Maina (daughter)
 25. Estate of Teresa Maina (daughter)
13. The free property of the deceased that is available for distribution is;
1. LR Plateau/chepkogony Block 3(zirwa)23 – 31.32 Ha
 2. Olare/burnt Forest Block 7 (chemngoror – Kipkabus) 17 – 15.48 Ha
14. There is no evidence on record to confirm whether the parcel known as Kipkabus Settlement Scheme belonged to the deceased and therefore this court cannot distribute it as part of the estate. As for the allegations by the objector that the parcel of land known as Olare/burnt Forest Block 7 (chemngoror – Kipkabus) 17 – 15.48 Ha is more valuable as it is located in an urban town is not supported by any evidence and therefore I shall consider shares based on size of land. From the proposed mode of distribution annexed to the summons for confirmation of grant, I can't help but notice that the women



have been allocated smaller portions of the estate. Pursuant to the provisions of section 40 of the Law of Succession Act, I order that the estate of the deceased be distributed as follows;

LR Plateau/chepkogony Block 3(zirwa)23 – 31.32 Ha

1. Paul Koech – 1.87 Ha
 2. Eunice Maina – 1.87 Ha
 3. Rusi Kangogo – 1.87 Ha
 4. John Kipsang Korir – 1.87 Ha
 5. Philip Keter – 1.87 Ha
 6. Teresia Maina – 1.87 Ha
 7. Shadrack Maina – 1.87 Ha
 8. Ann Maina – 1.87 Ha
 9. Victor Koech – 1.87 Ha
 10. Mary Jebet Koech – 1.87 Ha
 11. Pauline Jepkorir – 1.87 Ha
 12. Tecla Maina – 1.87 Ha
 13. Leonida Maina - 1.87 Ha
 14. Benjamin Maina – 1.87 Ha
 15. Daniel Maina - 1.87 Ha
 16. James Maina – 1.87 Ha
 17. Peter Maina – 1.87 Ha
- Olare/burnt Forest Block 7 (chemngoror – Kipkabus) 17

1. Rebecca Jepkemoi Maina – 1.87 Ha
2. Abraham Koech Maina – 1.87 Ha
3. Jane Jerotich Maina - 1.87 Ha
4. Cleophas Kimeli Korir – 1.87 Ha
5. Isaiah Kiptoo Maina – 1.87 Ha
6. Ivy Jepleting Maina – 1.87 Ha
7. Estate of Eunice Maina - 1.87 Ha
8. Estate of Teresa Maina - 1.87 Ha

15. It is my considered view that this is the mode of distribution that is fair in the circumstances.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 21ST DAY OF JULY 2023

In the Presence of :

M/s Khayo for the Objector.



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R. NYAKUNDI
JUDGE

