



REPUBLIC OF KENYA



**In re Estate of Kipkoros Kiplagat (Deceased) (Succession Cause  
145 of 2000) [2023] KEHC 20084 (KLR) (17 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20084 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 145 OF 2000  
RN NYAKUNDI, J  
JULY 17, 2023**

**BETWEEN**

**PHILOMENA KANDIE ..... PETITIONER**

**AND**

**KIMOI KAPKOROS ALIAS ELIZABETH KIMOJ JACOB  
KAPKOROS ..... OBJECTOR**

**JUDGMENT**

1. This matter relates to the estate of Kipkoros Kiplagat who died intestate on July 14, 1985. On June 20, 2000 the Petitioner herein petitioned for the grant of letters of administration in her capacity as a daughter-in-law to the deceased. She stated that the deceased was survived by one Elizabeth Lagat (Deceased) in her capacity as his widow and herself. However, on February 22, 2001 Kimoi Kapkoros alias Elizabeth Kimoi Jacob Kapkoros (Deceased) instituted Objection proceedings against the making of a grant of representation to the Petitioner herein.
2. On September 16, 2021 the Petitioner herein filed Summons for Confirmation of Grant dated September 6, 2021 in which she sought that the grant of letters of administration made to her on February 25, 2021 be confirmed.
3. The Petitioner also proposed that the estate of the deceased be distributed as follows:
  - a. Mosop/Kapchorua/115 - to be distributed equally between Gilbert Kiprotcih Kandie and Dovious Kipkorir Kandie.
  - b. Mosop/Kapchorua/117- to be distributed equally between Gilbert Kiprotcih Kandie and Dovious Kipkorir Kandie.
  - c. Mosop/Kapchorua/121- to be distributed equally between Gilbert Kiprotcih Kandie and Dovious Kipkorir Kandie.



- d. Kongasis Plot No 14 – to be distributed equally between Gilbert Kiprotich Kandie and Diovius Kipkorir Kandie.
  - e. Tumeiyo Plot No 1- whole to devolve to Gilbert Kiprotich Kandie.
4. The said summons were opposed by Miriam Jepkorir Kipkoris, vide her Replying Affidavit dated November 3, 2021 in which she deposed that the Petitioner herein had wilfully and maliciously failed and or refused to identify all the beneficiaries of the deceased.
  5. The Petitioner stated that the deceased herein was survived by the following persons:
    - a) Elizabeth Kimoi alias Elizabeth Kimoi Jacob (widow) (Deceased)
    - b) Miriam Jepkorir – daughter
    - c) Susan Jemutai Oloibe – daughter (Deceased)
    - d) Linah Jepkemboi Kiptai- daughter (Deceased)
    - e) Hannah Jebiwot Lagat- daughter
    - f) Margaret Jepkosgei Rop- daughter (Deceased)
    - g) Benjamin Kiplagat – son (Deceased)
  6. She argued that the proposed mode of distribution by the Petitioner is unacceptable as it only serves to disinherit other beneficiaries of the deceased herein. She further deposed that her mother had objected to these instant proceedings by virtue of ranking higher than the Petitioner herein. However, she stated that her mother passed on and that she made an application to substitute her but was not successful due to the doctrine of latches.
  7. She further deposed that her siblings and herself are entitled to inherit from the estate of the deceased by virtue of being children of the deceased. She further argued that Gilbert Kiprotich Kandie and Diovius Kipkorir Kandie are grandchildren of their late father and that they enjoy the same ranking as children born by her and her siblings. Further that the said Gilbert Kiprotich Kandie and Diovius Kipkorir Kandie can only benefit from the share due to the estate of their late father.
  8. She proposed the estate herein be distributed as follows:
    - h) Mosop/Kapchorua/115 - to be distributed equally amongst the children of the deceased.
    - i) Mosop/Kapchorua/117- to be distributed equally amongst the children of the deceased.
    - j) Mosop/Kapchorua/121- to be distributed equally amongst the children of the deceased.
    - k) Kongasis Plot No 14 – to be distributed equally amongst the children of the deceased.
    - l) Tumeiyo Plot No 1- to be devolved to the Estate of the late Benjamin Kiplagat.
  9. In a rejoinder the Petitioner filed a further affidavit dated March 24, 2022 in which she deposed that one of the siblings of Miriam Jepkorir Kipkoros or their estates have laid a claim to the estate of the deceased herein not even her only surviving sibling Hannah Jebiwot Lagat.
  10. The Petitioner maintained the beneficiaries listed in Miriam’s replying affidavit are not beneficiaries to the deceased’s estate, did not depend on the deceased as at the time of his death, were married and lived in their husband’s homesteads and are not entitled to a share of in the estate of the deceased according



to the will of the deceased who clearly expressed himself on how his estate should be distributed upon his death.

11. The Petitioner maintained that her late mother-in-law, Elizabeth Kimoi alias Elizabeth Kimoi Jacob has sworn an affidavit that explained how she wanted to be taken care of and how the estate would be administered and distributed. The Petitioner further maintained that the heirs of the deceased's estate are Gilbert and Dovious according to the intentions and wishes of the deceased and the deceased's cultural and customary practice which have been in operation over the years.
12. The Petitioner maintained that the said Gilbert Kiprotich Kandie and Dovious Kipkorir Kandie were not only grandchildren of the deceased, but were orphaned children at the tender ages of (7) and (5) respectively when she lost their late father before the death of the deceased herein. The Petitioner argued that she provided for her children throughout their education up to the age of marriage. The Petitioner further argued that her father-in-law the deceased herein entrusted his estate to her two sons.
13. The Petitioner maintained that her sons are entitled to inherit from the deceased's estate by virtue of being the deceased's grandsons. The Petitioner argued that the deceased was only survived by one son Benjamin Kiplagat who passed on December 22, 1973 and that the deceased had seen it only prudent to state his wishes since all his daughter were married at the time and the homestead of the deceased was only survived by her, her mother-in-law and her children.
14. The Petitioner argued that her two sons in accordance with the Customary law and the wishes of her late father-in-law have secured the estate for the good of future generations and in line with deceased's family tree.
15. The Petitioner maintained that the proposal made by Miriam is in bad faith given that she was aware of the deceased's wishes long ago and wants to take advantage or explore any loopholes for her own material benefit when they are now fathers of grown up children who have been allocated their shares which, if interfered with, can be a source of major family displacements who have since significant developments.
16. Consequently, in a new turn of events the Petitioner filed Summons dated November 9, 2022 in which she sought to have parties herein explore an alternative mode of dispute resolution. The said application was however opposed by Miriam Jepkorir Kipkoros who termed it as an abuse of Court process, a delay tactic and a clear attempt to obstruct the cause of justice.
17. This Court having heard the parties delivered its ruling dated January 27, 2023 allowed the parties herein to explore mediation as an alternative form of dispute resolution. However, as evidenced by the mediator's report dated March 3, 2023 on record the parties herein were not able to reach a settlement and are now back in Court.

### **Analysis & Determination**

18. From onset I must mention this a protracted probate case where parties seemingly cannot agree on the mode of distribution of the estate herein. From the above analysis it is therefore clear that the only bone of contention in this matter is how the deceased's estate should be distributed.
19. On one hand the Petitioner being the daughter-in-law to the deceased maintains that her sons are the sole beneficiaries to the estate of the deceased herein by virtue of being the deceased's grandsons whose father passed on before the demise of the deceased herein. The Petitioner contends that the daughters of the deceased herein have no stake whatsoever in the estate herein by virtue of being married. On the other hand, the daughters of the deceased led by one Miriam Jepkorir Kipkoros maintain that they too are beneficiaries to the estate herein by virtue of



being children of the deceased and that the Petitioners sons only rank in equal priority as their children and can only inherit from the share given to their late father's estate.

20. In the present matter there is no doubt that the deceased herein died intestate and was survived by the following persons:
  - a) Elizabeth Kimoi alias Elizabeth Kimoi Jacob (widow) (Deceased)
  - b) Miriam Jepkorir – daughter
  - c) Susan Jemutai Oloibe – daughter (Deceased)
  - d) Linah Jepkemboi Kiptai- daughter (Deceased)
  - e) Hannah Jebiwot Lagat- daughter
  - f) Margaret Jepkosgei Rop- daughter (Deceased)
  - g) Benjamin Kiplagat – son (Deceased)
21. The Petitioner herein is daughter-in-law to the deceased having been married to the deceased's son one Benjamin Kiplagat (Deceased).
22. At this juncture it worth pointing out that Article 27 of the [Constitution](#) 2010 provides that every person is equal in the eyes of the law and before the law; and the Article goes further to state that there should be no discrimination on any ground including gender which encompasses marital status; the [Constitution](#) does not allow discriminatory rules and customs in matters of personal law, including inheritance.
23. There ought to be no classification into categories of male, female, married or unmarried; there ought to be no discrimination against the male or female children of a deceased person; nor discrimination between the married daughters and unmarried daughters of a deceased person.
24. It must be noted that grandchild only becomes a direct heir to the estate of the grandparent where the parent pre-deceased the grandparent. The grandchildren step into the shoes of their deceased parents and take the parent's share in the estate of the grandparents as was enunciated [in RE Estate of Wabome Njoki Wakagoto \[2013\] eKLR](#) where it was held: -

' Under Part V, grandchildren have no right to inherit their grandparents who die intestate after July 1, 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.'
25. I also associate myself with the position adopted in Kiarie Waweru Kiarie, J in [Gabriel Simali & 7 Others vs George Oduor Oloko \[2020\] eKLR](#) that:
  9. The appeal herein revolve around the issue as to whether the appellants are beneficiaries of the estate of Oloko Munika, the deceased. It is not disputed that the respondent is the son of the deceased. From the record, the respondent was the only surviving son of his father and Klemensia Muniala was his sister. The appellants are therefore great grandchildren of the deceased herein.



10. There are instances when a grandchild or a great grandchild for that matter can inherit directly from the estate of the deceased. One such instance is where it is proved that such a grandchild or a great grandchild was being maintained by the deceased. In re Estate of Joyce Kanjiru Njiru (Deceased) [2017] eKLR Judge Lucy Waruguru Gitari observed the following:

' From the definition given under Section 29 the spouses and children of the deceased have priority to inherit the estate. The grandchildren and others can inherit if they were being maintained by the deceased prior to her death. In this present cause, the two grandchildren are not claiming interests as dependents but are coming in to claim the interests of their respective parents who are now deceased. My view is that the children are entitled to inherit the share which their deceased parents would have inherited.

I wholly agree with the learned judge. In the instance case, the appellants cannot lay their claim on this basis for they have not proved that the deceased herein maintained them.'

11. 'The second instance is where the grandchild can stake his claim on his/her parents' right to inherit. Musyoka J in the case of Estate of Veronica Njoki Wakagoto (deceased) [2013] eKLR described such a right in the following terms:

Grandchildren can only inherit their grandparents indirectly through their own parents, the children of the deceased. The children inherit first and thereafter the grandchildren inherit from the parents. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.

Whereas I agree with the Learned Judge, such must be clothed with legal powers to do so; he/she must first out seek and obtain letters of administration of their parents' estate. This is when he can claim his/her parents' inheritance from the estate of the deceased. In the instant case the appellants have not demonstrated that they have obtained letters of administration to allow them to stake any claim in the estate of the deceased.'

26. With the foregoing in mind there is no doubt that the children of the deceased herein rank in priority to his grandchildren. In the present case, it is not disputed that the Petitioner's children are grandchildren to the deceased herein by virtue of their late father being his son. In my view the Petitioner's children are entitled to inherit their father's share in the estate herein but not to the expense of the other beneficiaries to the estate herein.
27. That being said I have carefully looked at the two proposed mode of distributions presented by the parties herein. From a cursory look at the same it is clear that the said proposals vary in terms of how the estate herein should be distributed. The Petitioner wants the estate herein to be distributed exclusively to her two sons whereas Miriam Jepkorir Kipkoros wants the estate herein to be equally distributed to the (6) children of the deceased and where one is deceased then their child steps in their place to represent the said estate.
28. The parties hereto were at liberty to agree on the mode of distribution of the estate of the deceased. This Court gave them every opportunity to pursue a settlement however they were



not able to reach a settlement on how the estate herein should be distributed. Where parties fail to agree on the mode of distribution, the Court thus has the final say on how the estate herein should be distributed.

29. For purposes of bringing this matter to an end the estate herein will thus be distributed as follows:



No.	Description Of Property	Name	Share
Mosop/ kapchorua/121 Measuring 0.4ha Or 0.9884 Acres	Hannah Jebiwot Lagat- Id No xxxx  Rebecca Jepkoech Oloibe- Id No xxxx  Ambrose Kiptai Mashara- Id No xxxx  Christine Chemutai Rutto- Id No xxxx  Miriam Jepkorir Kipkoros -id No xxxx  Philomena Kandie - id No xxxx	To Be Shared EqualLY	
Mosop/ kapchorua/117 Measuring 0.64ha Or 1.581568 Acres	Hannah Jebiwot Lagat- Id No xxxx  Rebecca Jepkoech Oloibe- Id No xxxx  Ambrose Kiptai Mashara- Id No xxxx  Christine Chemutai Rutto- Id No xxxx  Miriam Jepkorir Kipkoros -id No xxxx  Philomena Kandie - id No xxxx	To Be Shared Equally	
Mosop/ kapchorua/115 Measuring 8.0ha Or 19.768 Acres	Hannah Jebiwot Lagat- Id No xxxx  Rebecca Jepkoech Oloibe- Id No xxxx  Ambrose Kiptai Mashara- Id No xxxx  Christine Chemutai Rutto- Id No xxxx	To Be Shared Equally	



	Miriam Jepkorir Kipkoros -id No xxxx  Philomena Kandie - id No xxxx	
Kongasis Plot No 14 Measuring 40 Acres	Hannah Jebiwot Lagat- Id No xxxx  Rebecca Jepkoech Oloibe- Id No xxxx  Ambrose Kiptai Mashara- Id No xxxx  Christine Chemutai Rutto- Id No xxxx  Miriam Jepkorir Kipkoros -id No xxxx  Philomena Kandie - id No xxxx	To Be Shared EquaLLY
Tumeiyo Shop Plot No 1	Philomena Kandie - id No xxxx	Whole

It is so ordered.

**DATED and DELIVERED at ELDORET this 17th day of July 2023.**

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**R. YAKUNDI**

**JUDGE**

