



**In re Estate of Jonah Kipsang Ngeno (Deceased) (Succession Cause
053 of 2021) [2023] KEHC 23688 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 23688 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 053 OF 2021
JK SERGON, J
OCTOBER 12, 2023**

IN THE MATTER OF THE ESTATE OF JONAH KIPSANG NGENO (DECEASED)

ERICK KIPYEGON SANG.....1ST PETITIONER

CHEROTICH VIVILINE NGENO.....2ND PETITIONER

VERSUS

GILBERT KIPRONO SANG.....3RD ADMINISTRATOR/1ST PROTESTOR

RICHARD KIPKEMOI SANG.....4TH ADMINISTRATOR/2ND PROTESTOR

KENNETH KIPROTICH SANG.....3RD PROTESTOR

ROBERT KIBET SANG.....4TH PROTESTOR

NANCY CHEPKEMOI MARITIM.....5TH PROTESTOR

JUDGMENT

1. The 1st and the 2nd Petitioners herein who are the joint administrators of the estate of Jonah Kipsang Ngeno, the deceased herein, filed summons for confirmation of grant seeking to have the grant of letters of administration issued to them on 11th March, 2022 be confirmed.
2. Subsequently, following an Application by the 1st and the 2nd Protestors dated 15th June, 2023, the grant of representation was amended and issued in favour of four Administrators, that is Eric Kipyegon Sang, Cherotich Viviline Ngeno, Gilbert Kiprono Sang and Richard Kipkemoi Sang after which a Grant of Letters of Administration Intestate with regard to the estate of Jonah Kipsang Ngeno dated 19th June, 2023 was issued to the said four Administrators.
3. The Petitioners filed an affidavit in support of the Summons for confirmation of grant sworn by Viviline Cherotich Ngeno, the 2nd Petitioner herein and stated that the deceased died intestate and left the following dependents;
 - i. Alice Koech Ngeno Daughter



- ii. Erick Kipyegon Sang Son
 - iii. Nancy Chepkemoi Ngeno Maritim Daughter
 - iv. Jane Koech Survived By
Hillary Kimutai Deceased Daughter
 - v. Irine Chepngeno Ngeno Daughter
 - vi. Gladys Chelangat Daughter
 - vii. Richard Kipkemoi Sang Son
 - viii. Robert Kibet Sang Son
 - ix. Kenneth Kipngetich Sang Son
 - x. Viviline Cherotich Ngeno Daughter
 - xi. Beatrice Chebet Ngeno Daughter
 - xii. Gilbert Kiprono Sang Son
4. She averred that the deceased had the following assets;
- i. Kericho/Kipkelion/Chepseon B1.4/Ckepseon/123.
 - ii. Kericho/Chepsir/13
 - iii. Kericho/Chepsir/32
 - iv. Set Kobor Farm Molo South/Ikumbi Bl.6/19
 - v. Set Kobor Farm Molo South/Ikumbi Bl.6/71
 - vi. Kericho Municipality Plot L.R No 1/265
 - vii. Kericho Municipality Plot L.R No. 631/1208
 - viii. Set Kobor Farm – Molo Sour/Ikumbi Block 6/83
 - ix. Kericho Municipality B1.4/467
 - x. Kericho/Chepsir/52
 - xi. Shares at Highlands Sacco
 - xii. Safe Lodge Plot (Tengecha)
 - xiii. Shares at Commercial Bank Limited
 - xiv. Keringet Farm – Molo South Langwenda Block 4/383(Chebara A)
 - xv. Shares at KTDA
 - xvi. Shares at Standard Chartered Bank Limited
 - xvii. Chepsir Co-operative Society Plot.
 - xviii. Shares at National Industrial Credit Limited
 - xix. Shares at Housing Finance Co. Ltd



- xx. Shares at ICDC Investment Limited
- xxi. Shares at Jupiter Insurance Co. Ltd
- xxii. Shares at Absa Bank
- xxiii. Shares at Brooke Bond Kenya Ltd
- xxiv. Shares at Nic Bank
- xxv. Shares at Co-Operative Bank
- xxvi. Shares at Tegat Tea Factory Co. Ltd
- xxvii. Shares at Jubilee Insurance Co. Ltd
- xxviii. Shares at Kenya Airways Co. Ltd
- xxix. Shares at Centum Company Limited
- xxx. Shares at Kericho Mwalimu Enterprise Co. Ltd
- xxxi. Shares at Mau Multi-Purpose Company Limited
- xxxii. Shares at K.C.C Co. Ltd
- xxxiii. Shares at Jubilee Holdins Co. Ltd
- xxxiv. Shares at Uchumi Supermarket Co. Ltd
- xxxv. Shares at Image Registrar
- xxxvi. Shares at Safaricom Kenya Limited

5. That no application of provision for dependants was pending, it was now over six (6) months since the grant was issued and no objection had been contemplated and that there was no dependant of the deceased who had been left out hence the identification and distribution of the estate of the deceased be ascertained and determined as follows:

- i. Kericho/Kipkelion/Chepseon Block. 4 (Chepseon)/124 approximately 43.10 ha (106.5 acres) be divided equally among the 12 beneficiaries.
- ii. Kericho/Chepsir/13 approximately 33.5 ha (82.77785 acres) be divided equally among the 12 beneficiaries.
- iii. Molo South/Ikumbi Block 6/19 9Set Kobor) approximately 14.613 ha (36.1087 acres) be divided equally among the 12 beneficiaries.
- iv. Molo South/Ikumbi Block 6/83 (Set Konor) approximately 0.0375 ha be given to Richard Kipkemoi Sang.
- v. Molo South/Ikumbi Block 6/71 approximately 0.0375 to be given as a gift to the deceased's sister Borness Cheptoo Bumbwa.
- vi. Kericho/Chepsir/52 approximately 1 ha (2 acres) be divided equally among the 12 beneficiaries.
- vii. Kericho/Municipality Plot No. 1/265 (Tengecha) to be held in common in equal shares among 10 beneficiaries namely; Alice Chepngetich Koech, Erick Kipyegon Sang, Nancy



Chepkemoi Maritim, Late Jane Ngeno Koech (Hillary Yegon-Son), Irine Chepkoech Ngeno, Gladys Chelangat Ngetich, Kenneth Kiprotich Sang, Viviline Cherotich Ngeno and Beatrice Chebet Ngeno and Gilbert Kiprono Sang.

- viii. Kericho Municipality Plot L.R No. 631/1208 (Next to Tea Hotel) be given to Robert Kibet Sang.
- ix. Kericho Municipality Plot B 1.4/467 (Next to Tea Hotel) be given to Robert Kibet Sang.
- x. Safe lodge plot (Tengecha) be given to Richard Kipkemoi Sang.
- xi. Chepsir Cooperative Society Plot to be held in common in equal shares among 3 beneficiaries namely Robert Kibet Sang, Kenneth Kiprotich Sang and Gilbert Kiprono Sang.
- xii. Highland Sacco shares to be divided equally among the 12 beneficiaries.
- xiii. Commercial Bank Limited shares to be divided equally among the 12 beneficiaries.
- xiv. KTDA Shares to be divided equally among the 12 beneficiaries.
- xv. Standard Chartered Bank Shares to be divided equally among the 12 beneficiaries.
- xvi. National Industrial Credit Limited Shares to be divided equally among the 12 beneficiaries.
- xvii. Housing Finance Company Limited Shares to be divided equally among the 12 beneficiaries.
- xviii. ICDC Investment Ltd Shares to be divided equally among the 12 beneficiaries.
- xix. Jupiter Insurance Co. Ltd shares to be divided equally among the 12 beneficiaries.
- xx. ABSA Bank Shares to be divided equally among the 12 beneficiaries.
- xxi. Brooke Bond Shares to be divided equally among the 12 beneficiaries.
- xxii. NIC Bank Shares to be divided equally among the 12 beneficiaries.
- xxiii. Cooperative Bank Shares to be divided equally among the 12 beneficiaries.
- xxiv. Tegat Tea Factory Shares to be divided equally among the 12 beneficiaries.
- xxv. Jubilee Insurance Shares to be divided equally among the 12 beneficiaries.
- xxvi. Kenya Airways Shares to be divided equally among the 12 beneficiaries.
- xxvii. Centum Company Shares to be divided equally among the 12 beneficiaries.
- xxviii. Kericho Mwalimu Enterprise Limited shares to be divided equally among the 12 beneficiaries.
- xxix. Mau Multi-purpose Tea Company Limited Shares be divided among the 12 beneficiaries.
- xxx. KCC Limited Shares be divided equally among the 12 beneficiaries.
- xxxi. Jubilee Holdings Co. Limited Shares to be divided equally among the 12 beneficiaries.
- xxxii. Uchumi Supermarket Shares to be divided equally among the 12 beneficiaries.
- xxxiii. Imagine Registrars Shares to be divided equally among the 12 beneficiaries.
- xxxiv. Cash money in Highland Sacco and Absa Bank be used to clear legal fees and the remaining amount be divided equally among the 12 beneficiaries.



- xxxv. Amount under Unclaimed Assets to be used to clear legal fees and the remaining amount be divided equally among the 12 beneficiaries.
6. She averred that no estate duty was payable in respect of the estate of the deceased hence the court ought to confirm the grant.
 7. Gilbert Kiprono Sang and Richard Kipkemoi Sang filed an affidavit of protest dated 26th June, 2023 and stated that they were the 3rd and 4th Administrators respectively pursuant to the Court's order appointing them on 19th June, 2023 and that they had the authority of the 3rd, 4th and 5th protestors to swear the Affidavit.
 8. They averred that there was no property and particularly the parcels of land left by the deceased in the estate of the Deceased available for distribution as presented to the court by the Petitioners and that all the beneficiaries were given their shares of properties in particular the parcels of land by the deceased and each beneficiary took possession of their various shares of parcels of land during the lifetime of the deceased and developed and/or sold and what was remaining was the transmission from the deceased's names into the beneficiaries through the grant of the court.
 9. They contended that the estate of the deceased in terms of the parcels of land shared and now occupied, utilized and controlled or possessed by all beneficiaries formed the mode of distribution since no land was available for distribution hence the same should be distributed as follows:
 - i. Kericho/Kipkelion/Chepseon Block 4 (Chepseon Farm)/123 approximately 43.10 ha (106.5 acres) to be retained in equal share of 53.25 acres each by Erick Kipyegon Sang and Richard Kipkemoi Sang the beneficiaries shown by the deceased and in occupation /utilization/ possession for over 20 years.
 - ii. Kericho/Chepsir/13 (Chepsir Farm) approximately 33.5 Ha (82.78 acres) to be retained on their respective shares under the beneficiaries shown by the deceased and who had been in occupation, utilization and possession of the same for over 20 years that is; Erick Kipyegon Sang (4.5 Acres), Richard Kipkemoi Sang (4.5 Acres), Robert Kibet Sang (21.63 Acres), Kenneth Kiprotich Sang (25.075 Acres) and Gilbert Kiprono Sang (25.075 Acres).
 - iii. Chepsir Centre Fam (1.75 Acres) to be retained on their respective shares under the beneficiaries shown by the deceased and who had been in occupation, utilization and possession of the same for over 20 years that is; Robert Kibet Sang (0.583 Acres), Kenneth Kiprono Sang (0.583 Acres) and Gilbert Kiprono Sang (0.583 Acres)
 - iv. (Set Kobor) Ikumbi/Block 6/19 Approximately 36 Acres to be retained on their respective shares under the beneficiaries shown by the deceased and who had been in occupation, utilization and possession of the same for over 20 years that is; Robert Kibet Sang (12 Acres), Kenneth Kiprotich Sang (12 Acres) and Gilbert Kiprono Sang (12 Acres).
 - v. Plot(A) Tengecha Lane Municipality Block 1/265 owned by the deceased herein and the late Elijah Togom, Half of the block being the deceased's share to be divided equally among Robert Kibet Sang, Kenneth Kiprotich Sang and Gilbert Kiprono Sang.
 - vi. Plot(B) Set Kobor Plot (No. 68) to be retained by Borness Cheptoo since she was gifted the same by the deceased.
 - vii. Plot (C) Set Kobor (No. 71) to be retained by the beneficiary shown by the deceased and who had been in occupation, utilization and possession of the same for over 20 years that is; Richard Kipkemoi Sang.



- viii. Plot(D) Guest House (Block 4/487) to be retained in equal shares by the beneficiaries directed by the deceased and who had been in occupation, utilization and possession of the same for over 20 years that is; Erick Kipyegon Sang (20%), Richard Kipkemoi Sang (20%), Robert Kibet Sang (20%), Kenneth Kiprotich Sang (20%) and Gilbert Kiprono Sang (20%).
 - ix. Plot(E) Residential (Next to Tea Hotel) to be retained by the beneficiary shown by the deceased and who has been in occupation, utilization and possession for over 20 years that is Robert Kibet Sang.
 - x. PlotF Chepsir Co-operative Society to be retained in equal shares by the beneficiaries directed by the deceased and who had been in occupation, utilization and possession of the same for over 20 years that is; Erick Kipyegon Sang, Richard Kipkemoi Sang, Robert Kibet Sang, Kenneth Kiprotich Sang and Gilbert Kiprono Sang.
 - xi. Brooke Plot1 was given by the deceased to Beatrice Chebet Tanui and she has utilized it for over 20 years the same should be retained by her.
 - xii. Togomin Farm (21/4 Acres) to be retained by the beneficiary shown by the deceased who has been in occupation, utilization and possession for over 20 years that is Alice Koech Chepnetich.
 - xiii. Keringet Farm (3 Acres) to be retained by the beneficiary shown by the deceased who has been in occupation, utilization and possession for over 20 years that is Nancy Maritim Chepkemoi.
 - xiv. Keringet Farm (3 Acres) to be retained by the beneficiary shown by the deceased who has been in occupation, utilization and possession for over 20 years that is Viviline Cherotich Mutai.
 - xv. Momoniat Farm (2 acres) to be retained by the beneficiary shown by the deceased who has been in occupation, utilization and possession for over 20 years that is the late Jane Chemutai Koech (Deceased) to be retained by her Representative/Child one Hillary Kimutai Yegon.
 - xvi. Total Farm (2 Acres) to be retained by the beneficiary shown by the deceased who has been in occupation, utilization and possession for over 20 years that is Irine Chepkoech Rotich.
 - xvii. Kaptebeswet Farm (Ngecherok Farm) to be retained by the beneficiary shown by the deceased who has been in occupation, utilization and possession for over 20 years that is Gladys Chelangat Ngetich.
10. They averred that the deceased left other properties including shares in various Banks, Saccos, Insurance Companies, Tea Factory Companies, Cooperative, Kenya Airways, Uchumi Supermarket and others, Cash money in Highland Sacco, Cash money in Absa Bank, Amount under unclaimed Assets and others.
 11. They further averred that at the time they were appointed as administrators by the court on 19th June, 2023, the petitioners had already ascertained status of the said properties aforementioned hence until the petitioners provides a full inventory of accurate account, the court should put in abeyance their proposed mode of distribution of the said properties since any attempt by themselves to propose on the mode of distribution of those properties without full and accurate inventory will be pre-empting the inventory and a proposal based on presumption on their part.
 12. That they were ready and willing based on the direction of court to file another Supplementary Affidavit on the said properties upon the petitioners furnishing the court with a full and accurate



inventory of the said properties forming part of the estate of the deceased for onward distribution forthwith.

13. They averred that the Consent to the making of grant dated 22nd September, 2022 by the Petitioners which they never signed was speculative and akin to opening a Pandora's box because there was no property available for distribution on parcels of land since all the beneficiaries had been in occupation, utilization and control of their various shares which possession every one of them took under the blessing and the direction of the deceased during his lifetime only that the said deceased did not transfer titles to them hence the need for grant of the court for transmission to all beneficiaries as the registered owners.
14. They further averred that all of them had been satisfied on what was given to them by their father and which they had since utilized, taken possession for more than 20 years and no one ever complained during the deceased lifetime and that the petitioner's mode of distribution was only imaginary and could not be implemented hence the reason they were not involved by the petitioners on the instant petition for grant both at the Chief Magistrate Courts and equally at the High court due to the conspicuous malice throughout and their thinking of hiding everything with their wishy-washy hopes of having the proceedings confirmed without the protestors involment whatsoever.
15. That the deceased never discriminated any of his children and or beneficiaries and all of them were given his or her share including their sisters hence it was interesting and disturbing to note that the petitioners had proposed some of the properties of the estate of the deceased to be used to clear legal fees whereas the said counsel has been the impediment to them and the objectors accessing justice and it was only a demonstration on manifestation of the interests of the counsel had on the estate of the deceased and how they were colluding with the petitioners for their own selfish interests.
16. They thus prayed that the court adopts their proposed mode of distribution on the parcels of land being that all beneficiaries were already in utilization and development of their respective shares and that the court should visit the said parcels of land to ascertain the current status.
17. The Petitioners filed a Supplementary Affidavit dated 20th July, 2023 sworn by Erick Kipyegon Sang on behalf of the 2nd Petitioner, wherein he stated that the averments made by the 3rd and 4th Administrators were not only interposed to advance their selfish interests but were also designed to mislead the court and that it was not true that there were no properties available for distribution as alleged or that the deceased had allocated each beneficiary their respective shares during his lifetime hence the deceased died intestate and as such never left any written will or oral will to justify the 3rd and 4th Administrator's claims.
18. He stated that some of the properties claimed to have been allocated to various beneficiaries were non-existent and/or registered in the name of the independent third parties. The aforementioned properties are; Momoniati Farm (2 Acres) claimed to have been allocated to Jane Chemutai Koech (deceased), Kaptebeswet Farm (Ngecherok Farm)-Kericho/Kipchimchim/4606 claimed to have been allocated to Gladys Chelangat Ngetich, Brooke Plot number 1 claimed to have been allocated to Beatrice Chebet Ngeno and Keringet Farm (3 Acres) claimed to have been allocated to Viviline Cherotich Ngeno.
19. He proceeded to explain that L.R NO. Kericho/Kipchimchim/4606, Kaptebeswet Farm (Ngecherok Farm) was registered in the name of Reuben Kipkoech Ngetich who is the husband to Gladys Chelangat Ngetich as evidenced from the certificate of official search while Momomniati Farm belongs to Simon Koech who was the husband of the late Jane Chemutai Koech as evidenced from a copy of the sale agreement dated 22nd September, 1988 attached hence the court should disregard the 3rd and 4th Administrators' averments in so far as these said properties are concerned.



20. He further stated that contrary to the 3rd and 4th Administrators' claims that the deceased had been collecting rent from properties known as Kericho Municipality Plot No. 631/IV/20 (Tengecha), Kericho Municipality Block 1/265, Kericho Municipality Plot-LR No. 631/1208 and Kericho Municipality Plot 4/467 prior to his demise in the year 2020 hence the 3rd and 4th Administrators' claim that some beneficiaries be allocated the said properties as they had been in occupation of the same for longer than 20 years could not hold as the deceased only passed on in the year 2020 aged 88 years.
21. That the deceased called for several meetings, prior to his demise, to discuss the distribution of his properties hence had he distributed his properties as claimed, he would not have called for deliberation on their distribution and that one of his sisters, Beatrice Chelangat Ngeno had been staying on the property known as Kericho/Chepsir/13 since the year 2015 prior to the deceased demise. That the said sister's move to relocate back home after she separated from her husband was welcomed by the deceased in which she was the deceased's care-giver during his last days but after the deceased's demise, the 3rd and 4th Administrators attempted to coerce her to leave by blocking access road/gate, disconnecting water and ploughing her garden, which acts were duly reported at Chepseon Police Station hence the 3rd and 4th Administrators' claim that they had been in its exclusive possession for at least the past 20 years could not lie.
22. The Petitioners thus urged the court to dismiss the 3rd and 4th Administrators' protest to the confirmation of the instant grant and order confirmation of the same in the terms proposed in their Summons dated 22nd September, 2022.
23. Directions were given that the Summons for Confirmation of Grant and Protest be canvassed by Written Submissions. Consequently, both the Petitioners and the Protestors filed their Written Submissions.
24. The Petitioners via their Written Submissions dated 27th July 2023 framed three issues for determination as follows:
 - i. Whether the deceased distributed his properties during his lifetime.
 - ii. Whether the proposed mode of distribution by the Protestor vide his Affidavit of Protest is in tandem with the law.
 - iii. Whether the Protestor's Affidavit of Protest is merited.
25. On the first issue, the Petitioners' reiterated that the Protestors claim that the deceased had distributed his property before his demise was not true and maintained that the deceased had called for several meetings, prior to his demise, to discuss the distribution of his properties hence had he distributed his properties as claimed, he would have called for deliberation on their distribution.
26. They relied on the provisions of section 107 of the *Evidence act* that whoever alleges must prove to submit that in the instant case, the Protestors merely alleged that the deceased had apportioned land to each beneficiary during his lifetime, that the petitioners purportedly forged minutes of the alleged family meeting held on 28th November, 2020 and the Chief's Letter which they used to commence succession proceedings without the consent/participation of the petitioners, and that they had been in occupation of their respective land portions for close to 20 years did not discharge their burden of proof.
27. The petitioners in stating that the properties which the beneficiaries are allegedly in occupation of were still registered in the deceased's name submitted that it was inconceivable that the deceased would simply surrender use and occupation of his properties at about age 65 years and thereafter fail to transfer



the same to the alleged beneficiaries for the subsequent 20 years until his demise in the year 2020. Reliance was placed in the case of *In re Estate of The Late Gedion Mantbi Nzioka* (Deceased) [2015] eKLR where it was held that:

“For gifts inter vivos, the requirements of law are that the said gift may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way of resulting trusts or the presumption of. Gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing. Gifts inter vivos must be complete for the same to be valid... The principle that emerges is that any gift inter vivos should be backed by some memorandum in writing and the gift would be complete once title to the subject property is transferred to the name of the beneficiary of the gift.”

28. It was their submissions that there were no written agreement evidencing transfer of the land parcels to the beneficiaries and no title deeds were issued in effect of the same and the conduct of the deceased prior to his demise of calling for meetings to deliberate on the mode of distribution, all pointed to the fact that the deceased had not distributed his estate during his lifetime and that no one was informed by the deceased of the alleged apportionment and distribution of the properties since had the deceased distributed his property prior to his death, he would have done the same through a will.
29. It was their further submissions that the protestors had not issued any explanation as to why the deceased allegedly distributed his properties 20 years prior to his demise without having bothered to similarly perfect his intentions in transferring the properties to those he wished, that the deceased never executed transfer forms nor land control board applications for consent to transfer nor were the same produced as evidence in support of the alleged intentions of the deceased. Reliance was placed in the case of *Cecilia Chepkemoi Sangutet v Kiplangat Arap Tonui* [2018] eKLR where it was held that:

“The law is that if a deceased person had distributed his or her property in his lifetime, such distribution should be respected... However, such wishes must be demonstrably clear, and can only be so through oral or documentary evidence adduced before the court. As matters stand, the court has no evidence before it that the deceased had distributed her property during her lifetime... In the absence of any evidence that the deceased had distributed her estate in her lifetime as alleged by the protestor, I must determine the first issue in the negative... I believe that in the absence of evidence that the deceased had distributed her property during her lifetime, the only course open to this court is to distribute the estate in accordance with section 38 of the *Law of Succession Act*. The protestor had every opportunity to bring evidence of such distribution, but elected not to.”

30. Consequently, they submitted that the deceased had not distributed his properties during his lifetime.
31. On the second issue the petitioners submitted that the mode of distribution proposed by the protestors was not in tandem with the law as it was not only discriminatory but also out rightly unfair as the protestors essentially propose that other beneficiaries get bigger portions than others based on the guise that the deceased had distributed his properties to the beneficiaries during his lifetime and that such assertion was only aimed at disinheriting other beneficiaries of the deceased while unjustly enriching themselves as the deceased had in fact not distributed his estate during his lifetime, whether by will or otherwise.
32. They reiterated that before the deceased's demise, he resided at his home in Chepsir, in one of his properties, namely L.R No. Kericho/chepsir/13 and was being taken care of by one of the beneficiaries, namely Beatrice Chebet Ngeno who had relocated back home after separating with her husband hence



- the protestor's claim that the deceased had allocated the said parcel entirely to them could not lie and that after the deceased demise, the protestors attempted to coarsen the said Beatrice Ngeno to leave by blocking the access road/gate, disconnecting water and ploughing her garden and that the said acts were reported at Chepseon Police Station.
33. It was their further submissions that if the protestors' claims were true, then they ought to have been the ones collecting rent for the properties within Kericho Municipality, however, the deceased was the one collecting the rent to the said properties prior to his demise in the year 2020 hence the court should distribute the deceased's properties in line with their proposed mode of distribution with the guidance of section 38 of the *Law of Succession Act* and the provisions of *the Constitution* of Kenya, 2010.
 34. The petitioners thus submitted that the Protestors' mode of distribution was not in tandem with the law hence the court should order confirmation of the grant in the terms proposed in their summons dated 22nd September, 2022.
 35. Concerning the third issue the petitioners submitted that the Affidavit of Protest was unmerited and ought to be dismissed since the same was filed in a bid to disinherit some of the beneficiaries of the estate and/or while advancing their selfish interest yet in the real sense all the beneficiaries are equally entitled to the deceased's estate.
 36. It was further submitted by the petitioners that the Protestors were reluctant to have the instant cause determined so as to hold the entire estate ransom while advancing their selfish whims as they had assumed occupation of larger portions of the estate of the deceased and wanted the status quo to be maintained as it favored them.
 37. From the foregoing, the petitioners submitted that the protestors' affidavit of protest was without Merit hence the court should dismiss it and confirm the Petitioners' Summons of Confirmation of Grant dated 22nd September, 2022.
 38. The Protestors via their Written Submissions dated 20th July, 2023 submitted that the Petitioners having appointed themselves as the administrators of the estate of the deceased without the consent of the objectors were mandated under provision of section 83 of the *Law of Succession Act* to provide the correct and accurate accounts of the deceased estate. Reliance was placed in the case of *In re Estate of Amoth Owira Ragen (Deceased)* [2021] eKLR.
 39. They reiterated that their proposal was premised on the fact that the deceased had given all the beneficiaries their shares of the properties in particular the parcels of land and each beneficiary took possession of their various shares of parcel of land during the lifetime of the deceased and developed and/or sold and what remained was transmission from the deceased's names into the beneficiaries through the grant of the court.
 40. They thus submitted that the estate of the deceased in terms of the Parcels of land shared and now occupied, utilized and controlled or possessed by all the beneficiaries ought to form the mode of distribution as proposed in their Affidavit of Protest since no land was available for distribution.
 41. The protestors urged the court to find that since the said parcels of land were given to various beneficiaries during the deceased's lifetime, there was no complain and each beneficiary settled on their respective shares for over 20 years and that the deceased loved his children equally and took a step to give each and every child a portion of the parcel of land including the girls although not in the same proportion with the boys. That this had never been an issue during the deceased's lifetime but only became an issue when the petitioners moved both the magistrate court and the High Court secretly with an intention of distributing the estate of the deceased in respect with the parcels of land equally,



- yet there was no parcel of land available for distribution having been distributed and boundaries demarcated by respective beneficiaries over 20 years ago.
42. That the petitioners had shielded away from sharing the foregoing facts as to the reality long accepted by the beneficiaries in respect to the deceased's parcels of land and a well settled reality during the lifetimes of the deceased hence the court should exercise restraint from disturbing a well settled mode of distribution as per the deceased wishes who took precaution of settling what would have been otherwise emotive issue in as far as the estate of the deceased is concerned.
 43. Reliance was placed in a combination of the holdings in the case of *Mary Rono v Jane Rono & Another* [2005] eKLR and *Elizabeth Chepkoech Salat v Josephine Chesang Salat* to submit that section 40 of the *Law of Succession Act* does not provide for equality between houses or that each child must receive the same or equal portion.
 44. With regards to shares and other properties of the deceased, the Protestors reiterated that the court and the objectors were in the darkness as to their accurate account and unless the petitioners availed in court the accurate status and accounts, the court and the objectors will be left in a state of confusion, guess work and inability to distribute to the beneficiaries what is unknown to them. They thus prayed for the accurate accounts to enable them propose the mode of distribution if need be.
 45. I have considered the Summons for confirmation of grant and the supporting affidavit, Affidavit of Protest as well as the rival Written Submissions. It is clear that there is no dispute about the beneficiaries. From the Affidavits and evidence by parties there is no liability of the estate listed neither has there been an application by any other person laying claim on the estate. I find that the issues for determination are as follows.
 - i. Whether the deceased had distributed his estate during his life time?
 - ii. If the answer to (i) above is in the negative, what assets are available for distribution?
 - iii. How should the assets in (ii) above be distributed.
 - iv. How should the Statutory Costs and Legal fees be paid?
 46. On the first issue, the petitioners have indicated that the deceased had not distributed his estate during his life time and this was evidenced by the fact that the deceased called for several meetings, prior to his demise, to discuss the distribution of his properties. The protestors on the other hand submitted that the deceased had given all the beneficiaries their shares of the properties in particular the parcels of land and each beneficiary took possession of their various shares of parcel of land during the lifetime of the deceased and developed and/or sold and what was remaining was the transmission of the said properties from the deceased's names to the beneficiaries name through the grant of the court hence there was no parcel of land available for distribution and that the said beneficiaries had occupied their respective portions of land for over 20 years.
 47. Upon my study of the record, I find that neither the petitioners nor the Protestors attached any documentary evidence to prove their assertions. The petitioners did not attach the minutes or any other documentary evidence of the alleged meeting called by their late father. The protestors also did not attach any evidence to show that the deceased's parcels of land had already been distributed by the said deceased during his lifetime.
 48. It is worth noting that the protestors claimed that the alleged distribution of deceased property, particularly the parcels of land took place over 20 years ago.



49. There are two types of gifts in law, that is; gifts made between living persons (gifts inter vivos), and gifts made in contemplation of death (gifts mortis causa). Section 31 of the [Law of Succession Act](#) provides as follows with respect to gifts made in contemplation of death:

“A gift made in contemplation of death shall be valid, notwithstanding that there has been no complete transfer of legal title, if-

- (a) the person making the gift is at the time contemplating the possibility of death, whether or not expecting death, as the result of a present illness or present or imminent danger; and
- (b) a person gives movable property (which includes any debt secured upon movable or immovable property) which he could otherwise dispose of by will; and
- (c) there is delivery to the intended beneficiary of possession or the means of possession of the property or of the documents or other evidence of title thereto; and
- (d) a person makes a gift in such circumstances as to show that he intended it to revert to him should he survive that illness or danger; and
- (e) the person making that gift dies from any cause without having survived that illness or danger; and
- (f) the intended beneficiary survives the person who made the gift to him:

Provided that-

- i. no gift made in contemplation of death shall be valid if the death is caused by suicide;
- ii. the person making the gift may, at any time before his death, lawfully request its return. the person making the gift may, at any time before his death, lawfully request its return. “

50. [In re Estate of The Late Gedion Manthi Nzioka \(Deceased\)](#)[2015] eKLR cited by the Petitioners, it was held as follows with regards to gifts in contemplation of death:

“The court is obliged to take cognizance of the gifts given by a deceased in contemplation of death if the conditions in section 31(a) to(f) are present. It must also be noted that the said conditions are cumulative and must all exist for such a gift to be valid, and that in such circumstances the gift need not be perfected. It must be noted that this gift only arises where the death of the donor is contemplated, and will be retained only in the event of the donor’s death.”

51. Concerning gift inter vivos, in the case of [re Estate of The Late Gedion Manthi Nzioka \(Deceased\)](#) (supra) it was explained as follows:

“For gifts inter vivos, the requirements of law are that the said gift may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way of resulting trusts or the presumption of. Gifts of land must be by way of registered



transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing. Gifts inter vivos must be complete for the same to be valid.”

52. In the instant application and protest, I find that it is not stated nor was any evidence given by the Protestors as to when the said distribution was made by the deceased to the beneficiaries. The evidence of the said distribution was that it was made by the deceased during his lifetime over 20 years ago whose date is not known and which the Petitioners have disputed.
53. Consequently, I find that section 31 of the *Law of Succession Act* is not applicable as it has not been established that the deceased made the said distribution in contemplation of his death. The said gift therefore can only be treated as a gift inter vivos.
54. In *Cecilia Chepkemoi Sangutet v Kiplangat Arap Tonui* [2018] eKLR it was held that:
- “The law is that if a deceased person had distributed his or her property in his lifetime, such distribution should be respected... However, such wishes must be demonstrably clear, and can only be so through oral or documentary evidence adduced before the court...”
55. In the present matter, no evidence has been placed before me to show that the deceased had distributed his property during his lifetime. Indeed, I note that the Protestors only made allegations without any prove whatsoever and the alleged distribution is denied by the petitioners as enumerated in their Further Affidavit in Reply to the Protest as well as their Written Submissions as I have summarized above.
56. Accordingly, in the absence of any evidence that the deceased had distributed his estate in his lifetime as alleged by the protestors, I determine the first issue in the negative.
57. On the second issue, the Protestors have alleged that the daughters of the deceased were gifted certain parcels of land as they have listed in their Affidavit of Protest but the Petitioners in their Further Affidavit in reply to the Affidavit of Protest stated that some of the properties claimed to have been allocated to various beneficiaries were non-existent and/or registered in the name of the independent third parties. The aforementioned properties are; Momoniati Farm (2 Acres) claimed to have been allocated to Jane Chemutai Koech (deceased), Kaptebeswet Farm (Ngecherok Farm)-Kericho/Kipchimchim/4606 claimed to have been allocated to Gladys Chelangat Ngetich, Brooke Plot number 1 claimed to have been allocated to Beatrice Chebet Ngeno and Keringet Farm (3 Acres) claimed to have been allocated to Viviline Cherotich Ngeno.
58. In fact, the Petitioners proceeded to attach the Certificate of Official Search that showed that L.R NO. Kericho/Kipchimchim/4606, Kaptebeswet Farm (Ngecherok Farm) was registered in the name of Reuben Kipkoech Ngetich who is the husband to Gladys Chelangat Ngetich while Momoniati Farm belongs to Simon Koech who was the husband of the late Jane Chemutai Koech as evidenced from a copy of the sale agreement dated 22nd September, 1988 attached hence the court should disregard the 3rd and 4th Administrators’ averments in so far as the said properties were concerned.
59. Upon my study of the attached official search, I find that it indeed indicates that the registered proprietor of Land tile No. Kericho/Kipchimchim/4606 is one Reuben Kipkoech Ngetich. I have also perused the Sale Agreement with regards to Momoniati Plot No. 651 and it is clear from the said Sale Agreement that the seller was one Mr. Cheruiyot Arap Rop while the buyer was Simion Kipyegon Arap Koech meaning that the said plot was not the deceased from the onset. The petitioners have also stated that Brooke Plot number 1 and Keringet Farm (3 acres) were either non-existence or registered in the names independent 3rd parties though they did not attach any evidence to that effect. It is interesting to note that the protestors did not rebut these assertions neither did they provide



any evidence to actually show that the above properties belonged to the deceased and that the said deceased had distributed them to the said beneficiaries. In the absence of any evidence to show that the aforementioned properties belonged to the deceased, I find that the same do not form part of the deceased estate.

60. The protestors have also prayed that the court orders the petitioners to provide accurate accounts with regards to shares and other properties to enable them propose the mode of their distribution.
61. Upon my study of the records, I find that the petitioners attached the Share Certificate of all the listed companies, parastatals and banks which clearly indicates the number of shares owned by the deceased. In any case, the petitioners had proposed that the shares be divided equally among the beneficiaries. There was nothing preventing the protestors from proposing how the said shares should be shared, in terms of percentages or proportions being that they did not deny that deceased owned shares in the listed companies or that the said shares had already been distributed.
62. Consequently, I find that the following properties forms part of the estate of the deceased Jonah Kipsang Ngenohence available for distribution amongst the beneficiaries.
 - i. Kericho/Kipkelion/Chepseon B1.4/Ckepseon/123.
 - ii. Kericho/Chepsir/13
 - iii. Kericho/Chepsir/32
 - iv. Set Kobor Farm Molo South/Ikumbi Bl.6/19
 - v. Set Kobor Farm Molo South/Ikumbi Bl.6/71
 - vi. Kericho Municipality Plot L.R No 1/265
 - vii. Kericho Municipality Plot L.R No. 631/1208
 - viii. Kericho Municipality B1.4/467
 - ix. Safe Lodge Plot (Tengecha)
 - x. Shares at Highlands Sacco
 - xi. Keringet Farm – Molo South Langwenda Block 4/383 (Chebara A).
 - xii. Chepsir Co-operative Society Plot.
 - xiii. Shares at Commercial Bank Limited
 - xiv. Shares at KTDA
 - xv. Shares at Standard Chartered Bank Limited
 - xvi. Shares at National Industrial Credit Limited
 - xvii. Shares at Housing Finance Co. Ltd
 - xviii. Shares at ICDC Investment Limited
 - xix. Shares at Jupiter Insurance Co. Ltd
 - xx. Shares at Brooke Bond Kenya Ltd
 - xxi. Shares at Nic Bank



- xxii. Shares at Co-Operative Bank
 - xxiii. Shares at Tegat Tea Factory Co. Ltd
 - xxiv. Shares at Jubilee Insurance Co. Ltd
 - xxv. Shares at Kenya Airways Co. Ltd
 - xxvi. Shares at Centum Company Limited
 - xxvii. Shares at Kericho Mwalimu Enterprise Co. Ltd
 - xxviii. Shares at Mau Multi-Purpose Company Limited
 - xxix. Shares at K.C.C Co. Ltd
 - xxx. Shares at Jubilee Holdins Co. Ltd
 - xxxi. Shares at Uchumi Supermarket Co. Ltd
 - xxxii. Shares at Image Registrar
 - xxxiii. Shares at Safaricom Kenya Limited
63. On the third issue as to how the assets should be distributed, having established that the deceased did not distribute his properties during his lifetime, I find that the Petitioners proposed mode of distribution is the fairest proposition since the protestors had based their mode of distribution on the fact that the deceased had already distributed his parcel of land and which proposal is in my view unfair to some beneficiaries.
64. On the statutory dues and legal fees, the petitioners proposed that monies held in Highland Sacco, Absa Bank and unclaimed assets be used to clear legal fees and the remaining amount be divided equally among the 12 beneficiaries. The protestors on the other hand opposed the proposal claiming that the counsels had been the impediment to them and the objectors in accessing justice. I opine that all the estate monies be used to meet the statutory dues and the legal fees and should the amount not meet the legal fees, then each beneficiary to meet the balance. The remaining balance if any to be divided equally among the beneficiaries.
65. The upshot is that the Amended Summons for Confirmation of Grant dated 22nd September, 2022 for the estate of Jonah Kipsang Ngeno is allowed giving rise to issuance of the following orders:
- a. The Estate of Jonah Kipsang Ngenobe distributed as proposed in the Affidavit Supporting the Summons for confirmation of grant dated 22nd September, 2022 as follows:
 - i. Kericho/Kipkelion/Chepseon Block. 4 (Chepseon)/123 approximately 43.10 ha (106.5 acres) be divided equally among the 12 beneficiaries.
 - ii. Kericho/Chepsir/13 approximately 33.5 ha (82.77785 acres) be divided equally among the 12 beneficiaries.
 - iii. Molo South/Ikumbi Block 6/199(Set Kobor) approximately 14.613 ha (36.1087 acres) be divided equally among the 12 beneficiaries.
 - iv. Molo South/Ikumbi Block 6/83 (Set Konor) approximately 0.0375 ha be given to Richard Kipkemoi Sang.



- v. Molo South/Ikumbi Block 6/71 approximately 0.0375 to be given as a gift to the deceased's sister Borness Cheptoo Bumbwa.
- vi. Kericho/Chepsir/52 approximately 1 ha (2 acres) be divided equally among the 12 beneficiaries.
- vii. Kericho/Municipality Plot No. block No.1/265 (Tengecha) (half of it) to be held in common in equal shares among 10 beneficiaries namely; Alice Chepngetich Koech, Erick Kipyegon Sang, Nancy Chepkemoui Maritim, Late Jane Ngeno Koech (Hillary Yegon-Son), Irine Chepkoech Ngeno, Gladys Chelangat Ngetich, Kenneth Kiprotich Sang, Viviline Cherotich Ngeno, Beatrice Chebet Ngeno and Gilbert Kiprono Sang.
- viii. Kericho Municipality Plot L.R No. 631/1208 (Next to Tea Hotel) be given to Robert Kibet Sang.
- ix. Kericho Municipality Plot B 1.4/467 (Next to Tea Hotel) be given to Robert Kibet Sang.
- x. Safe lodge plot (Tengecha) be given to Richard Kipkemoi Sang.
- xi. Chepsir Cooperative Society Plot to be held in common in equal shares among 3 beneficiaries namely Robert Kibet Sang, Kenneth Kiprotich Sang and Gilbert Kiprono Sang.
- xii. Highland Sacco shares to be divided equally among the 12 beneficiaries.
- xiii. Keringet Farm – Molo South Langwenda Block 4/383 (Chebara A) be given to Nancy Chepkemoui Maritim.
- xiv. Commercial Bank Limited shares to be divided equally among the 12 beneficiaries.
- xv. KTDA Shares to be divided equally among the 12 beneficiaries.
- xvi. Standard Chartered Bank Shares to be divided equally among the 12 beneficiaries.
- xvii. National Industrial Credit Limited Shares to be divided equally among the 12 beneficiaries.
- xviii. Housing Finance Company Limited Shares to be divided equally among the 12 beneficiaries.
- xix. ICDC Investment Ltd Shares to be divided equally among the 12 beneficiaries.
- xx. Jupiter Insurance Co. Ltd shares to be divided equally among the 12 beneficiaries.
- xxi. ABSA Bank Shares to be divided equally among the 12 beneficiaries.
- xxii. Brooke Bond Shares to be divided equally among the 12 beneficiaries.
- xxiii. NIC Bank Shares to be divided equally among the 12 beneficiaries.
- xxiv. Cooperative Bank Shares to be divided equally among the 12 beneficiaries.
- xxv. Tegat Tea Factory Shares to be divided equally among the 12 beneficiaries.
- xxvi. Jubilee Insurance Shares to be divided equally among the 12 beneficiaries.
- xxvii. Kenya Airways Shares to be divided equally among the 12 beneficiaries.



- xxviii. Centum Company Shares to be divided equally among the 12 beneficiaries.
 - xxix. Kericho Mwalimu Enterprise Limited shares to be divided equally among the 12 beneficiaries.
 - xxx. Mau Multi-purpose Tea Company Limited Shares be divided among the 12 beneficiaries.
 - xxxi. KCC Limited Shares be divided equally among the 12 beneficiaries.
 - xxxii. Jubilee Holdings Co. Limited Shares to be divided equally among the 12 beneficiaries.
 - xxxiii. Uchumi Supermarket Shares to be divided equally among the 12 beneficiaries.
 - xxxiv. Image Registrars Shares to be divided equally among the 12 beneficiaries.
 - xxxv. Cash money in Highland Sacco and Absa Bank be used to clear legal fees and the remaining amount be divided equally among the 12 beneficiaries.
 - xxxvi. Amount under Unclaimed Assets to be used to clear legal fees and the remaining amount be divided equally among the 12 beneficiaries.
 - xxxvii. Shares at Safaricom Co. Ltd to be shared equally among the 12 beneficiaries.
- b. The proposal to have the the petitioners provide accurate account with regards to the shares held at Banks, Saccos, Insurance Companies, Tea Factory Companies, Cooperative, Kenya Airways, Uchumi Supermarket and others, Cash money in Highland Sacco, Cash money in Absa Bank, Amount under unclaimed Assets and others is rejected
 - c. The Affidavit of Protest against Confirmation of Grant dated 26th June, 2023 is dismissed.
 - d. All the estate monies held in various bank accounts and under unclaimed assets to be used to meet the statutory dues and the legal fees and if the aforesaid amount is not sufficient to settle the legal fees, then each beneficiary should settle the balance of their respective advocates' fees.
 - e. If after settling the statutory dues and legal fees, a balance of the aforesaid monies remains, the same should be shared equally amongst the 12 beneficiaries.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH OCTOBER, 2023

.....

J.K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Koech for the Petitioners

1st – 5th Objectors

