



REPUBLIC OF KENYA



**In re Estate of Leshan Nick Ole Letoluo (Deceased) (Succession Cause E024 of 2021) [2023] KEHC 23637 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23637 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
SUCCESSION CAUSE E024 OF 2021  
F GIKONYO, J  
OCTOBER 11, 2023  
IN THE MATTER OF THE ESTATE OF  
LESHAN NICK OLE LETOLUO (DECEASED)**

**RULING**

1. On 29/3/2023, the court directed that the protest filed herein be canvassed within the confirmation hearing by way of written submissions.
2. Parties filed written submissions thereto and a date was set for judgment.
3. However, a different pathway has become necessary as shall be borne out later.
4. The global claim in the protestor is that she and her two daughters are dependants of the deceased under section 29 of the *Law of Succession Act*, and they too have a right to inherit the estate property.
5. The specific grounds stated are that, she is the wife of the deceased, and her daughters are children of the deceased, for; i) she was married to the deceased under Maasai customary law; and ii) they are children whom the deceased had taken into his family as his own, and as were being maintained by the deceased immediately prior to his death, respectively.
6. In addition, she stated that, prior to his death, the deceased had sub-divided his land parcel number 290 into four distinct portions with the intention of assigning them as follows; 7643 to his son Kuntai; 7644 to the protestor which was their matrimonial home; 7645 was where the borehole was to serve both matrimonial homes; and 7646 to Salome Leshan which was her matrimonial home.
7. The court is aware that the petitioner has stated; i) that the said property of the deceased has not been subdivided; and ii) that the protestor was merely an acquittance or a concubine of the deceased.
8. The court is acutely aware of the directions given on March 29, 2023 to the effect that the protest be canvassed within the confirmation of grant through written submissions. However, upon thoughtful perusal and consideration of the claims by the protestor and the nature of affidavit evidence filed, this is a case that should be resolved upon viva voce evidence as a matter of substantive justice.



9. Thus, in accordance with rule 41 of the *Probate and Administration Rules*, the court shall, during the hearing for confirmation of grant, hear oral evidence by the protestor as well as the petitioner and all persons who have filed affidavits herein in order to ascertain the rightful beneficiaries of, and eventually distribute the estate. Earlier directions are accordingly reviewed.

10. As a consequence, the judgment that was to be delivered today is hereby arrested. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 11<sup>TH</sup> DAY OF OCTOBER, 2023.**

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**F. Gikonyo M.**

**Judge**

**In the presence of:-**

M/s Opondo for Petitioner

2. Shikanda for Protestor

3. M/s Mabangu and Kimathi for 3<sup>rd</sup> Administrator

4. Mr. Muraguri C/A.

