



REPUBLIC OF KENYA



In re Estate of the Late Kipsonyo Arap Kili (Deceased) (Succession Cause E003 of 2017) [2024] KEHC 14264 (KLR) (15 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14264 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E003 OF 2017
RN NYAKUNDI, J
NOVEMBER 15, 2024**

IN THE MATTER OF THE ESTATE OF THE LATE KIPSONYO ARAP KILI (DECEASED)

BETWEEN

ESTHER JEPKOGEI PETITIONER

AND

ELIZEBA JEMAIYO RESPONDENT

AND

ALBINE JEMELI SONYO INTERESTED PARTY

RULING

1. Kipsonyo Arap Kili died on 18th April, 1978 domiciled in Kenya leaving behind the following beneficiaries:
 - a. Salome Kesumo Kipsonyo – Widow
 - b. Anna Chumo – Daughter (deceased)
 - c. Viola Jepkemei Samoei – Daughter
 - d. Nicholas Kimosbei Korir – son (deceased)
 - e. Elizeba Chemaiyo – daughter
 - f. Mary Jerop – Daughter
 - g. Esther Kepkogei – Daughter
 - h. Kibet Sonyo – Son (deceased)
 - i. Ruth Cheptoo Killy – Daughter (deceased)



2. The only asset the deceased left was the parcel of land known as Nandi/Cheptarit/16 which has now been subdivided and issued with new numbers.
3. On 11th July, 2016 one of the beneficiaries, Elizeba Jemaiyo was issued with a grant of letters of administration, which sought to be revoked through summons for revocation dated 13th February, 2017 for reasons that some of the beneficiaries were left out. The court considered the said summons and the grant was revoked vide this court's ruling dated 29th July, 2022. The court issued orders as follows:
 - a. The grant of letter of administration made to the Respondent on 11th July, 2016 is hereby revoked and set aside.
 - b. The titles arising from sub-division of Nandi/Cheptarit/16 are cancelled and the mother title reverts back to the name of the deceased awaiting the parties to agree on the mode of distribution and the courts determination of the same.
 - c. The parties to file consent or separate proposals on distribution within 21 days from the date herein.
 - d. Parties bear their costs.
4. Subsequently, only Esther Jepkogei filed her proposed mode of distribution dated 23rd February, 2023 and the rest of the parties never filed their proposal despite a follow up order dated 7th February, 2024. She proposed that the suit property be distributed equally amongst the nine units. In support of her proposal she cited Article 2(5) of the *Constitution*, Section 38 of the *Succession Act* and the cases of *In Kimitei Cherop* (2021) eKLR and *Joyce Kabiti M/Turuchu v David Mntiritu* (2016) eKLR.
5. Having given that brief background, it is only just that the court proceeds to distribute the estate without any further delays occasioned by the other parties who have failed to comply with the court's orders.

Analysis and Determination

6. Having considered the evidence on record regarding the estate herein and the Applicant's written submission I am persuaded that the Sole issue that presents itself for determination herein, is whether the Estate of the deceased should be shared equally amongst all beneficiaries or as per the proposal advanced by the Applicant herein.
7. In the present case, the Deceased was a monogamous man. Section 35 gives a life interest of the residue of the estate to the surviving spouse of a deceased intestate and thereafter to the surviving child or equally among the surviving children. I hold the view that this estate should be distributed and governed by the provisions of Section 35 as read with section 38 of the *Law of Succession Act*.
8. Section 35 of the *Law of Succession Act* provides as follows
 - “ 35. Where intestate has left one surviving spouse and child or children
 1. Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to —
 - a. The personal and household effects of the deceased absolutely; and



- b. A life interest in the whole residue of the net intestate estate: Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.”

9. I have read the provisions of Section 35(5) and 38 of the Act and they emphasize the doctrine of equal share and not equity. The applicant proposed an equal share amongst the beneficiaries. Even for the deceased beneficiaries, the law would naturally allow their share devolved to their respective estates for the benefit of the nominees therein. In the circumstances of this case the model that commends itself for purposes of distributing the estate is as hereunder:

Nandi/Cheptarit/16 measuring 14.97 hectares

NO	BENEFICIARY	SHARE
1	Salome Kesumo Kipsonyo	4.1 Acres
2	Estate of Anna Chumo	4.1 Acres
3	Viola Jepkemei Samoei	4.1 Acres
4	Estate of Nicholas Kimosbei Korir	4.1 Acres
5	Elizeba Chemaiyo	4.1 Acres
6.	Mary Jerop	4.1 Acres
7.	Esther Jepkogei	4.1 Acres
8.	Estate of Kibet Sonyo	4.1 Acres
9.	Estate of Ruth Cheptoo Killy	4.1 Acres

10. Each party shall bear its own costs noting that the claim herein is a succession cause involving members of one family.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 15TH DAY OF NOVEMBER 2024

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R. NYAKUNDI

JUDGE

