



REPUBLIC OF KENYA



**Kenduiwa v Kenduiwa & 3 others (Succession Cause 12 of 2014)
[2024] KEHC 14078 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14078 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 12 OF 2014
HI ONG'UDI, J
NOVEMBER 14, 2024**

BETWEEN

MARY CHPKORIR KENDUIWA PROTESTOR

AND

JOSEPH KIPKIRUI KENDUIWA 1ST PETITIONER

MATHEW KIPSANG KENDUIWA 2ND PETITIONER

JERMIAH KIBET KENDUIWA 3RD PETITIONER

ERICK CHERUIYOT KENDUIWA 4TH PETITIONER

RULING

1. Mary Chepkorir Kenduiwa (the protestor) filed the protest dated 21st January, 2022 against the proposed confirmation of the grant issued to the petitioners. She deponed that she is a widow to one of the sons of the deceased. She opposed the proposal of her being joint beneficiaries with her sons in her husband's shares in the estate. Her claim is that her sons who are grandsons to Samson Kimutai Tuimising the deceased cannot inherit from his estate.
2. Reference was made to the case of *the Matter of the estate of Veronica Njoki Wakagoto (deceased)* [2013] eKLR where Musyoka J held:

“.....under part V, grandchildren have no right to inherit their grandparents who die intestate after 1st July, 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 the share that ought to have gone to the said parents”. The same position was also reiterated *in re Estate of Joyce Kanjiru Njiru (Deceased)* [2017] eKLR.

3. She added that she has no objection to the mode of distribution for the shares of the other children of the deceased. She insists that the shares to her late husband should be registered in her name exclusively.
4. The petitioners did a joint affidavit sworn on 9th March, 2022. They averred that the protestor had not come to court with clean hands. This is because the protestor’s children had approached them with complaints against their mother (They followed it up with an affidavit by Peter Ngetich Kenduiywa (one of the sons) – JKKI. That they received a letter of complaint from the protestor’s counsel which they responded to (JKK 2a & b).
5. The protestor filed written submissions’ but the petitioners relied on their responses.

The protestors submissions

6. The same were filed by Onesmus Langat and company advocates and is dated, 28th day of March, 2024. These are a replica of what has been raised in the protest which has been captured above. Counsel contends that the action by the administrators is meant to create unnecessary tension between protestor and her children.

Analysis and Determination

7. I have considered the protest, the replying affidavit, annexures and the protestor’s submissions. The issue here is whether the share of the late James Kenduiwa the son of the late Samson Kimutai Tuimising whose estate is for distribution.
8. The position in law as has been espoused in the case of *The estate of Veronica Njoki Wakagoto (supra)* and *The estate of Joicye Kanjiru Njiru (supra)* is that grand children inherit through their parents.
9. I have however read and considered the affidavit of the administrators herein plus their annexures. They acted the way they did following the complaints raised by the children of the protestor. She did not file any response to the serious complaints raised in the said affidavit. The protestor has nowhere shown that the other widows have issues with their children yet are not sharing their shares.
10. Since the grand children can only inherit through their parents and the protestor is not in agreement with her children. The late James Kenduiwa’s share in his late father’s estate forms part of his own estate. That being the case I decline to grant the orders sought by the protestor. Instead I direct that the late James Kenduiwa’s share in his father’s estate shall devolve to his estate to be distributed in a separate Succession Cause which will be filed, after the distribution herein. The administrators to take date for the confirmation of the grant.
11. Orders accordingly

DELIVERED, VIRTUALLY, DATED AND SIGNED THIS 14TH DAY OF NOVEMBER, 2024 IN OPEN COURT AT NAKURU.

H. I. ONG’UDI

JUDGE

