

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

SUCCESSION CAUSE NO. E013 OF 2022

IN THE MATTER OF THE ESTATE OF KIBET ARAP

NGENY (DECEASED)

HENRY KIPLANGAT BETT 1ST PETITIONER

RECHO CHEPKEMOI NGENY 2ND PETITIONER

VERSUS

BORTA CHEPNGETICH BETTOBJECTOR

RULING

1. The Petitioners and the Objector are all beneficiaries of the estate of Kibet arap Ngeny (deceased). The deceased's estate comprised two parcels of land i.e. KERICHO/KYOGONG/273 and KERICHO/NDARAWETA/115 which are the subject of these succession proceedings. The family of the

deceased have been unable to agree on a mode of distribution of the deceased's estate.

2. From the outset, I must point out that I have, pursuant to section 99 and 100 of the Civil Procedure Act, corrected the arithmetic errors in the distribution schedule where the court indicated more acreage than was available for distribution.

Background

3. The Petitioners petitioned for Letters of Administration Intestate for the estate of Kibet arap Ngeny on 3rd March 2022 and the Grant was issued in the Petitioners' names on 20th July 2022.

4. Borta Chepngetich Bett (Objector) filed a Notice of Motion dated 19th August 2022 seeking to have the parcel KERICHO/NDARAWETA/115 included as part of the deceased's estate. Through a Ruling dated 27th April 2023, this court allowed the Objector's Application and directed that

KERICHO/NDARAWETA/115 be included as part of the deceased's estate.

5. The Petitioners then filed Summons for confirmation of Grant dated 3rd July 2023 where the 1st Petitioner annexed his proposed mode of distribution in the Affidavit dated 3rd July 2023.

6. Being dissatisfied with the proposed mode of distribution, Borta Chepngetich Bett one of the beneficiaries filed an Objection dated 21st August 2023 on 19th September 2023. On 6th December 2023, the Petitioner asked for time to go and discuss the Protest at home and he was granted the prayer by this court. Further at the request of the parties, this court directed that the meeting be convened by the Chief of Cheboryot location to assist the parties in resolving the dispute.

7. The family held meetings and reached some resolutions. The report authored by the Chief was

subsequently filed in court on 15th January 2024 by the petitioners. The report stated that the family had agreed that the deceased was survived by two widows Alice Chepkoech Ngeny and Recho Chepkemoi Ngeny (1st and 2nd wives respectively). That the family agreed on the two parcels of land being divided equally between the two widows or households. That they further agreed on a mode of distribution as follows: -

KERICHO/KYOGONG/273-share of 4.6acres:-

- | | |
|----------------------------|---------|
| i. Alice Chepkoech Ngeny | nil |
| ii. Henry Kiplangat Bett | 1 acre |
| iii. Lucy Chepkemoi Mazeti | 1 acre |
| iv. Sammy Kiprotich Tonui | 1 acre |
| v. Borta Chepngetich Bett | 0.2acre |
| vi. Linnah chemutai Maki | 0.2acre |
| vii. Betty Chesang Rop | 0.2acre |
| viii. Leonard Tonui | 1 acre |

KERICHO/NDARAWETA/115 share of 9.25 acres

- i. Alice Chepkoech Ngeny nil
- ii. Henry Kiplangat Bett 2.3125 acres
- iii. Lucy Chepkemai Mazeti 2.3125 acres
- iv. Sammy Kiprotich Tonui 2.3125 acres
- v. Leonard Tonui 2.3125 acres
- vi. Borta Chepngetich Bett nil
- vii. Linnah chemutai Maki nil
- viii. Betty Chesang Rop nil

8. The Report categorically stated that the parties had agreed on the distribution. On the same breath however, the Report stated that the Objector Borta Chepngetich Bett had refused to attend the mediation while the rest of the members all attended and signed the minutes. Technically therefore there was no agreement between the Objector and the rest of the family.

9. When the Mediation failed, parties came back to this court and sought directions on the hearing of the Protest. The court directed each party to file their preferred mode of distribution and submissions to support their respective positions.

The Petitioner's preferred mode of distribution (Henry Kiplangat Bett)

10. KERICHO/NDARAWETTA/115
- | | |
|----------------------------|--------------|
| i) Alice Ngeny | Nil |
| ii) Henry Kiplangat Bett | 2.3125 acres |
| iii) Lucy Chepkemoi | 2.3125 acres |
| iv) Sammy Kiprotich Tonui | 2.3125 acres |
| v) Leonard Tonui | 2.3125 acres |
| vi) Borta Chepngetich Bett | Nil |
| vii) Linner Chemutai Maki | Nil |
| viii) Betty Chesang Rob | Nil |
| ix) Recho Chepkemoi Ngeny | 9.25 acres. |

11. KERICHO/KYOGONG/273

i) Alice Ngeny	Nil
ii) Henry Kiplangat Bett	1 acre
iii) Lucy Chepkemoi	1 acre
iv) Sammy Kiprotich Tonui	1 acre
v) Leonard Tonui	1 acre
vi) Borta Chepngetich Bett	0.2 acres
vii) Betty Chesang Rob	0.2 acres
viii) Linner Chemutai Maki	0.2 acres
ix) Recho Chepkemoi Ngeny	4.6 acres
x) Julius Bett	Nil
xi) Benard Bett	Nil
xii) Charles Bett	Nil
xiii) Hillary Bett	Nil
xiv) Hellen Koech	Nil
xv) Rose Chepkoech	Nil
xvi) Mercy Cherotich Korir	Nil
xvii) Gladys Chepkirui Langat	Nil

The Objector's preferred mode of distribution

(Borta Chepngetich Bett)

12. KERICHO/NDARAWETA/115
- i) Alice Ngeny 0.962 acres
 - ii) Henry Kiplangat Bett 0.962 acres
 - iii) Lucy Chepkemoi 0.962 acres
 - iv) Sammy Kiprotich Tonui 0.962 acres
 - v) Leonard Tonui 0.962 acres
 - vi) Borta Chepngetich Tonui 0.962 acres
 - vii) Linner Chemutai Maki 0.962 acres
 - viii) Betty Chesang Rob 0.962 acres
 - ix) Recho Chepkemoi Ngeny 0.962 acres
 - x) Julius Bett 0.962 acres
 - xi) Benard Bett 0.962 acres
 - xii) Charles Bett 0.962 acres
 - xiii) Hillary Bett 0.962 acres
 - xiv) Hellen Bett 0.962 acres
 - xv) Rose Chepkoech 0.962 acres

- | | |
|-------------------------------|-------------|
| xvi) Mercy Cherotich Korir | 0.962 acres |
| xvii) Gladys Chepkirui Langat | 0.962 acres |
| xviii) Gilbert Bett | 0.962 |
| acres | |
| xix) Robert Bett | 0.962 acres |

13. KERICHO/KYOGONG/273

- | | |
|-----------------------------|-------------|
| i) Alice Ngeny | 0.442 acres |
| ii) Henry Kiplangat Bett | 0.442 acres |
| iii) Lucy Chepkemoi | 0.442 acres |
| iv) Sammy Kiprotich Tonui | 0.442 acres |
| v) Leonard Tonui | 0.442 acres |
| vi) Borta Chepngetich Tonui | 0.442 acres |
| vii) Linner Chemutai Maki | 0.442 acres |
| viii) Betty Chesang Rob | 0.442 acres |
| ix) Recho Chepkemoi Ngeny | 0.442 acres |
| x) Julius Bett | 0.442 acres |
| xi) Benard Bett | 0.442 acres |
| xii) Charles Bett | 0.442 acres |

xiii) Hillary Bett	0.442 acres
xiv) Hellen Bett	0.442 acres
xv) Rose Chepkoech	0.442 acres
xvi) Mercy Cherotich Korir	0.442 acres
xvii) Gladys Chepkirui Langat	0.442 acres
xviii) Gilbert Bett	0.442
acres	
xix) Robert Bett	0.442 acres

14. Following the directions of this court on 3rd June 2024, the parties filed written submissions as follows:-

The Objector's submissions

15. Through her submissions dated 1st July 2024, the Objector submitted that the deceased was married to two wives. That the deceased was a polygamous man and his estate ought to be divided in accordance to **section 40 of the Law of Succession Act** which provided for equal

distribution of the deceased's estate among the houses and according to the number of children in each house. That a surviving spouse was to be added as an additional unit to the number of children. She relied on **Mary Rono vs Jane Rono & another (2005) eKLR**, **re estate of Benson Ndirangu Mathenge (Deceased) (2018) eKLR** and **re estate of Ainea Masinde Walubengo (2017) eKLR**.

16. It was the Objector's submission that **section 38 of the Law of Succession Act** provided for equal distribution of a deceased's estate to the surviving children irrespective of gender and whether they were married or not. It was her further submission that the deceased's two properties ought to be equally divided among the beneficiaries as contained in her preferred mode of distribution.

The Petitioners' submissions

17. Through their submissions dated 16th July 2024, the Petitioners submitted that the beneficiaries had agreed to divide the deceased's estate between the two houses as the deceased was married to Alice Chepkoech Ngeny from the first house and Recho Chepkemoi Ngeny from the second house. That from the first house, his wife Alice Chepkoech Ngeny was to get 4.6 acres in KERICHO/KYOGONG/273 and 9.25 acres in KERICHO/NDARAWETA/115.
18. It was the Petitioners' submission that the daughters of the deceased formally renounced their claims to KERICHO/NDARAWETA/115 through Affidavits sworn on 15th January 2024. That Alice Chepkwony Ngeny, the deceased's 1st wife

formally renounced her interest on her share of land based on her advanced age.

19. The Petitioner submitted that in regard to KERICHO/KYOGONG/273, the 1st and 2nd house were to get an equal share of 4.6 acres and further the two houses were also to get an equal share of 9.25 acres each in KERICHO/NDARAWETA/115.
20. It was the Petitioners' submission that in regard to KERICHO/KYOGONG/273, beneficiaries from the 2nd house i.e. Recho Chepkemoi Ngeny, Julius Bett, Benard Bett, Charles Bett, Hillary Bett, Gilbert Bett and Robert Bett would all get 0.575 acres each while Hellen Koech, Rose Koech, Mercy Cherotich Korir and Gladys Chepkirui would not get a share. It was their further submission that in regard to KERICHO/NDARAWETA/115, Recho Chepkemoi Ngeny, Julius Bett, Benard Bett, Charles Bett, Hillary

Bett, Gilbert Bett and Robert Bett would all get 1.15 acres each while Hellen Koech, Rose Koech, Mercy Cherotich Korir and Gladys Chepkirui would not get a share.

21. The Petitioners submitted that the deceased's estate would be distributed by the personal representatives of each house as per the mode of distribution above.

22. I have gone through the entire court record including the Summons for Confirmation of Grant dated 3rd July 2023, the Objection dated 21st August 2023, the Objector's written submissions dated 1st July 2024 and the Petitioners' written submissions dated 16th July 2024. The only issue for my determination was to come up with a fair and just mode of distribution of the deceased's estate.

Analysis

23. From the record, I have noted that Kibet arap Ngeny (deceased) had two wives. His dependants are listed as follows:-

1st House.

- | | | |
|-------|------------------------|-----------------|
| i) | Alice Chepkoech Ngeny | Widow |
| ii) | Henry Kiplangat Bett | Son |
| iii) | Lucy Chepkemai Mazeti | Daughter in law |
| iv) | Sammy Kiprotich Tonui | Son |
| v) | Leonard Tonui | Son |
| vi) | Borta Chepngetich Bett | Daughter |
| vii) | Linner Chemutai Maki | Daughter |
| viii) | Betty Chesang Rob | Daughter |

2nd House

- | | | |
|------|------------------------|-------|
| i) | Recho Chepkemai Ngeny | Widow |
| ii) | Julius Kipngeno Bett | Son |
| iii) | Benard Kipngetich Bett | Son |

- | | |
|-----------------------------|----------|
| iv) Robert Bett | Son |
| v) Charles Bett | Son |
| vi) Gilbert Bett | Son |
| vii) Hillary Bett | Son |
| viii) Hellen Koech | Daughter |
| ix) Rose Chepkoech Biwott | Daughter |
| x) Mercy Cherotich Korir | Daughter |
| xi) Gladys Chepkirui Langat | Daughter |

24. Section 40 of the Law of Succession Act
provides:-

(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses

according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

25. The Court of Appeal in **Scolastica Ndululu Suva vs. Agnes Nthenya Suva (2019) eKLR** stated:-

“In Mary Rono vs Jane Rono & another (supra), Waki JA in the leading judgment, accepted the proposition that the Court had the discretion in ensuring a fair distribution of the deceased’s estate but

that the discretion must be exercised judicially on sound legal and factual basis.....It is therefore evident, that, although section 40 of the Law of Succession Act provides a general provision for the distribution of the estate of a polygamous deceased person, the court has discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.

26. Similarly in **re Estate of Nzolove Kisuke alias Daudi Nzolove Kisuke (Deceased) (2022) eKLR**, Odunga J. (as he then was) held:-

“It is therefore clear on judicial authority that the strict application of section 40 of

the Law of Succession Act may well lead to an absurdity and I associate myself with the opinion of the Court of Appeal that the said section only provides a general provision for the distribution of the estate of a polygamous deceased person. However, the court has discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.....”(Emphasis mine)

27. The Objector proposed equal distribution of the deceased estate comprising KERICHO/KYOGONG/273 and KERICHO/NDARAWETA/115 equally among the 19 beneficiaries. On the other hand, the 1st Petitioner

stated that his mother (Alice Chepkoech Ngeny) and the deceased's daughters had renounced their shares of land in KERICHO/NDARAWETA/115 by swearing Affidavits.

28. I have looked at the Affidavits referenced by the 1st Petitioner. The first Affidavit dated 29th December 2023 was sworn by the 1st widow (Alice Ngeny) and it stated that she agreed to have Henry Kiplangat Bett and Recho Chepkemoi Ngeny as the joint Petitioners in this case. That she was also in agreement with the mode of distribution as proposed by the Petitioners. The mode of distribution which she thumb printed indicated that she would not get a share of the land. She also stated in her affidavit that she was of advanced age of 90 years and agreed to be represented by her

son the 1st Petitioner and her co-wife the 2nd Petitioner.

29. The second Affidavit dated 29th December 2023 was sworn by Linner Chemutai Maki and it stated that she renounced her claim in KERICHO/NDARAWETA/115 as she was satisfied with her share of 0.2 acres to be excised from KERICHO/KYOGONG/273.

30. The third Affidavit dated 29th December 2023 was sworn by Betty Chesang Rop and it stated that she renounced her claim in KERICHO/NDARAWETA/115 as she was satisfied with her share of 0.2 acres to be excised from KERICHO/KYOGONG/273.

31. From the above, it was clear that only two daughters of the deceased from the first household renounced their claims in KERICHO/NDARAWETA/115 i.e. Linner Chemutai

Maki and Betty Chesang Rop. It was also clear that their renunciation only affected the distribution in their mother's household. The other daughters were bona fide beneficiaries as provided for in the law. In **Re Estate of Solomon Ngatia Kariuki (deceased) (2008) eKLR** Makhandia, J. (as he then was) held:-

“The Law of Succession Act does not discriminate between the female and male children or married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased's estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of an

old Kikuyu Customary Law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father's estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father's inheritance because they are likely to enjoy inheritance of their husband's side of the family.”

32. Similarly, Kimaru J. (as he then was) in **Peter Karumbi Keingati & 4 others vs. Dr. Ann Nyokabi Nguthi & 3 others (2014) eKLR** held:-

“As regards to the argument by the Applicants that married daughters ought

not to inherit their parent's property because to do so would amount to discrimination to the sons on account on the fact that the married daughters would also inherit property from their parent's in-laws, this court takes the view that the argument as advanced is disingenuous. This is because if a married daughter would benefit by inheriting property from her parents, her husband too would benefit from such inheritance. In a similar fashion, sons who are married, would benefit from property that their wives would have inherited from their parents. In the circumstances therefore, there would be no discrimination. In any event, the decision by a daughter or a son to get

married has no bearing at all to whether or not such son or daughter is entitled to inherit the property that comprise the estate of their deceased parents. The issues that courts would grapple with during distribution are the issues anticipated by Section 28 of the Law of Succession Act.....”

33.As stated earlier in this Ruling, **section 40 of the Law of Succession Act** envisaged equal distribution of the deceased’s estate among the two houses. The deceased’s wives (Alice Chepkoech Ngeny and Recho Chepkemai Ngeny) were to be added as additional units to the children. The Court of Appeal in **Mary Rono vs Jane Rono & another (2005) eKLR** held:-

“.....section 40 of the Succession Act should have been applied in which case all the children and the widows would have been considered as units, entitling them to equal distribution of the land.....”

34. In this case however I have already set out the express agreement of the beneficiaries in the first household. Their family meeting took into consideration the settlements of some of the older members of the family and the wishes of the two married daughters Linner Chemutai Maki and Betty Chesang Rop who renounced their right to an equal share and were contented to receive only 0.2 acres in Kericho/Kyogong/273 and no share in Kericho Ndarawetta/115.

35. From the above, the understanding which this court sees no need to interfere with, being of their

own free will, is that their brothers from their mother's household will get a bigger share. This court further sees no justifiable cause to interfere with their mother's express wish that she was of advanced age and was contented to share out the land to her children. From the report, she had directed her sons and step sons to proceed with the agreed demarcation and also beseeched the family members and in particular the Objector to withdraw court cases and settle amicably as a family.

36. This court upholds the law and the agreement of the parties that the two households would get an equal share of both Kericho/Ndaraweta/115 and Kericho/Kyogong 273. The former is estimated at 18.3 acres and therefore each household will get 9.15 acres. The latter is estimated at 8.4 acres and therefore each household will get 4.2 acres.

37. The just and fair distribution in the 1st household which takes into account the express wishes of the beneficiaries in the 1st household would work as follows. An equal distribution of 9.15 acres between 8 units would yield 1.14 acres each. The Objector Borta Chepngetich Bett therefore gets her beneficial share of 1.14 acres. Alice Chepkoech Ngeny (1st widow), Linner Chemutai Maki and Betty Chesang Rob opted out of their individual share computed by this court at 1.14 acres each, making a total of 3.42 acres in favour of the sons of the 1st household. Each of the 4 sons would therefore get their initial equal share of 1.14 acres each plus 0.8555 acres redistributed from their mothers' and 2 sisters' share making 1.99 acres each.

38. In the best interest of justice and taking into consideration the parties' interests, the following is this court's finding on the mode of distribution of the deceased's estate.

39. The distribution for **KERICHO/KYOGONG/273 for the 1st House (4.6acres)** will therefore be:-

- | | |
|----------------------------|------------|
| i. Alice Chepkoech Ngeny | NIL |
| ii. Henry Kiplangat Bett | 0.84 acres |
| iii. Lucy Chepkemoi Mazeti | 0.84 acres |
| iv. Sammy Kiprotich Tonui | 0.84 acres |
| v. Leonard Tonui | 0.84 acres |
| vi. Borta Chepngetich Bett | 0.84 acres |
| vii. Liner Chemutai Maki | 0.2 acres |
| viii. Betty Chesang Rob | 0.2 acres |

40. The half share of Kericho/Kyogong/273 (4.6acres) shall go to Recho Chepkemoi Ngeny for the 2nd household.

41. KERICHO/NDARAWETA/115 (18.3 acres)

The distribution for the 1st household would be total of 9.15 acres

- | | | |
|-------|------------------------|------------|
| i. | Alice Chepkoech Ngeny | Nil |
| ii. | Henry Kiplangat Bett | 1.99 acres |
| iii. | Luzy Chepkemoui Mazeti | 1.99 acres |
| iv. | Sammy Kiprotich Tonui | 1.99 acres |
| v. | Leonard Tonui | 1.99 acres |
| vi. | Borta Chepngetich Bett | 1.14 acres |
| vii. | Liner Chemutai Maki | Nil |
| viii. | Betty Chesang Rob | Nil |

42. The second widow Recho Chepkemoui Ngeny will hold her half share of (9.15 acres) to distribute to members of her household as per their household agreement.

43. The Grant is accordingly confirmed in accordance with this Ruling.

44.A certificate of confirmation of Grant shall issue accordingly.

Orders accordingly.

Ruling delivered, dated and signed this 3rd day of December, 2024.

.....
R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the 1st Petitioner present acting in person, Mr. J.K. Koech holding brief for Mr Ngeno for the for the Objector, Siele (Court Assistant).