



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Samuel Barkoiyet Kangogo (Deceased) (Succession Cause
117 of 2006) [2025] KEHC 14032 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14032 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 117 OF 2006
RN NYAKUNDI, J
OCTOBER 9, 2025
IN THE MATTER OF THE ESTATE AOF THE LATE
SAMUEL BARKOIYET KANGOGO (DECEASED)
THROUGH
CATHERINE JERUTO BAROIYET (PETITIONER/APPLICANT)
SUMMONS FOR CONFRAMTIO OF GRANT**

RULING

1. Before this court is summons for confirmation seeking the following order:
 - i. That the Grant issued on the 2nd October, 2006 to Catherine Jeruto Bargoiyet be confirmed
 - ii. That the costs be in the causeWhich Applciaitonis supported by the affidavit of Catherin Jeruto Bargoiyetthe administrator herein, sworn and filed and is premised on the following grounds:
 - i. That: Grant of letters of administration was issued on the 2nd October, 2006
 - ii. That the stipulated period of six (6) months has lapsed
 - iii. That I am the sole beneficiary of the estate namely Samuel Barkoiyet Kangogo
 - iv. That this application is brought expeditiously and in good faith
2. The same is annexed by an affidavit sworn by Catherin Jeruto Bargoiyetwhich states as follows:
 - i. That I am a female adult of sound mind and the petitioner/applicant herein, thus competent to swear this affidavit
 - ii. That I was granted letters of administration on 2nd October, 2006
 - iii. That the same has not been confirmed
 - iv. That I thought I had completed the court process



- v. That I now request this Honourable Court to confirm the said grant
- vi. That I have brought the application of confirmation for the same
- vii. That this Application is made in good faith and in the interest of justice.
- viii. That the contents of this affidavit are true to the best of my knowledge, information and belief.

Decision

- 3. The administrator sought leave of this court to proceed and confirm the summons duly filed for purposes of issuing the certificate of confirmation of grant. The beneficiaries have appended their signatures to the summons for confirmation of grant and it is therefore a non-contentious matter.
- 4. In this case therefore, it is prudent to place the law in perspective. The *Law of Succession Act* grants certain rights to the serving spouse. These are set out in section 35 (1) and 37 of the *Law of Succession Act*. Cases numbers 121, 122 and 246 deal with the rights of a serving spouse.

Section 35(1) provides:

Subject to the provisions of section 40, where an intestate has left a serving spouse and a child or children, the serving 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 serving spouse is a widow that intestate shall determine upon remarriage Section 36(1) provides: Where intestate has left one serving spouse but no child or children, the serving spouse shall be entitled out of the net intestate estate to:

- a. The personal and household effects of the deceased absolutely and
- b. The first ten thousand shillings out of the residue of the net intestate or twenty per cent thereof, which is the greater and
- c. A life interest in the whole of the remainder

Section 37 Provides

A surviving spouse entitled to a life interest under the provisions of section 35 of 36 with the consent of all co-trustees and all children of full age, or with the consent of the court may during the period of the life interest, sell any of the property subject to that interest if it is necessary for the own maintenance.

- 5. In so far as the children are concerned the rights are encapsulated in Section 35 (2) (3) (5) and 38 of the *Law of Succession Act*. Section 35 (2) (3) and (5)

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- (2) A surviving spouse shall, during the continuation of life interest provided by subsection 1) have a power of appointment of All or any part of the capital of the net intestate estate by way of gift taking effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.



- (3) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or, if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.
- (5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

Section 38 provides as follows:

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall subject to the provisions of section 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

6. Similarly, in Rule 41 (3) of the [Probate and Administration Rules](#) anchors the framework on confirmation of grant as follows;
 - (1) At the hearing of the application for confirmation the court shall first read out in the language or respective languages in which they appear the application, the grant, the affidavits and any written protests which have been filed and shall then hear the applicant and each protester and any other person interested, whether such persons appear personally or by advocate or by a representative.
 - (2) The court may either confirm the grant or refer it back for further consideration by the applicant or adjourn the hearing for further evidence to be adduced or make any other order necessary for satisfying itself as to the expediency of confirming the applicant as the holder of the grant or concerning the identities, shares and interests of the persons beneficially entitled and any other issue which has arisen including the interpretation of any will.
 - (3) Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to section 71 (2) of the Act, proceed to confirm the grant. [Underlining mine for emphasis]
 - (4) In proceedings under subrule (3), unless the court otherwise directs, the personal representative of the deceased shall be the applicant seeking determination of the question, and the person claiming so to be beneficially interested together with the residuary legatee or other person to be appointed by the court to represent the residuary estate shall be the respondents; and the court in such proceedings shall give all necessary directions relative to the prosecution thereof including the safeguarding of the share or estate so appropriated and set aside and the provision of costs.
 - (5) Where the court in exercise of its power under section 71 (2) (a) of the Act directs that a grant be confirmed it shall cause a certificate of such confirmation in Form 54 to be affixed to the grant together with the seal of the court and shall appoint a date not more than six months



ahead, by which time the accounts of the completed administration shall be produced to the court for its approval.

- (6) Where the court, in exercise of its power under section 71 (2) (b) of the Act, instead of confirming a grant already issued directs the issue of a confirmed grant, this grant may be in Form 55.
- (7) On production of the accounts in court any person beneficially entitled and any creditor may appear and be heard before the court's approval is given. (8) The approval of the accounts in court may be dispensed with if all persons beneficially entitled have signed as consenting to the accounts as produced. (9) On the date for approval of the accounts and on any adjourned date application may be made for an adjournment to a fixed date not longer than three months away.
7. The court assessment of the summons for confirmation, the supporting affidavit and the consent of the beneficiaries who are in attendance gives rise to one conclusion, that there is merit to grant the prayers in the summons followed by a duly certificate of confirmation of grant as herein shown in the matrix of distribution;

S/No	Beneficiary Name	Property Discription	Shares
1	Catherine Jeruto Bargoiyet	LR Tembelio/ kimoning Block 1(Cheburbur)43	5 Acres
2	Moses Kipng'etich	LR Tembelio/ Kimoning Block 1(Cheburbur)43	5 Acres
3	Rose Jepchirchir Bargoiyet Cecilia Jebet Bargoiyet Agnes Jemeli Bargoiyet	Kiplombe/Kiplombe Block 6 (Kutsi)/12	5 Acres Share Jointly
4	Catherine Jeruto Bargoiyet	LR Tembelio/ Kimoning Block 1(chiburbur)51	0.2 Whole

8. Costs of the application be in the cause.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 9TH DAY OF OCTOBER 2025

R. NYAKUNDI

JUDGE

