



**In re Estate of Kipngeno Arap Mibei (Deceased) (Succession Appeal
E032 of 2024) [2025] KEHC 13954 (KLR) (7 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13954 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION APPEAL E032 OF 2024
JK NG'ARNG'AR, J
OCTOBER 7, 2025**

BETWEEN

PHILIP KIPKURUI NGENO 1ST APPELLANT

LILIAN CHEPKORIR 2ND APPELLANT

AND

WINNIE MIBEI 1ST RESPONDENT

BETTY CHEMUTAI 2ND RESPONDENT

*(Being an Appeal from the Ruling of Chief Magistrate, Boke E. at the
Chief Magistrate's Court at Bomet, Succession Cause Number 46 of 2020)*

JUDGMENT

1. The Appellants (then Petitioners) filed for Petition of Letters of Administration Intestate and the Grant of Letters of Administration Intestate in their joint names was issued to them on 28th June 2021. The Appellants filed for Summons for Confirmation of Grant dated 25th January 2023. In response, the Respondents filed a Protest/Objection dated 5th June 2023 where they disputed the Appellants' proposed mode of distribution for the deceased's estate namely Kericho/Tegat/1686, Kericho/Tegat/306 and Kericho/Tegat/1020.
2. The Protest was heard by viva voce evidence and the trial court delivered its Ruling on 17th December 2024. The trial court ruled that the parcels Kericho/Tegat/1685 and Kericho/Tegat/1020 be distributed as per the Respondents' proposal and further that Kericho/Tegat/306 be awarded to Winnie Mibei (1st Respondent)
3. Being aggrieved with the Ruling of the trial court, the Appellants filed their Memorandum of Appeal dated 20th December 2024 challenging the trial court's orders specifically on Kericho/Tegat/306 and Kericho/Tegat/1020.



4. My work as the 1st appellate court is to re-evaluate and re-examine the evidence of the trial court and come to my own findings and conclusions, but in doing so, to have in mind that it neither heard nor saw the witnesses testify. This principle was espoused in the Court of Appeal case of Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] KECA 208 (KLR).
5. I shall briefly summarize the parties' cases in the trial court and their respective submissions in the present Appeal in the succeeding paragraphs.

The Petitioners/Appellants' case.

6. In regards to Kericho/Tegat/1020, the 1st Appellant stated that he purchased the said land together with the deceased sometime in the year 1987. That the parcel was 2.75 acres and he purchased 1.75 acres of it. The 1st Appellant stated that he took a loan to purchase the said share and when he completed the payments, the deceased took the Title Deed.
7. It was the 1st Appellant's case that in a meeting held at the Chief's office on 1st February 2021, his sisters acknowledged that he had participated in the purchase of Kericho/Tegat/1020 and that he was entitled to 1.75 acres of it.
8. In regards to Kericho/Tegat/306, the 1st Appellant was categorical that the 1st Respondent did not purchase or was not handed over the said parcel by the deceased in his lifetime and she was not entitled to the whole parcel.
9. The 1st Appellant's proposed mode of distribution was as follows: -
 - Kericho/Tegat/1020
 1. Philip Kipkurui Ngeno 6 acres.
 2. Lilian Chepkorir 0.8 acres including the homestead (for her benefit and the benefit of all the beneficiaries)
 - Kericho/Tegat/306
 1. Philip Kipkurui Ngeno 6 acres
 2. Winnie Mibei 1 acre
10. Through his written submissions dated 23rd June 2025, the 1st Appellant submitted that the Minutes the 1st Respondent relied on indicating that she was given the parcel Kericho/Tegat/306 were not signed. That Hellen Mibei and Mirriam Mibei who were the Respondent's witnesses were not present in the meeting and could not testify to the contents of the meeting. It was the 1st Appellant's case that any contract for disposition of land ought to be in writing and the transfer be effected through a valid instrument duly registered in the Lands Registry. He relied on section 3(3) of the [Law of Contract Act](#) and section 38 of the [Land Act, 2012](#).
11. It was the 1st Appellant's submission that gifts inter vivos were not exempt from the rules of disposition of interest in land. He relied on Micheni Aphaxard Nyaga & 2 others vs Robert Njue & 2 others (2021) eKLR. That the 1st Respondent did not acquire any legal interest in Kericho/Tegat/306 as it was not formalized by a written instrument. He relied on sections 107, 108 and 109 of the [Evidence Act](#) which placed the burden of proof on the 1st Respondent. It was the 1st Appellant's further submission that the 1st Respondent did not avail a Sale Agreement or a Deed of Transfer.



12. The 1st Appellant submitted that he was entitled to 1.75 acres of Kericho/Tegat/1020 as he jointly purchased the same with the deceased in 1987 from Micah Soi. That he called witnesses who were present during the joint purchase and testified that he secured a loan from KCB Bank to finance the transaction. The 1st Appellant further submitted that the area Chief confirmed that during the family meetings, the Respondents acknowledged that he had proprietary interest in the said parcel of land.
13. It was the 1st Appellant's submission that the 1st Respondent received Kshs 300,000/= which was proceeds from the sale of a portion of the deceased's property in which the full purchase price had not been completed during the deceased's lifetime. That she received the amount in her capacity as the family treasurer and had refused to remit the balance of Kshs 298,000/= to the estate. It was the 1st Appellant's further submission that Kshs 2,000/= had been paid to security officials during the handover of the money.

The Objectors'/Respondents' case

14. In regards to Kericho/Tegat/306, the 1st Respondent stated that the deceased sold her the said parcel as she helped him pay a loan in which the land had been charged as security. The 1st Respondent further stated that the deceased gave her the Title Deed.
15. It was the 1st Respondent's case that the 1st Appellant felt entitled to a big share of Kericho/Tegat/306 by virtue of him being the eldest son and only male beneficiary. It was the 1st Respondent's further case that Kericho/Tegat/306 should be wholly allocated to her.
16. The 1st Respondent stated that the 1st Appellant did not participate in the purchase of Kericho/Tegat/1020 and the said parcel was registered in the deceased's name.
17. The 1st Respondent's proposed mode of distribution was as follows: -

Kericho/Tegat/1020

1. Philip Kipkurui Ngeno 2 acres.
2. Betty Chemutai Korir 2 acres
3. Lilian Chepkorir 5 acres
4. Philip Kipkirui Ngeno 6 acres
5. Paskalia Cherono Mibei 2 acres
6. Tecla Mibei 5 acres
7. Hellen Mibei 2 acres
8. Winnie Mibei 2 acres
9. Mirriam Mibei 2 acres
10. Pauline Mibei 2 acres

Kericho/Tegat/306

To be wholly given to Winnie Mibei

18. In her submissions dated 17th July 2025, the 1st Respondent submitted that she was given Kericho/Tegat/306 after settling a loan on behalf of the deceased. That Kericho/Tegat/306 was not a gift inter



- vivos as alleged by the 1st Appellant. It was the 1st Respondent's submission that the 1st Appellant's Appeal was not merited as he had not demonstrated how the trial Magistrate misapplied the law and reached a wrong decision.
19. It was the 1st Respondent's submission that the deceased's estate should be distributed equally among all the beneficiaries with no discrimination as to gender or marital status. She relied on *Stephen Gitonga M'Murithi V Faith Ngira Murithi* [2015] KECA 347 (KLR) and section 38 of the [Law of Succession Act](#). It was the 1st Respondent's further submission that she did not have the estate's Kshs 298,000/= as alleged by the 1st Appellant. She relied on section 107 of the [Evidence Act](#) and re *Estate of Julius Mimano (Deceased)* [2019] KEHC 10103 (KLR).
 20. The 1st Respondent submitted that it was not the duty of this court to determine whether the 1st Appellant was entitled to 1.75 acres of Kericho/Tegat/1020. That this was a probate court that was concerned with distributing the deceased's estate. She relied on section 13 of the Environment and Land Court and re *Estate of Prisca Ong'ayo Nande (Deceased)* [2020] KEHC 6553 (KLR). It was the 1st Respondent's submission that Kericho/Tegat/1020 formed part of the deceased's estate.
 21. I have gone through and carefully considered the trial court Record, the Record of Appeal dated 24th April 2025 and the respective parties' written submissions. The only issue for my determination was whether the Appeal had merit.
 22. The present Appeal rests on the trial court's distribution of Kericho/Tegat/306 and Kericho/Tegat/1020. In regards to Kericho/Tegat/306, the 1st Respondent testified that the deceased who was her father gave her the said parcel as she helped him pay off a loan win which Kericho/Tegat/306 was charged as security. The 1st Respondent attached Minutes of a family meeting which was held on 5th November 2016. When she was cross examined, she reiterated that the deceased had given her Kericho/Tegat/306 before he died. She further reiterated that she had paid an AFC loan on behalf of her father. It was the 1st Respondent's further testimony that the Chief did not allow her to present her witnesses to prove that the deceased had given her Kericho/Tegat/306.
 23. I have looked at the Minutes of the family meeting held on 5th November 2016 and it confirmed in min3/5/11/16 that the deceased acknowledged that the 1st Respondent had assisted him in paying a debt and handed over the Title Deed for Kericho/Tegat/306.
 24. Tecla Chelangat Mibei, Hellen Chepkoech Mibei, Betty Chemutai Mibei and Miriam Mibei all testified in support of the 1st Respondent. They all testified that their father (deceased) had given the 1st Respondent the Title Deed of Kericho/Tegat/306. Their testimonies in regard to Kericho/Tegat/306 remained uncontroverted upon cross examination. They all supported the mode of distribution as proposed by the 1st Respondent.
 25. On the other hand, the 1st Appellant denied that the 1st Respondent had been given Kericho/Tegat/306 by the deceased. The 1st Appellant testified that the 1st Respondent had not provided any evidence to back up her assertion. The same was supported by Lilian Chepkorir who testified as the 2nd Appellant's witness. When the 1st Appellant was cross examined, he testified that Kericho/Tegat/306 was not registered in the deceased's name and further testified that the 1st Respondent was not in the meeting called by the Chief. It was the 1st Appellant's further testimony upon cross examination that he was allocating the 1st Respondent 1 acre of Kericho/Tegat/306 as she was married and that equal distribution did not apply on their land.
 26. When Lilian Chepkorir was cross examined, she testified that she was not aware that Kericho/Tegat/306 had been given to the 1st Respondent and that Philip and the 1st Respondent were in



occupation of the said parcel. She further testified that Kericho/Tegat/306 was registered in the name of Kipruto and she had a problem with the whole estate being shared equally.

27. In analysing the above, I have gone back to the Family Meeting. I have noted from the Respondents and the 1st Appellant were in attendance. As I have noted earlier, the Minutes showed that the deceased handed over Kericho/Tegat/306. This was witnessed by the 1st Respondent himself and the 2nd Respondent (Betty Chemutai) by virtue of their presence in the meeting. In essence, the 2nd Respondent's testimony corroborated the 1st Respondent's testimony on Kericho/Tegat/306. The 1st Appellant's cross examined the 1st Respondent on the issue of being handed over Kericho/Tegat/306 and the 1st Respondent's testimony remained uncontroverted.
28. It is also salient to note that out of the 5 witnesses that the 1st Appellant called, only the 1st Appellant and Lilian Chepkorir testified in regards to Kericho/Tegat/306 and they both confirmed that Kericho/Tegat/306 was not registered in the deceased's name. Further, in his submissions, the 1st Appellant confirmed that Tecla Chelangat Mibei and Hellen Chepkoech Mibei were not present in the family meeting and could not testify as to the contents of the meeting. This fortified the finding that the 1st Appellant was present in the meeting.
29. With the above in mind, it is my finding that the Minutes of the meeting was prima facie evidence that the deceased handed over Kericho/Tegat/306 to the 1st Respondent. My jurisdiction in this matter was limited to determining whether Kericho/Tegat/306 formed part of the deceased's estate. The issue of the 1st Respondent's ownership of Kericho/Tegat/306 was beyond this court's jurisdiction.
30. Flowing from the above, it is my finding that Kericho/Tegat/306 did not form part of the deceased's estate. I agree with the trial court's finding that the whole of Kericho/Tegat/306 be allocated to the 1st Respondent.
31. With regard to Kericho/Tegat/1020, the 1st Appellant testified that he purchased Kericho/Tegat/1020 together with the deceased and out of the 2.75 acres, his share was 1.75 acres. He further testified that they purchased the parcel from Micah Soi and he took a loan from KCB to facilitate the purchase. When he was cross examined, he testified that he did not have a Sale Agreement to show that he had bought the land.
32. Lilian Chepkorir testified as the second Appellants' witness. She testified that the 1st Appellant purchased Kericho/Tegat/1020 together with their parents and she was allocated the remaining acre. When she was cross examined, she reiterated that her brother (1st Appellant) had bought part of Kericho/Tegat/1020.
33. Thomas Towet testified as the Appellants' third witness. He testified that he was the 1st Appellant's close relative and that the 1st Appellant had purchased part of Kericho/Tegat/1020 from Micah Soi. Thomas testified that he witnessed the Agreement. When he was cross examined, he testified that he did not sign any Agreement.
34. Rebecca Chepkosgei testified as the Appellants' fourth witness. She testified that she was the 1st Appellant's neighbour. She testified that she was sure that the 1st Appellant paid money for the purchase of Kericho/Tegat/1020. When she was cross examined, she testified that she was not related to the 1st Appellant and she did not sign any Agreement.
35. Naomi Mosonik testified as the Appellants' fifth witness. She testified that Micah Soi informed her that he was selling Kericho/Tegat/1020 and that the 1st Appellant had shown capacity to purchase the same. When she was cross examined, she testified that Kericho/Tegat/1020 was registered in the deceased's name.



36. Simon Kitur testified as the Appellants' sixth witness. He testified that he was the Area Chief and it was stated that Kericho/Tegat/1020 had been bought jointly by the deceased and the 1st Appellant. When he was cross examined, he stated that he had no proof that Kericho/Tegat/1020 had been purchased jointly.
37. On the other hand, the 1st Respondent, Tecla Chelangat Mibei (second Respondent's witness), Hellen Chepkoech Mibei (third Respondent's witness), Betty Chemutai Mibei (fourth Respondent's witness) and Mirriam Mibei (fifth Respondent's witness) all testified that Kericho/Tegat/1020 was the deceased's parcel of land and the 1st Appellant did not participate in its purchase. They further testified that the 1st Appellant had constant arguments with the deceased and they did not relate well.
38. In analysing the above, I have considered the Appellants' witnesses' testimonies. From their testimonies, the consistent theme was that the 1st Appellant jointly purchased Kericho/Tegat/1020 with the deceased. I have also considered the 1st Appellants' sisters (the Respondents' witnesses) testimonies who opposed the said purchase.
39. This impasse can only be determined by finding out or interrogating the issue of the purchase of the land. As I have earlier stated, such issues relating to land are beyond the jurisdiction of this court. The appropriate forum would be the Environmental and Land Court.
40. That said, I have gone back to the Minutes of the family meeting. It was clear from the Minutes that the deceased and the 1st Appellant had problems with each other and did not relate well. The same came out during cross examination of the Respondents' witnesses. I have also looked at the testimonies of the 1st Appellant and his witness, Lilian Chepkorir. It was clear from their testimonies that they did not believe in the equal distribution of the deceased estate among men and women and were still stuck in the archaic past where men were heavily favoured in inheritance to the exclusion of women.
41. Article 27(3) of *the Constitution* of Kenya provides: -
Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
42. In re Estate of M'Ngarithi M'Miriti [2017] KEHC 7904 (KLR), Gikonyo held that: -
“From the arguments coming through, it is clear issues to do with discrimination based on gender and sex have emerged. There were bad times in the heavily patriarchal African society; that being born as daughter disinherited you. And so, even the judicial journey to liberate daughters from being so down-trodden by the patriarchal society in Kenya on matters of inheritance has been long and painful. As a matter of fact, due to the constitutional architecture of our nation at the time, before 2010, we only saw pin-prick thrusts and rapier-like strokes by courts on these persistent patriarchal biases. But, things changed when RONO vs. RONO [2008] 1 KLR 803 delivered the downright bludgeon-blow on these discriminatory practices against women in inheritance; it splendidly paid deference to the international instruments against all forms of discrimination against women especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). And, I am happy to say that from thence, there are many cases- and the number is rising by the day as courts implement *the Constitution*- which state categorically that discrimination



in inheritance on the basis of gender or sex or status is prohibited discrimination in law and *the Constitution*.

.....Therefore, a son will not have priority over a daughter of the deceased simply because he is male; all- male and female siblings- are equal before the law and are entitled to equal protection of the law.....”

43. The law contemplates equal sharing of inheritance among the beneficiaries irrespective of any circumstances. Equality is guaranteed even in a scenario where the deceased left behind children but no spouse. Section 38 of the *Law of Succession Act* provides: -

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

44. 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.

45. The Court of Appeal in *Stephen Gitonga M’murithi v Faith Ngira Murithi* [2015] KECA 347 (KLR) held: -

“.....Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried.....”

46. Similarly, in *re Estate of Francis Andachila Luta (Deceased) (Succession Cause 875 of 2012)* [2022] KEHC 16900 (KLR) (23 December 2022) (Judgment), Musyoka J. held: -

“Let me revisit section 38 of the *Law of Succession Act*. It provides for equal distribution of the estate amongst the children. The language of section 38 is gender neutral. It does not classify children into male and female, nor sons and daughters, nor men and women. There is no discrimination nor differentiation nor classification nor categorization along gender lines. That would mean that sons and daughters of a dead person are entitled on equal basis to a share in the estate of their dead parent. Section 38 does not make marriage a factor in the distribution of the estate of a dead parent.....”

Section 38 should be read together with Article 27 of *the Constitution*, which outlaws discrimination of women based on gender and marital status. It declares that men and women have a right to equal treatment in all spheres of life. These principles and standards set out in Article 27, are drawn from the United Nations Convention on Elimination of All Forms of Discrimination against Women. (CEDAW), to which Kenya is a signatory. Article 27 and CEDAW enjoins the State, of which the courts are part, not to discriminate against any person on the basis of their sex or gender or marital status, Article 2(5) (6) of *the Constitution* incorporates and makes the general rules of international law part of the law of



Kenya, and it also makes any treaty if or convention ratified by Kenya part of Kenyan law.....”

47. The court is faced with two proposed modes of distribution for Kericho/Tegat/1020. I have looked at and considered the proposals. In light of the above, I agree with the trial court’s finding that the Respondents’ proposed mode of distribution was fair and just in comparison to the Appellants’ proposed mode of distribution.
48. In the final analysis, it is my finding that the trial court did not err in its analysis of the evidence and Ruling dated 17th December 2024.
49. In the end, the Appeal dated 20th December 2024 has no merit and is dismissed. Each party to bear their own costs.

**JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 7TH
DAY OF OCTOBER, 2025.**

.....

HON. JULIUS K. NG’ARNG’AR

JUDGE

Judgement delivered in the presence of:

Siele/Susan (Court Assistants).

N/A for the Appellants

Mugumya for the Respondents

