



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Tapyanga arap Tobit (Deceased) (Succession Cause E004 of 2022) [2025] KEHC 14786 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14786 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
SUCCESSION CAUSE E004 OF 2022  
JK NG'ARNG'AR, J  
OCTOBER 23, 2025**

**IN THE MATTER OF THE ESTATE OF TAPYANGA ARAP TOBIT (DECEASED)**

**BETWEEN**

**SAMWEL KIPYEGON KORIR ..... 1<sup>ST</sup> PETITIONER**

**JOSEPH CHERUIYOT TOBIT ..... 2<sup>ND</sup> PETITIONER**

**AND**

**PAUL KIPLANGAT LEITICH ..... OBJECTOR**

**RULING**

1. The Petitioners petitioned for Letters of Administration Intestate in relation to the deceased's estate. They petitioned this court in their capacities as the deceased's sons. The deceased's estate comprised of Kericho/Chemaner/309, 1115, 406 and 403. A Grant was issued on 27<sup>th</sup> April 2022 in the joint names of the Petitioners.
2. On 2<sup>nd</sup> November 2022, the Petitioners filed Summons for Confirmation of the Grant. They stated that the deceased had three households to wit: -
  - 1<sup>st</sup> Household
    - Gabriel Kiptonui Korir Son
    - Reuben Kimutai Leitich Son
    - Joseph Cheruiyot Tobit Son
    - Fredrick Kipsigei Korir Son
    - Mary Chepkirui Rotich Daughter
    - Rusi Chepkoech Kebenei Daughter



2<sup>nd</sup> Household

Elizabeth Chepnegtich Daughter

Samwel Kipyegon Korir Son

Paul Kipsang Tobit Son

Joyce Chebii Tobit Daughter

Esther Chelangat Biomdo Daughter

Sarah Chepketer Kones Daughter

3<sup>rd</sup> Household

John Kiprono Korir Son

Paul Kiplangat Leitich Son

Joseah Korir Son

Simion Kipkoech Korir Son

David Cheruiyot Korir Son

Recho Chepchirchir Daughter

Emmy Chelangat Twei Daughter

3. The Petitioners proposed that in relation to Kericho/Chemaner/403, Joseph Cheruiyot Tobit (2<sup>nd</sup> Petitioner) holds all the shares in trust for the beneficiaries from the 1<sup>st</sup> household. In relation to Kericho/Chemaner/309 and Kericho/Chemaner/1115, Samwel Kipyegon Korir (1<sup>st</sup> Petitioner) holds all the shares in trust for the beneficiaries from the 2<sup>nd</sup> household and in relation to Kericho/Chemaner/406, John Kiprono Korir holds all the shares in trust for the beneficiaries from the 3<sup>rd</sup> household.

**Protest**

4. Paul Kiplangat Leitich filed his Affidavit of Protest dated 5<sup>th</sup> June 2023 in response to the Summons for Confirmation. He stated that the deceased's properties ought to be shared equally among all the beneficiaries.
5. It was the Protestor's case that the Petitioners filed the current proceedings without seeking consent from all the beneficiaries. That they wilfully concealed true facts from this court and that they should be condemned to pay the costs of the Protest.
6. On 13<sup>th</sup> March 2025, this court directed that the Protest be heard through written submissions.

**Protestor's written submissions**

7. In his submissions dated 12<sup>th</sup> May 2025, the Protestor submitted that the deceased's estate ought to be divided equally. He relied on section 40 of the *Law of Succession Act*, section 3(2) of the *Law of Succession Act*. In re Estate of Benson Ndirangu Mathenge (Deceased) [2018] KEHC 6497 (KLR), in the matter of the estate of Nelson Kimotho Mbithi HCSC No. 169 of 2000 and Stephen Gitonga M'murithi v Faith Ngira Murithi [2014] KEHC 1123 (KLR).



8. The Protestor proposed all the beneficiaries should get 0.96 acres each in Kericho/Chemaner/403, 0.94 acres each in Kericho/Chemaner/309, 0.85 acres each in Kericho/Chemaner/1115 and 0.27 acres each in Kericho/Chemaner/406.
9. By the time of writing this Ruling, the Petitioners had regrettably failed to file their written submissions despite being directed to do so on 13<sup>th</sup> March 2025.
10. I have gone through the entire court record including the Summons for Confirmation of Grant dated 30<sup>th</sup> October 2022, the Protest dated 5<sup>th</sup> June 2023 and the Protestor's written submissions dated 12<sup>th</sup> May 2025. The only issue for my determination was to come up with a fair and just mode of distribution of the deceased's estate.
11. This court adopted a Partial Mediation Agreement filed on 15<sup>th</sup> September 2023 as an order of the court. I have noted that the Agreement acknowledged that the deceased had three households. I have also noted that the beneficiaries could not agree on the mode of distribution.
12. 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.
13. I have noted from the two proposals that there was no provision for the deceased's spouses. The law contemplates equal sharing of a deceased's estate among the beneficiaries. 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.
14. The Court of Appeal in *Stephen Gitonga M'murithi v Faith Ngira Murithi* [2014] KEHC 1123 (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.....”
15. 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.....”

16. The court in *Re Estate of John Musambayi Katumanga – (Deceased)* [2014] KEHC 7506 (KLR) held as follows: -

“The spirit of Part V, especially Sections 35, 38 and 40, is equal distribution, of the intestate estate amongst the children of the deceased. There have been debates on whether the distribution should be equal or equitable. My reading of these provisions is that they envisage equal distribution for the word used in Sections 35(5) and 38 is “equally” as opposed to “equitably”. This is the plain language of the provisions. The provisions are in mandatory terms – the property “shall ... be equally divided among the surviving children.” Equal distribution is envisaged regardless of the ages, gender and financial status of the children.”

17. Having stated the law and the authorities above, it is the finding of this court that the deceased’s estate should be shared equally among the beneficiaries.

18. In the end, I make the following orders: -

- I. The Grant issued to the Petitioners on 27<sup>th</sup> April 2022 is hereby confirmed.
- II. Kericho/Chemaner/406, Kericho/Chemaner/1115 and Kericho/Chemaner/309, Kericho/Chemaner/403 be shared equally among the beneficiaries from the three households.
- III. This being a family matter, each party to bear their own costs.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 23<sup>RD</sup> DAY OF OCTOBER, 2025.**

.....

**HON. JULIUS K. NG’ARNG’AR**

**JUDGE**

Ruling Delivered in the presence of;

Susan/Siele Court Assistant

1<sup>st</sup> petitioner Present

2<sup>nd</sup> Petitioner present

1<sup>st</sup> Objector present

2<sup>nd</sup> Objector present

