



**In re Estate of Kiptanui Arap Yator (Deceased) (Family Appeal
E001 of 2024) [2025] KEHC 14805 (KLR) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14805 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
FAMILY APPEAL E001 OF 2024
RB NGETICH, J
OCTOBER 16, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE KIPTANUI ARAP YATOR (DECEASED)

BETWEEN

WILLIAM C. TANUI 1ST APPELLANT

LAWRENCE MPKOECH TANUI 2ND APPELLANT

AND

VERONICA TANUI RESPONDENT

JUDGMENT

1. The appellants (formerly the petitioners in the lower court) moved the Magistrate's Court vide petition filed on 17th August 2020 seeking letters of administration intestate in respect of the Estate of Kiptanui Arap Yator (hereinafter referred to as "the deceased") who died domiciled in Kenya on 19th December, 2008. The initial petitioners were William C. Tanui and Peter Yator, sons of the deceased who were issued grant of letters of administration on 2nd February 2021.
2. During the pendency of the petition proceedings, the 2nd petitioner passed on and the appellants applied for his replacement with his son, the 2nd appellant herein, Lawrence Kipkoech Tanui. The grant of letters of administration was accordingly amended.
3. Thereafter, the appellants applied for confirmation of the said grant. The application was opposed by an objection filed by the respondent herein, culminating into a hearing. A ruling on the objection was delivered on 12th March, 2024, which the appellants now appeal against, having filed an amended Memorandum of Appeal dated 4th October, 2024.
4. The court distributed the estate of the Late Kiptanui arap Yator alias Kiptanui Yator as follows:-
 - i. Baringo/Kamelilo/32 to go to Joseph Kipyegon Tanui.



- ii. The three sons namely Joseph Kipyegon Tanui, William C. Tanui and Peter Kipkoech Yator shall each have 1.5Ha to be excised from Baringo/Ravin E-102/103.
 - iii. All the remaining beneficiaries shall each be entitled to 2.4 Ha to be excised from Baringo/RavinE-102/103.
5. The Petitioners appeals against the said ruling on the following grounds:-
- i. That the learned Principal Magistrate erred in law and in fact by failing to consider the evidence tendered by the appellants.
 - ii. That the learned Principal Magistrate erred in law and in fact by failing to recognize that the property referenced as Baringo/Kamelilo/32 remained part of the deceased's estate and as such ought to be distributed to all beneficiaries in accordance with the *Law of Succession Act*.
 - iii. That the learned Principal Magistrate erred in law and in fact in failing to appreciate that the Petitioners had materially assisted the deceased in paying off a substantial portion of the SFT loan on the property referenced as Baringo/Ravine-102/103 thereby preserving the property from repossession.
 - iv. That the learned Principal Magistrate erred in law and in fact by neglecting the fact that the objector failed to tender solid evidence to prove that the family including all beneficiaries, had agreed that Joseph Tanui would inherit the entirety of Baringo/Kamelilo/32.
 - v. That the learned Principal Magistrate erred in law and in fact by neglecting to consider that the objector failed to provide any documentary evidence to support the assertion that it was the deceased who allocated the properties, Baringo/Kamelilo/33, Baringo/Kamelilo/28 and Baringo/Kamelilo/29 to the Petitioners.
 - vi. That the learned Principal Magistrate erred in law and in fact by failing to recognize or appreciate that the properties Baringo/Kamelilo/33, Baringo/Kamelilo/28 and Baringo/Kamelilo/29 were independently acquired by the petitioners and did not constitute gifts inter vivos as these properties did not originally belong to the deceased.
 - vii. That the learned Principal Magistrate erred in law and in fact by failing to consider the evidence that there was unlawful intermeddling with the deceased's Estate.
 - viii. That the learned Principal Magistrate erred in law and in fact in failing to consider the appellants' evidence on record.
 - ix. That the learned Principal Magistrate erred in law and in fact in failing to appreciate that both properties belonging to the deceased ought to be distributed among all beneficiaries;
 - x. That the learned Principal Magistrate erred in law and in fact by giving a ruling that is incomprehensive and thus not capable of being enforced by way of any extracted decree;
6. The appeal was canvassed by way of written submissions.

Appellant's Submissions

7. The appellants/petitioners identify the following as issues for determination arising from the grounds of appeal:-
 - a. Whether the learned trial magistrate erred in failing to evaluate and consider the totality of the appellants' evidence.



- b. Whether the property known as Baringo/Kamelilo/32 was wrongly excluded as forming part of the deceased's estate and should have been subject to distribution under the [Law of Succession Act](#).
 - c. Whether the properties known as Baringo/Kamelilo/33, Baringo/Kamelilo/28, and Baringo/Kamelilo/29 were wrongly treated as gifts inter vivos as considered by the Learned trial Magistrate.
 - d. Whether the trial magistrate erred in failing to recognize the appellants' contribution toward repayment of the Settlement Fund Trustees (SFT) loan.
8. On whether the learned trial magistrate erred in failing to evaluate and consider the totality of the appellants' evidence the Appellant's submit that it is a cardinal principle of law that a trial court must consider the entirety of the evidence; this duty arises from [Evidence Act](#) and judicial precedent see Peters v Sunday Post Ltd [1958] EA 424 and submit that the learned magistrate failed to consider crucial testimony and documentary evidence presented by the appellants, including receipts, correspondence, and oral evidence on contributions to loan repayment and independent land acquisition.
 9. On whether the property known as Baringo/Kamelilo/32 forms part of the deceased's estate and should have been subjected to distribution under the [Law of Succession Act](#), they submit that the property referenced as Baringo/Kamelilo/32 was registered in the name of the deceased as evidenced by the copy of Certificate of Official Search included in the Record of Appeal on page 19 of the Record of Appeal. That the respondent herein also admitted that the said property is registered in the name of the deceased in her testimony, and OW3 Joseph Tanui lived on the said parcel of land as shown at page 96 of the Record of Appeal.
 10. That no transfer of this specific property had taken place prior to the deceased's demise. That the claim that there was an agreement for exclusive inheritance by OW3, Joseph Tanui, was unsupported by any corroborative evidence. In support of their argument, they place reliance in the case of Rono v Rono & Another [20051 eKLR, where the Court of Appeal emphasized equal treatment of children unless there are compelling reasons to depart from equality. That no such reasons were established in this case.
 11. They submit that there are some contradictions as to the respondent's testimony during trial hearing and the testimonies of other objector witnesses. That the respondent indicated to court that a portion of the parcel of land Baringo/Kamelilo/32 had already been sold by Joseph Tanui OW3 as shown at page 97 of the Record of Appeal. That to the contrary, OW2 Simon Kiprotich who is also the deceased's son, indicated to court that this particular parcel had not been sold by anyone. They submit that OW3 Joseph Tanui, in his testimony, confirmed having sold a part of the said land whereas OW4 contradicted this by testifying that the said land had not been sold.
 12. That these contradicting testimonies raise doubts as to the credibility of the witnesses and their testimonies.
 13. On whether the properties known as Baringo/Kamelilo/33, Baringo/Kamelilo/28, and Baringo/Kamelilo/29 were wrongly treated as gifts inter vivos by the Learned trial Magistrate, they submit that the appellants led evidence that the properties referenced as Baringo/Kamelilo/33, Baringo/Kamelilo/28, and Baringo/Kamelilo/29 were acquired independently by them and were registered in their names prior to the deceased's death, they submit that the burden of proof lay on the respondent to show that the properties were originally owned by the deceased and gifted during his lifetime (gifts inter vivos), as was alleged. That the court in re Estate of Gedion Manthi Nzioka [20151 eKLR stated that cogent proof of a gift by the deceased ought to be presented for the same to be considered as forming gift inter vivos, which burden was not discharged.



14. On whether the trial magistrate erred in failing to recognize the appellants' contribution toward repayment of the Settlement Fund Trustees (SFT) loan, they argue that the appellants produced partial evidence demonstrating that they contributed significantly to repayment of the SFT loan on the Baringo/RavinE-102/103 property, saving it from repossession.
15. That contribution to preserving the estate is a relevant factor in distribution, they rely in re Estate of Veronica Njoki Wakagoto (Deceased) [2013] eKLR, which recognized the role of contribution as a basis for consideration in the equitable distribution of the estate.
16. On whether the trial magistrate erred in relying on unsupported allegations by the respondent, they argue that respondent failed to tender any documentary evidence or credible oral testimony to support the claim that the family agreed that OW3, Joseph Tanui, should inherit Baringo/Kamelilo/32 exclusively.
17. They submit that no consent by the other beneficiaries was availed as required under Rule 26 of the Probate and Administration Rules. It is submitted that the trial magistrate misdirected herself on both law and fact. That the appellants have demonstrated that the decision was contrary to the weight of the evidence, the *Law of Succession Act*, and established judicial precedent. In conclusion, they humbly pray that the appeal is meritorious and should be allowed. They accordingly pray that this honourable court do allow this appeal in its entirety and set aside the ruling delivered on 12th March, 2024.

Respondent's Submissions

18. The Respondents submit that the submissions of the appellants who were the petitioners in the subordinate court did not address how Baringo/RavinE-102/103 would be distributed.
19. That their submissions in the subordinate court aligned pretty well with the ruling of the learned magistrate except on the finding that the learned magistrate took into account the 4 acres the three sons; Joseph Kipyegon Tanui, William C. Tanui and Peter Koech had been allocated and the learned magistrate thought it right to allocate them 1.5Ha from Baringo/RavinE-102/103 pursuant to the spirit of Section 27 of the Law of Succession.
20. That since they have not filed a cross appeal to the ruling, they associate with the ruling of the learned magistrate, despite not filing grounds affirming the ruling of the learned magistrate, although this appears to be the practice in the Court of Appeal.
21. That on ground 1 and 9, the appellants argue that the learned magistrate did not consider the evidence presented by the appellants but on the contrary the trial magistrate considered the evidence of the appellants and held that Baringo/Kamelilo/32 should devolve to Joseph Kipyegon Tanui which correlates very well with the statement adopted by the appellants, who admitted that the said land should devolve to Joseph Kipyegon Tanui. On the issue of the distribution of land parcel Baringo/RavinE-102/103, the 1st appellant admitted in his cross-examination that the deceased father had given him 4 acres. That he also admitted that his brother Peter had also been given 4 acres of land and that is why the learned magistrate had to factor the share of land given to them when distributing Baringo/RavinE-102/103.
22. That the learned magistrate also considered the issue of intermeddling as raised by the appellants in their submissions. That the learned magistrate also touched on the issue of leaving the daughters from the distribution on account of marriage which the learned magistrate found to be unfair since the children of the deceased have equal right to benefit from the estate of their parents. They urge this court to dismiss the 1st and 9th ground of appeal.



23. That on ground 4 of the appeal, the appellants' case was that the learned magistrate failed to appreciate that they assisted the deceased to pay the SFT loan relating to Baringo/RavinE-102/103. That according to the appellants, the deceased herein declared that this land goes to them. That the appellants also believe that the learned magistrate ought to have considered the fact that they settled part of the loan on behalf of the deceased. That the material evidence that ought to have been produced by the appellants in support of the deceased's intention are:- Signed transfer forms, a will, evidence to show that the land was gifted to them and that the gift was complete and a sale of land agreement. They submit that the appellants did not produce any material evidence to show that the land was intended for them to the exclusion of all other beneficiaries. In support of the same, they relied on the case of *in re Estate of Nyachieo Osindi (Deceased) [2019] eKLR*.
24. That in view of the above, where one wants the court to believe that the deceased wished to have his land bequeathed to a particular person, merely stating so is not sufficient reason. That material evidence has to be placed before the court to demonstrate that the deceased intended the property to devolve to a particular beneficiary.
25. That the only thing they did not submit on was the fact that the amount the appellants were paying to set off the loan was done when the deceased was still alive. That the appellants attempted to rely on the receipts filed on 11th July, 2023 to justify that they contributed towards paying for the SFT loan which is the basis for them claiming to divide the land equally amongst themselves which receipts as produced are not of any probative value because some of the receipts indicate that it was the deceased who was paying for the SFT loan and the amounts shown in the receipt are not associated with the Land Parcel No.. Baringo/RavinE 102/103. That it is normal for parents to send their children to pay bills for on their behalf. This could be the case with the appellants. They rely in Section 107 of the [Evidence Act](#) and state that in this matter, the evidence adduced by the appellants does not support the fact that the appellants made any contributions towards the payment of the SFT loan and even if it were so, the amount contributed was too minimal to lay a claim on the whole land. That if it turns out to be true that the appellants contributed towards the payment of the SFT loans, the contributions should not be converted to a claim for a share in the deceased's land and instead, such contributions should be treated as a debt to the estate of the deceased and that no such debts were listed by the appellants.
26. That on ground 5 of the memorandum of appeal, the appellants complain that the respondent did not tender solid evidence to prove that the family, including all the beneficiaries, agreed that Baringo/Kamelilo/32 would go to Joseph Kipyegon Tanui. They submit that the appellants admitted in their statements dated 8th July, 2023 that Baringo/Kamelilo/32 was to belong to Joseph Kipyegon Tanui which is corroborated by the other beneficiaries of the deceased estate i.e Ow 1, 2 and 3 and further corroborated by the evidence of Ow 4 and 5, although they are not related to the deceased but knew why the land should be bequeathed to Joseph Kipyegon Tanui.
27. That since the appellants never contested the land devolving to Joseph Kipyegon Tanui, it is absurd for them to come to this court and complain that there was insufficient evidence to support the land devolving to Joseph Kipyegon Tanui. In support of the same, they rely on Section 143 of the [Evidence Act](#) which provides that no number of witnesses are required to prove a particular fact. That since this issue was uncontroverted or uncontested, the appellants and the witnesses called by the respondents are enough to discharge the burden of proof. That courts are meant to deal with contested issues. Where there are no contests, parties should go by the uncontested issues and implement them. They therefore do not find merit in ground 5 of the appeal and urge the court to find so.
28. On ground 6 of appeal, the appellants complain that there was no evidence to support that Baringo/Kamelilo/33,28 and 29 was allocated to the petitioner by the deceased. That this is true however, the



evidence of Ow1 to 5 as corroborated by the evidence of Pw1 confirms that the 1st appellant and his brothers were given some 4 acres in place of the deceased herein. They submit that Ow3 (Joseph Kibiego Tanui) was not given any land because he was the lastborn and was expected to inherit Baringo/Kamelilo/32 which was allocated to the deceased. That though there was no material evidence to support that Baringo/Kamelilo/33,28 and 29 was allocated to the petitioner by the deceased, it was clear that the three brothers were allocated land and Ow3(Joseph Kibiego Tanui) left out because he was the last born who would get Baringo/Kamelilo/32 upon the demise of his father. That if Ow3(Joseph Kibiego Tanui) was allocated a share like his other brothers, he would again inherit the share of his father, making him to have a bigger share. That to cap this, Ow3 (Joseph Kibiego Tanui) was denied a share with the hope that he would inherit Baringo/Kamelilo/32 from the father.

29. That in ground 7 of the appeal, the appellants complain that the learned magistrate failed to appreciate that Baringo/Kamelilo/33,28 and 29 were acquired independently by the appellants and therefore not subject to a gift inter vivo. They submit that although the learned magistrate treated the said land parcels as having been given to the deceased's three sons as gifts inter vivos, in response, they repeat their submissions ground 6 above. That the appellants did not present any evidence to show that the parcels belonged to them. That it is Ow1 who testified that the parcels belonged to the deceased. They argue that there is enough evidence to demonstrate that the deceased gave the 1st petitioner and his brothers some land which fact was admitted by pw1 in his cross-examination and so they find no merit in ground 7 of the amended memorandum of appeal.
30. That in ground 8 of the appeal, the appellant complains that the learned magistrate never considered the issue of intermeddling with the deceased's property. They submit that this issue was considered by the learned magistrate who dismissed the issue of intermeddling because what was before the court was the issue of distribution and the protest. That the issue of intermeddling was addressed to Ow3 (Joseph Kibiegon Tanui), who is alleged to have disposed of part of Baringo/Kamelilo/32 to third parties. That the best the appellants would have done is lodge a criminal complaint or lodge an application under Section 45 of the Law of Succession Act seeking whatever orders that may be relevant. That raising an issue of intermeddling in an application for confirmation of a grant or protest is unsustainable. That the issue of intermeddling is also unsustainable because an application for intermeddling was filed and the application was later compromised by a consent dated 3rd April 2024, they submit that the appellants have not yet lost their right to pursue an application under section 45 of the Law of Succession Act. That there is no merit in ground 9 of the memorandum of appeal and urge the court to dismiss it.
31. That in ground 10, the appellants complain that the learned magistrate failed to appreciate the properties belonged to the deceased and as such, they should be distributed among the beneficiaries. That the properties referred to are Baringo/Kamelilo/32 and Baringo/Ravin E-102/103. That nowhere did the learned magistrate fail to appreciate that the two properties did not belong to the deceased. That the appellants further state that the two properties should be distributed among the beneficiaries. That a look at the mode of distribution proposed by the appellants, the enormous Baringo/RavinE-102/103 was to be shared between the two hence they did not consider the other as beneficiaries. That they seem to have abandoned the contributions they allegedly made toward the payment of SFT loan towards Baringo/RavinE-102/103. Anyway, it is not necessary for beneficiaries to share the deceased's estate equally unless there are reasons to do so. They therefore find no reason to disturb the learned magistrate's ruling. we urge the court to dismiss ground 10 of the record of appeal.
32. That in ground 11 of the memorandum of appeal, the learned magistrate is blamed for drafting an incomprehensible judgment and thus incapable of being enforced by way of any decree. They submit that the judgement is comprehensible and that is why the appellants have been able to appeal against



the ruling. That if it was incomprehensible, the appellants would have applied for review in the same court.

33. That on the issue of decree, they submit that where an objection is considered and the estate is distributed, what follows is the issuance certificate of confirmation of grant. That the applicant ought to have extracted a certification of confirmation of grant but not a decree. That where a judgment is delivered, and the estate is not distributed, one may extract a decree as the final order. That there is no need to extract a decree in this matter as a certificate of confirmation of grant would do.
34. That extracting a decree is an exercise in legal drafting. They on their part note that the ruling has some errors on the listing of beneficiaries, which they corrected by filing an application for review in the subordinate court, although the application and the ruling are not in the record of appeal. The respondent submits that the judgment was sound in law and fact, and prays that the appeal be dismissed with costs.

Analysis And Determination

37. This being a first appeal, this court is obligated to re-evaluate and re-analyze the evidence presented before the trial court and arrive at its own independent conclusions. However, in doing so, I am mindful that unlike the trial court, I did not have the benefit of hearing the witnesses firsthand or observing their demeanour. I therefore make the necessary allowance in that regard. (See *Selle v Associated Motor Boat Co. Ltd* [1968] EA 123; *Peters v Sunday Post Ltd* [1958] EA 424.)
37. Upon review of the record of appeal, the trial court proceedings, and submissions filed by both parties, I am of the view that the issues raised may be consolidated as follows:-
 1. Whether the trial magistrate erred in the distribution of the estate, particularly in the treatment of Baringo/Kamelilo/32, 33, 28 and 29.
 2. Whether the appellants' contribution to the repayment of the SFT loan on Baringo/Ravine-102/103 was properly considered.
 3. Whether the trial court failed to consider material evidence, or rendered a judgment that was vague, unenforceable, or ignored allegations of intermeddling.
 - (i) Distribution of Estate Properties
 - (a) Baringo/Kamelilo/32
39. It is not in dispute that Baringo/Kamelilo/32 was registered in the name of the deceased at the time of his death. The appellants contend that the trial court erred by allocating this parcel solely to one beneficiary, Joseph Kipyegon Tanui, contrary to the equality principle under Section 38 of the [Law of Succession Act](#) and the holding in *Rono v Rono & Another* [2005] eKLR.
39. However, the respondent submitted that the trial record confirms that the appellants had admitted in their witness statements that Baringo/Kamelilo/32 was intended to devolve to Joseph Tanui. This was corroborated by the testimonies of objector's witnesses (OW1–OW5) and was not contested at trial.
40. In view of these admissions and the corroborative evidence on record, I find no fault in the trial court's decision to allocate the parcel to Joseph.
 - (b) Baringo/Kamelilo/33, 28 and 29 as Gifts inter vivos



42. The appellants claimed that these parcels were independently acquired and registered in their names prior to the deceased's death, and thus did not form part of the estate. They argued that the burden lay on the respondent to prove that the deceased gifted the properties during his lifetime.
42. In contrast, the respondent's witnesses testified that these properties were part of informal lifetime allocations made by the deceased in accordance with customary practices. The appellants did not provide any documentary proof such as title deeds to demonstrate registration in their names before the deceased's demise.
42. In the absence of such evidence, and considering the consistent witness testimonies regarding lifetime allocation, the trial court was justified in treating the parcels as gifts inter vivos. This approach aligns with the reasoning in *in re Estate of Gedion Manthi Nzioka* [2015] eKLR.

(ii) Contribution to the SFT Loan

45. The appellants asserted that they had preserved parcel Baringo/Ravine-102/103 by repaying the SFT loan and were therefore entitled to preferential allocation. However, the receipts presented neither clearly linked the payments to the land nor indicated the appellants as payers; many were in the name of the deceased.
45. As rightly noted by the respondent, payments made on behalf of a living parent—absent any written agreement, will, or deed of transfer—do not entitle contributors to a proprietary interest. This position is supported by *in re Estate of Veronica Njoki Wakagoto* [2013] eKLR, which affirms that contribution is relevant but not overriding in estate distribution.
45. Consequently, I find that the trial court correctly determined that the appellants' financial contributions did not warrant preferential allocation.

(iii) Alleged Failure to Consider Evidence, Vagueness of Judgment, and Intermeddling

(a) Consideration of Appellants' Evidence

48. The appellants submitted that the trial court disregarded their oral and documentary evidence. However, the record shows that the court reviewed all filed witness statements and documentary exhibits and offered reasons for preferring one party's evidence over the other. Judicial consideration entails evaluating and, where appropriate, rejecting evidence on merit—not necessarily repeating it verbatim.

(b) Allegation of Incomprehensible or Inoperative Judgment

49. The appellants further argued that the ruling was vague and unenforceable. Record show that the trial court issued a clear distribution schedule and ordered confirmation of the grant. A certificate of confirmation, not a decree, is the appropriate instrument for enforcement in succession proceedings. Displeasure with the outcome does not render a judgment unenforceable. I find no merit in this claim.

(c) Intermeddling Allegations

50. On the claim that Joseph Tanui sold part of Baringo/Kamelilo/32, the trial court observed that no formal application had been filed under Section 45 of the *Law of Succession Act* and that the issue had been settled by consent. The court correctly confined itself to distribution of the estate. The appellants remain at liberty to pursue appropriate remedies before the probate court or other relevant forum.
51. From the foregoing, I find no error in the learned trial magistrate's evaluation of the evidence or application of the law. The appeal is unmerited.



50. Final Orders

- a. The appeal is dismissed in its entirety.
- b. The ruling and distribution orders made by the trial court on 12th March 2024 are hereby upheld.
- c. Each party shall bear their own costs of the appeal.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 16TH DAY OF OCTOBER, 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Nyagaka for Respondent.

No appearance for Appellants.

CA Karanja.

