



REPUBLIC OF KENYA



In re Estate of Benjamin Kibiwot A Chesulut (Deceased) (Succession Cause E070 of 2021) [2025] KEHC 17573 (KLR) (28 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17573 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E070 OF 2021
HI ONG'UDI, J
NOVEMBER 28, 2025**

IN THE MATTER OF THE ESTATE OF BENJAMIN KIBIWOT. A. CHESULUT (DECEASED)

BETWEEN

**NOAH KIPRONO KERICH 1ST ADMINISTRATOR
PETER KIPROTICH KERICH 2ND ADMINISTRATOR
DANIEL KIPROTICH BIWOTT' 3RD ADMINISTRATOR**

AND

**MERCY CHEPKEMOI CHESULUT 1ST PROTESTOR
AGNES CHEPKORIR CHESULUT 2ND PROTESTOR
CATHERINE CHEPKOECH CHESULUT 3RD PROTESTOR**

RULING

1. This ruling is in respect of two applications. The first one is dated 4th July, 2025 while the second one is dated 11th July, 2025.
2. In the application dated 4th July 2025 the protestors pray for the following orders;
 - i. -ii- Spent.
 - iii. That this court be pleased to review its Judgment delivered on 30th May 2025 and include the parcel of land known as Njoro/ Ngata Block 2/5076 as part of free property of the deceased.
 - iv. That upon the review and inclusion of the said parcel of land as part of the free property of the deceased, the said parcel of land be given to the 4th house.
 - v. That costs of this application be in the cause.



3. The application is premised on the grounds on its face and the affidavit of the 1st protestor sworn on the even date. She deponed that they had obtained the official search for the parcel of land known as Njoro/Ngata Block 2/5076 which was not distributed in the judgment delivered by the court on 30th May 2025. She urged the court to include the said property to form part of the free property of the deceased and same be allocated to the 4th house entirely.
4. In the application dated 11th July 2025 the prayers seek for the following orders; -
 - i. That the honourable do review the judgement given on 30th May 2025 to include the exact share that each unit (person) was getting in their respective house.
 - ii. That the parcel of land known as Njoro/Ngata block 2/5076 measuring approximately 16 acres be 23 units equally. Which is equal to; --1st house 1.4 acres.-2nd house - 6.2 acres.-3rd house - 0.9 acres.4th house ~ 2.8 acres.
 - iii. That upon distribution the 3rd house to relinquish their share of 4 acres in Njoro/Ngata Block 2/5234 to be given to the 2nd house and the 2nd house to relinquish 4 acres in Njoro/Ngata Block 2/ 5076 to be given to the 3rd house which is next to their home comprised in Njoro/Ngata Block 2/257.
 - iv. That the costs of this application be costs in the cause.
5. The application is premised on the grounds on its face and the affidavit of the 3rd protestor sworn on even date. She equally urged the court to review its judgment delivered on 30th May 2025 to include to the exact share each unit (person) was to get as per the schedule under paragraph 11 therein. Further, that land parcel known as Njoro/Ngata Block 2/5076 which formed part of the estate of the deceased be distributed to the 23 units equally. Thereafter, the 3rd house to relinquish their 4 acres in Njoro/Ngata Block 2/5234 and they be given 4 acres in Njoro/Ngata Block 2/5076 which is next to their home built in Njoro/Ngata Block 2/257.
6. In response to both applications, the administrators filed a replying affidavit sworn on 13th October 2025. They averred that the 3rd house were in the subject property known as Njoro/Ngata Block 2/5076. Further, that it would only be fair that the same is distributed as such taking into consideration the wishes of the deceased who constructed a house for his third wife in the said land. They added that Njoro/Ngata Block 2/5235 (Kirobon) and Kericho/Kabianga/1752 was also left out of the confirmation of grant despite the title deed and the having been supplied.
7. They further averred that Njoro/Ngata Block 2/5235 was a subdivision of property known as Njoro/Ngata Block 2/255 and which property was occupied by the 2nd house. Thus, the 4 acres on Njoro/Ngata Block 2/5234 should be relinquished to the 1st house by the 3rd house, to which they consent since the property known as Njoro/Ngata Block 2/5076 devolves to them. They stated that the property known as Njoro/Ngata Block 2/5246 is a plot measuring 50ft by 100ft allocated to the 1st house by the deceased and the same already disposed off.
8. The protestors challenged the contents of the administrator's replying affidavit by filing a further affidavit dated 14th October 2025.
9. Both parties agreed not file any submissions in respect of the applications.



Analysis and determination

10. I have considered the two applications together with the affidavits sworn in support and the replying affidavits sworn in opposition by the respective parties. I opine that the issue for determination by this court is whether the applications dated 4th July, 2025 and 11th July, 2023 are merited.
11. This court having perused the said applications notes that they are intertwined and should therefore be determined together.
12. It is not disputed that this court delivered its judgment on 30th May 2025 where it distributed the properties forming part of the deceased's estate. In the said judgment the court noted that some properties listed in the parties proposed mode of distribution had no title documents. The protestors having obtained an official search, approached this court vide their applications seeking review of the aforementioned Judgment to include the parcel of land known as Njoro/ Ngata Block 2/5076 as part of free property of the deceased.
13. It is the protestors' argument that the said property should be allocated to the 4th house entirely. On the other hand, the administrators argue that the said property falls under the occupation of the 3rd house and it would only be fair that the same is distributed as such.
14. Upon perusal of the distribution schedule in the judgment dated 30th May 2025, I note that the total number of acres allocated to the 1st house was 18 acres which means the two units got 9 acres each. The 2nd house was allocated 48 acres meaning when divided equally among the nine units each got 5.3 acres approximately. The 3rd house got 39 acres and the same if divided equally among the eight units each would get 4.8 acres. Lastly, the 4th house was given 20 acres which when divided equally among the 4 units they would each get 5 acres approximately.
15. From the above distribution, there is no doubt that the third house was allocated less acres in the earlier distribution and this court indicated that it would ensure a fair distribution when the missing title documents are availed. The administrators have confirmed to this court that the 3rd wife's house was constructed by the deceased on the subject land Njoro/ Ngata Block 2/5076.
16. In view of the foregoing, this court further distributes the estate of the deceased as follows;Njoro/ Ngata Block 2/5076(16.50 acres), 8 acres is allocated to the 3rd house.The remaining 8.50 acres to be divided equally among the units in the 2nd and 4th house. Alternatively, the said acres can be sold and the proceeds be shared equally among the units in the said houses.
17. The prayers for re-distribution of the estate to indicate the share that each unit in the four houses is supposed to get and the distribution of Kericho/Kabianga/1751 have not been justified. The orders are for equal units per house.
18. A rectified certificate of confirmation of grant to issue to include the distribution above.
19. Orders accordingly.

DELIVERED, VIRTUALLY, DATED AND SIGNED THIS 28TH DAY OF NOVEMBER, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

