



REPUBLIC OF KENYA



**In re Estate of the Late Philip Cheruiyot Mitei (Deceased) (Succession Cause  
7 of 2020) [2025] KEHC 19134 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 19134 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 7 OF 2020  
JK SERGON, J  
DECEMBER 19, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE PHILIP CHERUIYOT MITEI (DECEASED)**

**BETWEEN**

**NAUM JEPKEMBOI & CHELSEA CHEBET ..... PETITIONER**

**AND**

**NAUM JERONO ..... OBJECTOR**

**JUDGMENT**

1. Naum Jepkemoi and Chelsea Chebet were on 6<sup>th</sup> October, 2020 jointly issued with a Grant of Letters of Administration Intestate in respect of the Estate of Philip Cheruiyot Mitei, deceased.
2. Naumi Jepkemoi subsequently filed the Summons for Confirmation of Grant dated 21<sup>st</sup> January, 2021. Naum Jerono filed an Affidavit of Objection to oppose the Summons for Confirmation. The cause proceeded for hearing where Naum Jerono and Naum Jepkemoi gave oral testimonies. At the close of evidence, parties were invited to file written submissions.
3. I have considered the material placed before this Court and the evidence plus the rival written submissions. It is the averment of the Objector/Protestor that she was left out by the Petitioners as a beneficiary of the Estate. She stated that the deceased sired a son with her. It is the submission of the Objector that one Allan Kipkigen Kogo being the deceased's son qualifies as a dependant hence he is entitled to benefit from his father's estate.
4. The Objector further stated in her evidence that the 1<sup>st</sup> Petitioner, Naum Jepkemoi was aware that the minor is the deceased's son and that she had even seen him in person. The Objector averred that the deceased full responsibility as the father of the minor before his untimely death. She stated that though the minor was born out of wedlock, he is entitled to inheritance hence he should be treated equally with the other children of the deceased.



5. The Objector also claimed that she should be treated as a dependant of the deceased's estate. She produced M-Pesa transactions the deceased is said to have made to her. She urged this Court to make provision for her under Section 27 of the Law of Succession Act. She further stated that she started cohabiting with the deceased in 2015 in Eldoret and continued upto 2020 when he died. The Objector also stated that the deceased rented a house for her when the deceased was transferred to St. Monica Kapkoros High School in Nandi County. She stated that during that period, the deceased is said to have assumed parental responsibility of both the Minor and her as a house wife.
6. The Objector also accused the 1<sup>st</sup> Petitioner of deliberately omitting the following four assets of the deceased from the Succession. Land in Mosoriot (Rental Houses), Plot at Kapkobai, Kapkobai main farm where the deceased was buried (8 Acres) and Kipsotoi Plot. The Objector made her proposed mode of distribution
7. On the other hand, Naum Jepkemboi stated the Objector is a stranger who is totally unknown to her and her family. She stated that she only came to learn about the Objector when she received calls about attempted withdrawals of monies from the deceased's accounts held at various financial institutions. She averred that the Protestor is not and has never been a dependant of the deceased and should not be allowed to oppose the Confirmation of grant.
8. She also argued that the Objector's child was equally not a dependant of the deceased as he is not his child. She further averred that the Minor was not being maintained by the deceased immediately prior to his death. She pointed out that there was not supporting documents before this Court.
9. The 1<sup>st</sup> Petitioner pointed out that although the Objector may have had a relationship with the deceased that allegedly resulted in the birth of her named child, there was no cogent evidence that the deceased and the Protestor went through any ceremony of marriage nor is there any evidence that they lived together and held each other out as husband and wife.
10. The 1<sup>st</sup> Petitioner went ahead and argued that she could only be considered as a beneficiary if she demonstrated that she was a dependant of the deceased, immediately prior to his death under Section 29 (b) and (c) of the Law of Succession Act. The 1<sup>st</sup> Petitioner beseeched this Court to find that the Protestor failed to call a witness to adduce evidence that indeed there was a relationship that may be taken as a marriage.
11. Having considered the evidence and the rival submissions, the following issues arose for determination:-
  - i. Whether the Objector/Protestor was a wife to the deceased and whether she should be treated as a dependant.
  - ii. Whether there was cogent evidence proving that the Minor was the deceased's child.
  - iii. Whether the omitted properties form part of the deceased's estate.
12. On the first issue, as to whether the Objector/Protestor was a wife and whether she should be treated as a beneficiary, I have carefully considered the evidence tendered and the rival submissions. The Protestor testified stating that she should be treated as a wife and at the same time as a dependant. Though the Protestor stated that the deceased rented a house for her, she did not tender cogent evidence to prove that the deceased actually rented the house she was staying.
13. She also failed to tender evidence to show that the deceased lived in that rented house as one of his homes. The Protestor further failed to present evidence indicating that the deceased held her as a wife in the public eye. The Protestor did not also present evidence to prove that she was married to the



deceased. She merely stated that she had a relationship which resulted to a child being born. That in itself is no proof of marriage.

14. In short, the Protestor failed to prove that she was married to the deceased under system of law that allows polygamy. I am convinced that the Protestor does not qualify to be a wife under Section 3 (5) of the Law of Succession Act such as to come within the definition of a dependant Under Section 29 of the Law of Succession Act. In the case of Phylis Njoki Karanja and 2 Others -vs- Rosemary Mueni Karanja & Another [2009]eKLR the Court of appeal held inter alia that the presumption of marriage could be drawn from two co-jointed factors, namely, long cohabitation and acts of general repute, and that long cohabitation is not mere friendship or that woman is not a mere concubine but that the long cohabitation has crystallized into a marriage and it is safe to presume the existence of a marriage
15. Having found that the Protestor was not a wife to the deceased, I further find that the deceased's dependant within meaning of Section 29 (a) of the Law of Succession Act. Consequently, she is not entitled to be included as one of the beneficiaries of the deceased's estate.
16. The second issue is whether the Minor is the deceased's child. I have examined the evidence presented by the Protestor. It is clear from the naming of the minor that the child does not bear the surname of the deceased. There was also no DNA tests undertaken in support of the claim that the minor was sired by the deceased. The Protestor failed to discharge the burden of proof as to the paternity of her minor child.
17. The final issue is whether the omitted properties form part of the deceased's estate. I have carefully looked at the statement of Objection/Protest filed by the Protestor and it is apparent that she stated that the 1<sup>st</sup> Petitioner did not disclose the property at Mosoriot, one at Nandi Hills, Kipsigak and 8 Acres of tea bushes. She did not give the specific particulars but only did so in written submissions. The Protestor averred that the omitted properties should form part of the assets of the estate to be distributed. Apart from the averments made, there was no proof that the properties were registered in the deceased name or that they belonged to the deceased.
18. In the end, I find Protest/Objection to be without merit, it is dismissed.
19. Having dismissed the Protest/Objection, it is obvious that the Summons for Confirmation of Grant should succeed. Consequently, the Summons for Confirmation of Grant dated 21<sup>st</sup> January, 2021 is allowed as prayed.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 19<sup>TH</sup> DAY OF DECEMBER, 2025.**

.....

**J. K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

No Appearance

