

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**SUCCESSION CAUSE NO. 22 OF 2012**

**THE MATTER OF THE ESTATE OF THE LATE CHERES ARAP**  
**KOMAING alias CHERES KAMOING (DECEASED)**

<b>ROBERT PROTESTOR</b>	<b>CHIRCHIR</b>	<b>BIEGON.....1ST</b>
<b>CHEPKORIR PROTESTOR</b>	<b>BIEGON</b>	<b>LILIAN .....2ND</b>
<b>KIPKURUI PROTESTOR</b>	<b>CHIRCHIR</b>	<b>JAMES.....3RD</b>
<b>CHEPNG'ENO PROTESTOR</b>	<b>DOROTHY</b>	<b>MELI.....4TH</b>
<b>KENNEDY PROTESTOR</b>	<b>KIPLIMO</b>	<b>CHIRCHIR.....5TH</b>
<b>ANTHONY PROTESTOR</b>	<b>CHIRCHIR.....</b>	<b>6TH</b>
<b>BEATRICE PROTESTOR</b>	<b>CHERONO</b>	<b>AKIMU.....7TH</b>

**VERSUS**

**PETER KIPNGETICH RONO.....1ST**  
**PETITIONER/RESPONDENT**

**ROSALINE CHEPKURUI KETER..2ND**  
**PETITIONER/RESPONDENT**

**JUDGMENT**

1. There are two applications coming up for determination by this court; summons for confirmation of grant filed by the

petitioners and an affidavit of protest against the summons for confirmation of grant by the protestors claiming that they are beneficiaries of the deceased, hence are deserving of a share of the estate of the deceased.

2. The petitioners of the estate of the deceased herein filed fresh summons for confirmation of grant dated 31st July, 2024 pursuant to the orders of this court reopening the matter which had been previously been dismissed. The matter was reopened and readmitted for confirmation of grant. In the summons for confirmation of grant, the petitioners are seeking the following orders;

***(i) THAT the grant of letters of administration intestate made to the said PETER KIPNGETICH RONO and ROSALINE CHEPKURUI KETER in this matter on the 18th February, 2013 be confirmed.***

***(ii) THAT the costs be in the cause.***

3. The summons is supported by the grounds on the face of it and the affidavit of ***Rosaline Chepkurui Kamoing*** the 1st petitioner and on behalf of her co-petitioner.
4. She avers that letters of administration intestate in respect of the estate of the deceased were issued to ***Peter Kipngetich***

**Rono and Rosaline Chepkurui Keter** in this matter on the 18th February, 2013.

5. She avers that the deceased left several surviving dependents and was the owner of **(i) Kericho/Kipchimchim/963**.
6. She avers that the identification and distribution of the shares of all persons beneficially entitled to the estate of the deceased has been ascertained and determined as follows;  
**Kericho/Kipchimchim/963 to be shared equally between Rosaline Chepkurui Keter and Peter Kipngetich Rono.**
7. She avers that no dependent of the deceased within the meaning of section 29 of the Law of Succession Act is opposed to the mode of distribution.
8. She avers that the mode of distribution takes into consideration of the legal fees incurred in distributing the estate amongst the beneficiaries and further that no estate duty is payable (or remains unpaid) in respect to the estate of the deceased.
9. **Robert Chirchir Biegon the 1st protestor** filed an affidavit of protest in opposition to the summons for confirmation of grant on behalf of the other protestors, the main bone of contention being that they were beneficiaries of the estate of

the deceased and were therefore entitled to a share of the estate and therefore the failure to include any of them as beneficiaries of the deceased was clearly an elaborate and deliberate attempt by the respondents to unlawfully to disinherit him and his siblings.

10. **Rosaline Chepkurui Kamoing** the 1st petitioner on behalf of her co-petitioner filed a reply to the affidavit of protest.
11. She states that the deceased died intestate on 12th June, 1985 and that he was polygamous with two wives now deceased namely:- **Zipporah Kamoing (1st wife) and Taprandich Kamoing (2nd wife)**.
12. She further states that the 1st wife sired only one daughter known as Ruth Chepkemai whilst the 2nd wife sired two sons; her husband **Charles Keter** (now deceased) and **Peter Kipngetich Rono**.
13. She also stated that the 1st wife namely **Zipporah Kamoing** deserted her matrimonial home, she was brought back to the matrimonial home after several years, she was ailing, she died shortly afterwards and was interred at her matrimonial home.

14. It is her statement that Ruth Chepkemoi the daughter of the 1st wife got married and established her matrimonial home elsewhere, she died and was interred in her matrimonial home by her husband.
15. It is also her statement that **Charles Keter** her late husband and **Peter Kipngetich Rono** the 2nd petitioner/respondent have been utilising and living on **Kericho/Kipchimchim/963** constituting the estate of the deceased.
16. It is her statement that the protestors are children of the late daughter of the deceased Ruth Chepkemoi (now deceased) and were not maintained by the deceased during his lifetime and/or immediately prior to his demise and are therefore not dependants of the deceased under section 29 (b) of the Law of Succession Act, they have neither utilized and/or occupied the estate property of the deceased.
17. It is also her assertion that the protesters have not obtained a limited grant and/or letters of administration in respect to the estate of their deceased mother and therefore lack locus standi and/or capacity to sue and/or be sued.
18. **Robert Chirchir Biegon the 1st protestor** filed a

supplementary affidavit in response to the reply to the protest and contended that the reply to the protest is laden with falsehood, misconceptions, half-truths and overly exaggerated facts noting that the respondents have chosen to either distort, conceal the facts and or opted to be economical with the true facts regarding the beneficiaries of the deceased's estate.

19. The parties consented to have the protest canvassed via witness statements and the same adopted by this court as evidence in the instant succession proceedings.

20. The petitioners filed a joint witness statement, they ceded that the protestors were grandchildren of the deceased, however, they were not maintained by the deceased during his lifetime and/or immediately prior to his demise and are therefore not dependants of the deceased under section 29 (b) of the Law of Succession Act, they have neither utilized and/or occupied the estate property of the deceased. The petitioners maintained that they are therefore bona fide beneficiaries of the estate of the deceased. The petitioners availed two witness statements in support of their case. **Pw. 1** a retired assistant chief of Kugerwet Sub Location

and a neighbour to the deceased filed a witness statement and states that the deceased was polygamous and married two wives. It is his statement that the deceased had several children; from the first house, one daughter Ruth Chepkemai Biegon (now deceased) who got married and established her matrimonial home in Kipkelion and two sons namely, Charles Kipkoros Keter (deceased) represented by his widow known as Rosaline Chepkirui Keter and Peter Kipngetich Rono from the second house. He further states that the objectors who are grandchildren of the deceased are not dependents of the estate of the deceased, as they were not maintained by the deceased in his lifetime and/or immediately prior to his demise and have neither utilised and/or occupied **Kericho/Kipchimchim/963** the estate land. It is further his statement that he only became aware of the objectors existence when they objected to the instant succession proceedings. He therefore urged this court to disallow the objectors claim to the estate.

21. **Pw. 2** a neighbour to the deceased filed his witness statement and states that the objectors who are grandchildren of the deceased are not dependents of the

estate of the deceased, as they were not maintained by the deceased in his lifetime and/or immediately prior to his demise and have neither utilised and/or occupied **Kericho/Kipchimchim/963** the estate land. It is further his statement that he only became aware of the objectors existence when they objected to the instant succession proceedings.

22. The objectors availed one witness statement in support of their case.

23. **Dw. 1** the 1<sup>st</sup> born of **Ruth Chepkemoi Byegon (deceased)** who was one of the daughters of **Cheres Arap Kamoing** (deceased) filed a witness statement on behalf of the other protestors. It is her statement that the 1<sup>st</sup> to 6<sup>th</sup> objector/applicants are her siblings and also beneficiaries of Ruth Chepkemoi Byegon (deceased) and as such are entitled to inherit their mother's share of the estate of Cheres Arap Kamoing. It is further her statement that the respondents herein, despite being fully aware that they are entitled to a portion of deceased's estate through their late mum, they went ahead to fraudulently and maliciously filed the

summons for confirmation of grant dated 31st July, 2024 through which they have completely disinherited her and co-applicants by sharing out the assets of the deceased amongst themselves without making any provision for any of the children of Ruth Chepkemoi Byegon.

24. At the close of the respective parties' case, this court directed the parties to file written submissions which this court has considered in order to arrive at a fair and just determination.

25. The protestors filed submissions and maintained that they are beneficiaries of the estate of the deceased, they relied on the case of *In re Estate of Kimeli Rono (Deceased) (Citation Cause 14 of 2024) [2024] KEHC 14779 (KLR) (27 November 2024) (Ruling)* where the court in finding that Grandchildren inherit through their deceased parent's share under the principle of representation the court held that; ***"Section 39 of the Law of Succession Act makes grandchildren heirs in intestacy, where their own parents, who are biological children of the deceased, are dead. Section 41 of the Law of Succession Act is the provision that enables grandchildren to step into the shoes of their own parents, and to step into those shoes they need not take out letters of administration.***

26. The petitioners filed submissions and contended that the protestors who are grandchildren of the deceased had failed to prove and/or demonstrate that they were maintained by the deceased immediately prior to his demise on 12th June, 1985 and that it is not mere relationship that matter but proof of dependency that counts in order for the protestors to inherit the estate of the deceased. They cited ***Keen & 2 others v Keen & another (Civil Application E027 of 2023) [2024] KECA 970 (KLR) (26 July 2024) (Ruling)*** where the Court of Appeal stated as follows; ***“Turning to the claim by the grandchildren in the intended appeal, we agree with the respondents and the beneficiaries who oppose this application that the legal position is crystal clear. The grandchildren are not direct beneficiaries of a deceased person and provision for them is dependent on proof that they were being maintained by the deceased immediately prior to his death. (See Beatrice Ciamutua Rugamba v Fredrick Nkari Mutegi & 5 Others [2016] eKLR). The grandchildren in this application did not adduce evidence of any such dependency and therefore, we do***

***not perceive any bona fide arguable point in that respect.”***

27. This court has considered the summons for confirmation of grant and the affidavit of protest filed and finds that the issue (s) for determination is whether the affidavit of protest is merited.
28. The petitioners argue that the protestors are not beneficiaries of the deceased as they have not proved and/or demonstrated that they were maintained by the deceased immediately prior to his demise whereas the protestors are adamant that they are legitimate beneficiaries of the deceased and that grandchildren can inherit a share of the deceased's estate through their deceased parent's share under the principle of representation.
29. This Court has considered the respective cases of the parties and evidence tendered before this Court. In my view, the protestors having described themselves as grandchildren of the deceased. It is clear that they are not automatic dependents of the deceased. They are obliged to prove by evidence that they were being supported by the deceased immediately prior to his death.

30. The Protestors failed to discharge that burden. The Protestors are not eligible to inherit the Estate Land of the deceased herein namely: Kericho/Kipchimchim/963 with reasons that they were not maintained by the deceased prior to his death.

31. It is clear that though the Protestors were grandchildren of the deceased, they were not at all maintained by the deceased and neither did they utilize the Estate Land nor occupied the same. Thus the Protestors are not eligible to inherit the said Estate Land and therefore their exclusion in the Succession Cause and distribution of the said Estate is proper and hence there was no fraud nor concealment of material facts.

32. In the end, the protest is found to be without merit. The protest is ordered dismissed. This being a family dispute, I order that each party bears his or her own costs.

33. The Summons for Confirmation of Grant dated 31<sup>st</sup> July, 2024 is allowed as prayed.

***Delivered, signed and dated at Kericho this 18<sup>th</sup> day of December, 2025.***

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**J.K. SERGON**  
**JUDGE**

