

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**SUCCESSION CAUSE NO. 371 OF 2015**  
**IN THE MATTER OF THE ESTATE OF ELIJAH KIPKURUI**  
**BELYON (DECEASED)**

**RENISON KIPLANGAT ARAP KIRUI.....1<sup>ST</sup>**  
**PETITIONER**

**KIRUI IAN KIPYEGON.....2<sup>ND</sup>**  
**PETITIONER**

**ELIZABETH WANGARE BELYON.....<sup>RD</sup>**  
**PETITIONER**

**WILLY KIPNGETICH KIRUI.....4<sup>TH</sup>**  
**PETITIONER**

**VERSUS**

**KIBET JACKSON KIRUI.....PROTESTOR**

**JUDGMENT**

1. The deceased herein, ***Elijah Kipkurui Belyon***, died intestate on 24<sup>th</sup> January 2013. He was at the time of his death domiciled in Kenya. According to the Chief's letter and the affidavits on record, the deceased was polygamous, having married twice under customary law.

2. Representation to the estate of the deceased was sought vide a petition for grant of letters of administration intestate lodged in this court on 3<sup>RD</sup> December 2015. The petition was brought by ***Renison Kiplangat Arap Kirui, Kirui Ian Kipyegon, Elizabeth Wangare Belyon, and Willy Kipngetich Kirui (hereinafter***

**"the administrators").** The grant of letters of administration intestate was duly made to them on 22<sup>nd</sup> March 2016.

3. The administrators subsequently filed a summons for confirmation of grant dated 22<sup>nd</sup> April 2021. The same is brought under Rule 40(3) of the Probate and Administration Rules. They propose a mode of distribution of the estate. That proposal has however attracted protests from two quarters.

4. The first protest is by Mike Kipngeno Korir, vide an affidavit of protest sworn on 3<sup>rd</sup> May 2021 and a further affidavit filed thereafter. The second protest is by Kibet Jackson Kirui, vide an affidavit of protest sworn on 12<sup>th</sup> May 2025. Directions were taken that the summons for confirmation and the two protests be disposed of by way of written submissions and affidavit evidence. The administrators filed their submissions on 6<sup>th</sup> January 2026. The 2<sup>nd</sup> protestor filed submissions on 20<sup>th</sup> January 2026. The 1<sup>st</sup> protestor relied on his affidavits on record.

5. The family of the deceased is not in dispute. From the material on record, the deceased had two households. The composition is as follows;

**1<sup>st</sup> Household (Ziporah Tapchelong - Deceased 1<sup>st</sup> Wife)**

- **Mary Cherotich Koskei - Daughter**
- **Esther Chepkorir Sigei - Daughter**
- **Sofia Chepkoech Mutai - Daughter**
- **Renison Kiplangat Arap Kirui - Son**

- **Willy Kipngetich Kirui - Son**
- **Emily Chepkoech Koske (alias Priscillah Koskei) - Daughter (Deceased) - survived by Daisy Chepkemoi and Ronald Kipyegon Too**
- **Kibet Jackson Kirui - Son**
- **Weldon Cheruiyot Kirui - Son**
- **Betty Chebet Belyon - Daughter**
- **Zakayo Kirui - Son (Deceased) - survived by two households:**
  - 1<sup>st</sup> House of Zakayo (Emily Chemutai - Deceased): Mike Kipngeno Korir, Martin Kiplangat Korir, Gloria Chelangat Kirui, Shadrack Kipkoech Korir, Kenneth Kiprono Kirui**
  - 2<sup>nd</sup> House of Zakayo (Jane Chepkoech Chepkwony - Surviving Widow): Jane Chepkoech Chepkwony, Lily Chepkemoi, Kenneth Kipyegon Koech, Frankline Kiptoo Koech**
- 2<sup>nd</sup> Household (Elizabeth Wangare Belyon - Surviving 2<sup>nd</sup> Wife)**
  - **Elizabeth Wangare Belyon - Widow**
  - **Caroline Chepkurui Kirui - Daughter-in-law**
  - **Geoffrey Kiplangat Kirui - Son**
  - **Kirui Ian Kipyegon - Son**

· ***Kennedy Kipkoech Kirui - Son***

· ***Beatrice Chepkoech - Daughter***

6. The administrators have proposed a mode of distribution which, in summary, allocates 71.5 acres to Elizabeth Wangare Belyon, the 2<sup>nd</sup> widow. The daughters from the 1<sup>st</sup> household, being Mary Koskei, Esther Sigei and Sofia Mutai, are allocated 2 acres each. The children of the 2<sup>nd</sup> household, Caroline Kirui, Geoffrey Kirui, Ian Kirui and Kennedy Kirui, are allocated 15 acres each in North Sotik.

7. In their written submissions dated 6<sup>th</sup> January 2026, the administrators contend that the deceased had settled his family during his lifetime. They assert that every household had started tilling and developing their respective portions as indicated by the deceased. They urge the court to maintain these boundaries to respect the wishes of the deceased. They also raise a technical objection to the 2<sup>nd</sup> protest, arguing that the protestor had failed to annex the authority from the ten beneficiaries he claims to represent as required by Order 1 Rule 13(2) of the Civil Procedure Rules. They further argue that the protestor has not provided proof, by way of title deeds or official searches, that the alleged omitted properties belong to the deceased.

8. Mike Kipngeno Korir deposes that he is a grandson of the deceased. His late father, Zakayo Kirui, was a son of the deceased. He states that Zakayo Kirui had two households, and

that all his children are entitled to inherit his share of the estate by representation under Section 41 of the Law of Succession Act.

9. He further deposes that during his lifetime, the deceased had apportioned 13 acres on Kericho/Cheborge/614 and 5 acres on Kericho/Cheborge/243 to the household of his late father for homestead and farming. He avers that the administrators have trespassed onto these portions and are ploughing and planting tea seedlings without justification. He prays for orders to safeguard these portions pending distribution and for his household to be included in the distribution.

10. The administrators filed no response to this protest. The allegations therein remain uncontroverted.

11. Kibet Jackson Kirui deposes that he is a son of the deceased from the 1<sup>st</sup> household. He states that he has authority from ten other beneficiaries to swear the protest, and has annexed the said authority as "KJK-1".

12. He deposes that the administrators' list of beneficiaries is incomplete, as it excludes Ronald Kipyegon Too, who is a son of the late Emily Chepkoech Koske (a deceased daughter of the deceased). He contends that Ronald Kipyegon Too is entitled to inherit by representation under Section 41 of the Law of Succession Act.

13. He further deposes that the administrators have omitted several properties from the estate. These include:

- **Plot No. 27 "Namba" in Bureti (approximately 7 acres)**
- **Litein Township 8839/5**
- **Litein Township 8839/39**
- **Litein Township 8839/42**
- **Litein Township 8839/43**
- **Litein Township 8839/51**
- **Cheborge Plot 1**
- **42 Investment Plot in Bomet**

14. He depones that the proposed allocation of 71.5 acres to Elizabeth Wangare Belyon, while daughters of the 1<sup>st</sup> household receive only 2 acres, is manifestly unjust and discriminatory. He exhibits a detailed mode of distribution in paragraph 18 of his affidavit. The same includes all beneficiaries and all assets known to him.

15. The administrators were granted leave on 22<sup>nd</sup> May 2025 to file a response to this protest. They did not do so. The allegations in this protest therefore remain uncontroverted.

16. The following issues arise for determination:

**(a) Whether the 1<sup>st</sup> protest by Mike Kipngeno Korir has merit;**

**(b) Whether the 2<sup>nd</sup> protest by Kibet Jackson Kirui has merit;**

***(c) Whether the administrators' technical objection regarding***

***authority is sustainable;***

***(d) Whether the administrators' proposed mode of distribution***

***should be upheld;***

***(e) What constitutes a fair and equitable distribution of the***

***estate;***

17. Section 41 of the Law of Succession Act, Cap 160, Laws of Kenya, provides that where a child of the intestate has predeceased the intestate, that child's children shall be entitled to the share that their parent would have taken. This is the doctrine of representation. Zakayo Kirui was a son of the deceased. He died before the deceased. His children are therefore entitled to inherit his share of the estate. The administrators' proposed distribution does not specifically allocate shares to each grandchild of Zakayo Kirui. That is inconsistent with Section 41. The 1<sup>st</sup> protestor has properly invoked this provision. I therefore find and hold that the grandchildren of Zakayo Kirui are entitled to their late father's share by representation.

18. On the claim of trespass, Mike Korir deposes that the deceased had, during his lifetime, pointed out portions on ***Kericho/Cheborge/614 and Kericho/Cheborge/243*** to his late

father's household. He deposes that the administrators have trespassed onto these portions and are planting tea seedlings.

19. The administrators filed no response to this allegation. They did not deny it. In the absence of any controverting evidence, I accept Mike Korir's deposition as true. However, given that the estate is yet to be distributed at the conclusion of this judgment, I find that this court cannot grant any order on the issue of intermeddling.

20. Section 51(2)(h) of the Law of Succession Act requires administrators to provide a full inventory of all assets and liabilities of the deceased. The duty of full disclosure is fundamental. In ***re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR***, the court emphasized that non-disclosure of material facts undermines justice and that parties must act with utmost good faith.

21. Kibet Jackson Kirui has listed specific properties allegedly omitted from the administrators' inventory. The administrators, despite having the opportunity, filed no response to these allegations. They adduced no evidence to prove that these properties do not belong to the estate. The only evidence before this court regarding these properties is the protestor's affidavit. In the circumstances, I find and hold that the following properties form part of the deceased's estate;

• ***Plot No. 27 "Namba" in Bureti***

• ***Litein Township 8839/5***

- ***Litein Township 8839/39***
- ***Litein Township 8839/42***
- ***Litein Township 8839/43***
- ***Litein Township 8839/51***
- ***Cheborge Plot 1***
- ***42 Investment Plot in Bomet***

22. On the omission of beneficiaries, the administrators' list excludes Ronald Kipyegon Too. He is a son of the late Emily Chepkoech Koske, a daughter of the deceased who predeceased the deceased. Section 41 of the Law of Succession Act mandates that grandchildren inherit by representation where their parent has predeceased the grandparent. This evidence is uncontroverted. Ronald Kipyegon Too is therefore a beneficiary of this estate and must be included in the distribution.

23. The administrators' claim that "the deceased settled his family before he died" is not supported by any evidence. There is no affidavit from any independent witness corroborating this claim. There is no written document from the deceased indicating his wishes. There is no survey map or beacon certificate showing the alleged boundaries. In ***Alice Chepkemai Yosei & another v Ruth Chemutai Yosei [2015] KEHC 3770 (KLR)***, the court held that a claim of prior settlement must come out on oath and be tested. The administrators have not subjected their claim to

such scrutiny. In the absence of evidence, this court cannot base a distribution on an unsubstantiated assertion.

24. Even if such settlement existed, the administrators' own proposed distribution contradicts it. The allocation of 71.5 acres to Elizabeth Wangare Belyon, who married late, while daughters of the first household who contributed over many years receive only 2 acres, is manifestly unjust.

25. In ***re Estate of George Cheriro Chepkosiam (Deceased) [2017] eKLR***, the court held that to equate a widow who entered the home decades later and made no contribution to the acquisition of the estate with a first widow who contributed would be discriminatory. I adopt that reasoning.

26. The deceased was polygamous. Section 40 of the Law of Succession Act provides the primary framework for distribution. It states;

***"(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."***

27. However, as the Court of Appeal stated in ***Scolastica Ndululu Suva v Agnes Nthenya Suva [2019] KECA 1053 (KLR)***, the court has discretion to take into account factual circumstances to ensure an equitable and fair distribution. The Court of Appeal stated;

**"It is therefore evident, that, although section 40 of the Law of Succession Act provides a general provision for the distribution of the estate of a polygamous deceased person, the court has discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate."**

28. The factual circumstances in this case are these;

- **The 1<sup>st</sup> wife, Ziporah Tapchelong, was married to the deceased for approximately 25 years before the deceased married Elizabeth Wangare Belyon.**

- **By the time of the second marriage, the deceased had already acquired the majority of the properties comprising the estate.**

- **The children of the first household were already adults and had contributed to the family's welfare over many years.**

· **Elizabeth Wangare Belyon is younger in years than Mary Cherotich Koskei, the first daughter of the first household.**

29. To apply Section 40 rigidly without regard to these circumstances would be to perpetuate an injustice. This court must exercise its discretion to ensure an equitable distribution.

30. The 2<sup>nd</sup> protestor has proposed a detailed mode of distribution in paragraph 18 of his affidavit. I have perused the same. It includes all known assets of the estate. It includes all beneficiaries, including Ronald Kipyegon Too and all grandchildren of Zakayo Kirui. It allocates shares to all children of the deceased without discrimination based on gender or marital status. It takes into account the doctrine of representation under Section 41.

31. The administrators have not filed any response challenging the arithmetic or fairness of this proposal. They have not demonstrated how their own proposal is superior. They have simply relied on an unsubstantiated claim of prior settlement.

32. I am satisfied that the 2<sup>nd</sup> protestor's proposed mode of distribution is fair and equitable.

33. The administrators argued that the 2<sup>nd</sup> protest should be struck out for failure to annex the authority from the ten beneficiaries, citing Order 1 Rule 13(2) of the Civil Procedure Rules. They rely on ***Seme & 10 others v County Government***

**of Narok & 3 others [2023] KEELC 21883 (KLR)**, where a suit was struck out for failure to attach such authority.

33. I note that the beneficiaries whom Kibet Jackson Kirui claims to represent are identified by name in the protest. They are adult beneficiaries who have not come forward to disown the protest. The primary mandate of this court in succession matters is to ensure the fair and just distribution of the estate of a deceased person. Striking out the protest on a technical ground would delay justice and potentially prejudice the very beneficiaries the rule seeks to protect. Furthermore, I have noted the authority to plead on record dated 12<sup>th</sup> May 2025 signed by ten persons. I hold that the protestor was authorized to plead on behalf of ten others.

34. The summons for confirmation of grant dated 22<sup>nd</sup> April 2021 seeks confirmation of the grant on the administrators' terms. For the reasons I have given, I am not persuaded that the administrators' proposed mode of distribution is fair and equitable. It omits assets. It excludes a rightful beneficiary. It is skewed in favour of the 2<sup>nd</sup> household.

35. In the end, I make the following orders;

(a) ***The 1<sup>st</sup> protest by Mike Kipngeno Korir is hereby allowed. The grandchildren of Zakayo Kirui are entitled to inherit their late father's share of the estate by representation under Section 41 of the Law of Succession Act.***

***(b) The 2<sup>nd</sup> protest by Kibet Jackson Kirui is hereby allowed.***

***(c) The summons for confirmation of grant dated 22<sup>nd</sup> April 2021 is hereby allowed and distribution of the Estate should be done as proposed in the Affidavit of the 2<sup>nd</sup> Protestor***

***(e) Each party shall bear their own costs.***

**Dated, signed and delivered at Kericho this 12<sup>th</sup> day of March, 2026.**

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

In the Presence of:-

C/Assistant - Rutoh

Evanson Kirui for Protestor

No Appearance for the Petitioners