

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
SUCCESSION CAUSE NO. 18 OF 2007
IN THE MATTER OF THE ESTATE OF THE LATE KIPLANGAT
MAINA (DECEASED)

GEOFFREY KIPKORIR CHERUIYOT.....
PETITIONER

VERSUS

VIOLA CHEBET
MAINA.....PROTESTOR/BENEFICIARY

AND

ESTHER CHEPKORIR KORGOREN.....1ST OBJECTOR
RECHO LANGAT2ND
OBJECTOR

JUDGMENT

1. ***Esther Chepkoech Korgoren*** and ***Recho Lang'at***, the 1st and 2nd Petitioners herein filed the Summons for Confirmation of grant dated 6th February, 2024. The Petitioner filed the Affidavit sworn by ***Geoffrey Kipkorir Cheruiyot*** in support of the Summons. ***Viola Chebet Maina*** filed an Affidavit of Protest she swore against the aforesaid summons for Confirmation Grant. The Summons and Protest were directed to be disposed of by oral evidence.

2. The Protestor (PW.1) was the only witness who testified in support of the Protest. **Viola Chebet Maina (PW.1)** executed a witness statement which she adopted as her evidence in Chief. PW.1 told this Court that the deceased was her father. She produced in evidence as an exhibit the Area Chief's Letter in which the Chief acknowledged her as a daughter to the late **Kiplang'at Maina**. She also told this Court that her home is built on the parcel of land known as LR. **Kericho/Cheptalal/584**.

3. She averred that the first house are determined to exclude her from inheriting her father's estate. She denied the allegation that her mother namely **Mary Maina** was divorced. She (PW.1) further pointed out that her step-brother **Geoffrey Kipkorir Cheruiyot** acknowledged that in his affidavit filed in support of a Summons for Confirmation of Grant she is a daughter to the deceased. PW.1 proposed to have the deceased's distributed as follows:-

OPTION 1

KERICHO/CHEPTALAL/584

KERICHO/CHEPTALAL/552

Be shared equally between the 2 houses.

OPTION 2

(a) KERICHO/CHEPTALAL/584 - 4.0 HA

(i)	MARY C. MAINA	0.5 HA
(ii)	GEOFFREY KIKORIR CHERUIYOT	0.5 HA
(iii)	JOSEPH KIPRONO CHERUIYOT	0.5 HA
(iv)	RECHO LANGAT	0.5 HA
(v)	ALICE CHELULE	0.5 HA
(vi)	ESTHER KORGOREN	0.5 HA
(vii)	JANE CHEPNGENO	0.5 HA
(viii)	VIOLA MAINA	0.5 HA

(b) KERICHO/CHEPTALAL/552 - 8.0 HA

(i)	MARY C. MAINA	1.0 HA
(ii)	GEOFFREY KIKORIR CHERUIYOT	1.0 HA
(iii)	JOSEPH KIPRONO CHERUIYOT	1.0 HA
(iv)	RECHO LANGAT	1.0 HA
(v)	ALICE CHELULE	1.0 HA
(vi)	ESTHER KORGOREN	1.0 HA
(vii)	JANE CHEPNGENO	1.0 HA
(viii)	VIOLA MAINA	1.0 HA

4. The Petitioners presented the evidence of four witnesses in support of their Summons for Confirmation of Grant. **Esther Korgoren (DW.1)** stated that she is a daughter to the deceased and her mother is called **Juliana Maina**. She said that she did not know **Viola Chebet Maina**. She however stated that Vila was summoned to attend a family meeting but she refused to attend.

5. DW.1 said that **Viola Chebet** was not part of her family. She averred that the deceased returned the dowry of Viola's mother. DW.1 further stated that Viola and her mother were given a portion of land to occupy before leaving. She claimed that her father (deceased) got married to **Mary Maina**, the Protestor's mother and shortly, Mary deserted the deceased. She alleged that the Protestor and her mother wanted to grab the deceased's land using succession proceedings. DW.1 also stated that the Protestor's mother left and came back two (2) years after the deceased passed on.

6. **Jane Chepng'eno Cheruiyot (DW.2)** told this court that she was married to one **Joel Cheruiyot (now deceased)**, a son of the deceased. She said she did not know **Viola (PW.1)**. DW.2 said that she heard that the deceased got married to Mary, the Protestor's mother. She stated that Viola and her mother were given a portion of a $\frac{1}{4}$ of an Acre to temporarily occupy. She also confirmed that Mary, the Protestor's mother left for a long time. She said that she is aware Mary got married to the deceased as a second wife.

DW.2 also said that dowry was returned to **Mary Maina's parents.**

7. **Geoffrey Kipkorir Cheruiyot (DW.3)** said he educated **Viola Chebet Maina**, the Protestor herein upto class. 6. DW.3 further stated that **Mary Maina** was married to the deceased but only stayed for a month and left. He said Viola (Protestor) went and came back in 1986 and has been living with them since then. DW.3 said that the parents of Mary demanded a return of the dowry and therefore the marriage between Mary and deceased is deemed as dissolved.
8. DW.3 further stated that his late brother **Joel Cheruiyot** gave a portion of land to occupy. He said that he included Viola I the Succession Proceedings as his sister. He said that Mary came back and she and the Protestor are living in a $\frac{1}{2}$ an Acre portion in the Parcel known as **LR. No. Kericho/Cheptalal/584**. He claimed he was forced by the Area Chief to include the name of Viola as a beneficiary. DW.3 further stated that he excluded Mary and Viola from inheriting when the family rejected them. DW.3 further admitted that the deceased had two wives. He also claimed

that the deceased told him he returned the dowry to Mary's parents.

9. **Joseph Cheruiyot (DW.4)** stated that he does not know **Mary Maina and Viola Chebet Maina**. DW.4 stated he occupies the parcel of land known as **LR. No. Kericho/Cheptalal/584**. DW.4 claimed their mother allowed the Protestor and her mother to occupy a small portion. He said that Mary and Viola arrived in 2003. DW.4 admitted that in 2021 in another Succession Cause, he testified and stated that Mary was his father's second wife.

10. At the close of evidence, parties were invited to file written submissions.

11. I have considered the evidence plus the rival submissions. The main issue which arose for determination whether the Protestor and her mother are entitled to inherit from the deceased's estate.

12. The Protestor has tendered evidence in which she stated that she is a daughter of the deceased and that her mother **Mary Maina** is the deceased's second wife. The Protestor recognized her as a daughter of the deceased. She

also produced a Chief's letter indicating that the Protestor is a daughter to the deceased.

13. The Petitioners acknowledged that the deceased got married to **Mary Maina**. They however aver that **Mary Maina** cohabited with the deceased for a short period and then left. The Petitioners also claimed that the deceased returned the dowry thus his marriage with **Mary Maina** is deemed dissolved.

14. It is not in dispute that the Protestor and her mother are in occupation of a portion in **LR. No. Kericho/Cheptalal/584**.

15. Having considered the rival submissions and the evidence presented by both sides, it is clear to this Court that the Petitioner (DW.3) included the Protestor in the Petition as beneficiary who survived the deceased as a daughter and hence his sister. In fact DW.3 clearly stated that he educated the Protestor upto class 6. It is also admitted by the Petitioner that the Protestor and her mother are living in Parcel **No. Kericho/Cheptalal/584**. The Petitioners have stated that **Mary C. Maina** who was

married to the deceased as a second wife was divorced when dowry was returned.

16. According to DW.3, when the dowry was returned, he was aged 14 years. DW.3 stated that the dowry was returned and that in a family meeting, the passed a resolution that dowry was returned. It is not clear whether the marriage between the deceased and **Mary C. Maina** was customary or statutory. However, it would appear from the evidence that it was a customary marriage. There was no cogent evidence to show that the essential steps and ceremonies were performed to complete the divorce process. The allegation that dowry was returned was not proved to the required standard. It is believable that DW.3 at aged 14 could be in a position to return dowry.

17. In short, this Court is not satisfied that the deceased divorced **Mary C. Maina**. Therefore, **Mary C. Maina** marriage was never dissolved. She is still a widow of the deceased. It is alluded that the Protestor is not a daughter of the deceased. It is apparent that the Petitioner recognized her as his sister. If the Petitioners wanted the

paternity issue to be resolved, that they should have applied for a DNA to be conducted. The evidence tendered by both sides clearly indicate that the Protestor was treated as the deceased's daughter. The evidence tendered appear to suggest that the Protestor was a dependant. In fact she was educated by her step brother (DW.3).

18. In the end, this Court is satisfied that **Mary C. Maina** and **Viola Chebet Maina** are entitled to benefit from the deceased estate. It was therefore wrong for the Petitioners to exclude the duo from benefiting from the estate.

19. This Court finds the Protest to be meritorious. It is upheld. Consequently, the Grant issued on 29th day of April, 2008 be amended to include **Viola Chebet Maina** as a Co-Administrator.

20. The Amended Grant is hereby ordered confirmed and distribution be as proposed as option 2 in paragraph 12 of the Affidavit of Protest dated 21st February, 2024 as follows:-

(a) KERICHO/CHEPTALAL/584 - 4.0 HA

- | | |
|--|---------------|
| (i) MARY C. MAINA | 0.5 HA |
| (ii) GEOFFREY KIKORIR CHERUIYOT | 0.5 HA |
| (iii) JOSEPH KIPRONO CHERUIYOT | 0.5 HA |

(iv) RECHO LANGAT	0.5 HA
(v) ALICE CHELULE	0.5 HA
(vi) ESTHER KORGOREN	0.5 HA
(vii) JANE CHEPNGENO	0.5 HA
(viii) VIOLA MAINA	0.5 HA

(b) KERICHO/CHEPTALAL/552 - 8.0 HA

(i) MARY C. MAINA	1.0 HA
(ii) GEOFFREY KIKORIR CHERUIYOT	1.0 HA
(iii) JOSEPH KIPRONO CHERUIYOT	1.0 HA
(iv) RECHO LANGAT	1.0 HA
(v) ALICE CHELULE	1.0 HA
(vi) ESTHER KORGOREN	1.0 HA
(vii) JANE CHEPNGENO	1.0 HA
(viii) VIOLA MAINA	1.0 HA

21. This being a family dispute, a fair order on costs is to order each party to meet his or her own costs.

Dated, signed and delivered at Kericho this 31st day of March, 2026

.....
J. K. SERGON
JUDGE

In the presence of:

C/Assistant - Rutoh

Miruka for the Protestor

Wakio for the Petitioner

Miss Chelimo for Objectors