

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

SUCCESSION CAUSE NO. 122 OF 2015

IN THE MATTER OF THE ESTATE OF KIPLANGAT MAINA

ALIAS KIPLANGAT ARAP MAINA (DECEASED).

BARNABAS KIPNGENO LANGAT PETITIONER

VERSUS

ANNAH CHEPWOGEN MAINA 1ST

PROTESTOR

ERNEST BARTAI 2ND PROTESTOR

PATRICK KIPYEGON KORIR 3RD PROTESTOR

R U L I N G

1. In this matter, the Grant was issued to the Petitioner on 21st October 2015. The Petitioner filed an Application for

confirmation of Grant dated 8th January 2025 where he stated that the deceased's estate comprised of: -

- i) KERICHO/KIPSONOI S.S/276 (21 hectares)
- ii) KERICHO/GETARWET/135 (10.52 hectares)

2. The Petitioner's proposed mode of distribution was as follows: -

KERICHO/KIPSONOI S.S/276

Kiprono Rotich	12 acres	To hold in trust for the estate of Simon Langat
Barnabas Kipngeno Langat	7 acres	Whole share
Hellen Chepkoech	3 acres	Whole share
Erickson Kiprono Langat	3 acres	Whole share

Philemon Kiprono Langat	3 acres	Whole share
Loice Chebet Koech	3 acres	Whole share
Dorcas Chemutai	3 acres	Whole share
Damaris Chepkorir	3 acres	Whole share
Raeli Chepkoech Cherorot	2 acres	Whole share
Betty Chepkurui Maina	2 acres	Whole share
Rebecca Chepkemoi Koech	2 acres	Whole share
Dinner Chelangat Maritim	2 acres	Whole share
Barnabas Kipngeno Langat	6 acres	To hold in trust for the estate of Allois Kipkorir Chepkwony.

AFRICAN GOSPEL CHURCH CANAAN	0.3 acres	Whole share
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KERICHO/GETARWET/136

Caliph Kipyegon Langat	6 acres	Whole share
Charles Kibet Langat	6 acres	Whole share
Jimmy Kipkorir Langat	6 acres	Whole share
Benard Langat	6 acres	Whole share

3. Through his Further Affidavits both dated 27th February 2025, the Petitioner stated that the deceased had settled his beneficiaries and liabilities in his lifetime. That the 2nd Protector did not fall within the ambit of **section 29 of the Law of Succession Act** and was seeking to disinherit the deceased's rightful beneficiaries. The Petitioner further

stated that the 2nd Protestor's claim was unfounded as he failed to tender documents to substantiate his claim.

4. It was the Petitioner's case that the 2nd Protestor was an intermeddler and was colluding with the 1st Protestor to ensure that they got a sizeable portion of the deceased's estate. It was the Petitioner's further case that the deceased spearheaded the formation of a self-help group with his dependants carrying out activities in KERICHO/KIPSONOI S.S/276 to the exclusion of the 1st Protestor.

5. The Petitioner stated that the 1st Protestor was not the deceased's widow. The Petitioner further stated that it was true that the deceased sold a portion of KERICHO/KIPSONOI S.S/276 to Allois Kipkorir Chepkwony and not the 2nd Protestor.

6. It was the Petitioner's case that the land in RONGENA KAITET did not form part of the deceased's estate as he bought the

same individually. It was the Petitioner's further case that the deceased allocated the 1st Protestor 10 acres of KERICHO/KIPSONOI S.S/276 which she sold to other people including the 2nd Protestor. That the 1st Protestor disposed off the entire 10 acres and purchased other properties elsewhere.

7. The Petitioner stated that despite the 1st Protestor a portion of KERICHO/KIPSONOI S.S/276, he allocated 18 acres of KERICHO/KIPSONOI S.S/276 to her children.

8. In regards to KERICHO/GETARWET/136, the 1st Protestor had not set foot on the said land as it was the 1st property the deceased purchased with their late mother (Grace Maina). That the said parcel belonged to the 1st household. The Petitioner further stated that the 1st Protestor wanted to sell the deceased's estate and had brought third parties to the estate forcing him to report the same to the police. That the 1st Protestor wanted to be added as an administrator as she had sold part of her portion to third parties.

Protests

1st Protestor

9. Through her Affidavits of Protests dated 6th November 2024 and 24th January 2025, the 1st Protestor stated that she was the deceased's 2nd widow and that the deceased's estate comprised of: -

- i) KERICHO/KIPSONOI S.S/276
- ii) KERICHO/GETARWET/135 (10.52 hectares)
- iii) KETRACO compensation worth Kshs 2,775,045/=

10. It was the 1st Protestor's case that the deceased had subdivided 12 acres of KERICHO/KIPSONOI S.S/276 to the 1st household and gave the remaining portion to her household. That the deceased also sold part of KERICHO/KIPSONOI S.S/276 to Aloise Kipkorir Arap Chepkwony (deceased) (4 acres) and Ernest Bartai (2nd Protestor) (1 acre).

11. The 1st Protestor stated that before his demise, the deceased had allocated the Petitioner family land in RONGENA KAITET measuring 16 acres. That after the demise of the deceased, the Petitioner forcefully evicted the 2nd household and subjected them to torture and attempted to also evict Ernest Bartai who was a liability to the deceased's estate.

12. The 1st Protestor's proposed mode of distribution was as follows: -

LIABILITIES

Ernest Bartai	KERICHO/KIPSONOI S.S/276	1 acre
Patrick Kipyegon Korir (holding in trust for the sons and daughters of the late Allois Kipkorir	KERICHO/KIPSONOI S.S/276	4 acres

Chepkwony)		
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KERICHO/KIPSONOI S.S/276

Anna C. Maina	Widow	7 acres
Leah Langat (holding in trust for the heirs of Simon Langat)	Daughter in law	12 acres
Philemon Kiprono Langat	Son	8 acres
Erickson Kiprono Langat	Son	8 acres
Hellen Chepkoech	Daughter	3 acres
Loice Chebet Koech	Daughter	3 acres
Dorcas Chemutai	Daughter	3 acres
Damaris Chepkorir	Daughter	3 acres

KERICHO/GETARWET/136

Caliph Langat	Kipyegon	Son	3 acres
Charles Langat	Kibet	Son	3 acres
Jimmy Langat	Kipkorir	Son	3 acres
Benard	Langat	Son	3 acres
Barnabas Kipngeno	Langat	Son	3 acres
Raeli Cherorot	Chepkoech	Daughter	1.75 acres
Betty Maina	Chepkurui	Daughter	1.75 acres
Rebecca Chepkemoi	Koech	Daughter	1.75 acres
Dinner Maritim	Chelangat	Daughter	1.75 acres
Anna C.	Maina	Widow	2 acres

Philemon Langat	Kiprono	Son	1 acre
Erickson Langat	Kiprono	Son	1 acre

13. Through her Further Affidavits dated 25th January 2025 and 3rd March 2025, the 1st Protestor stated that it was true that the 3rd Protestor was entitled to 6 acres of KERICHO/KIPSONOI S.S/276 and had been in occupation.

2nd Protestor

14. Through his Affidavit of Protest dated 27th January 2025, the 2nd Protestor stated that he was a liability to the deceased's estate as he purchased 1 acre of KERICHO/KIPSONOI S.S/276 from the deceased. That the Petitioner had intermeddled with the estate by distributing it amongst his family members and locking him out. The 2nd Protestor further stated that the Petitioner had sold part of the deceased's

land that were adjacent to his. The 2nd Protestor prayed that this court include him as a liability to the deceased's estate.

3rd Protestor

15. Through his undated Affidavit of Protest, the 3rd Protestor stated that he was the son of Allois Kipkorir Chepkwony (deceased) who was a liability to the deceased's estate. That his late father purchased 4 acres of KERICHO/KIPSONOI S.S/276 from the deceased and 2 acres of KERICHO/KIPSONOI S.S/276 from Simion Langat (deceased) during their lifetimes. The 3rd Protestor objected to the Petitioner holding the 6 acres of KERICHO/KIPSONOI S.S/276 in trust for them. The 3rd Protestor prayed that this court include him as a liability to the deceased's estate.

16. On 2nd October 2025, the court directed parties to submit on the mode of distribution.

Petitioner's written submissions

17. Through his written submissions dated 4th March 2026, the Petitioner submitted that his proposed mode of distribution as captured in his Application dated 8th January 2025 bore the deceased's true wishes. The Petitioner further submitted that the 1st Protestor had failed to prove that she was the deceased's widow. That the deceased never intended to marry the 1st Protestor but only brought her into the homestead to assist their late mother. He relied on **section 3 of the Law of Succession Act, section 2 of the Marriage Act** and **Mary Nyambura Kangara v Paul Ogari Mayaka [2023] KESC 2 (KLR)**.

18. It was the Petitioner's submission that if the court found that the 1st Protestor was the deceased's widow then it considers her period of marriage vis a vis her contribution. He relied on **re Estate of Solomon Ngatia Kariuki (Deceased) (2013) eKLR, re Estate of John Musambayi Katumanga (Deceased) (2014) eKLR et.al.**

19. The Petitioner submitted that the deceased, in his lifetime, sold portions of his estate to Alloys Kipkorir Chepkwony and African Gospel Church. That the 2nd Protestor did not purchase 1 acre of KERICHO/KIPSONOI S.S/276 from the deceased. The Petitioner further submitted that the documents relied upon by the 2nd Protestor were null and void for want of the deceased's signature.

20. It was the Petitioner's submission that the deceased allocated Baragunin Self Help Group 10 acres of KERICHO/KIPSONOI S.S/276.

The Protestors' written submissions

21. Through their written submissions dated 5th November 2025, the Protestors submitted that the deceased's estate ought to be shared equitably between the two households. That the Petitioner's proposal to grant KERICHO/GETARWET/136 to the 1st household and KERICHO/KIPSONOI S.S/276 to the 2nd household was unfair. They relied on **section 40 (1) of the Law of Succession Act, Rono v Rono and another**

(2005) eKLR, re Estate of Lerionka Ole Ntutu (2019) eKLR et.al.

22. It was the Protestors' submission that the value of the estate and not the acreage should dictate fair distribution. That KERICHO/GETARWET/136 was three times more valuable than KERICHO/KIPSONOI S.S/276. It was the Protestors' submission that the Petitioner's proposal was discriminatory and contrary to **section 40 of the Law of Succession Act**. They relied on **Article 27 (1) and (4) of the Constitution of Kenya** and **re Estate of Mbiyu Koinange (Deceased) (2021) eKLR et.al.**

23. The Protestors submitted that the 2nd and 3rd Protestors were liabilities to the deceased's estate. That the deceased and his son sold 6 acres of KERICHO/KIPSONOI S.S/276 to the 3rd Objector and 1 acre to the 2nd Objector. They further submitted that the 2nd and 3rd Objectors had been in occupation for over 15 years. They relied on **re Estate of**

Njau Kairu (Deceased) (2002) eKLR, re Estate of Joyce Wanjiku Kamau (Deceased) (2020) eKLR et.al.

24. It was the Protestors' submission that the inclusion of African Gospel Church Canaan was unlawful and was an afterthought. That it violated **Rule 41(1) of the Probate and Administration Rules** which required all parties be included before distribution. They relied on **re Estate of Kahindi Ngala Mangi (Deceased) (2016) eKLR, re Estate of Mwaura Mutero (Deceased) (2018) eKLR et.al.**

25. The Protestor submitted that the KETRACO compensation of Kshs 1,186,080/= awarded to the 2nd Protestor should not be merged with the estate's compensation of Kshs 2,775,045/=. The Protestors proposed that KERICHO/GETARWET/136 be shared equally between the 1st and 2nd households based on the number of children, KERICHO/KIPSONOI S.S/276 be shared after deducting the liabilities of the 2nd and 3rd Protestor and the KETRACO compensation of Kshs

2,775,045/= be shared equally amongst all biological children of the deceased.

26. I have keenly read through and considered the record; the Petitioner's written submissions dated 4th March 2026 and the Protestors' written submissions dated 5th November 2025. The only issue for my determination is how to distribute the deceased's estate.

27. On record are two Partial Mediation Settlement Agreements dated 3rd July 2025 and 6th August 2025. The same were adopted as an order of the court on 2nd October 2025. The Partial Agreements stated that: -

- i) The KETRACO compensation be distributed equally among all the deceased's beneficiaries.
- ii) The deceased's beneficiaries were as follows: -

1st Household

Simon Langat (deceased) but represented by Leah Langat.

Eunice Langat (deceased) but represented by Dickson Ngetich.

Barnabas Langat

Rael Chererot.

Betty Chelule.

Linah Maritim.

Caliph Langat.

Charles Langat.

Jimmy Langat.

Benard Langat.

2nd Household

Anna Chepkoech Maina.

Erickson Kiprono Langat.

Philemon Kipkurui Langat.

Loice Chebet.

Dorcas Chemutai.

Damaris Chepkorir.

Elizabeth Maina.

28. From the above, it was clear that the deceased died a polygamous man. The law which relates to the distribution of his estate is **section 40 of the Law of Succession Act** which provides: -

(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.

29. Section 35 of the Law of Succession Act provides: -

(1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—

(a) the personal and household effects of the deceased absolutely; and

(b) a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow that interest shall determine upon her re-marriage to any person.

(2) A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of

gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.

(3) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or, if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.

(4) Where an application is made under subsection (3), the court shall have power to award the applicant a share of the capital of the net intestate estate with or without variation of any appointment already made, and in determining whether an order shall be made, and if so what order, shall have regard to—

- (a) the nature and amount of the deceased's property;**
- (b) any past, present or future capital or income from any source of the applicant and of the surviving spouse;**
- (c) the existing and future means and needs of the applicant and the surviving spouse;**
- (d) whether the deceased had made any advancement or other gift to the applicant during his lifetime or by will;**
- (e) the conduct of the applicant in relation to the deceased and to the surviving spouse;**
- (f) the situation and circumstances of any other person who has any vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under his will (if any); and**
- (g) the general circumstances of the case including the surviving spouse's reasons for withholding or exercising the power in the**

manner in which he or she did, and any other application made under this section.

(5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children. (Emphasis mine)

30. The court in **Re Estate of John Musambayi Katumanga - (Deceased) [2014] KEHC 7506 (KLR)** held as follows: -

“The spirit of Part V, especially Sections 35, 38 and 40, is equal distribution, of the intestate estate amongst the children of the deceased. There have been debates on whether the distribution should be equal or equitable. My

reading of these provisions is that they envisage equal distribution for the word used in Sections 35(5) and 38 is “equally” as opposed to “equitably”. This is the plain language of the provisions. The provisions are in mandatory terms - the property “shall ... be equally divided among the surviving children.” Equal distribution is envisaged regardless of the ages, gender and financial status of the children.”

31. The Court of Appeal in **Scolastica Ndululu Suva v Agnes Nthenya Suva [2019] KECA 1053 (KLR)** stated: -

“In Mary Rono vs Jane Rono & another (supra), Waki JA in the leading judgment, accepted the proposition that the Court had the discretion in ensuring a fair distribution of the deceased’s estate but that the discretion must be exercised judicially on sound legal and factual basis.....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.”

32. Similarly, in **re Estate of Nzolove Kisuke alias Daudi Nzolove Kisuke (Deceased) [2022] KEHC 1495 (KLR)**, Odunga J. (as he then was) held: -

“It is therefore clear on judicial authority that the strict application of section 40 of the Law of Succession Act may well lead to an absurdity and I associate myself with the opinion of the Court of Appeal that the said section only provides a general provision for the distribution of the estate of a polygamous deceased person. However, 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.....”

33. More recently, the Court of Appeal in **Kilonzo vs Kilonzo & another (Civil Appeal E351 of 2021) [2024] KECA 354 (KLR) (12 April 2024) (Judgment)** held: -

“In our view, parties need to understand that the distribution of an estate is not a mathematical exercise. A court of law dealing with the distribution of an estate has the discretion to ensure fair distribution is done, but the discretion has to be exercised judiciously based on sound legal and factual basis. In addition, the circumstances of each case have to be considered taking into account inter alia, the number of houses; the number of children in each house; the circumstances of each

beneficiary; and any gift that may have been given to a beneficiary during the lifetime of deceased but always bearing in mind that the factors to be considered cannot be exhaustive. Of paramount consideration in the exercise of discretion in distribution is to ensure justice is done so that there is no blind application of section 40 of the Law of Succession Act.”

34. From the above authorities, it is clear that the court has discretion when deciding on the mode of distribution of an estate of a polygamous person. Among the factors that the court takes into consideration are the number of houses and the number of children per house. More importantly, a court should consider each case on its own merit as the circumstances of each case differ from one another.

35. In the present case, the Petitioner's claim that the 1st Protestor was not a widow of the deceased was extinguished

by the Partial Mediation Settlement Agreements referenced earlier in this Ruling. The 1st Protestor was the deceased's 2nd wife hence a beneficiary to his estate.

36. Having gone through the record, I have noted the current proceedings are a fight between the 1st household and the 2nd household with each household trading and countering allegations at each other.

37. In regards to KERICHO/GETARWET/136, the Petitioner stated this parcel belonged to the 2nd household and did not include any members of the 1st household in his proposed mode of distribution. The Protestors submitted that the parcel ought to be divided equally among the households. Having analysed the arguments by all parties, I am guided by the provisions of **section 35 and 40 of the Law of Succession Act** and I find that in the interests of justice, the said parcel be shared equally among the two households.

38. In regards to KERICHO/KIPSONOI S.S/276, this appears to be the contested parcel. The Petitioner stated that this parcel was bought by the deceased and his late mother and was not available for distribution to the 2nd household. Recognizing the difficulty, the Court faced in the eventuality of distribution, it sent the parties for mediation in an attempt to reach a solution or compromise that benefited all the parties taking into consideration the circumstances or developments on the ground. Unfortunately, the mediation bore no fruit and the court is faced with the difficult task of distribution. Having found the 1st Protestor as a beneficiary of the deceased's estate, I am again guided by the provisions of **section 35 and 40 of the Law of Succession Act** and I find that in the interests of justice, the said parcel be shared equally among the two households.

39. The Petitioner stated that the deceased allocated the 1st Protestor 10 acres of KERICHO/KIPSONOI S.S/276 but the 1st Protestor sold the same to purchasers including the 2nd Protestor. I have gone through the record and I have noted

that the Petitioner did not adduce or attach any evidence to back up his claim. The same remained unfounded and is considered an allegation. This argument fails.

40. Regarding the issue of liabilities of KERICHO/KIPSONOI S.S/276, it was an undisputed fact that the deceased and his son sold 6 acres of KERICHO/KIPSONOI S.S/276 to Allois Kipkorir Chepkwony (deceased) who was now represented by the 3rd Protestor. It is however salient to state that it was disingenuous for the Petitioner to claim in his proposed mode of distribution that he wanted to hold the 6 acres in trust for the 3rd Protestor and his siblings.

41. On the issue of the 2nd Protestor, the 2nd Protestor stated that he purchased 1 acre of KERICHO/KIPSONOI S.S/276 from the deceased during his lifetime. He attached a Sale Agreement as evidence of his purchase. Unfortunately, this court is unable to determine the ownership status of the parcel as alleged by the 2nd Protestor as the jurisdiction is vested with the Environment and Land Court.

42. However, there was additional evidence on record buttressing the 2nd Protestor's claim. The 1st Protestor filed an Affidavit dated 3rd March 2025 which corroborated the 2nd Protestor's claim that he purchased 1 acre of KERICHO/KIPSONOI S.S/276 from the deceased in his lifetime. Additionally, the 2nd Protestor filed a letter from KETRACO dated 13th March 2017 which was a proposal to pay the 2nd Protestor Kshs 1,186,080/= as compensation for the use of his portion of land in KERICHO/KIPSONOI S.S/276 as a leave corridor/route. In my view, this was *prima facie* evidence that the 2nd Protestor was the owner of a portion of KERICHO/KIPSONOI S.S/276.

43. Flowing from the above, it is my finding that the 2nd and 3rd Protesters were liabilities to the deceased's estate.

44. On the issue of Baragunin Self Help Group and African Gospel Church Canaan, it is my finding that the same was an afterthought. They were neither listed as part of the

deceased's estate nor had a formal application be done to include them as part of the deceased's estate. A formal application would allow the parties and the court to test and determine the veracity of their status as part of the deceased's estate. It is my finding therefore that Baragunin Self Help Group and African Gospel Church Canaan do not form part of the deceased's estate.

45. In the end, I make the following orders: -

- I. The Grant dated 21st October 2015 be rectified to include Barnabas Kipngeno Langat and Anna Chepwogen Maina as the joint administrators.
- II. KERICHO/GETARWET/136 be shared equally among the 1st and 2nd households.
- III. Ernest Bartai (2nd Protestor) be allocated 1 acre of KERICHO/KIPSONOI S.S/276.
- IV. Patrick Kipyegon Korir (3rd Protestor) be allocated 6 acres of KERICHO/KIPSONOI S.S/276.
- V. The remaining acreage of KERICHO/KIPSONOI S.S/276 be shared equally among the 1st and 2nd households.

VI. A Certificate of Confirmation of Grant to issue.

**Ruling delivered, dated and signed at Bomet this 4th Day
of May, 2026.**

.....
HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling Delivered in the presence of;

Susan/Siele Court Assistant

Ondieki for Petitioner

J.K. Koech for Objectors