



REPUBLIC OF KENYA



In re Estate of William Kamuren Chirchir Chepkut (Deceased) (Succession Cause E007 of 2023) [2025] KEHC 662 (KLR) (31 January 2025) (Ruling)

Neutral citation: [2025] KEHC 662 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E007 OF 2023
RN NYAKUNDI, J
JANUARY 31, 2025**

BETWEEN

DANIEL KIPROTICH CHIRCHIR 1ST PETITIONER

CAROLYNE JEBIWOTT CHIRCHIR 2ND PETITIONER

CHRISTIAN KIPKOECH CHIRCHIR 3RD PETITIONER

AND

MILCAH JEPNGETICH SAMOEI 1ST OBJECTOR

BETCY CHERUTO BIRGEN 2ND OBJECTOR

AND

NAOMI MUTIO NZIOKA JUDGMENT CREDITOR

AND

MWANANCHI CREDIT LIMITED INTERESTED PARTY

RULING

Background

1. This matter concerns the petition for Grant of Letters of Administration for the estate of the late William Kamuren Chirchir Chepkut (hereinafter "the deceased"). The petition was jointly filed by Daniel Kiprotich Chirchir (brother), Caroline Jebiwott Chirchir (sister), and Christian Kipkoech Chirchir Chepkut (son) in their respective capacities as siblings and offspring of the deceased.
2. The petition has attracted two contentious applications. The first is by Milcah Jepngetich Samoei, who identifies herself as the widow of the deceased. The second is an objection filed by Betsy Cheruto Birgen, who also claims to be the deceased's widow and mother to two of his minor children.



The Application by Milcah Jepngetich Samoei

3. Milcah Jepngetich Samoei's application dated 10th March, 2023 sought primarily to stay the publication of the cause in the Kenya Gazette and any further proceedings. She additionally requests the court's direction regarding the proper parties to petition for the Grant of Letters of Administration, contending that the current petitioners lack the requisite capacity under the *Law of Succession Act*.

Replying affidavit to the application dated 10th March, 2023

4. In opposition to the application, the 1st Petitioner/Respondent, Daniel Kiprotich Chirchir, filed a replying affidavit sworn on 20th March 2023, raising several pertinent issues. The Respondent, being the biological brother of the deceased, contended that the Applicant had been estranged from the deceased for more than ten years prior to his demise, a fact evidenced by Eldoret Divorce Cause No. 68 OF 2021, which the Applicant herself had filed seeking to dissolve the marriage. The Respondent points out that the said divorce cause was scheduled for hearing on 19th January 2023, and it was only after the deceased's passing that the Applicant filed a notice of withdrawal on 30th January 2023.
5. The Respondent further deposed that there existed a toxic relationship between the Applicant and the deceased's family. Additionally, that the Applicant had filed a separate matrimonial cause (Eldoret High Court Matrimonial Cause No. 2/2021) seeking distribution of matrimonial property. The Respondent maintains that they have legitimately included all the deceased's children as beneficiaries, including those of the Applicant, despite the estrangement. The affidavit also highlights that the Applicant has failed to provide details of any allegedly omitted assets, and the question of whether she is the sole widow remains a matter for determination during the confirmation of grant stage.
6. In a further affidavit by Milcah Jepngetich Samoei sworn on 16th May, 2023, the applicant strongly contested the representations made by the Respondents. The Applicant categorically refutes the claim that she and the deceased were separated for over 10 years, characterizing such assertions as "blatant misrepresentations, fabrications and material non-disclosure calculated to mislead the Honourable Court."
7. The Applicant acknowledged filing Eldoret Divorce Cause No. 68 of 2021 due to marital difficulties but emphasized that the case remained undetermined at the time of the deceased's passing, thus maintaining her legal status as his wife. She painted a picture of an ongoing relationship, including her participation in his 2022 election campaign and attendance at family functions, supported by annexed photographic evidence. Furthermore, she asserted that community elders were involved in reconciliation efforts, and that the deceased consistently acknowledged their marital status in official contexts, as evidenced by documentary proof. Regarding the administration of the estate, the Applicant cited Section 66 of the *Law of Succession Act*, which grants her priority rights as the widow to petition for letters of administration. She also raised concerns about the Respondents' handling of the matter, particularly their approach to involving her son Christian in the petition without proper consultation, and noted that the 2nd Respondent's residence in Australia would impede effective administration of the estate. The Applicant concluded by requesting the court to make a proper determination regarding the rightful persons to petition for the Grant of Letters of Administration, maintaining that her application should be allowed as prayed.

The Objection by Betsy Cheruto Birgen

8. Betsy Cheruto Birgen came in with an objection to making of Grant dated 19th April, 2023 on grounds that she is the widow to the deceased and out of their marriage with the deceased they were blessed



- with two children all of whom are minors. That as such, together with the minors they are dependants of the estate of the deceased. She contended that being a spouse to the deceased, she ranks in priority to the siblings of the deceased in applying for grant of letters of administration hence the same ought not be granted in their favour.
9. The Petitioners through Daniel Kiprotich Chirchir put in a response to the said opposition and raised significant objections to the Objector's claims. The Petitioners firmly asserted that the Objector is not the widow of the deceased as alleged, and has failed to produce any evidence to substantiate her claim of being the deceased's wife. While acknowledging that the deceased had two children with the Objector, the Petitioners maintain that the deceased was legally married to one Milcah Jepng'etich Samoei through a statutory monogamous marriage, which would have made any subsequent marriage to the Objector legally impossible.
 10. The Petitioners further addressed the question of residence and burial location, confirming that the deceased, by virtue of his political office, maintained residences in both Nairobi and their rural home in Kapsundei Location. They contested the legitimacy of a chief's letter from Chepkero Location presented by the Objector, arguing that the deceased did not hail from that location. Instead, they relied on the chief's letter from Kapsundei Location, where the deceased was interred, as confirmation of his true residency, a fact they noted the Objector has not disputed. The affidavit also dismissed the Objector's claims regarding dependency on the deceased as unfounded, characterizing her as "a mere mistress" whose children have been acknowledged as heirs. The Petitioners, citing Section 66(b) of Cap. 160 of the laws of Kenya, maintained their legal standing to move the court regarding their late brother's estate and argued that the objection lacks merit and should not be allowed as it would not serve the ends of justice.
 11. The latest summons which came in was done by Dassie Negussie Ambasie. In the summons dated 25th October, 2024 she sought orders as follows:
 - a. That pending hearing and determination of this application, the Honourable court be pleased to issue a restraining order against Parliamentary Service Commission from releasing the monetary benefits owed to the deceased to any person unless otherwise ordered by this Honourable Court.
 - b. That pending hearing and determination of this suit, this honourable court be pleased to apportion the monetary benefits of the deceased in equitable percentages amongst the three wives and the mother of the deceased and further order for the release of the same by the Parliamentary Service Commission.
 - c. This Honourable Court be pleased to order for the grant of letters of administration to issue in favour of the joint names of the wives of the deceased.
 - d. Costs be provided for.
 - e. Any other order that this court will be pleased to issue in the circumstances.
 12. In support of the application, the Objector/Applicant averred that she is the third wife of the deceased and the mother to Zahir Kamuren Chirchir Chepkut and Habil Kamuren Chirchir Chepkut. She further deposed that the petitioners have petitioned this honourable court for grant of letters of administration intestate without notice or citation to the applicant herein or any of her two other co-wives namely Milcah Chepnetich Samoei, and Bitcy Cheruto Birgen.
 13. The focus of this instant ruling is on the Objection to making of the Grant. The objection was initially considered by this court and vide a ruling dated 25th May, 2023, the court ruled that the objection had



not ripened for determination. The same position was clearly laid out in a subsequent ruling dated 6th may, 2024 where this court considered a number of application filed by parties and decreed as follows:

“At a glance of the record the litigation in this Probate Cause No. E007 of 2023 has not ripened for reason that the Petition for grant of letters of administration which are at the heart of such proceedings is yet to be gazetted and subsequently issued to the appointed administrators or in any event executors. The court therefore cannot be invited to exercise jurisdiction under the succession Act without first the parties demonstrating evidence of a special grant of letters of administration limited for a particular purpose like prosecution or preservation of the estate. The court has power to strike out any proceedings which are ultra-vires the provisions of the *Law of Succession Act*. The locus standi as who has the capacity to sue or to be sued on behalf of the estate of the deceased remains moot.”

14. The matter has been officially published in the Gazette Notice dated October 4, 2024, and consequently, the case is now ready for a determination as to the proper party to petition for a grant of administration within the Probate and Administration Rules which contains a requirement that the making of the Grant can be objected to within 30 days from the date of gazettelement. It is worthy to note that the ruling at this stage is not in respect of the consolidated action but the one to unlock the making of the Grant of representation pursuant to section 66 of the *Law of Succession Act*.

Analysis and determination

15. At the heart of all these applications, is whether the deceased’s estate is to be determined as an intestate estate or that of testate. Given the primary petition as deduced from the materials in form P&A 57, Form 38, P&A 12, P&A 5, the petitioners namely: Daniel Kiprotich Chirchir, Carolyne Jebiwot Chirchir and Christain Kipkoech Chirchir Chepkut who happen to introduce themselves as siblings to the deceased and son respectively lodged the petition for onward transmission to the government printer for gazettelement as administrators to the intestate estate of the deceased. In the making of the Grant of administration intestate form 38 dealing with consent was signed by the following:
 - a. Grace Jepkemboi Chirchir
 - b. Peter Komen Chepkut
 - c. Monicah Jepkorir Chirchir
 - d. Stellah Jekorir Chirchir
 - e. Isaack Kiptoo Chirchir
 - f. Enock Kipkosgei Chepkut
16. A glance of the letter of the chief by the chief of Kapsundei Sub-location dated 28th October, 2022 acknowledged the above as beneficiaries to the estate and in addition the following direct lineage were also stated to survive the deceased:
 - a. Jerono Kabon Chirchir – Mother
 - b. Christian Chirchir – Son
 - c. Nicholas Chirchir – son
 - d. Dylan Kimutai – son
 - e. Habil Chirchir – Son



- f. Darrel Kipchumba – son
 - g. Zahir Chirchir – son
17. It is also clear from the Kenya Gazette dated 4th October, 2024 by dint of the Petition appropriately lodged, the government printer released an advert touching on the deceased’s estate premised as follows:

“ TAKE NOTICE that an application having been made I this court in:

CAUSE NO. E007 OF 2023

By (1) Daniel Kiprotich Chirchir, (2) Carolyn Jejiwott Chirchir and (3) Christian Kipkoech Chirchir Chepkut, for a grant of letters of administration intestate to the estate of William Kamuren Chirchir, who dies at Parklands, on 8th October, 2022.

The court will proceed to issue the same unless be shown to the contrary and appearance in this respect entered within thirty (30) days from the date of publication of this notice in the Kenya Gazette.”

18. As a consequence of this, if there was no objection raised, the above name persons were to be granted the Letters of Administration from this court in probate cause No. E007 of 2023. The details from the affidavits demonstrate that they are brother, sister and a son to the deceased and as pointed out by the letter from the chief, they are named allegedly as beneficiaries of the deceased estate. This petition gave rise to an avalanche of cross petitions against the making of the grant to any of the gazetted petitioners. This forms the substratum of the subject matter for this court to adjudicate at the interlocutory stage to pave way for the administration of the deceased who allegedly died intestate. The dispute in both of the actions lodged by the various beneficiaries, interested parties boils down to the million-dollar question as to who are the rightful administrators and beneficiaries of the deceased estate. In short, the parties herein are duelling over the estate of the deceased so that none of them is left out from getting a pie or a piece of the estate notwithstanding their degree of consanguinity and affinity to the deceased.
19. The central question before me then concerns the determination of appropriate administrators for the deceased’s estate. The 1st and 2nd petitioners do not dispute the fact that they are siblings to the deceased. In accordance with Section 66 of the *Law of Succession Act* (Cap 160), which governs intestate succession, there exists a prescribed order of preference for selecting estate administrators where the deceased has died without a valid will. This provision delineates a clear hierarchical order of preference for potential administrators, with primary consideration given to surviving spouses, followed by the deceased’s children. The relevant statutory provision states:

“ When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interest of all concerned, be made, but shall without prejudice to that discretion, accept as a general guide the following order of preference-

- a. Surviving spouse or spouses, with or without association of other beneficiaries;
- b. Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interest as provided by part V;
- c. The Public Trustee; and
- d. Creditors



20. The procedural requirements for administration applications are further elaborated in Rule 7(7) of the Probate and Administration Rules. This rule stipulates that when an individual with a lesser right to administration seeks appointment, they must fulfil one of three requirements: obtain explicit consent from those with higher priority rights, secure formal renunciation of rights from such parties, or issue citations requiring these parties to either pursue their administrative rights or formally renounce them. For avoidance of doubt, the provision reads as follows:

“7) where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has: -

- a) renounced his right generally to apply for a grant or
- b) consented in willing to the making of the grant to the application;
Or
- c) been issued with a citation calling upon him either to renounce such right or to apply for a grant.

21. The 1st Objector Milcah Jepngetich deposed in her affidavit that upon realizing that a petition has already been lodged, at the High Court in Probate cause No. E007 of 2023 she moved with speed to stop any further legal steps in the making of the grant including its gazettement of the proposed administrators. She contended and averred that none of the alleged petitioners notified her of any intention to lodge a petition to administer the estate of her late husband, the deceased herein therefore bringing into question the legality, regularity, propriety and correctness of the proceedings in the making of the grant of representation. The 1st Objector placed reliance on her legal standing as a lawfully married spouse to the deceased as evidence the Certificate of Marriage dated 25.4.1993.

22. The Objector armed with this material evidence invited the court to find that any proposed petition for the making of the grant without her involvement and participation is in contravention of the law. That the said appointment was done without her consent and the rest of her children. As a surviving spouse, it was her averment on oath that she ranks higher together with her children as beneficiaries to the deceased estate in exclusion of other claimants who will be under duty to establish their dependency under Section 29 of the Act.

23. As stated elsewhere in this ruling, by the affidavit in opposition, to the evidence in support of the application in objecting to the making of grant of representation, it is averred by the Petitioners that this step of petitioning for grant of representation was informed by the facts in existence that the 1st Objector had since been estranged with her husband, the deceased. In the same surrounding circumstances, she had even moved the chief magistrate's court in Divorce Cause No. 68 of 2021 seeking the dissolution of the marriage which cause of action on demise of the deceased was withdrawn appropriately on 30.1.2023. That is the substratum of the opposition to the application by the objector seeking the remedy of annulling the making of the grant of representation in favour of the petitioners.

24. This court also takes judicial notice that the letter generated by the area chief does not provide exact specifics as to the surviving spouse or spouses and or children of the deceased. This statement is informed of the respective affidavits from other persons claiming to be beneficiaries of the estate of the deceased identifying themselves as either wife and children of the deceased with a right of inheritance



within the framework of the law. All these issues as to who is a dependant save for the objector and her children survived of the deceased are matters to be delved into at an opportune time by way of viva voce evidence in the event of full-blown contestation. As of now, procedural law requires that administrators be identified by either the family as a unit to be appointed to administer the estate in the scheme of the provisions of the *Law of Succession Act*. Since William Kamuren Chirchir Chepkut died intestate, the management of his estate is subject to the provisions of the Intestate Succession Act.

25. I have had the advantage of appraising all the relevant material and the criteria to be satisfied in the making of the Grant of representation and based on the foregoing, I am persuaded that in terms of Section 76 of the Act, the purported order of appointment of administrators was null and void. In support of the foregoing statement, a citation of the extract of the law as it is, is hereby stated for the benefit of the applicable findings in support of the objection proceedings.

“76. Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any Interested Party or of its own motion—

- a) that the proceedings to obtain the grant were defective in substance;
- b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - i. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - ii. to proceed diligently with the administration of the estate; or
 - iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- e) that the grant has become useless and inoperative through subsequent circumstances.”



26. The scope and application of section 76 was clearly expounded by the court In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR where it was stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

27. The applicant also averred that the Respondent/Petitioners applied for letters of administration fraudulently for absence of lack of the necessary consent as required by the Law of Succession where the first applicant objector's final submissions and averments, she urged the court that she was the only undisputed legally married spouse by the deceased. That during the subsistence of the marriage with the deceased, they happened to be blessed with children out of that union.
28. I now turn to the question as to whether the applicant has proved, the petitioners/respondents, fraudulently obtained the necessary forms and subsequently petitioned for the grant of administration in contravention of section 76 of the Act. Black's Law dictionary defined the term fraud as follows: “knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his/her detriment. In the instant application, there is no dispute that the 1st applicant is the spouse to the deceased notwithstanding that at one time they had differences but the same never ended at the dissolution of the marriage. This process of the making of grant seems to substantially focus on the siblings of the deceased in exclusion of his spouse or as the case may be and the bloodline children survived of the deceased. In order to draw a proper inference of whether the petition for letters of administration were properly petitioned for towards the making of the Grant of representation, the letter of the chief is devoid of any mention of a surviving spouse or the exact number of children in the first degree to the family tree of the deceased. Undoubtedly, from the affidavit evidence of the 1st Applicant/Objector, the impugned proceedings as indicative from the content and text in the various necessary forms filed by the petitioner/respondents, the making of the grant was obtained fraudulently. In addition, the statement of facts did not take into account the need for notice to the other beneficiaries to consent to the making of the grant.
29. This is a case where the spouse and children, the near relatives will only be entitled to a share upon proof of dependency. It is trite law that a dependant in relation to a deceased person means a person



who was maintained by that deceased person immediately prior to his death and was also living with him or her. In line with this definition, one has to consider the eligibility of the brothers and sisters of the deceased to benefit from his estate. The law demands of them to proof dependency. From my analysis of the evidence on record, this far I find that the two petitioners happened to be a brother and a sister to the deceased. Based on the legal architecture of the Law of Succession Act, I find that the 1st and 2nd petitioners herein are siblings to the deceased and unless otherwise proven by way of evidence of them being dependants of the deceased during his lifetime, they are not entitled to benefit from the estate. Their relationships can be based described like that of a brother and sister-in-law to the objector. Furthermore, as the deceased is survived by a spouse and children, his siblings are not entitled to rank superior against the nucleus family to entitle a benefit from the deceased's intestate estate. Essentially, the duel in this estate is between the 1st degree of consanguinity and affinity heirs to the estate as against the 2nd degree family of the deceased positively identified as brothers and sisters. In accordance to the assertion by the 1st petitioner Daniel the prior conduct of the objector also a wife to the deceased is not entitled to the estate hence the reason for her exclusion from the scheme of distribution and administration of the estate.

30. However contrary to the assertion and belief of the 1st Petitioner, the Constitution in Art. 45(3) tells a different story which states that parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.” Based on these provisions, the 1st Objector even at the dissolution of marriage in the event a decree absolute was to be the final sanction of the so referenced divorce proceedings, she could still be entitled to her share of the deceased's marital estate. Similarly, equality and non-discrimination before the law is entrenched under Article 27 (1) and (4) of the constitution. This same constitution enacted and voted for by the Kenyan people remains to the supreme law of the land in all matters of governance, human rights, and other imperatives of importance in sustaining the values that underline an open and democratic society based on human dignity, equality, equity, and fundamental freedoms. It also happens that Article 2(5) & (6) of the constitution takes cognisance the context of International law as part of our sources of law. The Highlights of the International Covenant on Civil and Political rights in Article 23 provides for equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. It specifies that women should have equal inheritance rights to those on men when the dissolution of marriage is caused by death of one of the spouses. As regards CEDAW Article 16 (h) specifically prescribes the same rights for spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property which includes that which falls under the category of inheritance. Whereas the Maputo protocol in Article 2 sets the standard in prohibiting all forms of discrimination against women. What these legal perspective demonstrate exclusion of spouses from petitioning to be part of the administration of the estate survived of the late spouse on any of the grounds specified in Article 27 (4) of the constitution is a violation of the law.
31. For those reasons the first Applicant/Objector as discharged the standard and burden of proof for this court to invoke the provisions of Section 76 of the Law of Succession Act to quash all those proceedings initiated by the respondents on 15.1.2023 seeking leave of the court to be appointed as administrators to the estate of William Kamuren Chirchir Chepkut. As a consequence, the gazette notice dated 4.10.2024 No. 12917 legally recognizing Daniel Kiprotich Chirchir, Caroline Jebiwott Chirchir and Christain Kipkoech Chirchir Chepukut as administrators to the estate of the deceased be annulled for being tainted with acts of mis presentation and non-disclosure on the part of the petitioners. That a declaration be and is hereby made that the proceedings for the making of the grant of representation to administer the estate of the deceased be commenced denovo as Cause No E07 of 2023, That each party be at liberty to apply. Status Conference on 27.2.2025
32. Orders accordingly.



DATED AND DELIVERED AT ELDORET THIS 31ST DAY OF JANUARY 2025

R. NYAKUNDI

JUDGE

In the Presence of:

M/s Diana Advocate for the 1st Applicant/Objector.

Mr. Mwaka Advocate for the interested party.

M/s Isiaho Advocate for the Proposed Administrators.

