



**In re Estate of ECC (Deceased) (Succession Cause E041 of 2021)
[2025] KEHC 1287 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1287 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE E041 OF 2021**

JK SERGON, J

FEBRUARY 27, 2025

IN THE MATTER OF THE ESTATE OF ECC (DECEASED)

BETWEEN

**LRB 1ST PROTESTOR
SCC 2ND PROTESTOR
MC 3RD PROTESTOR
JCC 4TH PROTESTOR**

AND

**RCC 1ST PETITIONER
NCC 2ND PETITIONER
RKC 3RD PETITIONER
JCC 4TH PETITIONER**

JUDGMENT

1. The Petitioners/Respondents filed summons for the confirmation of grant dated 23rd February, 2023 seeking to have the grant of letters of administration intestate made to RCC, NCC, RKC and JCC on 12th November, 2021 confirmed.
2. The Petitioners/Respondents filed an affidavit in support of the summons for confirmation of grant in which they aver that the deceased was survived by his wife and children as follows;
RCC - Widow
KCC- Son
NCC - Daughter



HCC - Daughter

RKC - Son

JCC - Daughter

KCC - Son

3. The Petitioners/Respondents aver that the deceased was not survived by any other dependents, nor did he take up other people as his dependents, they further aver that no application for provision for dependents is pending.
4. The Petitioners/Respondents avers that the identification and shares of all persons beneficially entitled to the estate of the deceased ascertained and determined as follows;



Name of Beneficiary	Description of Properties	Shares
Tass Koloo Limited	Title No. Kericho/ Kipchimchim/1XX5	100%
	Title No. Kericho/ Kipchimchim/1XX3	
	Title No. Kericho/ Kipchimchim/1XX5	
	Title No. Kericho/ Kipchimchim/4X6	
	Title No. Kericho/ Kipchimchim/5X9	
	Title No. Kericho/ Kipchimchim/3XX2	
	Title No. Kericho/ Kabartegan/1XX4	
	Title No. Kericho/ Kabartegan/1XX5	
	Land Reference No.631/IV/3 (IR No. 1XX41)	
	Title No. Kericho/ Kipchimchim/4X6	
	Bank Account at KCB A/C No. 110XXXXX08	
	Bank Account at DTB A/C No. 02804XXXX77	
	Shares in Simbelyn Company Limited	
	Shares in National Housing Corporation	



	Shares in Yasangwan Holdings Limited	
	Shares in Kipsigis Traders Limited	
	Shares in Kericho Wholesalers Limited	
	Shares in Kericho Club	
	Shares in Nenyany Company Limited	

5. The Petitioners/Respondents avers that the list of liabilities payable from the estate of the deceased is as follows;
 - County Government of Kericho - Kshs. 3,952,137/=
 - Barclays Bank of Kenya - Kshs. 15, 000/=
 - Kenya Commercial Bank - Kshs. 40,000/=
6. The 1st Protessor/Applicant in response to the summons for confirmation of grant filed an affidavit of protest with the authority of the 2nd, 3rd and 4th Protessor/Applicants.
7. The Protessor avers that she is one of the dependents of the estate of the deceased.
8. The Protessor avers that the deceased died on 15th June, 2021 while domiciled in Kenya and attached a copy of the death certificate.
9. The Protessor avers that the Petitioner/Respondents, obtained letters of administration fraudulently without the knowledge of other beneficiaries and that they did not consent to the filing of the grant as it was not signed by all the beneficiaries.
10. The Protessor avers that the Petitioner/Respondent filed the P&A 5 Form without disclosing all the beneficiaries of the deceased's estate.
11. The Protessor avers that the chief's letter dated 1st July, 2021 was obtained fraudulently and it falsely claims that the deceased was only married to one wife and excludes other beneficiaries of the estate and attached a copy of the chief's letter.
12. The Protessor avers that the deceased died intestate leaving behind the following beneficiaries;
 - 1st House
 - RCC - Widow
 - DK - Son
 - RC - Son
 - KK - Son
 - NC - Daughter
 - JC - Daughter



HC - Daughter

2nd House

EN - Widow

LRB - Daughter

SCC - Daughter

MC - Daughter

JCC - Daughter

HC - Daughter

EMK - Daughter

13. The Protestor avers that the 2nd house of the deceased were not aware of the filing of the grant as none of them was consulted and that it is in the interests of justice to have the estate of the deceased distributed equally among its beneficiaries.
14. The Petitioners/Respondents filed a reply to the affidavit of protest in which they maintained that the protest is unmerited and that they disclosed all the beneficiaries of the estate of the deceased as per the chief's letter dated 1st July, 2021 and any other beneficiary is a stranger to the estate.
15. The Petitioners/Respondents maintained that the deceased had one wife and attached a copy of the marriage certificate. They were adamant that the protestors had not proven that they were beneficiaries to the estate of the deceased and maintained that the estate should be distributed as per paragraph 6 in the affidavit in support of confirmation of grant.
16. The Court directed that the protest be canvassed by means of viva voce evidence. The Protestor availed five (5) witnesses in support of her case.
17. LRB (Pw.1) the Protestor maintained that the deceased was her biological father, she stated that she recorded a witness statement and adopted it as her evidence chief. On cross examination, she reiterated that she grew up knowing that the deceased was her biological father through her mother EN. She stated that during the burial they were recognised as the second family. On re-examination, she confirmed that she did not have a birth certificate, however, she was willing to undergo DnA testing to ascertain paternity.
18. SC (Pw.2) stated that she and her siblings were biological children of the deceased with equal rights to his estate and was willing to undergo DnA testing to ascertain paternity. She stated that she recorded a witness statement and adopted it as her evidence chief. On cross examination, she stated that the deceased bought them a parcel of land in Kipkelion and that whereas she did not possess sufficient details about the parcel, Ken Chebelyon, their step brother, was in occupation of the said parcel.
19. MC (Pw.3) stated that she and her siblings were biological children of the deceased with equal rights to his estate and was willing to undergo DNA testing to ascertain paternity. She stated that she recorded a witness statement and adopted it as her evidence chief. On cross examination, she confirmed that they had filed the protest.
20. JCC (Pw. 4) stated that she and her siblings were biological children of the deceased with equal rights to his estate and was willing to undergo DnA testing to ascertain paternity. She stated that she recorded a witness statement and adopted it as her evidence chief. On cross examination, she stated that she was recognised as a daughter of the deceased during the funeral by Rev. Leleito. She confirmed that she



- did not summon Rev. Leleito to attend court and testify. On reexamination Pw.4 confirmed that they made a formal application for DnA testing and that the application was dismissed.
21. Daniel Kiarie Kibe (Pw. 5) stated that he was in court as a witness in respect to the estate of the deceased and that he recorded a witness statement and adopted it as his evidence chief. On cross examination, he stated that he knows that LC is a daughter to the deceased. He stated that the deceased had several daughters who bore a striking resemblance with the deceased. He confirmed that he did not know that the deceased had another family.
 22. John Koe (Pw. 6) stated that he was in court as a witness in respect to the estate of the deceased and that he recorded a witness statement and adopted it as his evidence chief. He stated that lived with the family of the deceased in the same estate, he used to see the deceased in company of his daughters, the protestors herein. On cross examination, he confirmed that the deceased bore a striking resemblance with his daughters.
 23. At the end of the Protestors Case, the Petitioner/Respondent availed two (2) witnesses in support of her case.
 24. RCC (Dw.1) stated that she recorded a witness statement and adopted it as her evidence chief. In the said statement she stated that in the petition for grant of administration, she disclosed all the beneficiaries of the state of the deceased as per the contents of the chief's letter dated 1st July, 2021. She stated that she was married to the deceased and provided this court with a copy of her marriage certificate which was marked as DExh. 1. She stated that the alleged parcel of land in Kipkelion belongs to her son RC who built his home and resides there. She stated for six years her husband battled cancer, she never saw the protestors visit him nor were the protestors present at the funeral of the deceased. She reiterated that the protestors were strangers to the estate. She stated that her husband was philanthropic and supported the less fortunate, the protestors included until his demise.
 25. On cross examination, Dw.1 confirmed that she did not recognise the protestors as her children. She further confirmed that she did not possess documents to show that the deceased bequeathed their son with the parcel of land in Kipkelion. On re-examination, Dw. 1 stated that she was not aware that the deceased had another wife or family.
 26. RK (Dw.2) stated that he recorded a witness statement and adopted it as his evidence chief. In the said statement he maintained that the protesters were strangers to the estate. He stated that the land in Kipkelion is his and he currently resides on it. He therefore urged this court to dismiss the protest and proceed with confirmation of grant. On cross examination, Dw.2 confirmed that he was a son to the deceased. On re-examination, he confirmed that he was bequeathed the land at Kipkelion and that is where he resides.
 27. RDK (Dw.3) stated that he recorded a witness statement and adopted it as his evidence chief. He stated that following the demise of his father his late uncle EC the deceased herein assumed the responsibility of taking care of his family. He stated that the deceased was a man of generosity and extended help to countless people in his community. He stated that he was aware that the deceased was married to RC and he grew up alongside their children. On cross examination, he confirmed that he did not know any of the protestors. On re-examination, he confirmed that he is not a beneficiary of the estate of the deceased.
 28. This Court directed the parties to file written submissions.
 29. At the time of writing this ruling the Petitioners complied and filed written submissions whereas the Protestors had not uploaded their submissions on the Case Tracking System.



30. The Petitioners submitted that the question of who is a dependant in this context is well provided for under section 29 of the *Law of Succession Act*, a 'dependant' is defined as; "a. The wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death; b. Such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death." The Petitioners contended that the onus of proof lies with the Protestors, who have to prove the claim to paternity with the deceased and demonstrate that they are biological children. The Petitioners cited Section 107 of the *Evidence Act* which places the burden of proof on the party making an allegation and the case of *Re Estate of Patrick Mwangi Wathiga* (2015) eKLR, where the court emphasized that claimants must prove dependency and paternity in relation to the deceased.
31. The Petitioners laid emphasis on the case of *Re Estate of Patrick Mwangi Wathiga*, supra, which further established that individuals emerging after the death of a deceased person to claim a share of the estate must demonstrate attempts to be recognized as family members during the deceased's lifetime or provide compelling evidence of paternity or familial connection. The court held, thus: "... The practice of persons emerging after the demise of a deceased person purely to claim a share of properties of the deceased should be discouraged unless the alleged claimant can demonstrate attempts to be recognized as a beneficiary during the deceased's lifetime, or the deceased left clear instructions to that effect. Where someone remains delinked from a family for 24 years and only emerges after death, the burden lies on him/her to establish the claim beyond reasonable doubt..."
32. The Petitioners contended that the Protestors have not established connection to the deceased and failed to demonstrate that they are rightful heirs to the deceased's estate, their actions are therefore unfounded attempts to unlawfully benefit from the estate of the deceased.
33. The Petitioners argued that it is not in dispute that the deceased was a benevolent and philanthropic man who extended support to many disadvantaged children, aiding with school fees, food donations and clothing. While the protestors claim that the deceased paid their school fees and catered to their daily needs, they have failed to provide any evidence to substantiate these assertions. The Protestors did not place before the court any credible evidence such as receipts, correspondence, or other documentation. The Petitioners argued that generosity cannot be misconstrued as proof of parentage. Dw. 3, who is a nephew to the deceased, testified that the deceased assumed the responsibility of taking care of his siblings, mother and himself after his father passed on. The deceased paid his school fees and he tendered evidence to that effect contrary to the protestors allegations which were never backed with any iota of evidence.
34. The Petitioners cited the case of *EMM v IGM & Another* (2012) eKLR, mere acts of generosity or financial assistance from the deceased do not establish paternity. Rawal J (as she was then) pronounced herself as follows: "...Only because the deceased paid school fees and to facilitate the purchase of foreign exchange described the objector as his son, the objector does not become his son."
35. The Petitioners contended that the Protestors have failed to provide documentary evidence in form of photographs or communication to substantiate their claim to parentage and that the issue of DNA testing has since been rendered moot. The Protestors had ample opportunity to request the preservation of a DNA sample from the deceased prior to his burial, which could have facilitated a conclusive DNA analysis. Unfortunately, they failed to take such steps within the appropriate time frame. Insisting on mandatory DNA testing for non-consenting adults at this stage, especially after the Court has already adjudicated on the matter, is both untimely and speculative. The Petitioners urged this court to adopt the reasoning set out by Limo J in the case of *in re Estate of Geoffrey Mathews*



Kakuli Nzale (Deceased) (Succession Cause 7 of 2019) [2022] KEHC 14862 (KLR) (9 November 2022) (Judgment), where the Court held: "...This court subscribes to the former school of thought in view of the circumstances obtaining on this matter. The protestor states that he was 25 years of age when he met the deceased in 1999 which means he is around 47 years of age at present. When someone of that age comes to stake claim on a deceased person's estate long after the demise of the deceased, a court should treat the claim with caution. This is because estates of deceased persons need protection against intermeddlers and other persons who out of mischief emerge from nowhere after demise of deceased persons to claim a stake on such estates even where they have no nexus with the deceased persons ...

... The protestor should have applied for a DNA sample of the deceased to be taken and preserved before his burial for purposes of conclusive DNA analysis. Coming 8 years after the demise and burial of the deceased asking for DNA from the children of the deceased is both belated and speculative. This court is not persuaded to make such orders at this stage because as I have found out above, the protestor has not laid sufficient basis to claim inheritance rights over the estate in this cause. His protest fails for want of proof..."

36. The Petitioners maintained that the Protestors have failed to provide credible evidence of a biological relationship with the deceased. Their claims are riddled with inconsistencies and appear to be a deliberate attempt to unfairly benefit from the estate of the deceased.
37. Having considered the summons for confirmation of grant, the facts deponed in the affidavit of protest and the viva voce evidence and submissions by the parties, I find that the sole issue for determination is whether this court should allow the protest in light of the protestors claim on parentage.
38. On one part, the protestors contended that the petitioners did not disclose all the beneficiaries of the deceased's estate when obtaining the letters of administration in respect to the estate of the deceased, they maintained that they were biological children of the deceased with equal rights to the estate of the deceased and were willing to undergo DNA testing to ascertain paternity.
39. On the other part, the petitioner/respondents argued the deceased's benevolent and philanthropic nature notwithstanding, the deceased had one wife and they attached a copy of the marriage certificate to buttress their claim. The petitioner/respondents were adamant that the protestors had not demonstrated that they were beneficiaries to the estate of the deceased and therefore the estate of the deceased should be distributed as per paragraph 6 in the affidavit in support of the summons for confirmation of grant.
40. This court has considered the arguments by the parties and wishes to highlight that issue of DNA testing as a means to ascertain paternity is moot, this court having already adjudicated on the matter, the protestors made a formal application for DNA testing and the application was dismissed vide a ruling of this court.
41. It is the finding of this court that the protestors have not aptly demonstrated dependency and paternity. The protestors have also not furnished this court with tangible evidence in support of their claim to a stake in the estate of the deceased. I wish to reiterate the findings in *Re Estate of Patrick Mwangi Wathiga*, supra, which established that individuals emerging after the death of a deceased person to claim a share of the estate must demonstrate attempts to be recognized as family members during the deceased's lifetime or provide compelling evidence of paternity or familial connection. In the circumstances, it is clear that the affidavit of protest lacks merit.



42. Consequently, the summons for confirmation of grant dated 23rd February, 2023 is hereby allowed and the property of the deceased to be distributed as set out in paragraph 6 of the affidavit in support of confirmation of grant. Each party to bear their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 27TH DAY OF FEBRUARY 2025.

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J.K. SERGON

JUDGE

In the Presence of:

C/Assistant – Rutoh

Ondiek for the Petitioner

Kiletyen for the Protestor

