



REPUBLIC OF KENYA



**In re Estate of Kipngeno Arap Chemurany (Deceased) (Succession Cause E011 of 2023) [2025] KEHC 1238 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1238 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE E011 OF 2023  
JK SERGON, J  
FEBRUARY 26, 2025**

**BETWEEN**

**JACKLINE CHEPKURUI ..... PETITIONER**

**AND**

**JANE CHEBET NGENO ..... PROTESTOR**

**RULING**

1. The matter coming up for determination contemporaneously the summons for confirmation of grant dated 6th October, 2023 and the affidavit of protest dated 20th November, 2024.
2. In the summons for confirmation of grant dated 6th October, 2023, the Petitioner is seeking the following orders;
  - (i) That the grant of letter of administration issued to Jackline Chepkurui by this honourable court on 26.7.2023 be confirmed.
  - (ii) That the costs be provided.
3. The summons is based on the grounds stated on the face of the summons and the facts deponed in the supporting affidavit of Jackline Chepkurui the Petitioner herein.
4. The Petitioner avers that the grant of letters of administration in respect of the estate of the deceased made on 26.7.2023 and that it is therefore imperative to apply for confirmation before the lapse of six months.
5. The Petitioner avers that deceased was the sole proprietor of Kericho/Kipchimchim/226 and that the persons beneficially entitled to the estate of the deceased have been ascertained and determined as follows;
  - a. Kericho/Kipchimchim/226



Jane Chebet Ngeno - 2.44 Acres

Jackline Chepkurui - 2.44 Acres

Betty Chepkemoi Koech - 2.44 Acres

Amos Kiprotich Kigen - 2.44 Acres

Paul Cheruiyot Ngeno - 2.44 Acres

Peter Mosonik (to hold in trust for the family of Mosonik Ngeno) - 6.25 Acres

James Bett (to hold in trust for the family of Kibii Ngeno) - - 6.25 Acres

6. Jane Chebet Ngeno the protestor filed an affidavit of protest dated 20th November, 2024.
7. The Protestor avers that there exists parallel proceedings in this cause and that in Kericho High Court Succession Cause No. 121 of 1994 in respect of the estate of the late Kipngeno Arap Chemurany, where she was appointed as an administrator via the grant of letters of administration issued to her on 2.11.1995.
8. The Protestor avers that the grant was amended to include the name of Kibii Arap Terer and an amended grant of letters of administration intestate was issued to her and her co-administrator on 31.1.1996.
9. The Protestor avers that following the demise of Kibii Arap Terer, the grant of letters of administration intestate jointly issued in her name and co-administrator on 31.1.1996 were further amended by consent of the parties on 25.8.2000 and the name Tabkigen w/o Ngeno substituted in place of Kibii Arap Terer and that following the substitution the matter was referred for arbitration and contentious issues amicably resolved on 7.2.2010. The Protestor attached a copy of the minutes and agreement between the family members.
10. The Protestor avers that Kericho High Court Succession Cause No. 121 of 1994 was subsequently dismissed for want of prosecution and that she instructed her advocate to seek a review of the said orders.
11. The Protestor avers that she is aware that the Petitioner has sought and obtained a grant of letters of administration in the instant succession cause and seeks to distribute the estate in disregard of the mode of distribution amicably settled upon on 7.2.2010 as follows;
  - a. Tabutany w/o Chemurany (deceased) allocated sixteen (16) acres of land to be subdivided amongst her two sons; Kibii Terer and Mosoin Ngeno each to get 8 acres of land
  - b. Jane Chebet Ngeno (surviving widow) allocated ten (10) acres of land
12. The Protestor avers that it is not contested that the deceased was married to two wives Tabutany w/o Chemurany and Jane Chebet Ngeno.
13. The Protestor avers that being the only surviving spouse of the deceased, she therefore rank higher in priority to the Petitioner who is a daughter to the deceased and therefore the grant issued to the Petitioner without the consent of the Protestor is liable for revocation.
14. The Protestor therefore urged this Court to disregard the Petitioners proposed mode of distribution, dismiss the summons for confirmation of grant dated 6th October, 2023 and take into consideration the settlement by the beneficiaries of the estate on 7.2.2010, which settlement conforms to the Kipsigis Customary Law and provisions of section 2 (2) of the [Law of Succession Act](#).



15. This court directed the parties to file written submissions in respect to the summons for confirmation of grant and the affidavit of protest.
16. The Protestor filed submissions in which she reiterated that her preferred mode of distribution is in tandem with Kipsigis customary law and that the deceased having died intestate on 1st July 1968 according to the certificate of death on record, before the Law of Succession Act came into force on 1st July 1981. According to section 2(2) of the Law of Succession Act, his estate, therefore, falls for distribution in accordance the law and custom that applied to estates such as his prior to 1st July 1981, but the administration of the estate is subject to Part VII of the Law of Succession Act.
17. The Protestor reiterated that being the only surviving spouse of the deceased, she therefore rank higher in priority to the Petitioner who is a daughter to the deceased. The Protestor contended that the order of preference as to who ought to apply and be appointed as an administrator or administratrix is set in section 66 of the law of succession and by dint of section 66, in the instant case, therefore, the protestor being the only surviving widow to the deceased ranks in priority to the petitioner who is a child. She cited Rule 7 (7) of the probate and administration Rules that;-

“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 grant; or (b) consented in writing to the making of the grant to the applicant; or (c) been issued with a citation calling upon him to renounce such right or to apply for a grant.” The Protestor cited the case *Re Estate of Magaret Muringi Muhoro (deceased)* where justice W.Musyoka in revoking the Grant observed at paragraph 13-14 as hereunder: “The provisions of section 66 of the Act makes the right of the children to administer the estate of their departed parents secondary to that of the surviving spouse of the deceased...” The Protestor argued that the effect of the above provisions is that where a person is applying for a grant of letters of administration intestate, he must get consent from persons of equal or lower priority than him and failure to obtain the consents from the other siblings makes the proceedings of obtaining the same to be defective in substance and the said grant ought to be revoked and a new grant issued to the applicants.

18. The Protestor contended that the Grant of Letters of Administration issued in this cause is liable for revocation under section 76 of the law of Succession Act and cited the case of *Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where Musyoka J. expounded the provisions of Section 76 where he stated as follows: “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.
19. The Petitioner had not uploaded submissions on the Case Tracking System at the time of writing this ruling.



20. I have considered the application and submissions by the parties and I find that the sole issue for determination is whether the affidavit of protest has merit.
21. On the issue as to whether, the affidavit of protest is merited. Having considered the summons in support of the confirmation of grant filed by the petitioner and the affidavit of protest filed by the protestor, this court finds that the crux of the dispute between the parties is the mode of distribution. It is the petitioner's case that the estate of the deceased ought to be divided equally whereas it is the protestor's case that proposed mode of distribution in the affidavit of protest takes into consideration the settlement by the beneficiaries of the estate on 7.2.2010 and 3.6.2024. The Protestor attached minutes of the said meetings and which settlement conforms to the Kipsigis Customary Law and the provisions of section 2 (2) of the Law of Succession Act as the deceased died before the inception of the Law of Succession Act. Having considered the arguments put forward by the parties, it is the finding of this court that in the circumstances, the mode of distribution in the affidavit of protest is anchored on mutual agreement by the beneficiaries of the estate of the deceased and therefore this court will not interfere with the same. It is also the finding of this court that the letters of administration issued to Jackline Chepkurui the Petitioner by this honourable court on 26.7.2023 ought to be revoked since she ranks lower in priority to Jane Chebet Rono the Protestor who is the surviving widow of the deceased.
22. Consequently, the affidavit of protest dated 20th November, 2024 is hereby allowed. The grant be issued to Jane Chebet Rono and is hereby subsequently confirmed. The Estate to be distributed as proposed in the Affidavit of Protest. Each party to meet their own costs.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 26TH DAY OF FEBRUARY, 2025.**

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**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Miss Koech for Protestor

No Appearance for the Respondent

