



REPUBLIC OF KENYA



In re Estate of Kipyegon Arap Chepkwony (Deceased) (Succession Cause E018 of 2020) [2025] KEHC 1239 (KLR) (26 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1239 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE E018 OF 2020**

JK SERGON, J

FEBRUARY 26, 2025

**IN THE MATTER OF THE ESTATE OF THE LATE
KIPYEGON ARAP CHEPKWONY (DECEASED)**

BETWEEN

RAEL CHELANGAT NGENO APPLICANT

AND

DAVID KIPTONUI RESPONDENT

RULING

1. This court has been called upon to determine whether to adopt an out of court settlement where a panel of elders was tasked with identifying the rightful beneficiaries of the estate of the deceased.
2. On 20.3.2024 this court referred the instant succession cause for an out of court settlement where a panel of elders was tasked with identifying the rightful beneficiaries of the estate of the deceased.
3. On 3.6.2024 the panel of elders convened a meeting and resolved that the daughters of the deceased should not inherit any of the properties constituting the estate of the deceased; rather the panel decided that the daughters of the deceased were to be awarded a cow each.
4. The Applicant herein being aggrieved by the said resolution, filed an affidavit of objection against the resolution by the panel of elders.
5. The Applicant objected to the said resolution of the panel of elders because it was tantamount to violation of the *Constitution* of Kenya which guarantees equal rights to all citizens regardless of gender. The Applicant cited article 27 of the *Constitution* which states that “every person is equal before the law and has the right to equal protection and benefit of the law.” and article 27 (3) that outrightly prohibits any form of discrimination, including on the basis of gender.



6. The Applicant argued that section 38 of the *Law of Succession Act*, provides that where a deceased person dies intestate, the estate shall be equally divided among all the children of the deceased, regardless of whether they are male or female and it was therefore unlawful for the panel of elders to deny the daughters of the deceased their rightful inheritance based on traditional practices that favour the sons of the deceased.
7. The Applicant argued that the panel of elders relied on customary practices in their decision making which are inconsistent with the written law and that section 3 (2) of the *Judicature Act* provides that customary law is applicable in so far as it is not inconsistent with any written law.
8. The Applicant maintained that the court referred the matter to the panel of elders for the purpose of identifying the rightful beneficiaries to the estate and that the decision by the panel of elders denying her inheritance solely based on gender is an affront to the principles of equality and fairness entrenched in the *Constitution*.
9. The Applicant therefore urged this court to nullify the said resolution and direct that the estate of the deceased be distributed in accordance with the *Law of Succession Act* which mandates equal inheritance for all the children of the deceased irrespective of gender.
10. The Applicant urged this court to direct that the estate of the deceased be distributed under the supervision of the court to ensure compliance with the law and avoid further reliance on discriminatory customs that are inconsistent with the supervening legal framework.
11. On 24.2.2025, the matter came up for inter partes hearing, the Applicant maintained that she opposed the award by elders and that she filed an affidavit of objection against the resolution by the panel of elders whereas the Respondent stated that he was in concurrence with the resolution by the panel of elders.
12. This court finds that the sole issue for determination is whether to uphold the decision by the panel of elders. Having considered the resolution of the panel of elders, this court finds that the said resolution was tantamount to violation of the *Constitution* of Kenya which guarantees equal rights to all regardless of gender.
13. It is the finding of this court that the resolution by the panel of elders is an affront to the principles of equality entrenched in the *Constitution* and therefore the estate of the deceased should be distributed in accordance with section of 38 the *Law of Succession Act* which provides as follows; “Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.” The said section mandates equal inheritance for all the children of the deceased irrespective of gender. *In re Estate of Francis Andachila Luta (Deceased)* (Succession Cause 875 of 2012) [2022] KEHC 16900 (KLR) (23 December 2022) (Judgment) Musyoka J stated as follows; “Let me revisit section 38 of the *Law of Succession Act*. It provides for equal distribution of the estate amongst the children. The language of section 38 is gender neutral. It does not classify children into male and female, nor sons and daughters, nor men and women. There is no discrimination nor differentiation nor classification nor categorization along gender lines. That would mean that sons and daughters of a dead person are entitled on equal basis to a share in the estate of their dead parent. Section 38 does not make marriage a factor in the distribution of the estate of a dead parent. Gender and marital status are factors under customary law, but not under the *Law of Succession Act*. The estate herein is not subject to customary law, for the reasons that I have discussed in paragraphs 13, 14 and 15 a foregoing. The estate is subject to the *Law of Succession Act*, which is blind on biases founded on gender and marital status.”



14. This court is satisfied that the affidavit of objection against the resolution by the panel of elders has merit. It is upheld. The succession cause to be heard by this Court to determine the appropriate mode of distribution in compliance with the Law. Costs to be in the cause.

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

Rael Ngeno – Present in Person

David Kiptonui Biegon – Present in Person

