



REPUBLIC OF KENYA



**In re Estate of the Late Chepchilat Tangwar Chumo alias Chumo Tangwar
(Succession Cause 16 of 2020) [2025] KEHC 3851 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3851 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 16 OF 2020
JK SERGON, J
MARCH 27, 2025**

BETWEEN

ESTHER CHERUTO TANGWAR 1ST PETITIONER

DANIEL KIBET CHERUIYOT 2ND PETITIONER

AND

WILLIAM KIPKOECH RUTO 1ST OBJECTOR

JOEL KIPLANGAT CHEPKWONY 2ND OBJECTOR

RULING

1. Esther Cheruto Tangwar and Daniel Kibet Cheruiyot filed a petition for letters of administration intestate in respect to the estate of the deceased.
2. They filed an affidavit in support of the petition for letters of administration stating that the deceased died on 15/1/1984 and last known place of residence was known as Kapkormom Area.
3. They listed the beneficiaries of the estate of the deceased as follows;
Albert Chepkwony - son
Julius Chepkwony - son
Benard Chepkwony - son
Robert Chepkwony - son
Vincent Chepkwony - son
Wesly Chepkwony - son
Zeddy Chepkwony - married daughter



- Emmy Chemutai - daughter.
4. They listed the full inventory of the assets and liabilities of the estate of the deceased to wit Kericho/Poiywek/455 measuring 26 ha and one liability namely; John Chebochok Kipkoech a purchaser.
 5. William Kipkoech Ruto and Joel Kiplangat Chepkwony filed an answer to petition for grant following publication of the notice of application for the said grant in the Kenya Gazette and an objection to the making of grant on several grounds, abridged as follows;
 - i. That the 1st and 2nd objector's are the deceased's biological children and rank first in priority for grant of letters of administration to the estate of the deceased.
 - ii. That the objectors have never renounced their rights to apply for grant nor consented to the application Esther Cheruto Tangwar and Daniel Kibet Cheruiyot
 - iii. That the deceased's estate comprises of land parcels Kericho/Poiywek/455 jointly registered in the name of the deceased and his brother Cheruiyot Arap Chumo and which portion Esther Cheruto Tangwar and Daniel Kibet Cheruiyot have intermeddled and consequently listed John Chebochok Kipkoech who is not a liability with a view of defrauding the estate of the deceased to the detriment of the objectors and other legitimate beneficiaries.
 - iv. That Esther Cheruto Tangwar and Daniel Kibet Cheruiyot are neither dependants nor relatives of the deceased in the nearest degree of consanguinity as defined in section 39 (1) (e) of the *Law of Succession Act*.
 6. William Kipkoech Ruto and Joel Kiplangat Chepkwony filed a petition by way of cross - application for grant.
 7. They filed an affidavit in support of petition for grant of letters of administration intestate and stated that the deceased died on 20/7/1978 at Poiywek Village. They stated that the deceased died intestate and listed his beneficiaries to include;

Pauline Taplelei Tangwar - widow (deceased)
Esther Cheptoo Tangwar - widow (deceased)
Joel Kiplangat Chepkwony - son
Janet Chepkorir - daughter
Edwin Chepkwony - son
Chemutai Faith - daughter
Benard Chepkwony - son
Daniel Kipkemoi Ruto - son (deceased)
Elizabeth Cherotich - daughter (deceased)
William Kipkoech Ruto - son
Juliana Chepkosgei - daughter
Samwel Kiplangat Ruto - son
Christopher Kiprotich Ruto - son (deceased)
Johana Kipngetich Ruto - son



8. They listed the full inventory of the assets and liabilities of the estate of the deceased to wit Kericho/ Poiywek/455 measuring 26 ha and the following liabilities namely; William Kipkemoi Soi, Leonard Arap Rugut, Jared Kipkorir Towett and Vincent Kiprono Mutai (purchasers).
9. This court directed that the objectors' case be canvased via viva voce evidence.
10. William Kipkoech Ruto (Pw. 1) stated that he would be relying on the averments in affidavit in support of the cross application for petition of grant of letters of administration intestate. The 1st Objector herein stated that Chepchilat Tangwar (the deceased herein) was his father and that he had two wives. He stated he did not know the Esther Cheruto Tangwar and Daniel Kibet Cheruiyot the 1st and 2nd Petitioners and the beneficiaries set out in the affidavit in support of the petition for letters of administration intestate, he was therefore opposed to the grant being given to the duo. He stated that John Chebochok came and forcefully fenced off their land. He reiterated his prayer to have this court grant him letters of administration intestate in respect to the estate of the deceased. On cross examination, Pw. 1 maintained that Esther Cheruto Tangwar is a stranger to the estate of the deceased. He confirmed that he is the son of Esther Cheptoo Tangwar. He stated that the chief's letter introduced Esther Cheruto Tangwar as having married Rhoda Chebirir Ruto and that they had rejected the chief's letter and that their father died in 1979. On re-examination, Pw. 1 confirmed that the deceased had two wives; Pauline Tangwar and Esther Cheptoo Tangwar. He maintained that he did not know Rhoda Chebirir Ruto.
11. Samwel Rotich Lelei (Pw. 2) stated that he executed a witness statement and wished to adopt the same as his evidence in chief, he stated that the deceased had two wives who were now deceased. He stated that he did not know the 1st and 2nd Petitioners. He stated that upon the demise of the deceased he heard that someone was claiming a share of the deceased's property. On cross examination, Pw. 2 confirmed that he worked for the deceased, he was a herdsboy and that the deceased had introduced him to his family members in his lifetime. On cross - examination, he confirmed that he was never introduced to Esther Cheruto Tangwar and that he was not privy to the chief's letter stating that the deceased had three wives.
12. At the close of the objector's case the petitioner was called upon to testify in support of her case.
13. Esther Cheruto Tangwar (Dw. 1) stated that she executed a witness statement and wished to adopt it as her evidence in chief. She stated that the first wife to the deceased, namely, Rhoda Chebirir married her under a Kipsigis woman to woman marriage and that the objectors are her sons. She produced a bundle of documents filed in support of the petition for letters of administration intestate in respect to the deceased's estate to wit death certificate, chief's letter and national identity cards marked as DExh. 1. On cross examination, Dw. 1 reiterated that the deceased had three wives and that she was married by the first wife in a customary woman to woman marriage. She confirmed that the objectors are children of the deceased. She confirmed that she sold a portion of the deceased's property to one John Chebochok upon the demise of her husband and she was therefore not privy to other liabilities of the estate of the deceased and used the proceeds of the sale to take care of her children. She maintained that she included all the names of the children of the deceased in the petition for letters of administration intestate.
14. Albert Kibet Sang (Dw. 2) stated that he executed a witness statement and wished to have it adopted as his evidence in chief, he stated that the deceased was his neighbour for many years and that Esther Cheruto Tangwar was his wife. On cross examination, Dw. 2 confirmed that the deceased had three wives and that the first wife of the deceased namely Rhoda Chebirir Ruto married Esther Cheruto Tangwar (the petitioner) herein in a customary woman to woman marriage. He confirmed that the three wives of the deceased have since died. He confirmed that he did not witness any of the marriages.



15. I have considered the petition and the objection to the petition and viva voce evidence by the parties and I find that the sole issue for determination is whether the objection to the petition has merit. I have considered the respective cases by the parties. On one part, the objector maintained that Esther Cheruto Tangwar the petitioner herein is a stranger to the estate of the deceased. He confirmed that he is the son of Esther Cheptoo Tangwar. He stated that the chief's letter introduced Esther Cheruto Tangwar as having married Rhoda Chebirir Ruto and that they had rejected the chief's letter and that their father died in 1979. On the other part, the petitioner stated that the deceased had three wives and that the first wife to the deceased, namely, Rhoda Chebirir married her under a Kipsigis woman to woman marriage and that the objectors are her sons. She produced a bundle of documents filed in support of the petition for letters of administration intestate in respect to the deceased's estate to wit death certificate, chief's letter and national identity cards marked as DExh.1. This court having considered the parties' respective case is of the considered view that the petitioner has a strong and cogent case, that is backed by documentary evidence to wit death certificate, chief's letter and national identity cards marked as DExh.1, she has proven her case on a balance of probability. Having been married to Rhoda Chebirir the first wife of the deceased in a woman to woman marriage, the other wives having predeceased her, she is deemed to be a surviving widow of the deceased and therefore entitled to a grant of letters of administration intestate in respect to the estate of the deceased. Woman to woman marriage is recognized in some communities in Kenya. The Nandi & Kipsigis being among them. For such a marriage to be proved there must be evidence adduced to show its existence. In the case of *Monica Jesang Katan v Jackson Chepkwony & Another (unreported)* J.B. Ojwang J (as he then was) found the existence of such a marriage under Nandi Customary Law following the consistent evidence that was adduced before the court. He held that the petitioner was a wife of the deceased within the meaning of Section 29 of *Law of Succession Act*.
16. Consequently, the objection is found to be without merit. It is dismissed. This court therefore upholds the petition for letters of administration intestate filed by Esther Cheruto Tangwar and Daniel Kibet Cheruiyot in respect to the estate of the deceased.

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

.....

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Okok for the 1st Petitioner

Miss Koech for the Protestor

