



REPUBLIC OF KENYA



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**Kemboi v Kangogo & another (Civil Appeal E010 of 2023)
[2025] KEHC 5522 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5522 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CIVIL APPEAL E010 OF 2023
RB NGETICH, J
APRIL 30, 2025**

BETWEEN

SILAS KITAI KEMBOI APPELLANT

AND

ENID JEPCHUMBA KANGOGO 1ST RESPONDENT

BRIAN KANGOGO 2ND RESPONDENT

*(Being an appeal arising from the Ruling of Honourable A. Towett
at the Senior Resident Magistrate's court at Eldama Ravine
on the 16th January, 2023 in Sucession cause No. 39 of 2020)*

JUDGMENT

1. The Petitioners herein moved the court on 8th July, 2020 seeking Letters of Administration intestate of the Estate of their late mother Rael Kimoi Kangogo who died intestate on the 26th February, 2019. The Petitioners stated that the deceased left behind the following beneficiaries: -
 - i. Job Sasita Kangogo – widower (deceased)
 - ii. Catherine Jemutai Kangogo- daughter (deceased)
 - iii. Julius Kibichii Kangogo- son (deceased)
 - iv. Enid Jepchumba Kangogo- daughter
 - v. Brian Kangogo- son
2. The Petitioner listed L.R No. Baringo/Perkerra/101/1540 to be shared amongst the beneficiaries of her estate.



3. The trial court vide a ruling delivered on the 16th January, 2023 found that from the evidence adduced, it is not in dispute that the petitioners herein are the biological children of the late Rael Kimoi Kangogo and therefore rank in priority over the objector and are entitled to the estate for purposes of Section 29 (1) of *Law of Succession Act*.
4. That appellant not only sought to be appointed as administrator of the estate of deceased but to also inherit the deceased estate. The trial magistrate therefore did not find any merit in the objection by Silas Kitai Kemboi to the issuance of grant of letters of administration intestate of the Estate of the late Rael Kangogo deceased to the Petitioners herein and proceeded to dismiss the objection with costs to the Petitioners.
5. The Appellant herein Silas Kitai Kemboi being dissatisfied by the whole ruling of Hon. A. Towett (SRM) delivered on the 16th day of January 2023 filed this appeal on the following Grounds:
 - i. That the learned Magistrate erred in law and in fact in finding that the Appellant is not a dependent of the deceased herein Rael Kimoi Kangogo and therefore has no legal interest in the estate.
 - ii. That the learned Magistrate erred in law and in fact in finding that the said piece of land (being 4acres) gifted to the Appellant amounted to his share of the land bequeathed to his father by his grandfather.
 - iii. That the learned Magistrate erred in law and in fact in finding that the land held by the deceased Rael Kimoi Kangogo was not held in trust for the Appellant, his stepson.
 - iv. That the learned Magistrate erred in fact and in law in finding that the 1st and 2nd Respondents herein are the rightful beneficiaries of the estate and issuing them Letters of Administration of the estate held by the deceased.
 - v. That the learned Magistrate erred in law and in fact in failing to provide for the grandchildren of the deceased (the rightful dependents) being the children of the late Catherine Kangogo and the Late Julius Kibichii Kangongo. Born in wedlock by the late Job Sasita and the late Rael Kimoi Kangogo.
 - vi. That the learned Magistrate erred in law and in fact in failing to recognize that the land was held in trust by the deceased and therefore should transmit to the rightful dependents of the Late Job Sasita and not the deceased dependents only.
 - vii. That the learned Magistrate erred in law and in fact in failing to review the green cards and consider them in their deliberations.
6. The Appellant in his memorandum of Appeal prays:-
 - i. The Appeal is allowed and the Ruling of the Subordinate Court is set aside with Costs.
 - ii. The Costs of this Appeal is borne by the 1st and 2nd Respondents.
 - iii. That the grant of the letters of Administration do not issue during the pendency of this matter.
 - iv. Any other Orders the Honourable Court deems just and expedient.

Submissions By Appellant

7. They submit that the main issues for determination are:-



- i. Whether the Appellant herein qualifies as the dependant of the deceased Rael Kimoi Kangogo;
 - ii. Whether the Appeal herein is merited; and
 - iii. Who shall bear the costs?
8. On Whether the Appellant herein qualifies as the dependant of the deceased Rael Kimoi Kangogo, the appellant submits that since the deceased was a step-mother to the Appellant, he is a dependent under Section 29 of the *Law of Succession Act* and placed reliance in the case of Beatrice Ciamutua Rugomba Vs-Fredrick Nkari Mutegi & 5 Others (2015) eKLR and in the case of Gilbert Otieno Okuti vs-Moses Odero Onditi (2013) eKLR.
 9. The appellant submits it is not disputed that he was the deceased's son and his father has since died but left children and he is therefore entitled to the life interest in the half residue in the net intestate estate due to his deceased father and relied on the case of Tau Kakungi v Margrethe Thorning Katungi & Another[2014] eKLR where Musyoka J. was of the view that the purpose of Section 35 of the Act was to prevent a spouse of the deceased from being impoverished after the demise of the other by distributing the entire estate to the children. They similarly rely, in the case of Cleopa Amutala Namayi v Judith Were Succession Cause 457 of 2005 (2015) eKLR.
 10. He further submits that under Section 35 of *Law of Succession Act* and case law, the estate of a deceased person in which the surviving spouse has a life interest is not available for distribution unless that parent bequeaths them whatever he or she pleases to them.
 11. The Appellant submits that he was a dependant to his grandfather the deceased herein and the deceased gave him 4 acres out of Baringo/Perkerra/101/1 during his lifetime which he had been in occupation of the same piece during the lifetime of the deceased and even after the demise of the deceased. He relied on the case of Re. Estate of James Kiani Kiranga (deceased) 2020 eKLR where Majanja J, held that the deceased's grandchildren ought to be in priority to the deceased's daughter -in -law and it follows therefore that grandchildren are entitled to share equally the portion which their parent would have received.
 12. They submit that it is clear that the deceased herein was a step mother to the appellant, and since the deceased whose estate is in issue herein died, the Appellant survived the deceased as his child and the deceased's intestate estate ought to have devolved in line with the rules governing intestacy under Part V of the *Law of Succession Act*; that the deceased herein was not survived by a spouse and his estate ought to have devolved in accordance with section 38 of the *Law of Succession Act*.
 13. That a child of a deceased who died intestate therefore need not prove dependency in order to inherit from the estate of their deceased parent. That the question that follows then is what happens when despite surviving the deceased, such a child dies before the estate of the deceased is distributed. That in such instances, the share of the deceased child, otherwise termed as a beneficiary, devolves under the rules of intestacy or testacy as applicable. That in the instant case, the child or beneficiary in question is Job Kangogo Sasita (deceased). That his share of the estate of his late father the deceased ought to devolve to his beneficiaries; that a grandchild can inherit from their grandparents directly through their deceased parents and the question of whether grandchildren can inherit from their grandfather's estate was addressed in the case of Cleopa Amutala Namayi vs.Judith Were Succession Cause 457 of 2005 [2015] eKLR; and submit that the children of Job Kangogo Sasita (deceased) ought to have been included as beneficiary of the estate of his grandfather the deceased to inherit the share due to his late father.



14. The Appellant submits that he is seeking the share of the estate of the deceased that was rightly due to his late father and not directly claiming a share of the deceased's estate in his own capacity and that he need not to prove dependency.
15. That the deceased's son Silas Kemboi Kilai is entitled to the share of his late father Job Kangogo Kitai (deceased) estate, it is only just and fair he is included in the distribution and omitting his name from the list of the beneficiaries who survived the deceased whose estate is in issue amounts to concealment of a material fact, which is a ground upon which a grant of representation can be revoked and based on the rules of intestacy, the estate of the deceased ought to have been shared equally amongst his beneficiaries.
16. The appellant urged this court to allow the objection and submits that the general principal is that costs follow the events and urged this court to allow this Appeal with costs.

Analysis And Determination

17. This being the first appellate court, it has a duty of reevaluating evidence adduced before the trial court and arrive at an independent determination. Unlike the trial court, this court however did not get the advantage of observing demeanor of witnesses. Section 78 of the *Civil Procedure Act* espouses the role of a first appellate court being to re-evaluate, reassess and reanalyze the extracts of the record and draw its own conclusions. This position was stated in the case of *Selle v Associated Motor Boat Company Ltd* [1968] EA 123 where it was held that:

“This court must consider the evidence, evaluate itself and draw its own conclusion though in doing so it should always bear in mind that it neither heard witnesses and should make due allowance in this respect. However, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he had clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or of the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

18. Further in the case of *Peter M. Kariuki v Attorney General* [2014] eKLR it was held that:

“We have also, as we are duty bound to do as a first appellate court, to reconsider the evidence adduced before the trial court and reevaluate it to draw our own independent conclusions and to satisfy ourselves that the conclusions reached by the trial judge are consistent with the evidence... (See *Ansazi Gambo Tinga & another v Nicholas Patrice Tabuche* [2019] eKLR).

19. In view of the above, I have perused and considered the trial court record together with submissions filed herein. Record show that the objector testified that the deceased Rael Kimoi Kangogo was his step mother and that the land in dispute belonged to his late grandfather Kangogo Kitai and that green card for the parcel of land No.BARINGO/PERKERRA SETTLEMENT SCHEME/1010/1 show that the parcel was subdivided into 3 portions and No.593 which was then registered in the names of his grandmother, the second parcel No.594 registered to in the names Paul Kimoi Kangogo, Silas Kitai Kemboi, Wilson Kangogo while the 3rd parcel No.595 was sold to Mathew Kibitok Tumu by his grandfather. He said he was born in the year 1976 and his father passed on 10th March, 1977 and he prayed for his rightful shares as the son to Job Kangogo Kitai.
20. On cross-examination, he said that the late Rael Kangogo was his stepmother and was living with his father at the time of his father's death. He said that he did not live in deceased's home. He said his grandfather Kangogo Kitai was the original owner of the land in dispute.



21. The appellant further stated that in September 1993, the land in question was still in the names of his grandfather and that it was his grandfather who subdivided the parcel of land in question into 3 portions. He said his grandfather transferred/subdivided the land in question in 1997 and that his father had already passed on in 1997. He said Wilson Kangogo is a brother to his father and when his grandfather subdivided the land in question, the late Rael did not complain.
22. Ruth Chepkemoi Chepkuyeng testified as a witness to the objector/Appellant, said the late Rael Kangogo was her sister-in-law and on cross examination, she said the Objector is her nephew. She said that Silas the objector/appellant was taken to her home by her mother in 1978 and the Silas (Objector) stayed/lived with her and objector's father; she stated that the deceased Rael was married to her brother job and they were blessed with three children. She confirmed that her father was Kangogo Kitai and her mother was his first wife. She said that Rael acquired the land in question fraudulently but they did not report the matter to the police. She said her father subdivided his land to avoid animosity in the family in future and the late Rael Kimoi Kangogo was gifted the land in dispute in the year 1997 by his father. She said the objector Silas sold his parcel of land and relocated to Solian. She said Silas had been given 4 acres whilst Rael was given 13 ½ acres.
23. She said Silas is fighting for the land in dispute for the children of the late Catherine and late Julius to be accommodated.
24. Objector's witness 3 Joan Cheron Kangogo on cross- examination said the Objector is her nephew. That Rael Kangogo was her sister-in-law while Silas is a stepchild to Rael. She said she was informed that the late Rael was given portion of land by her father.
25. The Petitioner Enid Kangogo testified that she is a daughter to the late Rael Kangogo. She stated that she did not know Silas Kangogo and that her mother passed on in the year 2019 and that the objector went to their home to demand her mother's share of their land. She said her mother Rael Kangogo had already been issued with a title deed which she produced in court as exhibit.
26. She further stated that after her mother's death, she conducted a search and noted that the land had been subdivided into 3 portions that is for Silas, Wilson and her mother. She said that she was not aware whether Catherine and Julius' children were ejected from home. She said the late Catherine and Julius's children have been catered for.
27. She further stated that she was born in 1988 and confirmed that her father was Job Sasita. She said she cannot recall when her father passed on. She said that she knows Silas Kangogo and that Parcel No.617 belonged to Silas and that Silas has never taken care of the children of the late Catherine and the late Julius and Julius' wife bought her own parcel of land.
28. Brian Kangogo testified that he is the lastborn son to Rael Kangogo. He stated that he knows Silas Kitai as his step brother. He said that he was born in 1990 and his father was Job Sasita Kitai and that he was not yet born in the year 1977 and his siblings Catherine and Julius are both deceased and he knows the late Catherine and Julius' children.
29. Amos Kipsargon Kandie testified as pw3 and stated that the objector is his uncle He said the objector Silas and the petitioner Enid are siblings. He said Enid's mother Rael Kimoi Kangogo was a wife to Job and he did not know the mother to Silas but he heard that the objector Silas was born outside wedlock and that he went home in 1996 and his grandfather welcomed him home and he lived at home since then. He said that Job's father had 70 acres of land and had two wives. That he subdivided his land into two parcels of 35 acres each to each of his wives and when the subdivision took place, Job had already passed on. That the land was further divided and Job's wife was given 17 ½ acres of land and



- from the 17 ½ acres, Job's wife Rael Kangogo gave Silas 4 acres of land and was issued with a title deed to the said land.
30. That in the year 2008, the objector Silas approached him and informed him that he would wish to sell his portion of land and later informed him that he had sold the land in question and purchased land in Solian; and the said Rael Kimoi passed on 26th February, 2019.
 31. That after her death, they had a meeting as a family including the objector Silas and he later heard that Silas had placed a caution on the late Rael Kimoi's parcel of land. He said he has never seen the objector Silas's mother.
 32. On cross examination, he said Job was her cousin and that he was living with Job's father but later left after buying his own parcel of land. That the late Rael Kimoi was his brother's wife. He confirmed that the objector Silas is a son to the late Job and that the objector Silas went to the home in the year 1996.
 33. He further confirmed that there were no minutes of the meeting by job's father to orally share land. He said the objector Silas was given 4 acres of land and his father Job Sasita passed on in 1977. He confirmed that Catherine Chemutai and Julius Kangogo were born before 1977 while the rest were born after Job passed on. He said that Catherine passed on leaving behind two children and that Kibichii also passed on and Catherine and Kibichi's children live at home
 34. PW4 Wilson Kangogo testified that Job Sasita was his brother and that he had four children. He said that he knows Silas Kitai who went to their home in 1996. He said his father subdivided his land into 2 parts i.e. 35 acres each because he had two wives/homesteads. He said their late mother had two sons, himself and Job. That his father subdivided their land into two that is 17 ½ acres for himself and 17 ½ acres for his brother's wife the late Rael Kimoi and out of 17 ½ acres, Silas was given 4 acres of land being the late Job's son.
 35. He said that the objector Sila is the son of his elder brother the late job Sasita and their father is the late Kangogo Kitany. He said that he was born in 1968. That Silas was born in 1976 and that he has never seen Silas mother and that the objector went to their home in the years 1996. He testified that Rael had 4 children two of who are deceased and two being Brian born in 1992 and Enid are not Job's children. That when his father subdivided his land, he was in his seventies.
 36. From the evidence adduced before the trial court, there is no doubt that the appellant/objector was the deceased job's son born out of wedlock but accepted by the family upon him joining them in the year 1996. Further, that the deceased herein Rael Kimoi Kangogo was Job's late wife and that she was given 17 and half acres of land being share of her late husband Job's. From evidence adduced, the deceased Rael gave 4 acres to the objector which he sold and purchased land at Solian.
 37. I now wish to consider whether the 4 acres allocated to the appellant/objector is sufficient or he deserves additional allocation from L.R. No. Baringo/perkerra/101/1540 registered in the name of the deceased herein Rael Kimoi Kangogo
 38. Record show that the deceased herein Rael Kimoi Kangogo died intestate on the 26th February, 2019. From evidence adduced, the deceased herein was wife of Job Sasita Kangogo and she had 4 children being Catherine Jemutai Kangogo deceased, Julius Kibichii Kangogo deceased, Enid Jephumba Kangogo and Brian Kangogo.
 39. From evidence adduced parcel number L.R No. Baringo/perkerra/101/1540 was registered in the name of the deceased Rael Kimoi Kangogo after she had given 4 acres to the objector whom together with her children accepted and acknowledged as the son of the deceased Job Sasita Kangogo. The



Appellant in his pleadings argue that the suit property was registered in the name of the deceased to hold in trust for the beneficiaries of the estate of his late father Job Sasita Kangongo.

40. Record show that the Appellant's grandfather subdivided his land equally amongst his heirs thus giving the deceased herein 17 ½ acres from the 35 acres he initially owned. It is further in evidence that the deceased herein upon being bequeathed 17 ½ acres which was her late husband's share, she subdivided the land further into two whereby she hived four acres of the land and which was registered in the objector's name who was her stepson and the remainder of the land in her name. The Appellant in his testimony in court does not dispute that he was given four acres which he later sold and relocated to Solian

41. Section 29 of the *Law of Succession Act* defines the meaning of a dependent.

“For the purposes of this Part, dependent means-

- 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 and
- c. Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”

42. A party claiming dependency must proof that he or she is a dependant as defined under Section 29 of the Act. Under the Section a person claiming dependency as a stepson must prove that the deceased had taken him into his family as his own.

43. From evidence adduced, it is not disputed that at the time of demise job Sasita Kangogo, the deceased Ral Kimoi Kangogo had 2 children and together with their mother, they form 3 units and on the other hand ,the objector formed one unit as his mother was not part of job Sasita Kangogo's family. In my view, the 17 and half acres should have been distributed in the ration of 3:1 which translate to 4.375 acres to the objector. From the foregoing, I find that the objector is entitled to additional 0.375 acres form parcel number registered in the name of the deceased herein Rael Kimoi Kangogo.

Final Orders: -

1. 0.375 from LR No. Baringo/perkerra/101/1540 be distributed to the objector Silas Kitai Kemboi.
2. Each to bear own costs of trial court and appeal case.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 30TH DAY OF APRIL, 2025.

.....

RACHEL NGETICH

JUDGE

In the presence of:

Ms. Kanda holding brief for Targo for Appellant.



Ms. Kiget holding brief for Mr. Arusei for Respondent.

Court Assistant – Elvis.

