



REPUBLIC OF KENYA



In re Estate of Ndiwa Plimut Chepkech (Deceased) (Succession Cause 593 of 1995) [2025] KEHC 5415 (KLR) (29 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5415 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 593 OF 1995
SC CHIRCHIR, J
APRIL 29, 2025**

IN THE MATTER OF ESTATE OF NDIWA PLIMUT CHEPKECH- (DECEASED)

BETWEEN

CHARLES GORDON NDIWA APPLICANT

AND

TEKLA CHEPANGUR NDIWA RESPONDENT

RULING

1. The applicant vide chamber summons dated 16th January, 2020 brought under Section 47 of the [Law of Succession Act](#), Rule 63 and 73 of the [Probate and Administration Rules](#) seeks orders as follows:-
 - a. That this Honourable Court be pleased to review its orders made on confirmation of grant 29/3/1996 to include Title Number Elgon/ Chemoge/570 measuring 4 hectares which was left out of the list of properties in the schedule of assets.
 - b. That the respondent be included as a beneficiary of the deceased estate and Title Number Elgon/Chemoge / 570 be transferred in her name
 - c. That the Honourable Court be pleased to recall and cancel the certificate of confirmation issued on 29/3/1996 and to issue a fresh one in line with 'a' and 'b' above
 - d. That costs of this application be in the cause.
2. The summons is based on the grounds set out on the face of the Application and on affidavit of Charles Gordon Ndiwa, sworn on 16th January,2020.
3. He has deposed that the deceased had two wives namely Sudi Ndiwa (1st Wife) and Norah Chebet (2nd Wife) both of whom are now deceased. That the deceased was survived by the following children: from the 1st wife:



- a. Charles Gordon Ndiwa
 - b. Silas K. Ndiwa
 - c. Richard Ndiwa – from the 1st wife
- and :
- a. Teklar Chepangur Ndiwa- from the 2nd wife.
4. He further deposed that the deceased had acquired several properties among them Title Number Elgon/Chemoge / 297 and 570; that during his lifetime, the deceased had allocated Title Number Elgon/Chemoge / 570 to the 2nd wife’s family.
 5. He further stated that at the time of the petitioning for grant of letters of administration, he left out the property which was bequeathed to the 2nd wife family and her beneficiary, believing that the same would require a separate succession cause.
 6. He further deposes that the deceased estate should be distributed as follows:
Title Number Elgon/Chemoge /297 (parcel No 297)
 1. Charles Gordon Ndiwa.....18 Acres
 2. Silas K. Ndiwa.....18 Acres
 3. Richard Ndiwa.....18 Acres
 Title Number Elgon/Chemoge / 570(Parcel No 570)
To be registered in the name of the respondent.

The respondent’s case

7. The application is opposed by the respondent through a Replying Affidavit sworn on 13th August 2020. She deposes that the applicant had deliberately left out the full list of members of the deceased’s family; that Richard Ndiwa was a grand son of the deceased whose father Dixon Ndiwa, though deceased, had other children, who have not been included as beneficiaries.
8. She further states that parcel No 570 was never ,at any time, given to the 2nd wife’s family during the life time of the deceased, but rather her step brother Reuben Ndiwa .She further averred that her step brother’s sons reside in the said property and it would cause unnecessary strife between her and her brother’s children if she was to be given parcel No 570.
9. She further states that her mother used to reside on parcel No 297 until her death and she was buried on the said 5 acre portion of parcel No 297.
10. She proposes that deceased estate should be equally as follows:



1. 1	Reuben Ndiwa	10.6 Acres
2.	Dickson Maling'a Ndiwa	10.6 Acres
3.	Silas Ndiwa	10.6 Acres
4.	Beatrice Ndiwa	10.6 Acres
5.	Charles Gordon Ndiwa	10.6 Acres
6.	Tekla Chepangur Ndiwa	10.6 Acres
	Total	64.1 Acres

11. She further stated that the certificate of confirmation should be revoked so that proper application for fresh confirmation is done.
12. The parties filed submissions through their respective counsels which I have read, and considered for purposes of this Ruling.

Analysis and determination

13. The main issue for determination is whether a review of the orders of confirmation made on 29th march 196 are warranted.
14. In her reply the respondent is opposed to a review and instead seeking for the seeking for revocation of the confirmed grant. However the respondent has not filed a counterclaim seeking for revocation of grant. Thus if the court was to grant her prayers , there is no basis upon which those orders would stand .
15. However the respondent has indicated that some beneficiaries were left out ; that one of the purported beneficiaries, one Richard Ndiwa is a grandson to the deceased and some of Richard's siblings have been left out from distribution of the estate. She states that Richard is the son of Rueben Ndiwa, a son of the deceased who has since died. The respondent has then gone ahead to propose a fresh mode of distribution as it appears in paragraph 10 of this judgment.
16. The fact that land parcel No 570 was left out of distribution is not disputed. That would be a valid ground for review. Further the respondent has provided a list of additional beneficiaries who had been left out by the petitioner. The petitioner has not contested this. The fact that some beneficiaries were left out would also be a ground for review as well as revocation. However the respondent has not sought for revocation of grant. Instead she is seeking for revocation of the certificate of confirmation, which is not tenable. A certificate of confirmation can only be set aside or amended. It is not amenable for revocation. Am of the view that the inclusion of the beneficiaries who were left out can be effected by way of a review.
17. Review is founded on order 45 of the Civil procedure Rules and which order has been imported to the *Law of succession Act* through Rule 63 of the probate and Administration Rules. One of the grounds of review is on discovery of new and relevant facts which were not easily available at the time of the suit or for any other reason. I believe the application in this case falls under the category of “ other reasons” ,



within the context of order 45, as the Applicant told the court that he was under the mistaken belief that the land parcel left out ought to be subjected to a different succession process.

18. I have considered the new proposals on distribution by both parties. The proposal by the Applicant is discriminatory as it allocates large share to some of the beneficiaries. No reason has been presented for the discriminatory distribution. It also came out from the affidavit of the respondent that Richard Ndiwa was not the only child of his father, yet he was allocated a portion of the land as though he was one of the children of the deceased. His siblings too have a right to inherit what would have otherwise gone to their father. The best approach, I think, is to allocate them their father's share which would then be distributed under their father's succession proceedings.
19. On the basis of paragraph 9 of the respondent's affidavit the deceased had six children and no spouse. The appropriate mode of distribution is therefore section 38 of the Act., which sets out the appropriate mode of distribution where the deceased has left behind children and no spouse. The section 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."
20. I have considered the sizes of each parcel of land and considered the fact that equity, as opposed to equality should be the guiding principle. Thus doing the best I can, I hereby proceed to redistribute the deceased's estate as follows:
 - a). Title No. Elgon/chemoge/ 297 to be shared equally between :
 - Charles Gordon Ndiwa
 - Tekla chepangur Ndiwa
 - Dickson Maligwa Ndiwa
 - Silas Ndiwa
 - Beatrice Ndiwa
 - b). Parcel No. Elgon/chemoge/ 570 to go to the Estate of Reuben Ndiwa
21. Taking all the above into consideration, I hereby proceed to make orders as follows:
 - a. The Application for review is hereby allowed.
 - b. Parcel No Elgon/chemoge/570 to be included in the list of the Assets of the deceased.
 - c. The deceased Assets to be redistributed in terms of paragraph 20 hereof.
 - d. An amended certificate of confirmation of grant to be issued in terms of paragraph 22 hereof, forthwith. .

DATED, SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO, THIS 29TH DAY OF APRIL 2025

S. CHIRCHIR

JUDGE.

In the presence of :

Godwin Luyundi- Court Assistant

