



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Chelelgo Limo (Deceased) (Succession Cause
E122 of 2023) [2025] KEHC 5160 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5160 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E122 OF 2023
RN NYAKUNDI, J
APRIL 29, 2025**

IN THE MATTER OF THE ESTATE OF THE CHELELGO LIMO (DECEASED)

BETWEEN

ANNAH JEPKEMOI CHIRCHIR PETITIONER

AND

SELLY CHIRCHIR 1ST OBJECTOR

BEATRICE JEPNGETICH CHIRCHIR 2ND OBJECTOR

EDWIN KIPROP CHIRCHIR 3RD OBJECTOR

SAMMY CHIRCHIR 4TH OBJECTOR

BRIAN CHIRCHIR 5TH OBJECTOR

CYNTHIA JEBICHI CHIRCHIR 6TH OBJECTOR

JUSTUS KIBET CHIRCHIR 7TH OBJECTOR

RULING

1. The matter herein concerns the estate of the late Chelelgo Limo who died on 9th August, 2015. The deceased died intestate and left the following surviving him:
 - a. Anna Jepkemoi Chirchir - daughter
 - b. Selly Chirchir – Widow (2nd Wife)
 - c. Sammy Chirchir – son
 - d. Edwin Chirchir – son
 - e. Brian Chirchir – son



- f. Beatrice Jepngetich Chirchir – Daughter
 - g. Cynthia Jebichii Chirchir – Daughter
 - h. Justus Kibet Chirchir – Son
2. At the time of death, the deceased owned one asset: Uasin Gishu/Kaptagat/38, measuring 18.5 hectares. Letters of Administration intestate were issued to Anna Jepkemoi Chirchir on January 23, 2024, and subsequently amended on March 10, 2025, when the court appointed Edwin Chirchir as an additional administrator. In the summons for confirmation dated 30th January, 2025 filed by the petitioner, she sought that the estate be distributed as follows:
- A 1st House
- a. Mary Kongato Chirchir (1st wife) – deceased 9.25 Ha
 - b. Annah Jepkemoi Chirchir Absolutely
- B. 2nd House
- a. Selly Chirchir (2nd Wife)
 - b. Sammy Chirchir
 - c. Edwin Chirchir 9.25Ha
 - d. Brian Chirchir Jointly in equal share
 - e. Beatrice Jepngetich Chirchir
 - f. Cynthia Jebichii Chirchir
 - g. Justus Kibet Chirchir
3. The Objectors on the other hand equally filed an affidavit for distribution of the estate of the deceased dated 16th April, 2025. The Objectors through Edwin Kiprop Chirchir deposed that the deceased had two wives, Mary Kongato Chirchir (deceased) and Selly Chirchir.
4. The objectors protested the model of distribution as proposed by the petitioner and proposed that the estate be distributed as follows:



No.	Name	Shares of Heirs
1.	Selly Chirchir	2.31 Ha
2.	Beatrice Jepngetich Chirchir	2.31 Ha
3.	Edwin Kiprop Chirchir	2.31 Ha
4.	Sammy Chirchir	2.31 Ha
5.	Brian Chirchir	2.31 Ha
6.	Cynthia Jebichi Chirchir	2.31 Ha
7.	Justus Kibet Chirchir	2.31 Ha
8.	Annah Jepkemoi Chirchir	2.31 Ha

Determination

5. The fundamental principle guiding succession matters in Kenya is equity and fairness among all rightful beneficiaries. When a person dies intestate, as in the present case, the law seeks to ensure that the distribution of the estate upholds the dignity and rights of all dependents and family members without undue preference or prejudice. This Court's duty is to balance the competing interests while adhering to the applicable legal principles, customary practices where relevant, and the overarching goal of justice.
6. In a case of this nature where the deceased died intestate and was a polygamous man survived by widows and children the anchor on distribution of his estate is Section 40 of the *Law of Succession Act* which primarily provides as follows; "(1)Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate, shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.
7. The basic scheme is in line with the principles expounded in the following cases *Rono -v-Rono* Civil Appeal NO. 66 of 2002, where Waki J.A stated inter alia that; - "More importantly, section 40 of the Act which applies to the estate makes provision for distribution of the net estate to the "houses according to the number of children in each house, but also adding any wife surviving the deceased as an additional unit to the number of children." A "house" in a polygamous setting is defined in section 3 of the *Act* as a "family unit comprising a wife and children of that wife."
8. *In the Matter of Re Estate of Benson Ndirangu Mathenge (deceased)* Nakuru HCSC NO. 231 of 1998(Ondeyo J), the deceased was survived by his two widows and their children. The first widow had four children, while the second widow had six children. The court stated that the first house was comprised of five units while second had seven units. The two houses of the deceased combined and looked at in terms of units made up twelve units. The court distributed the estate to the children and the widows treating each as a unit. The land available for distribution was forty acres, which was divided by the court into twelve units. Out of the twelve units, five were given to the first widow and her four children, while the remaining seven units went to the second widow and her six children.



9. In the present case, the deceased was survived by two houses - the first house comprising of the late Mary Kongato Chirchir (first wife, now deceased) and her daughter Anna Jepkemoi Chirchir, and the second house comprising of Selly Chirchir (second wife) and her six children. Following the principles established in the cases cited above, particularly *Re Estate of Benson Ndirangu Mathenge*, each beneficiary should be treated as a unit for the purposes of distribution.
10. The petitioner's proposed distribution seeks to allocate half of the estate (9.25 hectares) to herself alone, representing the first house, while the other half would be shared among seven beneficiaries of the second house. This proposal runs contrary to the principle of equity and fairness that underpins succession law. It would create a stark disparity whereby one beneficiary receives 9.25 hectares while the other seven would receive approximately 1.32 hectares each.
11. The objectors' proposed distribution model, allocating 2.31 hectares to each of the eight beneficiaries, better aligns with the principles of equality and fairness. While Section 40 of the *Law of Succession Act* does provide for distribution according to houses, its underlying intention is to ensure equitable treatment of all dependents. In this case, with one wife deceased and only one child in the first house, strict application of the "house" formula would result in an unjust enrichment of one beneficiary at the expense of others.
12. This decision cannot be complete without laying down the provisions of Art. 27 which provides as follows:

“ that every person shall have the right to equality before the law and to equal protection of the law. In the same article, subsection (4) states that no person shall be unfairly discriminated against, directly or indirectly and without derogating from the generality of these provisions on one or more of the following grounds: in particular, including race, sex, marital status, health status, ethnic or social group, colour, age, disability, conscience, belief, culture, dress, language or birth.”
13. The essence of this constitutional imperative on differentiation and discrimination is that prima facie proof by a party in an adjudicatory process like succession law on any of the grounds specified in subsection (4) shall be presumed to be sufficient proof of unfair discrimination as contemplated in the supreme law until the contrary is established. The assessment on discrimination and equality before the law cannot be undertaken in a vacuum but it is based both on the wording of Art. 27 and the context of a country where the male child within a family structure is held to be a ranking member as compared with his counterpart, the female gender within the same consanguinity and affinity. In regard to distribution of the intestate estate, the Constitutional organ established under Art. 50(1) of the *Constitution* is expected to act in a rational manner more so when it comes to weighing the material evidence on the proposals made during confirmation of grant some of which are arbitrary and manifest naked preferences against the same members from the same lineage.
14. First, a glance at the two proposals, one by Learned Counsel Mr. Omwenga for the petitioner in comparison with the frame advanced by Learned Counsel Mr. Chemweno for the objectors, prima facie one does notice differentiation on the allocation of shares which amount to discrimination. The emphasis which the court has placed on the impact of discrimination in deciding whether or not Art. 27(4) has been infringed is consistent with this concern that adopting the model by learned counsel for the petitioner in the present case will precisely occasion treatment of petitioner by dint of her being born as the only child in the first house, she should inherit a big junk the immovable asset as against her siblings from the second house. At the heart of the prohibition of unfair discrimination lies a recognition in the *Law of Succession Act* that all human beings or dependants or heirs under section 29



of the Act as defined in section 38 read conjunctively with 40 of the same statute should be guided by the doctrine of equality and equity. It goes without saying that the purpose of our new constitutional dispensation and democratic order, is the establishment of a society in which all human beings will be accorded equal dignity and respect regardless of their membership of particular groups which is clearly expressed in Art. 27(4) of the *Constitution*. The position of the objectors is that the proposed model of distribution by the petitioner shows a pattern of disadvantage and if it is affirmed, it will impact unfairly on their rights to inheritance with regard to the intestate estate survived of the deceased. The Succession Act is of a special nature and more certainly than just an ordinary statute for it incorporates the human rights components which is one of our national values and principles of values in Art. 10 of the *Constitution*. My reading further of this provision lays emphasis on human dignity, equity, social justice, inclusiveness, equality, non-discrimination and protection of the marginalized. It is for the courts to seek out its purpose as drafted way back in 1981 by our legislature and give it effect as the statute in its provisions sets out removal of discrimination on inheritance matters. This is to state the obvious for one has to read the text of section 38 of the *Law of Succession Act* to come to terms with the doctrine of equality in the distribution of the estate. The principle of equal treatment in succession matters shall mean that there shall be no discrimination whatsoever on grounds of sex, gender, birth, customs, culture, either directly or indirectly by reference in particular to marital or family status.

15. Having carefully considered the competing proposals and the applicable legal principles, I find that the objectors' proposed distribution model best serves the interests of justice and the intent of succession laws. Therefore, I direct that the estate of the late Chelelgo Limo, comprising of land parcel Uasin Gishu/Kaptagat/38 measuring 18.5 hectares, be distributed equally among the eight beneficiaries, with each receiving 2.31 hectares as proposed by the objectors.

16. The distribution matrix shall be then as hereunder:

No.	Name	Shares of Heirs
1.	Selly Chirchir	2.31 Ha
2.	Beatrice Jepngetich Chirchir	2.31 Ha
3.	Edwin Kiproop Chirchir	2.31 Ha
4.	Sammy Chirchir	2.31 Ha
5.	Brian Chirchir	2.31 Ha
6.	Cynthia Jebichi Chirchir	2.31 Ha
7.	Justus Kibet Chirchir	2.31 Ha
8.	Annah Jepkemoi Chirchir	2.31 Ha

17. Orders accordingly.

DATED SIGNED AND PUBLISHED AT ELDORET THIS 29TH DAY OF APRIL 2025.

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R. NYAKUNDI



JUDGE

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