



REPUBLIC OF KENYA



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In re Estate of Joshua a Morit alias Morit arap Temuge (Deceased) (Succession Cause 39 of 2010) [2025] KEHC 7091 (KLR) (29 May 2025) (Judgment)

Neutral citation: [2025] KEHC 7091 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 39 OF 2010**

JK SERGON, J

MAY 29, 2025

BETWEEN

SAMUEL RUTO 1ST PETITIONER

TIMOTHY KIPTOO ARAP RUTO 2ND PETITIONER

AND

ALICE CHEPWOGEN PROTESTOR

JUDGMENT

1. There are two applications coming up for determination contemporaneously; on one part, a summons for confirmation of grant where the petitioners are seeking to have letters of administration intestate confirmed and the estate of the deceased distributed as per the contents of the affidavit in support of the summons for the confirmation of grant of letters of administration intestate. On the other part, there is an affidavit of protest filed by the protestor herein objecting against the summons for confirmation of grant. She is adamant that the deceased being a polygamous man and having not left a valid will, the estate of the deceased should therefore be distributed among the houses according to the number of children in each house as provided for under section 40 of the *Law of Succession Act*. The protestor has outlined her proposed mode of distribution in the affidavit of protest against confirmation of grant.
2. In the summons for confirmation of grant dated 17th September, 2021 the petitioners are seeking the following orders;
 - (i) That the grant of letters of administration intestate made to the said Timothy Kiptoo Arap Ruto and Samwel Kipkoech Ruto in this matter be confirmed.
 - (ii) That the costs be in the cause.
3. The application is supported by grounds on the face of it and the supporting affidavit of Timothy Kiptoo Arap Ruto the administrator of the estate herein.



4. The administrator avers that the deceased died intestate on the 23rd June, 1986 and that the letters of administration were issued to him in the matter on 1st July, 2021.
5. He avers that, the deceased's estate is comprised of land parcel Kericho/Sosiot/3X0 and Kericho/Sosiot/1XX1 whose acreages is 58.7 acres and 3.7 Ha respectively, the surveyor had conducted the survey process and produced the mutation form which the beneficiaries were to sign accordingly.
6. He avers that it is apparent and obvious from the letter dated 19/5/1986 that the deceased wished to have land parcel Kericho/Sosiot/3X0 shared equally among his sons and further sought and obtained consents from the Belgut Land Control Board to subdivide the said parcel and subsequently made allocation to each of the beneficiaries who continue to be in occupation and use of their respective allocation/portion since 1984 to date.
7. He avers that based on the consent obtained from the Belgut Land Control Board, the estate of the deceased ought to be distributed as follows;
L.R. No. Kericho/Sosiot/3X0
 - a. Timothy Kiptoo Arap Ruto - 9.3375 acres
 - b. Elijah Arap Ruto - 93375 acres
 - c. Kipnueno Ruto - 93375 acres
 - d. Simon Kiplangat Ruto - 93375 acres
 - e. Samwel Kipkoech Ruto - 10.675 acres
 - f. Evans Kibet Cheruiyot - 1.334 acres
 - g. Alexander Kimutai Cheruiyot - 1.334 acres
 - h. Nathan Kipngeno Cheruiyot - 1.334 acres
 - i. Cheruiyot Kipegon Asaph - 1.334 acres
 - j. Jonah Kipkurui - 1.334 acres
 - k. Patrick Kipkoech - 1.334 acres
 - l. Jackline Chepkoech Ruto - 2.668 acres to hold in trust for Douglas Kiprono Cheruiyot, Abigael Chelangat, Michelle Chepkemoi and Donald Kipkemoi Cheruiyot
8. He avers that the deceased had allocated Kericho/Sosiot/1XX1 to Sila Ruto who is now deceased, the said parcel should be distributed equally among his two (2) surviving widows with each getting 1.85 Ha.
9. He avers that there is no dependent of the deceased within the meaning of section 29 of the Law of Succession who is opposed to the said mode of distribution.
10. It is therefore against such background that Alice Chebwogen Mutai a daughter to the deceased and the protestor herein objected against the summons for confirmation of grant based on her affidavit of protest dated 6th April, 2023 she contended that the deceased was married to two wives (now deceased) and blessed with fifteen children and further that the deceased being a polygamous man and having not left a valid will, the estate of the deceased should therefore be distributed among the houses according to the number of children in each house as provided for under section 40 of the [Law of Succession Act](#).



11. She avers that in order for the contents of the purported letter to be tabled as an oral will, the testator must die within a period of 3 months from the date of making the oral will and it has to be made before two or more competent witnesses and no witness (es) had testified that they helped the deceased to jot down the information in the purported letter.
12. She avers that the purported letter cannot pass for a written will as the same is not attested by two or more competent witnesses, who must have seen the testator sign or affix his mark.
13. She avers that the deceased did not obtain any consent for the subdivision of Kericho/Sosiot/3X0 as alleged and that if the deceased wanted to subdivide the said parcel, he would have executed a mutation form which is the primary document in the process of subdivision of land. She further avers that Kericho/Sosiot/3X0 cannot be regarded as a gift inter vivos as the same was not transferred during the lifetime of the deceased as it is still in the name of the deceased and therefore in the circumstances, the mode of distribution proposed by the petitioner does not reflect a true and fair distribution of the estate of the deceased.
14. She avers that the deceased passed on after enactment of the law of succession which under section 26 empowers the court to make reasonable provision for the beneficiaries not provided for either in intestacy and testacy. She therefore set out her preferred mode of distribution of the deceased's estate.

L.R. No. Kericho/Sosiot/3X0

1st House

- a. Timothy Ruto Kiptoo - 4.11 acres
- b. Rosa Chepkirui to hold in trust for the family of Esther Kogo (deceased) - 4.11 acres
- c. Eda Chelangat Birir - 4.11 acres
- d. Mathew Ruto - 4.11 acres
- e. Simon Ruto - 4.11 acres
- f. Elijah Ruto - 4.11 acres
- g. Dorcas Chepgnetich - 4.11 acres

2nd House

- a. Betty Chelangat to hold in trust for the family of Sarah Temuge (deceased) - 4.11 acres
- b. Evans Kibet to hold in trust for the family of Isaiah Ruto (deceased) - 4.11 acres
- c. Sheila Langat to hold in trust for the family of Annah Chepkemoi (deceased) - 4.11 acres
- d. Alice Chepkurui Mutai - 4.11 acres
- e. Samwel Kipkoech Ruto - 4.11 acres
- f. Nancy Rose Nyamichaba - 4.11 acres
- g. Alice Chepwogen Viola - 4.11 acres
- h. Lina Cherotich to hold in trust for the family of Evaline Chepkorir (deceased) - 4.11 acres

L.R No. Kericho/Sosiot/1XX1

- a. Geoffrey Langat - 4.5 acres



- b. Wesley Langat - 4.5 acres
15. The matter came up for inter partes hearing and the court directed that the matter be heard through viva voce evidence.
 16. Pw. 1 the protestor herein stated that she filed an affidavit of protest and witness statement and wished to adopt the same as her evidence in chief and maintained that the deceased who was her father did not leave a will. On cross examination, she confirmed that she was privy to the fact that land parcels to wit Kericho/Sosiot/3X0 and Kericho/Sosiot/1XX1 constituted part of the estate of the deceased. She stated that the father had given each of his wives a portion of land based on Kipsigis customs and traditions and that her mother Sophia Temuge had once registered a caution in respect to the subject land parcels and therefore the deceased could not complete the process of subdivision on account of the caution. She reiterated that the deceased did not leave an oral or written will.
 17. Pw. 2 stated that she filed a witness statement and wished to adopt it as her evidence in chief, she stated that she is a daughter of the deceased and that fact that she lives in her matrimonial home, notwithstanding, she wished to inherit a portion of the estate of the deceased. On cross examination, she stated that whereas some of her brothers were gifted with land inter vivos, however, the same was not perfected and has resulted in conflict among the beneficiaries of the estate of the deceased. She stated that her mother had filed a caution after the deceased had expressed his intention to give his sons land to the exclusion of his daughters.
 18. Pw. 3 stated that he filed a witness statement and wished to adopt it as his evidence in chief, he stated that the deceased had two wives and several children. He stated that the deceased did not leave a written or oral will. On cross examination, he confirmed that the beneficiaries of the estate of the deceased had a protracted dispute on the distribution of the estate of the deceased. On re-examination, he stated that he was not aware that the deceased had distributed his land prior to his demise.
 19. Pw. 4 stated that she filed a witness statement and wished to adopt it as her evidence in chief, she stated that she was a granddaughter to the deceased and that she was not given a portion of the estate of the deceased. On cross examination, she stated that whereas the deceased had shared out Kericho/Sosiot/3X0, the parcel was not subdivided and stated that she had come to court seeking to claim a share of the estate of the deceased on behalf of her mother. On re-examination, she confirmed that she did not have letters of administration in respect to her mother's estate.
 20. At the close of the protestor case, the petitioner/ administrator availed several witnesses in support of his case.
 21. Dw. 1 stated that he executed a witness statement and wished to adopt it as his evidence in chief. On cross examination, he stated that he was alone with the deceased who shared that he was desirous to distribute and subdivide his land among his sons, he however could not recall the date when the deceased expressed his intent to distribute his land among his sons. On re-examination, he reiterated that the deceased had expressed the desire to subdivide his land among his sons to the exclusion of his daughters.
 22. Dw. 2 stated that he is the administrator of the estate of the deceased and that he had filed a summons for confirmation of grant and affidavit in support and wished to have the same adopted as his evidence in chief and produced a bundle of documents in support of his case which this court marked as DExh. 1 - 5 which included a letter by the deceased dated 19.5.1986, an application for subdivision to the land control board and sketch maps for the subdivision of Kericho/Sosiot/3X0. On cross examination, he reiterated that the said parcel was gifted to them by their father. On re examination, he stated that they were informed as to how to distribute the subject parcel by a clansman.



23. Dw. 3 a retired assistant chief Sosoit Location, stated that he executed a witness statement and wished to adopt it as his evidence in chief. He stated that he was privy to the contents of the letter dated 19.5.1986 which he produced as DExh. 6 and further that the deceased had come to his office and stated that he wanted his children to stay where they were at the time, he however, could not recall the date of the demise of the deceased. On cross examination, he confirmed that whereas the deceased had come to his office and told him that his children should settle where they were, he did not record the wishes of the deceased in writing.
24. Dw.4 stated that he executed a witness statement and wished to adopt it as his evidence in chief and further that the deceased had two wives. On cross examination, he stated that Dw. 2 the petitioner herein had shown him a letter in which the deceased had shown him how he wished to distribute the land.
25. Dw.5 stated that she executed a witness statement and wished to adopt it as her evidence in chief and stated that the deceased had distributed his land while he was alive and that she saw the proposed method of distribution. She stated that at the time all her sisters were married save for herself. On cross examination, she stated that whereas the deceased had distributed his land prior to his demise, subdivision could not proceed because some of the documents had been hidden, these being attempts to frustrate the deceased from subdividing his property. She confirmed that the deceased had told her of his intentions to distribute his land and that he was adamant that the married daughters were not to get a share of the subject land.
26. Dw. 6 stated that he executed a witness statement and wished to adopt it as his evidence in chief. He stated that the deceased had two households and that whereas the protestors come from the second household, the beneficiaries were from the first household. He stated that the deceased had two parcels of land and that Kericho/Sosiot/3X0 is in dispute. He stated that the deceased had subdivided the said land, however, he could not effect transfer as the land was cautioned by the second wife. He stated that at the time the deceased had distributed the property, all his daughters were married. He stated that the deceased wrote a letter to the then area assistant chief Shadrack Koros who is now deceased and that the assistant chief prior to his demise showed them the letter the deceased had written to him stated 19.5.1986 marked as DExh. 2 and that the deceased died on 23.6.1986 almost a month after writing the said letter at Tenwek Mission Hospital. On cross examination, he confirmed that the letter dated 19.5.1986 was in the custody of the assistant chief and that their father died a month after he wrote the letter. He confirmed that whereas the subdivision was effected in favour of the deceased's sons the land could not be transferred as there was a caution registered over the subject parcel. On re-examination, he confirmed that he did not craft the letter and rather that the letter is in the handwriting of the deceased.
21. Dw. 7 a grandson to the deceased, stated that he executed a witness statement and wished to adopt it as his evidence in chief. He stated that he was with the deceased at Tenwek Mission Hospital before he died and that prior to his demise, the deceased informed him that he had bequeathed his land to his sons. On cross examination, he confirmed that whereas titles had not been issued each son was shown his portion. He stated that he was not certain as to why the married daughters of the deceased were in court seeking to inherit the deceased's land and according to Kipsigic culture and traditions married daughters cannot inherit land.
22. Dw. 8 a son to the deceased, stated that he executed a witness statement and wished to adopt it as his evidence in chief. He stated that at the time of his father demise in 1986, he owned two parcels of land Kericho/Sosiot/111 and Kericho/Sosiot/3X0 and that Kericho/Sosoit/111 was bequeathed to Sila Ruto and Andrea Ruto whereas the other sons were bequeathed with Kericho/Sosiot/3X0. He avers that the deceased had moved to obtain a consent to subdivide and subsequently transfer the land



to his sons, however, he did complete the subdivision process as his step mother had filed a caution against Kericho/Sosiot/3X0. He stated that his sisters protested while the deceased was alive, however, the deceased was set on distributing his land among his sons. He stated that after the demise of the deceased, they summoned the then assistant area chief for a family meeting and he gave them a letter written by the deceased marked as DExh. 2. He stated that the mode of the distribution contained in the summons for confirmation of grant is in tandem with the deceased's wishes. On cross examination, he confirmed that the deceased had physically shown his sons their respective portions on Kericho/Sosiot/3X0.

23. This court, having heard the matter, directed the parties to file and exchange written submissions, however, at the time of writing this judgment, the administrator was yet to file submissions, however, this court considered the material on record.
24. The protestor complied and filed her submissions and contested the assertion that the property of the deceased was distributed during the lifetime of the deceased as the process was not completed and property transferred to the beneficiaries. The protestor maintained that the subject property is free land subject to equal distribution between the beneficiaries of the deceased. The protestor argued that the administrator had not proven that the land parcels were gifted inter vivos or causa mortis.
25. The protestor contended that the letters the administrator was relying upon to propound the existence of a written will did not meet the threshold on the validity a will under section 9 under the [Law of Succession Act](#).
26. The protestor argued that being daughters of the deceased, they are beneficiaries of the deceased and therefore ought to be included in the mode of distribution of the estate of the deceased, the protestor therefore sought the intervention of this court to avert the apparent acts of discrimination and cited the case of *In re Estate of M'Ngarithi M'Miriti* [2017] eKLR where the court held as follows; "From the arguments coming through, it is clear issues to do with discrimination based on gender and sex have emerged. There were bad times in the heavily patriarchal African society; that being born as a daughter disinherited you. And so, even the judicial journey to liberate daughters from being so down-trodden by the patriarchal society in Kenya on matters of inheritance has been long and painful. As a matter of fact, due to the constitutional architecture of our nation at the time, before 2010, we only saw pin-prick thrusts and rapier-like strokes by courts on these persistent patriarchal biases. But, things changed when *RONO vs. RONO* [2008] 1 KLR 803 delivered the downright bludgeon-blow on these discriminatory practices against women in inheritance; it splendidly paid deference to the international instruments against all forms of discrimination against women especially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). And, I am happy to say that from then, there are many cases- and the number is rising by the day as courts implement [the Constitution](#)- which state categorically that discrimination in inheritance on the basis of gender or sex or status is prohibited discrimination in law and [the Constitution](#). More specifically I am content to cite the proclamation by the Court of Appeal in the case of *STEPHEN GITONGA M'MURITHI vs. FAITH NGIRAMURITHI* [2015] eKLR that:-

"Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried..."

Therefore, a son will not have priority over a daughter of the deceased simply because he is male; all- male and female siblings- are equal before the law and are entitled to equal protection of the law. See article 27 of [the Constitution](#). Accordingly, the 3rd Administrator and her children who are claiming the inheritance of the late Festus K. M'Ngaruthi, the



son of the deceased, are only entitled to the share of their late father. They are not, in the circumstances of this case, entitled to more than the distinct share of each of the two daughters of the deceased simply because the late Festus M’Ngaruthi was the son. The three children of the deceased are entitled to share the net intestate estate of the deceased equally.”

27. Having considered the summons for confirmation of grant, protest, viva voce evidence and submissions by the parties, this court finds that the sole issue for determination is whether the protest has merit. On one part, the administrator contended that vide a letter dated 19/5/1986 that the deceased wished to have land parcel Kericho/Sosiot/3X0 shared equally among his sons and further sought and obtained consents from the Belgut Land Control Board to subdivide the said parcel and subsequently made allocation to each of the beneficiaries who continue to be in occupation and use of their respective allocation/portion since 1984 to date, the administrator availed the letter and consent as part of the bundle of documents in support of his case. On the other part, the protestor argued that the deceased being a polygamous man and having not left a valid oral or written will, the estate of the deceased should therefore be distributed among the houses according to the number of children in each house as provided for under section 40 of the *Law of Succession Act*.
29. This court has considered the rival arguments by the parties and finds that the deceased was a polygamous man, who died intestate without a valid oral or written will, whereas this court is cognisant of the contents of the letter dated 19.5.1986 (DEXh. 2) written by the deceased slightly over a month prior to the demise of the deceased, that the administrator was relying upon to propound the existence of a will, it is the finding of this court that the letter does not meet the threshold of an oral will under section 9 or a written will under section 11 of the *Law of Succession Act*. This court has also considered the assertion that the property of the deceased was distributed during the lifetime of the deceased and that this is demonstrated in the efforts to obtain consent from the land control board, however, this court is of the considered view that the process was not completed and property transferred to the beneficiaries, the subject parcel was neither gifted inter vivos or mortis causa and therefore the subject property is free land subject to equal distribution between the beneficiaries of the deceased, married daughters of the deceased included. In *Eliseus Mbura M’Thara v Harriet Ciambaka & Another* [2012] eKLR the court in abid to demonstrate the level of non-discrimination that is required in the distribution of a deceased person’s estate held as follows: “The *Law of Succession Act* does not discriminate between gender in matters of succession or inheritance. Under the *Law of Succession Act* and indeed under *the Constitution* a child is a child and every person has equal rights under the law irrespective of gender. The *Law of succession Act* does not discriminate between married or unmarried daughters but gives them equal rights to inheritance as the other children (sons) of a deceased person.” In light of the foregoing, it is the finding of this court that the property constituting the estate of the deceased, is free land subject to distribution among the beneficiaries of the deceased and in the absence of any surviving widow, the estate of the deceased should be divided equally among the surviving children of the deceased. The court in the *Re Estate of John Musambayi Katumanga – Deceased* [2014] eKLR held as follows; “ The spirit of part V, especially sections 35, 38 and 40, is equal distribution of the intestate estate amongst the children of the deceased. There have been debates on whether the distribution should be equal or equitable. My reading of these provisions is that they envisage equal distribution for the word used in sections 35 (5) and 38 is ‘equally’ as opposed to ‘equitably’. This is the plain language of the provisions. The provisions are in mandatory terms – the property “shall ... be equally divided among the surviving children.” Equal distribution is envisaged regardless of the ages, gender and financial status of the children.” This court, having carefully studied the mode of distribution propounded by the petitioner and the protestor respectively, finds that the mode of distribution by the protestor is fair and just in the circumstances of this case as the same divides the estate of the deceased equally among the surviving children of the deceased.



32. In the result, it is the finding of this court that the protestor's protest has merit. The same is hereby allowed. The following orders are hereby issued:

(i) The summons for confirmation of grant dated 17th September, 2021 and the estate of the deceased to be distributed as per the proposed mode of distribution in the protest.

(iii) Each party to bear their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 29TH DAY OF MAY 2025.

J.K. SERGON

JUDGE

In the presence of:

C/Assistant - Rutoh

Okok for the Protestor

Langat for the 1st Petitioner

No Appearance for the 2nd Petitioner

