



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Kipkoech Arap Chererot alias Kipkoech A Chererot (Deceased)**  
**(Succession Cause 138 of 2014) [2025] KEHC 11497 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11497 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KERICHO**  
**SUCCESSION CAUSE 138 OF 2014**

**JK SERGON, J**

**JULY 31, 2025**

**THE MATTER OF THE ESTATE OF KIPKOECH ARAP**  
**CHEROROT ALIAS KIPKOECH A.CHEROROT (DECEASED)**

**BETWEEN**

**EDWARD KOECH ..... 1<sup>ST</sup> PETITIONER**

**ANDREW KOECH ..... 2<sup>ND</sup> PETITIONER**

**RITA CHEPKEMOI CHEROROT ..... 3<sup>RD</sup> PETITIONER**

**AND**

**WINNIE CHEROTICH TONUI ..... OBJECTOR**

**JUDGMENT**

1. The applications coming up for determination are a summons for confirmation of grant in respect to the estate of the deceased and an affidavit of protest filed by the objector. The objector is hereby contesting the summons for confirmation of grant citing the fact that she is a biological daughter of the deceased and she has not been included on the mode of distribution. The petitioners also cannot agree on the mode of distribution in respect to Kericho/ Koiwa/100.
2. The petitioners of the estate of the deceased herein filed a summons for confirmation of grant dated 6th March, 2017 seeking the following orders;
  - (i) That the grant of letters of administration intestate made to the applicant on 13th November, 2014 be confirmed.
  - (ii) That six (6) months have elapsed and no objection has been lodged.
  - (iv) That the costs be in the cause.



3. The summons is supported by the grounds on the face of it and the affidavit of Rita Chepkemoi Chererot, the 3rd petitioner.
4. It is her disposition that the deceased died intestate and left several surviving dependents including; Wesley Koech, Edward Koech, Richard Koech, Godwing Koech, Joyce Chepkorir, Andrew Koech, Benard Koech, Evans Koech,, Gilbert Koech, Glorious Chepkirui, Geoffrey Koech, Sharon Chepngeno, Timando Cherotich, Judith Chepkorir, Vincent Koech, Joyce Cheronon and Geoffrey Kipyegon Koech and was the owner of several properties and further that that the identification and distribution of the shares of all persons beneficially entitled to the estate of the deceased has been ascertained and determined as follows:
  - (i) Kericho/Koiwa/101 - 25. 5 Ha, Kericho/Koiwa/26 - 2.6 Ha, Kericho/Koiwa 592 - 029 Ha - Edward Koech to hold in trust for the 1st family
  - (ii) Kitale (Saboti Sikhendu)/19 - 48 acres, Kericho/Koiwa/76 - 3 acres Andrew Koech to hold in trust for the 2nd family
  - (iii) Kericho/ Koiwa/100 - 22.5 Ha, Kericho/Koiwa 568 - 1.8 Ha - Rita Chekemoi Chererot surviving widow to hold in trust for her children
  - (iv) Tractor complete with 2 trailers, one hydraulic pump and plough registration no. KXS xxx and L.R Maji Tamu/Chemasis/Block 4/176 to be equally shared among the three families.
5. She deposes that no dependent of the deceased within the meaning of section 29 of the [Law of Succession Act](#) is opposed to the mode of distribution.
6. She deposes that the mode of distribution takes into consideration of the legal fees incurred in distributing the estate amongst the beneficiaries and further that no estate duty is payable (or remains unpaid) in respect to the estate of the deceased.
7. Winnie Cherotich Tonui, the objector/protestor, filed an affidavit of protest dated 26th January, 2023 contesting the summons for confirmation of grant citing that the petitioners petitioned for grant of letters of administration intestate in the instant succession cause secretly and without involving the other members of the family and that whereas she is the biological daughter of the deceased the petitioners did not include her name in the mode of distribution and that the petitioners and area chief colluded and deliberately omitted her name from the list of beneficiaries with the aim of denying her a share in the said estate thereby rendering her destitute. She did not file her preferred mode of distribution, she was simply desirous of being included as a beneficiary of the estate of the deceased.
8. The 1st and 2nd petitioner filed a reply to the protest, they attested that all the family members of the deceased are well aware of this matter and that the succession cause was filed by their blessing. It is further their attestation that this matter was filed by all the petitioners but the issue of distribution of the estate arose and in any event it clear from the onset of succession proceedings that the estate of the deceased ought to be distributed amongst the three (3) houses of the deceased hence the application by the protestor is premature.
9. In addition to the protest on record, the petitioners herein could not agree on a mode of distribution in respect to Kericho/ Koiwa/100 which is allegedly occupied by the 3rd petitioner and the surviving widow of the third house, court directed that the matter be canvassed via oral evidence.
10. The 3rd petitioner testified and availed her witnesses.



11. Ow. 1 the 3rd petitioner and third wife of the deceased stated that she filed the petition and that she wrote a statement and wished to have the same adopted as her evidence in chief. She stated that she lives in Kericho/Koiwa/100 yet Andrew Koech from the second house is claiming the said property. She stated that the first wife was staying on Kericho/Koiwa/101 and the second wife was staying on Kitale (Saboti Sikhendu)/19. She stated that she wanted to stay where the deceased had settled her. She stated that she filed her proposed mode of distribution dated 27.7.2010 and urged this court to allow the same. On cross examination, she reiterated that she was the third wife of the deceased and that when she married him the deceased had already acquired property. She confirmed that the area chief held several meetings with the beneficiaries but they were yet to agree on a mode of distribution.
12. Ow. 2 son to Ow. 1 stated that he filed a witness statement and wished to have the same adopted as evidence in chief. He testified the beneficiaries are yet to agree on an equitable mode of distribution and that the other petitioners want a share of Kericho/Koiwa/100 yet they were not willing to share their respective parcels. On cross examination, he confirmed that his father had distributed his property prior to his death.
13. Ow. 3 son to Ow. 1 stated that he filed a witness statement and wished to have the same adopted as evidence in chief. He stated that they have been residing on Kericho/Koiwa/100 and that their father had settled each family on respective parcels of his vast property. He further stated that at his demise the deceased left a power saw, tractor, plough and two trailers. He stated that he did not have any beneficial interests on the parcel occupied by the first and second houses. He was privy to the disputes within the family of the deceased. On cross examination, he confirmed that the properties of the deceased were in his name and that the deceased distributed his property to the respective houses in his lifetime.
14. He reiterated that the third wife and her family reside on Kericho/Koiwa/100. He confirmed that there have been several meetings to agree on the mode of distribution, however, the beneficiaries did not agree.
15. He reiterated the crux of the dispute between the petitioner is that the 1st and 2nd petitioner were trying to convince them to cede half of Kericho/Koiwa/100 to the second house and that the second house were currently encroaching on the said parcel yet all the parcels of land are relatively the same. In re-examination, he conceded that the deceased did not leave an oral will. He urged this court to direct that the families remain on their respective properties as this is in tandem with the wishes of the deceased. He reiterated that their wishes were to remain on Kericho/ Koiwa/100 and Kericho/ Koiwa/568.
16. At the close of the 3rd petitioner's case 1st and 2nd petitioners testified.
17. Dw. 1 testified and adopted the contents of his affidavit as evidence in chief.
18. Dw. 2 testified and adopted the contents of his affidavit as evidence in chief. On cross examination, stated that the third wife was married to the deceased belatedly and that at the time the first and second wives were in occupation of Kericho/Koiwa/100 and Kericho/Koiwa/101. On re-examination, he stated that the deceased had two wives and that Kericho/Koiwa/100 was supposed to be shared between two wives and the subject parcel had been split in the middle. He confirmed that the deceased had distributed his property in his lifetime.
19. Dw. 3 a son from the second house testified and adopted the contents of his affidavit as evidence in chief. He stated that after their father had passed away they approached a panel of elders to advise on distribution of the estate of the deceased and that the third wife disputed the resolution by the panel of elders. He stated that the father had settled their mother in Kitale.



20. Dw. 4 testified and adopted the contents of his affidavit as evidence in chief and stated that they had not fully agreed on the mode of distribution of the estate of the deceased and that the third widow disputed on the mode of distribution. He stated that there were several meetings held to deliberate on distribution of the estate of the deceased and produced a letter from the area chief and minutes of the meeting held on 17.12.2009 and 23.4.2010 as DMFi 1, 2 and 3. He stated that the distribution should be done as per the wishes of the deceased. On cross examination, he stated the 3rd petitioner rejected the minutes of the meeting held on 23.4.2010. On re-examination he stated that he lives on Kericho/Koiwa/100 and could not recall where the 3rd petitioner resides.
21. Dw. 5 a brother to the deceased testified and adopted the contents of his affidavit as evidence in chief and stated that family of the deceased held three meetings to deliberate on distribution of the estate of the deceased and that the deceased had distributed his property in his lifetime. On cross examination, he stated that his brother had three wives. He confirmed that the deceased had settled his wives on respective parcels; however, he did not document his wishes or affix boundaries. He confirmed that the family meetings were reduced into writing.
22. Dw. 6 a retired chief testified and adopted the contents of his affidavit as evidence in chief and stated that he knew the deceased and held two meetings with the family to resolve disputes on the distribution of the estate and produced minutes of the said meetings as DExh. 1, 2 and 3. On cross examination, he confirmed that the said meetings were held by the elders to deliberate on the distribution of the estate of the deceased.
23. He confirmed that he did not personally share out the land, rather he prepared the introductory letter. He confirmed that the three wives of the deceased occupied their respective parcels and that the deceased did not inform him on how to share out his land.
24. At the close of the respective parties' case, this court directed the parties to file written submissions which this court has considered in order to arrive at a fair and just determination.
25. The 1st and 2nd petitioners filed submissions and maintained there was no dispute on list of beneficiaries and assets of the deceased and that the dispute lies on the mode of distribution of the estate of the deceased that whereas the 3rd petitioner was seeking to have the estate of the deceased distributed as follows;
- (i) Kericho/Koiwa/101 - 25. 5 Ha, Kericho/Koiwa/26 - 2.6 Ha, Kericho/Koiwa 592 - 029 Ha - Edward Koech to hold in trust for the 1st house
  - (ii) Kitale (Saboti Sikhendu)/19 - 48 acres, Kericho/Koiwa/76 - 3 acres Andrew Koech to hold in trust for the 2nd house
  - (iii) Kericho/ Koiwa/100 - 22.5 Ha, Kericho/Koiwa 568 - 1.8 Ha - Rita Chekemoi Cherorot surviving widow to hold in trust for her children
  - (iv) Tractor complete with 2 trailers, one hydraulic pump and plough registration no. KXS xxx and L.R Maji Tamu/Chemasis/Block 4/176 to be equally shared among the three families.
26. The 1st and 2nd petitioner proposed the following as a fair and equitable mode of distribution;
- (i) Kericho/Koiwa/101, Kericho/Koiwa/26, Kericho/Koiwa 592, Tractor KXS xxx, Kericho/Koiwa Plot 2 and 5, power saw subject to the third house giving 1 cow - be given to the 1st house
  - (ii) Saboti/Sikhendu)/Block 2/Bukwet/19 and Tengecha Plot - be given to the 2nd family
  - (iii) Maji Matamu Chemasis and Kiptenden Plot 3 - be given to the 3rd family



- (iv) Shared properties Kericho/Koiwa/100 and Kericho/Koiwa/568 - 2nd and 3rd house equally Kiptendent Plot 7 - 1st and 2nd house equally Mogogosiok Plot 4 - 3rd house equally Koiwa Plot unregistered - 3rd house equally Koiwa Plot unregistered - 1st and 2nd house equally Shares at Kcb Bank - 3rd house equally Cash at hand (Kshs. 110,000) - 3rd house equally
26. The 1st and 2nd petitioners maintained that the deceased had settled the houses on respective parcels therefore the provisions of section 40 of the Law of Succession Act did not apply.
27. The 1st and 2nd petitioners asserted that the family members met and agreed to appoint the 3 petitioners and agreed to uphold the wishes of the deceased save for the 3rd petitioner. They maintained that the 2nd and 3rd houses were in occupation of Kericho/ Koiwa/100 and Kericho/ Koiwa/568 and therefore the 3rd petitioner's claim that she was solely given the said parcels is not in tandem with the deceased's wishes. The 1st and 2nd petitioners maintained that the deceased settled the houses on respective parcels openly and that his wishes and intention were to have the same respected and in any event the deceased was the owner of the said properties therefore he reserves the right to deal with it as he deems fit.
28. The 1st and 2nd petitioner were adamant that the fact that the parcels of land are still registered in the name of the deceased is not sufficient for this court to assume fresh distribution and/or redistribution of the estate whereas the deceased had settled each house on respective parcels.
29. The 3rd petitioner filed submissions and reiterated that there are two modes of distribution for determination by the court; one filed by the 1st Petitioner and 2nd Petitioner dated the 29th October, 2019 and the other by the 3rd Petitioner dated 6th March, 2017.
30. She contended that the mode of distribution preferred by the 1st and 2nd Petitioner is motivated by the fact that that some of the properties were acquired by the deceased before he married her and therefore these properties were to be shared between the first and second houses and the remainder shared equally among the three houses.
31. The 3rd petitioner contended that the assertion that the deceased had indicated how he wished his property should be shared is neither here nor there. The courts have on various occasions held that without perfection, the property remains available for distribution. It is further her contention that all the witnesses confirmed that the wives of the deceased lived on separate parcels of land. That is the basis upon which the 3rd Petitioner filed her proposed mode of distribution in the way she did.
32. This court has considered the summons for confirmation of grant, the affidavit of protest and the various modes of distribution and finds that the issue (s) for determination is whether the protest has merit and the most fair and equitable mode of distribution of the estate of the deceased more so in respect to Kericho/ Koiwa/100 and Kericho/ Koiwa/568 as between the 2nd and 3rd houses.
33. On the issue as to whether the protest has merit, on one part, the protestor is adamant that the petitioners obtained letters of administration intestate in the instant succession cause secretly and without involving the other members of the family and that the petitioners did not include her name in the mode of distribution.
34. On the other part, the petitioners maintain that the family of the deceased was involved at the inception of the succession proceedings and that the estate of the deceased was to be distributed among the various houses. Having considered the arguments by the parties, it is this court's finding that it is clear from the onset of the instant succession proceedings that the estate of the deceased ought to be distributed amongst the three (3) houses of the deceased and not specific beneficiaries hence the



- application by the protestor is premature. It is further the finding of this court that the protest is devoid of merit.
35. On the issue as what is the most fair and equitable mode of distribution of the estate of the deceased more so in respect to Kericho/ Koiwa/100 and Kericho/ Koiwa/568 as between the 2nd and 3rd houses. It is the 1 and 2nd petitioner's case that the deceased settled the houses on respective parcels whereas it is the 3rd petitioner's case that without perfection, the property remains available for distribution.
36. It is this court's finding that in the absence of a will the deceased died intestate and having being polygamous section 40 of the Law of Succession Act is applicable in the circumstances. In as much as the 1st and 2nd petitioner are adamant that the deceased had settled the houses on respective parcels openly and that his wishes and intention were to have the same respected, this court finds that he did not document his wishes or subdivide his properties and affix boundaries.
37. There is no consent or consensus amongst the beneficiaries on distribution of the estate, and, in the circumstances, this court shall follow the position stated by the Court of Appeal in *Justus Thiora Kiugu, & 4 Others vs. Joyce Nkatha Kiugu & Another* [2015] eKLR (Visram, Koome and Otieno-Odek JJA), that where the parties filed consents on distribution, the court would have no reason not to endorse the distribution proposed, so long as the same had the concurrence of all the persons beneficially entitled, even if the proposed distribution departed from what the law provided on distribution.
38. However, where there is no consensus, the court strictly applies the law. However, courts are also cautioned on the blind application of section 40 of the Law of Succession Act but enjoined to exercise discretion and to take into account the legal and factual circumstances of the particular case.
39. In *Douglas Njuguna Muigai vs John Bosco Maina Kariuki & Another* [2014] eKLR the court cautioned on the blind application of section 40 of the Law of Succession Act. The court observed as follows: "It is therefore evident, that, although section 40 of the Law of Succession Act provides a general provision for the distribution of the estate of a polygamous deceased person, the court has discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate." This court has considered the modes of distribution preferred by the parties and finds that the mode of distribution espoused by the 3rd petitioner in the summons for confirmation of grant to be fair and equitable in the circumstances.
40. Consequently, the summons for confirmation of grant dated 6th March, 2017 is hereby allowed and this court finds that the most fair and equitable mode of distribution of the estate of the deceased is as set out in the affidavit filed in support of the summons for confirmation of grant which is as follows:
- (i) Kericho/Koiwa/101 - 25. 5 Ha, Kericho/Koiwa/26 - 2.6 Ha, Kericho/Koiwa 592 - 029 Ha - Edward Koech to hold in trust for the 1st family
  - (ii) Kitale (Saboti Sikhendu)/19 - 48 acres, Kericho/Koiwa/76 - 3 acres Andrew Koech to hold in trust for the 2nd family
  - (iii) Kericho/ Koiwa/100 - 22.5 Ha, Kericho/Koiwa 568 - 1.8 Ha - Rita Chekemoi Cherorot surviving widow to hold in trust for her children
  - (iv) Tractor complete with 2 trailers, one hydraulic pump and plough registration no. KXS xxx and L.R Maji Tamu/Chemasis/Block 4/176 to be equally shared among the three families.
  - (v) Each party to meet their own costs.



**DELIVERED, SIGNED AND DATED AT KERICHO THIS 31ST DAY  
OF JULY, 2025**

.....

**J. K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Miruka for 1<sup>st</sup> & 2<sup>nd</sup> Petitioners

Okok for the 3<sup>rd</sup> Petitioner

