



**In re Estate of Kipngetich Cheruiyot alias Micah Kipngetich Cheruiyot (Deceased)
(Succession Cause 51 of 2007) [2025] KEHC 11370 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11370 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 51 OF 2007**

JK SERGON, J

JULY 31, 2025

**THE MATTER OF THE ESTATE OF KIPNGETICH
CHERUIYOT ALIAS MICAH KIPNGETICH
CHERUIYOT (DECEASED)**

BETWEEN

ROBERT KIPKIRUI NGETICH PETITIONER

AND

RACHEL CHEPKEMOI CHERUIYOT 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 the second wife of the deceased and sole surviving widow and therefore entitled to a share of the estate. The objector is adamant that being a surviving widow of the deceased, she had priority in terms of taking out letters of administration.
2. The petitioner of the estate of the deceased herein filed a summons for confirmation of grant dated 7th November, 2011 seeking the following orders;
 - (i) That the grant of letters of administration intestate made to the applicants on 28th April, 2007 be confirmed.
 - (ii) That the costs of the application be in the cause.
3. The summons is supported by the grounds on the face of it and the affidavit of Robert Kipkirui Ngetich, the petitioner.



4. He deposes that the deceased died intestate and left several surviving dependents and was the owner of 9.3 acres comprised in the land parcel L.R. No. Kericho/Kibwastuiyo/77 out of 47 acres jointly owned with four others and further 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 follow:-

Kericho/Kibwastuiyo/77 - 9.3 acres

Wesley Ngetich - 3.1 acres

Raymond Ngetich - 3.1 acres

Gideon Ngetich - 3.1 acres

5. He avers 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. He avers 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. Rachel Chepkemoi Cheruiyot, the objector, filed an affidavit of protest contesting the summons for confirmation of grant citing the fact that she was the second wife of the deceased and sole surviving widow and therefore entitled to a share of the estate. The objector is adamant that being a surviving widow of the deceased, she had priority in terms of taking out letters of administration.
8. She stated that upon the demise of the deceased, she was chased away from the matrimonial home, she lodged a complaint with the area chief, the matter was referred to the land dispute tribunal and a panel of elders heard and determined the dispute in her favour and that the award was adopted in Kericho Principal Magistrate's Court Misc. Application No. 75 of 2007 as a judgment of the court.
9. She did not set out her preferred mode of distribution, however, she maintained that the estate ought to be shared equally among the beneficiaries of the estate.
10. This court directed that the protest be canvassed via oral evidence.
11. Pw. 1 the objector testified she was married to the deceased and that the petitioner was a son to her co wife who was deceased. She stated that the deceased was the sole proprietor of L.R. Kericho/KikwasTuiyet/77 and that the deceased died in 1988. She stated that soon after his demise her step sons evicted her. She stated that the chief and local elders tried to intervene to no avail.
12. She reiterated that she wished to be included as a beneficiary of the estate of the deceased. On cross examination, she reiterated that she was married to the deceased and her children were born in the subsistence of their union.
13. She confirmed that their union was solemnized under the Kipsigis customary law.
14. Pw. 2 testified and stated that the protester was the second wife of the deceased and that he witnessed the marriage between the protester and the deceased. He stated that the protester was chased away by the children of the first wife.
15. In cross examination, he confirmed that he solemnized the marriage between the protestor and the deceased and that dowry was paid. He confirmed that the protester and deceased lived together for several years.
16. Pw. 3 the area chief Techoget Location testified and stated that he wrote the introduction letter dated 5.10.2006 prior to the filing of the letters of administration intestate in the instant succession cause.



- He stated that the protestor was the wife of the deceased and therefore a beneficiary of the estate. He stated that he was privy to the disputes within the family of the deceased.
17. In cross examination, he confirmed that at the time he wrote the letter there was a dispute and that the dispute was never resolved, he maintained that his duty was merely to identify the beneficiaries of the estate.
 18. Pw. 4 testified and adopted the contents of his affidavit as evidence in chief and stated that he wishes to have the instant succession cause resolved so that his sister can go back to her home. On cross examination, he confirmed that when his sister the objector herein got married in 1979 he was not yet born. On re-examination, he stated that the protestor resides at their home. Pw.4 stated that his parents told him that a traditional ceremony was done to solemnise the union of the protestor and the deceased and that two cows were exchanged as dowry.
 19. At the close of the objector's case the petitioner testified.
 20. Dw. 1 the petitioner testified and adopted the contents of his affidavit as evidence in chief. On cross examination, he stated that his father had one wife and that he has five sisters and five brothers. He stated that at the demise of the deceased, it was agreed that his sisters who were all married were not entitled to inherit from the estate of the deceased. He confirmed that Taita Cheruiyot is a brother to his late father.
 21. He stated that he was privy to the fact that there was a dispute filed at the lands dispute tribunal but was not aware of the outcome of the said tribunal. He maintained that he did not have any evidence that the objector was married to the deceased.
 22. In re-examination, he stated that the subject parcel in this succession cause was registered in the names of Taita Cheruiyot, Tamigoi Lessan and Tapnyole Lessan.
 23. Dw. 2 testified and adopted the contents of his affidavit as his evidence in chief. On cross examination, stated that he is a cousin to the deceased and that the objector was not married to the deceased. On re-examination, he stated that the objector lived on the land belonging to the deceased, however, he was not aware that the objector was married to the deceased.
 24. Dw. 3 testified and adopted the contents of his affidavit as evidence in chief. On cross examination, he stated that the objector was married to the deceased. On re-examination, he stated that two cows were exchanged as dowry.
 25. Dw. 4 testified and adopted the contents of his affidavit as evidence in chief. On cross examination, he stated that the objector was married to the deceased and they had three children. He stated that the objector had separated with the deceased and then she came back. He stated the objector had previously been married to one Richard Rono who was deceased prior to her marriage with the late Micah Kipngetich Cheruiyot.
 26. In re-examination, he stated that he attended the traditional marriage between the objector and the deceased.
 27. 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.
 28. The objector filed submissions and reiterated that she is a beneficiary to the estate of the deceased having been married to the deceased under Kipsigis customary law and therefore the only surviving widow of the deceased. She contested that upon the demise of the deceased, when she was chased away from



the matrimonial home, she was referred to the land dispute tribunal and the panel of elders resolved the dispute in her favour.

29. The petitioner filed submissions and maintained that the objector has not established that she is a beneficiary of the estate of the deceased and that her children are biological children of the deceased and/or whom the deceased had adopted and taken as his own or that the children were dependent on the deceased prior to his demise. He argued that it has been held on severally that a chief's letter is not conclusive proof of marriage and cited the case of *In re Estate of the Late Symon Kipngény Koima (Deceased)* [2021] eKLR where the court found that the objector and her children were not dependants of the deceased despite producing a chief's letter and evidence in a bid to prove dependency.
30. This court has considered the summons for confirmation of grant and the affidavit of protest and finds that the issue (s) for determination is whether the objector and her children are entitled to a share of the estate of the deceased.
31. It is the petitioner's case the objector is not a beneficiary of the estate and therefore not entitled to a share of the estate of the deceased whereas it is the objector's case that she is a beneficiary of the estate of the deceased as she was married to the deceased under the Kispsigis customary law.
32. It is the evident from viva voce evidence by the parties that the deceased was polygamous and had two wives, the objector included and several children and therefore section 40 of the *Law of Succession Act* is applicable in the circumstances.
33. This court finds that whereas the petitioner contends that the evidence of customary marriage was contradictory and therefore cannot be relied on to establish the existence of a marriage, this court of the view, that the testamentary evidence by the objector and petitioner's witnesses revealed that the objector and the deceased were married under customary law and whereas the said union was tumultuous, three children were born in the subsistence of their union.
34. Pw. 4 and Dw. 3 in their evidence confirmed the existence of the customary marriage and that the dowry exchange ceremony and that two cows were given as dowry to solemnize the union between the objector and the deceased.
35. It is therefore the finding of this court that the objector has established that she was married to the deceased under customary law and had children born in the subsistence of the union and therefore her and her children are beneficiaries of the deceased and therefore the affidavit of protest has merit.
36. It is further the finding of this court that the objector has further established that she is entitled to a share of the estate based on the efforts she made once her step sons evicted her the matrimonial home, she lodged a complaint with the area chief, the matter was referred to the land dispute tribunal and a panel of elders heard and determined the dispute in her favour and that the award was adopted in Kericho Principal Magistrate's Court Misc. Application No. 75 of 2007 as a judgment of the court, she attached a copy of the land tribunal award which recognized her as wife to the deceased and therefore entitled to a share of his estate. This court finds that the affidavit of protest is merited and is agreeable with the proposition of the objector who has proposed that the estate of the deceased be distributed equally among the surviving beneficiaries of the deceased.
37. Consequently, the summons for confirmation of grant dated 7th November, 2011 is hereby allowed save that the mode of distribution in the summons of confirmation of grant. 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 of protest which is as follows;

Kericho/Kibwastuiyo/77 - 9.3 acres



1. First House - 4.56 acres to be shared equally among the surviving children of the 1st house
2. Second House - 4.65 acres to the Rachel Chepkemoi Cheruiyot the surviving widow to hold in trust for her children

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

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J. K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Sang for the Petitioner

No Appearance for Bii for the Objector

