



REPUBLIC OF KENYA



KENYA LAW
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**Baliat & another (Succession Cause 9 of 2010)
[2025] KEHC 11887 (KLR) (11 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11887 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 9 OF 2010
DB NYAKUNDI, J
AUGUST 11, 2025**

IN THE MATTER OF

**JONATHAN KIPTOO BALIAT 1ST PETITIONER
JOHN K BALIAT 2ND PETITIONER**

RULING

1. What is pending before me for determination are summons for Confirmation of Grant dated 23rd September 2024 in which the Applicants are seeking the following orders:
 - a. That the Grant of Letters of Administration intestate for the Estate of Joseph Kibaliat Kipsego (deceased) who died on 21st August 2001 made to Jonathan Kiptoo Baliat And John K. Baliat on 18th May 2010 be confirmed.
 - b. That pursuant to order1 above, the Honourable Court do distribute the estate of the deceased in accordance with the mode of distribution.
 - c. That costs of this application be in cause.
2. The Application is based on the following grounds among others:
 - a. That on 18th May 2010, the Honourable Court issued grant of Letters of Administration intestate for the estate of Joseph Baliat Kipsego (deceased) in favour of Jontahan Kiptoo Baliat And John K. Baliat.
 - b. That six months have since lapsed after the grant of letters of administration intestate were issued.
 - c. That the petitioners/Applicants have obtained consent necessary for confirmation of the said grant.
 - d. That there is no application pending herein under part III of the *Law of Succession Act*.



3. The Application is supported by the annexed affidavit dated 23rd September 2024 sworn by Jontahan Kiptoo Baliat And John K. Baliat, the Applicants herein who aver as follows:
- a. That on 18th May 2010, the Honourable Court issued grant of Letters of Administration intestate for the estate of Joseph Baliat Kipsego (deceased) who died on 21st May 2001 in our favour.
 - b. That six months have since lapsed after the said grant was issued.
 - c. That the deceased was survived by the following:
 1. Paul Limo Baliat Son (deceased)
 2. John Kiplagat Baliat Son
 3. Jonathan Kiptoo Baliat Son
 4. Benjamin Cheboi Baliat Son
 5. Alice J. Baliat Daughter
 6. Linah Jeruto Baliat Daughter
 7. Selly J. Baliat Daughter
 8. Susan J. Baliat Daughter
 - d. That the Petitioner/Applicants have obtained consent necessary for Confirmation of Grant.
 - e. That the deceased left the following assets:
 - a. Moiben/Chebara/195 measuring 16.5 Ha
 - b. Moiben/Moiben Block 3 (Kapsilailat)/309 measuring 7.488 Ha
 - c. Moiben/Moiben Block 3 (Kapsilailat)/249 measuring 30.05 Ha
 - d. Elgeyo Marakwet/Sangurur/14 measuring 3.97 Ha
 - e. Irong/Korkitony/11 measuring 2.0 Ha

Decision

4. I have read the summons, the ground in support and also the affidavit in support of the same. The is one issue which arises for determination:

Whether this Court should grant orders of Confirmation of Grant

5. The applicable law in this succession cause is Section 71(2) (a) of the *law of Succession Act* which states as follows:

- (2) The court to which application is made, or to which any dispute in respect thereof is referred may (a) If it is satisfied that the grant was rightly made to the applicant, and that he is administering and will administer, the estate according to law, confirm the grant or...

Provided that in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities of the all persons beneficially entitled and when confirmed the grant shall specify all such persons and their respective shares.



6. Rule 41(3) of the *Probate and Administration Rule* States:

“Where a question arises as to the identity, share or estate of my person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant but subject to the provision of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI rule 1 of the *Civil Procedure Rules* and may thereupon, subject to the proviso to section 71(2) of the Act, Proceed to confirm the grant.

7. It is also clear from the Law of Succession that the rights of children on inheritance are guaranteed and protected as can be appreciated under Section 36 & 38 of the Act.

35(2) A surviving spouse shall during the continuation of life interest provided by subsection (1) have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as take effect at any future date.

(2) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.

(3) Subject to the provisions of section 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

8. Section 38 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 Section 41 and 42 devolve, upon the surviving child if there be only one, or be equally divided among the surviving children.

9. Given this background and the principles applicable, I allow the summons for confirmation dated 23rd September 2024 and filed on 14th November 2024. The certificate of confirmed grant be in consonant with Paragraph 4 of the affidavit in support of Joseph Kibet the administrator of intestate estate. Being a family matter, I make no orders as to costs.

DATED, DELIVERED AND SIGNED AT ELDORET DISPATCHED VIA CTS ON 11TH AUGUST 2025.

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R. NYAKUNDI

JUDGE

