



REPUBLIC OF KENYA



In re Estate of Gideon Boen Kimarta alias Gedeon (Deceased) (Succession Cause E051 of 2023) [2025] KEHC 12305 (KLR) (1 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12305 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E051 OF 2023
RN NYAKUNDI, J
SEPTEMBER 1, 2025**

**IN THE MATTER OF THE ESTATE OF GIDEON BOEN KIMARTA ALIAS
GEDEON BOEN KIMARTA ALIAS BOEN KIMARTA - (DECEASED)**

BETWEEN

**ISAAC KIPNETICH BETT 1ST APPLICANT
PETER BETT 2ND APPLICANT
BENJAMIN BETT 3RD APPLICANT
FLORA BETT 4TH APPLICANT
JOSEPH BETT 5TH APPLICANT**

AND

**ANNAH JEPKOSGEI SAMOEI 1ST RESPONDENT
TRUPHOS CHELIMO BOEN 2ND RESPONDENT
NAUM CHEPKUTO BOEN 3RD RESPONDENT
JONAH KIPTII BET 4TH RESPONDENT**

RULING

1. Before this court is a Chamber Summons brought under Section 48 of the [Law of Succession Act](#) Ca0 160 Laws of Kenya rules 49 & 73 of Probate and Administration rules 1980 and all enabling provisions of the Law seeking the following orders:
 - a. That this application be certified as urgent and service hereof be dispensed with in the first instance



- b. That this Honourable Court be pleased to arrest the delivery of the ruling on the mode of distribution herein pending hearing of this application interparties
 - c. That this Honourable Court be pleased to grant the Applicants an opportunity to file their affidavits on the proposed mode of distribution and to be heard on the same
 - d. That the costs of this application be provided for on the grounds that
 - i. That this matter is scheduled for delivery of ruling on the mode of distribution on Notice before the Hon Justice R. Nyakundi
 - ii. That the Applicants have discovered an anomaly on the part of their counsel previously on record who has alleged that the Applicants have agreed on the mode of distribution in the submissions dated 4.4.2025.
 - iii. That The Applicants however, strongly object to the delivery of the ruling based on the mode of distribution submitted by their previous counsel
 - iv. That the Applicant therefore pray their case should be heard before the court delivers the ruling on the mode of distribution
 - v. That should the ruling be delivered then the Applicants constitutional rights under Article 50(1) of *the constitution* would be infringed upon and that amounts to a great travesty of justice
 - vi. That the Applicants therefore pray this application be allowed
 - vii. That the application has been brought in the utmost good faith.
2. It is further annexed by an affidavit sworn by the said Isaac K, Keter which states as follows:
- i. That I am an Advocate of the High Court of Kenya representing the Plaintiff in this suit hence competent to swear this affidavit
 - ii. That I have read and understood the contents of the Application dated 28/4/2025 filed by the Applicants seeking to arrest the Delivery of the ruling scheduled for 29/4/2025 and I respond thereto as follows
 - iii. That the said Application is frivolous, vexatious and an abuse of the court process and is clearly intended to Delay and Frustrate the Timely conclusion for these proceedings
 - iv. That the Applicants have failed to particularize their alleged Anomalies and demonstrate how it would occasion a miscarriage of justice
 - v. That in absence of particulars of the alleged anomalies, the application is fatally vague and incapable of meeting the threshold for arresting delivery of a ruling
 - vi. That the present Applicant's Application is a second attempt to halt Delivery of the Ruling a similar Application was made to suspend the delivery of ruling by this honourable court
 - vii. That it was only after the said application to suspend the ruling scheduled for 29.4.2025 was denied when the Applicants took any steps in these proceedings, including filing the present Application. This impugned application is only reactionary



- viii. That further the Applicants have always taken part in proceedings and participated in mediation as Directed by the court and were not in any way in objection with the proposed mode of distribution raised by the administrators
- ix. That notwithstanding, the submission dated 4/4/2025 was based on the affidavit on the proposed mode of distribution sworn by the 4th Respondent (One of the administrators herein) previously swore on behalf of other beneficiaries (excluding the protestors) thus the Applicants cannot now claim a normally by their former counsel
- x. That the Applicants, application is made in bad faith and is intended solely to delay the delivery of the ruling particularly since the applicants have not demonstrated any triable issue and/or abnormalities to warrant arrest of the delivery of the ruling
- xi. That the Application is brought merely as an afterthought and in bad faith, with the intention of unjustly delaying the court process

Decision

3. This Succession cause is at the critical stage of determining the rights of inheritance to the beneficiaries. The codification of the *Law of Succession Act*, incorporates in it's letter and the spirit the canons of inclusivity, non-discrimination, and participation of the heirs or for that matter beneficiaries legitimately identified as provided for under Section 29 of the Act. This court takes judicial notice that there has been some sense of delay in finalizing this matter. There is already a proposed model of distribution which this court was expected to issue a final judgment on the matter before the instant application seeking arrest of the decision.
4. I have reviewed the entire record, and the pending confirmation proceedings aimed at devolving rights to the beneficiaries as per law established. However, I also take cognizance of the fact that the Applicants to the instant application seems not have made any proposals in concurrence with the respondents or in objection to the metrics which form the basis of the matrix proposed on the entire distribution of the intestate estate. As the right to a fair hearing in Art. 50 of *the constitution*, is present in almost all areas of law and informs numerous practices and procedures tailored to the decision making process of a court or tribunal duly established under Article 50 (1) of *the constitution* it is useful to conceive of the right in the sphere of Succession Law as envisioned by the Applicants. I agree with the averments by the Respondents that there has been a bit of inordinate delay in concluding this Succession cause and the court must raise up to the occasion to mitigate the prejudice or injustice likely to occasioned by dint of multiplicity of applications. Therefore, weighing the competing interest of this matter, the court has brought powers to exercise discretion against any litigant who may be abusing the process within a trial to preserve the integrity of the trial and the safety of the verdict.
5. The concept of fairness is not static and responds to the individual circumstances of the case so as to ensure the ends of justice are met. The link between evidence and rights is very clear. The goal of factual accuracy also promotes human rights as one of our values in Article 10 of *the constitution*. This being said I exercise discretion to freeze temporarily the determination of the issues on distribution of the estate as proposed by the Respondents and give an opportunity to the Applicants to file a rejoinder to the mode of distribution to facilitate this court to move with speed to deliver its long-awaited final judgement on the matter.
6. For those reasons, the application is merited and an enlargement of time of 10 days be and is hereby allowed for the Applicants to read in and read out the proposed model of distribution and file one in concurrence or in objection but abide with the provisions of the law. The final Status Conference



on 17.9.2025 for highlighting of any differentia minimum or maximum to the proposed mode of distribution currently on record.

DATED, SIGNED AND DELIVERED VIA E-MAIL AT ELDORET THIS 1ST DAY OF SEPTEMBER 2025.

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R. NYAKUNDI

JUDGE

