



REPUBLIC OF KENYA



**Ngemy & another (Succession Cause 5 of 2016)
[2024] KEHC 4106 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4106 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 5 OF 2016**

**RL KORIR, J
APRIL 30, 2024**

IN THE MATTER OF

**EUNICE CHEPKIRUI NGENY 1ST PETITIONER
JOSEPH KIPRONO LANGAT 2ND PETITIONER**

RULING

1. This Succession Cause involves the estate of the late Kipruto arap Ngeny being Kericho/kyogong/66. His widow, Eunice Chepkirui Ngeny (1st Petitioner) petitioned this court for Letters of Administration on 18th January 2016. A Grant was issued in the name of Eunice Chepkirui Ngeny on 30th June 2016.
2. Joseph Kiprono Langat, who was the son to the deceased and the 1st Petitioner, filed Summons for Revocation of the Grant dated 29th December 2016. This Application was heard by way of viva voce evidence. This court (Ongeri J.) delivered its Ruling on 4th August where it revoked the Grant issued on 30th June 2016 and ordered a fresh Grant to be issued in the joint names of Eunice Chepkirui Ngeny (1st Petitioner) and Joseph Kiprono Langat (now 2nd Petitioner). The court further ordered that the list of beneficiaries be amended to include the six daughters of the deceased who had been left out.
3. The new Grant in the joint names of the 1st and 2nd Petitioner was issued by this court on 26th January 2021.
4. The 1st Petitioner filed Summons for Confirmation of Grant dated 19th October 2021. The 1st Petitioner listed the beneficiaries as follows:-
 - i. Eunice Chepkirui Ngeny.
 - ii. Joseph Kiprono Langat.
 - iii. Linah Langat.
 - iv. Florida Chelangat Ngeny.



- v. Recho Chepkemoi.
 - vi. Joyce Chemutai Ngeny.
 - vii. Nancy Chepkoech Cheruiyot.
 - viii. Margaret Chepngetich.
5. The beneficiaries especially the 2nd Petitioner have not been able to agree on the mode of distribution. In an attempt to solve the impasse, this court referred the matter to mediation on 21st July 2022. Despite filing two Mediation Agreements dated 4th August 2022 and 18th August 2022 for adoption, the beneficiaries were unable to agree on the mode of distribution.
 6. A Consent on the mode of distribution dated 7th October 2021 provided that the subject land was to be subdivided into 4 equal shares of 2 acres each between Eunice Chepkirui Ngeny (1st Petitioner), Joseph Langat (2nd Petitioner), Linah Chepkirui Langat (deceased's daughter in law) and Florida Chelangat Ngeny (deceased's daughter). The remaining 5 daughters of the deceased to wit; Recho Chepkemoi, Joyce Chemutai Ngeny, Nancy Chepkoech Cheruiyot, Margaret Chepngetich and Sophia Cheronno were not allocated any share of the deceased's estate. This Consent was rejected by the 2nd Petitioner.
 7. A second Consent dated 2nd February 2022 provided the same schedule of shares of the deceased's estate as the first Consent. This Consent was also rejected by the 2nd Petitioner.
 8. It became clear that the 2nd Petitioner was the only sibling resistant to the mode of distribution, a matter that I will discuss later on in this Ruling. On 26th April 2023, this court directed the 2nd Petitioner to file his Protest on the mode of distribution. On 22nd May 2023, I further directed the parties to file their submissions.

The 2nd Petitioner's Protest and alternative mode of distribution.

9. Through his Affidavit dated 2nd October 2023, the 2nd Petitioner stated that the subject land (Kericho/kyogong/66) measured 3.2 hectares approximately 8 acres. He stated that the married daughters being Recho Chepkemoi, Joyce Chemutai Ngeny, Nancy Chepkoech Cheruiyot, Margaret Chepngetich and Sophia Cheronno had renounced their beneficial interests in the estate.
10. It was the 2nd Petitioner's contention that before the deceased died, he had shown him and his sister-in-law and given them some cattle while the larger herd remained with the 1st Petitioner. That the 1st Petitioner had used the cattle to pay school fees for his last-born sister Florida Chelangat and used the same cattle to assist her (1st Petitioner) in paying off some of her loans.
11. The 2nd Petitioner stated that they have not utilized the cattle they were allocated by his father as they have been used to the benefit of Florida Chelangat. That the 1st Petitioner refused to account for the cattle which formed part of the deceased's estate and which must be included in the distribution. The 2nd Petitioner further stated that Florida Chelangat must refund the cattle in terms of getting a reduced acreage in the distribution.
12. The 2nd Petitioner averred that the 1st Petitioner and Florida Chelangat colluded to alienate their father's cattle without their consent and in disregard to their beneficial right to the cattle. That it was in the interest of justice that the 1st Petitioner and Florida Chelangat ceded one acre each and the Grant be confirmed with the following mode of distribution:-
 - i. Eunice Chepkirui Ngeny 1 acre



- ii. Joseph Kiprono Langat 3 acres
- iii. Linah Langat 3 acres
- iv. Florida Chelangat Ngeny 1 acre.

The 1st Petitioner's submissions

13. Through her submissions dated 24th October 2023, the 1st Petitioner submitted that the estate of the deceased should be distributed equally. She relied on section 29 and 35 of the *Law of Succession Act*. She submitted that the law does not discriminate whether the dependant is a son or a daughter. That Florida Chelangat Ngeny did not renounce her right of inheritance and therefore had an equal right of inheritance as herself, Joseph Kiprono Langat (1st Petitioner) and Linah Langat who was her late son's wife.
14. It was the 1st Petitioner's submission that the proposed mode of distribution by the 2nd Petitioner was discriminatory and repugnant to justice. That the issue of cattle were new issues introduced by the 2nd Petitioner to deny the equal distribution of the subject land. It was her further submission that the issue of cattle did not feature anywhere in the proceedings.
15. I have considered the Summons for Confirmation of Grant dated 19th October 2021, the 1st Petitioner's submissions dated 24th October 2023 and the 2nd Objector's Affidavit of Protest dated 2nd October 2023. The only issue for my determination was the mode of distribution of Kericho/kyogong/66 measuring approximately 8 acres.
16. As I stated earlier in this Ruling, the 2nd Objector rejected the two Consents dated 7th October 2021 and 2nd February 2022 on the proposed modes of distribution. Due to this impasse, this court directed all the beneficiaries to appear in court to inform the court of their interest in the subject land.
17. On 14th November 2022, Joyce Chemutai Ngeny, Margaret Chepngetich and Jackline Chelangat all daughters of the deceased appeared before this court. They confirmed that they had signed the Consent dated 2nd February 2022 and that they were not interested in the subject land. They stated that they were in agreement that their mother (1st Petitioner) should be at liberty to share out the land and they agreed with her mode of distribution.
18. On 2nd March 2023, Nancy Chepkoech Cheruiyot and Sofia Cherono appeared before this court and informed the court that they had consented to the mode of distribution and had no interest in the subject land. They stated that they agreed with their mother's mode of distribution. Linah Langat appeared before this court on 14th March 2023 and informed the court that she was aware of the succession proceedings. She further informed the court that she needed time to think about the mode of distribution. Despite being summoned to appear before this court, Recho Chepkemoui failed to appear.
19. I have looked at the two Consents and Recho appended her signature to the consent dated 7th October, 2021 meaning that she agreed to the mode of distribution. She had also consented to the mode of distribution in the Mediation Agreement dated 4th August, 2022. Linah on the other hand did not append her signature to the Consent which means along with the 2nd Petitioner, she was not in agreement as to the mode of distribution.
20. From the analysis above, the subject land (Kericho/kyogong/66) was available to be shared amongst Eunice Chepkirui, Joseph Kiprono Langat, Linah Langat, and Florida Chelangat Ngeny.



21. In his Protest, the 2nd Petitioner stated that the 1st Petitioner and Florida Chelangat Ngeny conspired to use cattle that they deceased had left for them to their detriment and to the benefit of Florida Chelangat Ngeny. He stated that the cattle should form part of the estate and that the 1st Petitioner and Florida Chelangat Ngeny should cede a portion of the subject land because they had used their cattle.
22. It is my finding that the issue of cattle is a matter of fact and the same should be proved through evidence. The existence of the subject land was proved through an official search dated 17th November 2015 which showed that Kericho/kyogong/66 was registered in the name of Kipruto arap Ngeny. Further, the 1st Petitioner had a chance to raise the issue of the cattle when he filed his Summons for Revocation of Grant dated 29th December 2016 but he did not. This leads to me to the conclusion that the issue of the cattle was an afterthought and I accordingly dismiss the same. In any case the 1st Petitioner, being the widow of the deceased had a life interest in the said cattle and was not estopped from dealing with them.
23. The relevant law to the circumstances of this case is Section 35 of the [Law of Succession Act](#) which provides:-
- (1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—
 - (a) the personal and household effects of the deceased absolutely; and
 - (b) a life interest in the whole residue of the net intestate estate:
Provided that, if the surviving spouse is a widow that interest shall determine upon her re-marriage to any person.
 - (2) A surviving spouse shall, during the continuation of the 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 immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.
 - (3) 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.
 - (4) Where an application is made under subsection (3), the court shall have power to award the applicant a share of the capital of the net intestate estate with or without variation of any appointment already made, and in determining whether an order shall be made, and if so what order, shall have regard to—
 - (a) the nature and amount of the deceased's property;
 - (b) any past, present or future capital or income from any source of the applicant and of the surviving spouse;
 - (c) the existing and future means and needs of the applicant and the surviving spouse;
 - (d) whether the deceased had made any advancement or other gift to the applicant during his lifetime or by will;
 - (e) the conduct of the applicant in relation to the deceased and to the surviving spouse;
 - (f) the situation and circumstances of any other person who has any vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under his will (if any); and



- (g) the general circumstances of the case including the surviving spouse's reasons for withholding or exercising the power in the manner in which he or she did, and any other application made under this section.
- (5) Subject to the provisions of sections 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. (Emphasis mine)
24. Article 27(3) of *the Constitution* of Kenya provides:-

Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

25. In re Estate of M'Ngarithi M'Miriti (2017) eKLR, Gikonyo J. held that:-

“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 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 thence, 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*.

.....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.....”

26. The law contemplates equal sharing of inheritance among the beneficiaries irrespective of any circumstances. Equality is guaranteed even in a scenario where the deceased left behind children but no spouse. Section 38 of the *Law of Succession Act* provides:-

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

27. Section 40 of the *Law of Succession Act* provides:-

- (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.



- (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.
28. The Court of Appeal in *Stephen Gitonga M'murithi vs Faith Ngira Murithi* (2015) eKLR held:-
- “.....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.....”
29. Similarly in *re Estate of Francis Andachila Luta (Deceased)* (Succession Cause 875 of 2012) [2022] KEHC 16900 (KLR) (23 December 2022) (Judgment), Musyoka J. held:-
- “Let me revisit section 38 of the *Law of Succession Act*. It provides for equal distribution of the estate amongst the children. The language of section 38 is gender neutral. It does not classify children into male and female, nor sons and daughters, nor men and women. There is no discrimination nor differentiation nor classification nor categorization along gender lines. That would mean that sons and daughters of a dead person are entitled on equal basis to a share in the estate of their dead parent. Section 38 does not make marriage a factor in the distribution of the estate of a dead parent.....
- Section 38 should be read together with Article 27 of *the Constitution*, which outlaws discrimination of women based on gender and marital status. It declares that men and women have a right to equal treatment in all spheres of life. These principles and standards set out in Article 27, are drawn from the United Nations Convention on Elimination of All Forms of Discrimination against Women. (CEDAW), to which Kenya is a signatory. Article 27 and CEDAW enjoins the State, of which the courts are part, not to discriminate against any person on the basis of their sex or gender or marital status, Article 2(5) (6) of *the Constitution* incorporates and makes the general rules of international law part of the law of Kenya, and it also makes any treaty if or convention ratified by Kenya part of Kenyan law.....”
30. The court in *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.”
31. Having stated the law and the authorities above, and considered the clear wishes of all the beneficiaries it is the finding of this court that the subject land (Kericho/kyogong/66) be shared equally among the remaining four beneficiaries.
32. In the end, the Grant issued on 26th January 2021 by this court to Eunice Chepkirui Ngeny and Joseph Kiprono Langat is hereby confirmed and a Certificate to that effect shall follow. The mode of distribution of Kericho/kyogong/66 shall be as follows: -
- i. Eunice Chepkirui Ngeny 2.0 acres



- ii. Joseph Kiprono Langat 2.0 acres
- iii. Linah Langat 2.0 acres
- iv. Florida Chelangat Ngeny 2.0 acres

Each party shall bear their costs.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED THIS 30TH DAY OF APRIL, 2024.

.....

R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Mr Kenduiwo for the 1st Petitioner and holding brief for Mr J.K.Koech for the Objector and Siele(Court Assistant).

