



REPUBLIC OF KENYA



**In re Estate of Kipkemboi Maiyo (Deceased) (Probate & Administration
256 of 2019) [2024] KEHC 6042 (KLR) (28 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6042 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 256 OF 2019
RN NYAKUNDI, J
MAY 28, 2024**

N THE MATTER OF THE ESTATE OF KIPKEMBOI MAIYO (DECEASED)

RULING

1. Before this court is summons for confirmation of grant filed in court on 24.1.2024 under Section 71(1) of the *Law of Succession Act* and Rule 40 (1) of the P&A Rules Cap 160 of the Laws of Kenya. The application seeks the following substantive order:
 - a. That the Grant of letters of Administration Intestate made to the said Joseph Kibet Rotich in this cause on the 30th of April 2012 be confirmed.
 - b. That the costs of this application be in the cause.
2. The summons is supported by an affidavit and also consent from the beneficiaries. That consent covenants as follows: We Joseph Kibet Rotich being the defendants within the meaning of Section 29 of the *Law of Succession Act* of the above named Kipkemboi Maiyo (or a person who might be beneficially entitled to participate in the estate of the above named Kipkemboi Maiyo) who died on the 23rd March 1995 do hereby consent to the confirmation of Grant of Probate/Letters of Administration of the Estate of Kipkemboi Maiyo on to the distribution of the said Estate made as stated hereunder:-
 - a. Mary Chemeli Too
 - b. Jane Jerono Maiyo
 - c. Chrstopher Kimeli Modern
 - d. Jahakim Kipsang Keino
3. The administrator Joseph Kibet in the affidavit filed in Court on 24.1.2024 deponed as follows:
 - a. That a Grant of Letters of the said estate was made to me in this matter on the 30th April 2012 (Annexed hereto and marked JKR/1 is a copy of said grant)



- b. That the deceased was survived by the following Mary Jemeli Too Deceased Daughter Jane Jerono Maiyo Deceased Daughter Christopher Arap Kemei Adult Son Johakim Kipsang Keino Deceased son Joseph Kibet Rotich Adult son
- (c) That No application for provision for dependents is pending
- (d) That the identification and shares of all persons beneficially entitled to the said estate have been ascertained and determined as follows

Beneficiary Property Share

- 1. Jane Chepnetich Tulwet/tulwet Block1(masaba)20 2 Acres
- 2. Joseph Rotich Tulwet/tulwet Block1(masaba)20 1acre
- 3. Christopher Arap Kemei Tulwet/tulwet Block 1(masaba) 20 5 Acres
- 4. Julius Kipruto Sang Tulwet/tulwet Block 1(masaba)20 4 Acres
- 5. Joseph Kibet Rotich Tulwet/tulwet Block 1(masaba) 20 8 Acres

Decision

- 4. I have considered the application for confirmation of grant and the applicable law which is set out in 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. 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.

- 5. 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.

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- (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.

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.

6. Given this background and the principles applicable, I allow the summons for confirmation dated 25.10.2023 and filed on 24.1.2024. 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, SIGNED AND DELIVERED AT ELDORET THIS 28TH DAY OF MAY 2024

R. NYAKUNDI

JUDGE

