

KENYA / JUDGMENT

In re Estate of Chesimet Kipsugut alias Chesimet Arap Chirchir (Deceased) [2026] KEHC 12669 (KLR)

[2026] KEHC 12669 (KLR)

COURT

High Court

BEFORE

RL Korir

CASE / FILE NUMBER

Succession Cause 35 of 2017

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REPUBLIC OF KENYA**IN THE HIGH COURT OF KENYA AT BOMET****SUCCESSION CAUSE NO. 35 OF 2017****IN THE MATTER OF THE ESTATE OF CHESIMET KIPSUGUT ALIAS CHESIMET ARAP CHIRCHIR
(DECEASED)****JOSEPH KIPKEMOI SUGUT PETITIONER****VS****CARREN CHEPKORIR KORGOREN OBJECTOR****JUDGEMENT**

1. The deceased, Chesimet Kipsugut Chirchir died on 28th December 1974 and left behind the following dependants:-
2. Zipporah Baliach - Daughter
3. Elizabeth Marindanya - Daughter
4. Recho Teigutwo - Daughter
5. Joseph Kipkemoi Sugut - Son
6. Carren Korgoren - Daughter in law

7. Joseph Kipkemoi Sugut petitioned this court for Letters of Administration Intestate in his capacity as the deceased's son. He listed the deceased's asset as KERICHO/NDARAWETTA/780.
8. The Grant was issued in the Petitioner's name on 15th March 2018.
9. The Petitioner filed Summons for Confirmation of Grant dated 29th November 2018. The Petitioner stated that KERICHO/NDARAWETTA/780 measured approximately 5.2 hectares. He stated that Carren Korgoren was his late brother's (David Kimutai Korgoren) wife and before his brother died, he had sold 0.3 acres to Joseah Tamui and later, the Objector also sold to the same purchaser 1.3 acres. The Petitioner further stated that his late mother donated a part of the land to Africa Gospel Church in 1974.
10. The Petitioner attached a sketch map as JKS1 with his proposed mode of distribution. He proposed that they (Objector and Petitioner) each get 2.43 hectares and Africa Gospel Church get 0.155 hectares. He further stated that even though the Objector had intermeddled with the deceased's estate, he had allowed the purchaser to occupy land that fell on his proposed share.
11. The Objector filed an Affidavit of protest dated 8th February 2019. The Objector stated that together with her late husband, David Kimutai Korgoren, they sold 2 acres to Joseah Tamui who occupied and developed part of the area that the Petitioner proposed to be his share. That the Petitioner had all along been aware that they sold part of the land to the purchaser and that before filing of this proceedings, they (Petitioner and Objector) had agreed to share the suit parcel (KERICHO/NDARAWETTA/780) into four parts.
12. The Objector attached a sketch map as CCK 1 with her proposed mode of distribution. She proposed that they (Objector and Petitioner) each get 6 acres and Africa Gospel Church get 0.38 hectares.
13. On 4th February 2021 and 5th July 2021, this court gave the parties' time to attempt an amicable settlement on the Protest but the parties were unable to agree. On 28th March 2022, this court referred the matter to court annexed mediation and on 16th November 2021, the court adopted the Partial Mediation Agreement which was handwritten and dated 30th March 2022 as the orders of the court.
14. The Partial Agreement stated that the Objector and Petitioner had agreed on an equal share of the estate. They however did not agree on the positioning of their respective shares. The court consequently directed the parties to frame the outstanding issues for determination by the court.
15. The Objector filed her issues for determination and they were as follows:-
16. Whether the estate of the deceased should be subdivided as per the sketch map filed by the Objector or by the sketch map filed by the Petitioner.

17. Whether the Petitioner transferred his homestead to a position belonging to the Objector as indicated in her sketch map during the pendency of this succession cause.
18. Whether the Petitioner occupied the Objector's position without due regard to the court order issued on 15th March 2018.
19. What will happened to the developments done by the Objector in the position that has been occupied forcefully by the Petitioner?

The Objector's Case

1. Richard Kurgat who was a surveyor testified as the Objector's 6th witness. He testified that he was invited on 30th July 2012 to survey the suit land. He further testified that he found existing boundaries already done by the family members and he confirmed the acreage as 6 acres for Joseph Kipkemoi Sugut (Petitioner), 4 acres for Carren Chepkorir Korgoren (Objector) and 2 acres for Joseah Tamui (Purchaser). He produced a sketch map as **Objector's Exhibit 1**.
2. It was Richard's testimony that as per the sketch map, the Objector lived on parcel A, the Petitioner's buildings were on parcel B and parcel C had a church. When Richard was cross examined, he stated that parcel C had no buildings and he was told that it belonged to Tamui (purchaser). Richard further stated upon cross examination that the Objector's land was on both ends and enclosed the purchaser's portion.
3. Carren Chepkorir Korgoren testified as the 1st Objector's witness. She testified that she was married to David Korgoren who was the Petitioner's brother and after their wedding her mother in law showed them (Petitioner and Objector) their parcels of land which they occupied and developed by planting tea bushes, trees and building a homestead. That in the year 2006 she fell sick and she sold 0.5 acres to Joseah Tamui to raise medical fees. She further testified that her late husband had earlier sold 1.5 acres to Joseah Tamui.
4. It was Carren's testimony that they engaged a surveyor, Richard Kurgat who visited the land and confirmed acreage. It was her further testimony that in the year 2017, the Petitioner and clan members came to the portion that they had sold to Joseah Tamui, drove away his cattle and demolished the purchaser's houses and the Petitioner took over the said parcel and transferred his homestead in disregard to the status quo order that had been issued by this court. She testified that the Petitioner was aware that they had sold part of the land to Joseah Tamui and did not protest for 10 years until her husband died.
5. Carren testified that she wanted to continue living where her mother in law assigned her as she had lived there for over 24 years. She further testified that their parents' graveside was on her portion of land (parcel A)

6. It was Carren's testimony that the purchaser should not move to parcel A as he had made a lot of developments on parcel C. It was her further testimony that the Petitioner's land was portion B and he should move out of parcel C which he moved in in the year 2017 in violation of the status quo order.
7. When Carren was cross examined, she reiterated that she lived on parcel A and the purchaser lived on parcel C which he had already developed. She further stated that they had not done succession on the suit parcel but it was her mother in law who assigned them the parcels.
8. John Soi testified as the 2nd Objector's witness. He stated that he was the Petitioner's and Objector's neighbour and that their parent's graveside was located in the Objector's land (parcel A). He further stated that the graveside had not been sold to the purchaser.
9. Robert Kipyegon Kosgei testified as the 3rd Objector's witness. He testified that he was present during the confirmation of the acreage of the suit land. He further testified that after the surveyor drew a sketch map and gave copies to all parties, they lived peacefully until the year 2017 when the Petitioner called them for a meeting and told them that the Objector had sold to the purchaser the portion of land which had their parent's graveside.
10. It was Robert's testimony that there was no evidence of such and that the purchaser and his cows were on parcel C and that portion was fenced. It was his further testimony that the Petitioner transferred his homestead to parcel C and destroyed all the developments there.
11. Robert testified that the Objector's land was divided into parcel A and parcel C and that their parent's graveside was in parcel A. Robert further testified that the Petitioner's land was parcel B. When he was cross examined, he stated that the purchaser's land was parcel C.
12. Leonard Kosgei testified as the 4th Objector's witness. He gave the same testimony as Robert Kipyegon Kosgei.
13. Benard Kiplangat Mutai testified as the 5th Objector's witness. He testified that in the year 2006, the Objector sold a portion of her land to Joseah Tamui and he was engaged to fence it by the purchaser. He further testified that he was engaged to plant trees and Napier grass.
14. It was Benard's testimony that both parties lived peacefully until the year 2017 when the Petitioner and his clan members drove away the purchaser's cattle and closed the entrances and he later transferred his homestead to the purchaser's parcel.
15. Through her written submissions dated 7th October 2024, the Objector submitted that the court should distribute the deceased's estate according to the sketch map (Objector's Exhibit 1) that was produced by the surveyor, Richard Kurgat (6th Objector's witness). That the Petitioner upon cross examination confirmed that the surveyor visited the suit parcel and Robert Kipyegon Koskei (3rd Objector's witness) and Leonard Kosgei (4th Objector's witness) were present during the survey process.

16. It was the Objector's submission that this court direct as assessment report to be filed on the losses she suffered and the amount to be compensated to her by the Petitioner. That the Petitioner had cut trees and destroyed developments on her parcel of land.

The Petitioner's Case

1. On the other hand, the Petitioner (Joseph Kipkemoi Sugut) testified as the 1st Petitioner's witness. He testified that his late brother David Kimutai Korgoren (Objector's husband) sold 0.7 acres of the suit land to Joseah Tamui violating the law by intermeddling with the deceased's estate. He testified that the deceased brother was shown his parcel by their late mother and after they sold part of the parcel, the Purchaser took over vacant possession, fenced off the land and planted Cyprus trees and planted napier grass and tea bushes. He testified that he did not object to the sale at that time.
2. It was Joseph's testimony that after the death of his brother (the Objector's husband,) she conspired with the Purchaser to sell and purchase another portion on his parcel and threatened to encroach their parent's graveside. It was his further testimony that the Objector sold the land without considering his occupational right.
3. Joseph testified that the Purchaser intermeddled with the deceased's estate by interfering with his peaceful occupation of his parcel. Joseph further testified that he wanted to administer the estate for the benefit of his late brother's children and that the Objector's share should be jointly registered with the eldest daughter to safeguard the land from being sold or wasted.
4. It was Joseph's testimony that the surveyor had divided the land three times. Joseph produced a sketch map as **Petitioner's Exhibit 1**. He testified that the Objector's portion was parcel A (6 acres) and his portion was parcel B (6 acres).
5. Joseph testified that he disputed the Objector's proposed distribution as he wanted everyone to stay in the same position. He further testified that he never encroached on the Objector's parcel and that it was the Purchaser who caused the discord.
6. When Joseph was cross examined, he stated that according to the Objector's sketch map (which they both paid for) the surveyor showed them that parcels A and C belonged to the Objector and parcel B belonged to him. He further stated that his sketch map was drawn by the County Surveyor, Japhet Langat and the Objector did not participate in that survey.
7. Upon further cross examination, the Petitioner stated that when the succession proceedings commenced, he was in parcel B and was now in parcel C and that clan members had agreed that he move from parcel B to parcel C. He further stated that there was a road touching the whole suit land and everyone would have access. It was the Petitioner's testimony that he wanted equal distribution.

8. Abraham Kiprono Koske testified as the 2nd Petitioner's witness and as the Petitioner's nephew. He testified that the Petitioner's mother had left the suit land to be shared between the Petitioner and his late brother and the late David Korgoren violated the law when he sold off a part of his land (0.4 acres) before succession was done. Abraham further testified that the Objector and the Purchaser conspired to sell and purchase another portion that was on the Petitioner's side and the Purchaser was removed from the land to enable the family resolve the issue.
9. When Abraham was cross examined, he stated that the Objector sold the land without the family's knowledge. He further stated that after equal sharing of the land between the Objector and the Petitioner, the Objector should shoulder her liability to the Purchaser. Upon being shown the Objector's sketch map, Abraham stated that before the dispute, the Petitioner lived on parcel B and the Objector lived on parcel A and that the Petitioner now occupied parcel C and part of parcel B.
10. It was Abraham's testimony that the Purchaser had encroached on his grandparent's graveside. It was his further testimony that the transaction done by the Purchaser and the Objector was illegal and had threatened the Petitioner with eviction by not allowing him peaceful occupation of his inheritance.
11. Joshua Chepkwony testified as the 3rd Petitioner's witness. Joshua gave similar testimony as Abraham Kiprono Koske (2nd Petitioner's witness). He further testified that the Purchaser had not developed the land and had left. When he was cross examined, he stated that he had no familial relationship with the Petitioner and the Objector and was an elder who knew their parents. He further stated that he was present when the Purchaser bought the land from the Objector and he (Purchaser) kept his cattle there even though he did not live there.
12. Philip Kiprono Rotich testified as the 4th Petitioner's witness. Philip gave similar testimony as Abraham Kiprono Koske (2nd Petitioner's witness) and Joshua Chepkwony (3rd Petitioner's witness). He further testified that the Petitioner and the Objector were his neighbours.
13. It was Philip's testimony that the Petitioner and the Objector ought to divide the suit land equally. It was his further testimony that the Objector sold the land before succession proceedings commenced and that the Purchaser had planted Cyprus trees but there were no houses on the Purchaser's parcel. He further testified that the Objector's husband was buried in the Objector's parcel.
14. When Philip was cross examined, he stated that he was present when their late mother divided the suit land. He further stated that before the succession proceedings commenced, the Petitioner lived on the other side.

Analysis and determination.

1. I have gone through the Summons for Confirmation of Grant dated 29th November 2018, the Affidavit of Protest dated 8th February 2019, the viva voce evidence and the Objector's written submissions dated 7th October 2024. The only issue for my determination was how to distribute the suit property between the Petitioner and the Objector.
2. The law provides the order of preference in succession of an estate where the deceased died intestate.

Section 66 of the Law of Succession Act provides:-

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

- (a) **surviving spouse or spouses, with or without association of other beneficiaries;**
- (b) **other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;**
- (c) **the Public Trustee; and**

43. It was in this respect that the Petitioner being a child of the deceased was appointed administrator and issued a grant by this court on 15th March 2018.

1. As earlier stated, trouble rocked the estate when it came to distributing the estate.
2. The order of preference in intestate succession is set out by law of section 38 of the Law of Succession Act provides that the net intestate estate shall devolve upon the surviving child, it there be only one, or be equally divided among the surviving children.
3. The surviving children of the deceased were listed as four. From the evidence, it was clear that the deceased's widow had divided the subject land equally between her two sons being the Petitioner and David Kimutai Korgoren, the husband of the Objector. It was not clear whether the other children of the deceased had been catered for.
4. This court must take it that the sub-division was for purposes of settlement only pending succession as distribution can only be perfected through a confirmed grant.

5. From the evidence, it is clear that the Petitioner and the Objector were both beneficiaries of the deceased's estate which comprised of KERICHO/NDARAWETTA/780 which measured approximately 5.2 hectares. It was also clear from the onset that subdivision of the suit land was done before succession proceedings commenced and that the Objector and her deceased husband sold part of their share. This scenario translates to intermeddling with the deceased's estate which would make the subdivision and the sale to Joseph Tamui illegal and **void* *ab initio**.
6. The Objector stated that they (Objector and Petitioner) engaged a surveyor (Richard Kurgat, 6th Objector's witness) and he surveyed the suit land and drew a sketch map (Objector's Exhibit 1). The Petitioner confirmed participation in this survey as he stated both of them paid the surveyor. This was also corroborated by the surveyor himself. The sketch map (Objector's Exhibit 1) showed that the Objector occupied parcels A and C which formed a total of 6 acres and the Petitioner occupied parcel B which was 6 acres. The Objector explained that she divided her parcel into A and C because she sold 2 acres to the Purchaser and the purchase now resided in parcel C.
7. The Petitioner produced his own sketch map (Petitioner's Exhibit 1) which stated that the Objector occupied parcel A (6 acres) and he occupied parcel B (6 acres). There was no provision for the Purchaser on the Petitioner's sketch map even though he acknowledged that Joseph Tamui was a purchaser. The Petitioner simply stated that he allowed the Purchaser to settle on his share of land (parcel B).
8. When the Petitioner was cross examined, he stated that his sketch map (Petitioner's Exhibit 2) was done by the County Surveyor and in the absence of the Objector and any other witness. This was contrary to the Objector's sketch map which was done in the presence of the Petitioner Robert Kipyegon Kosgei (3rd Objector's witness) and Leonard Kosgei (4th Objector's witness). In my view, the Petitioner's sketch map (Petitioner's Exhibit 1) was of low probative value.
9. The Objectors' witnesses stated that the Petitioner moved forcefully evicted the Purchaser from his parcel and transferred his homestead to the Purchaser's parcel. This was corroborated by Abraham Kiprono Koske (2nd Petitioner's witness) and Philip Kiprono Rotich (4th Petitioner's witness) who upon cross examination stated that the Petitioner lived in parcel A and the Objector lived in parcel B before the dispute started. That the Petitioner now occupied parcel C.
10. In the mind of this court, the actions taken by the Objector and Petitioner in surveying and distributing the land to take into consideration an illegal sale were void. I will therefore confine myself to the distribution as between the Objector and the Petitioner.
11. I am guided by re Estate of Gedion Nthiw'a Mutinda (Deceased) **Succession Cause No. 650 of 2010 [2023] KEHC 3229 (KLR) (17 April 2023) (Judgement)**, where Muigai J. held:-

“The Beneficiaries concede that they all reside on the said property and have permanent structures and developments. In line with the law the property shall be distributed amongst the beneficiaries considering their permanent settlements...”

1. Similarly in re Estate of SBS (2014) eKLR, Mabeya J. held:-

“The other factor which I have taken into consideration is the developments undertaken by individual beneficiaries. There are those who told the court that they have already constructed permanent homes in certain areas. In this regard, the court has tried to ensure that while trying to maintain equity, the lives of the beneficiaries are to be disrupted at the minimum...”

1. From the evidence tendered it appears to this court that the Petitioner shifted the goal post set by his deceased’s mother and moved to occupy a different part of the land. There was no evidence that the purchaser had made any developments other than planting trees. Having found that the Objector sold the deceased’s land without succession, I find the sale and purchase to have no bearing in the present succession cause. Both the Objector and Petitioner should file a joint mode of distribution for confirmation of the grant by the court. The Objector would thereafter have the legal right to deal with her portion.
2. In the end, these are my final orders on distribution.
3. Both the Petitioner and the Objector are entitled to 6 acres each to be measured taking into consideration their settlements.
4. The GCA Church shall get the share of 0.38 acres donated to it by the deceased and his wife.
5. The court cannot allocate a share to Joseph Tamui as he is not recognised as a creditor to the deceased’s estate.
6. The Petitioner having acquiesced to the initial survey shall solely bear the cost of the re-survey.
7. Both parties to file joint Summons for confirmation of grant.

Orders accordingly.

Judgment delivered, dated and signed at Chuka this 5th day of August, 2026.

.....

R. LAGAT-KORIR

JUDGE

Judgment delivered in the presence of Mr. J.K. Koech for the Petitioner, N/A for Mr. Kenduiywo the Respondent. Muriuki and Siele (Court Assistants).

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