



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO**

Civil Miscellaneous Application 56 of 2009

1. Family Law
2. The Law of Succession Cap.160 Laws of Kenya.
3. Probate & Administration practice and procedure.
 - (a) Preliminary Objection.
 - (b) Objection proceedings filed in miscellaneous case.
 - (c) Proceedings to have been filed in a Law of Succession Cause under Section 26 of the Law of Succession Act.
 - (d) The application be struck out.
 - (e) In reply:
 - (e) The applicant had been left out of the estate
 - (f) Application under Law
 - 3rd respondent;
 - (g) Does not wish to submit to this
4. **Held**
 - (a) The applicant given 14 days to file a law of succession cause under section 26.
 - (b) No dealings with deceased properties – there being a stay for 14 days.
5. **Case law**
 - (a) **In the Estate of Kibowen Komen** – deceased.
Succession Cause No.500/97 (Koome J,)
 - (b) **Erastus J. M. Mwangi & Anor. -v- Jacob Kakun Stephen**
HCA 268/99 (Ransley J,)
6. **Advocates**

M.C. Nyigei advocate instructed by M/S Nyigei & Co. advocates for the Petitioner/applicants – present
 P. Sawe advocate instructed by M/S Otieno Ragot & Co. advocates for the 1st, 2nd ad 3rd Respondent – present
 F.O. Koko advocate instructed by M/S Obondo Koko & co. advocates for the 3rd Respondents – present.

WINFRED CHEPKEMOI KERICH PETITIONER

VERSUS

RECHO CHEPKEMEI KERICH	-	1 ST RESPONDENT
ROBERT KIPKURUI RUTO	-	2 ND RESPONDENT
KENNETH CHERUIYOT RUTTO	-	3 RD RESPONDENT
MELLIOT CHERONO NAIDNOI	-	4 TH RESPONDENT

RULING

Preliminary Objection

I. Procedure of Preliminary Objection

1. The advocate for the respondent 1, 2, and 4 herein raises a Preliminary Objection to this High Court Miscellaneous Cause. The background of the matter being that the original applicant having dissatisfied with the deceased, her late father Alfred Kipruto Koech having left no provision for her and indeed her two sisters prayed that she be provided for under the Law of Succession Cause **section 26** on dependency.

2. The objection raised by applicant/respondent 1, 2 & 4 herein is that this is a succession matter. It should therefore be put if a succession cause under **section 26** on dependency would therefore be filed and not a miscellaneous cause under the Civil Procedure Rules. They argued that Ransley J, had ruled in the case of **Erastus J. M. Mwangi & Anor. v Jacob Gakuru Stephano & Anor. HCA 268/99** Nairobi that if the applicant claimed beneficiary rights he can do this only in a Succession Cause and not through a Land Dispute Tribunal cause or a civil case. This argument was enforced by Koome J, at Nakuru in the case of the Estate of **Kibowen Komen (deceased)** whereby the Civil Procedure Rules could not be imported into the Law of Succession Act. The act was "*wholesome and conclusive*". Thus issue falling under the Civil Procedure Act could not be imported into the Law of Succession Act.
3. The respondents 1, 2, and 4 prayed this matter be struck out. The 3rd respondent stated through his advocate that he would not submit.

II. Findings

4. It is clear that the Dependency Proceedings had been brought through the Civil Procedure Rules instead of the **Law of Succession Act Cap 160**.
5. This court allows the application on the Preliminary Objection. The application is hereby struck out. The original applicant is given leave to file a Law of Succession Cause seeking for orders of dependency under **section 26** of the Law of Succession Act within fourteen (14) days.
6. There will be further orders that there be stay on the properties and bank accounts held by the original respondents until an application is filed within (14) days.
7. The costs would be to the respondent 1, 2 and 4 paid by the original applicants/respondents.

Dated this 30th day of November 2009 at Kericho

M. A. ANG'AWA
JUDGE