



**Lemagon & another (Suing as the personal representatives of the Estate of the Late Lodoviko Cheptoo Rotich alias Cheptoo Rotich alias Lotobiko Cheptoo Rotich - Deceased) v Komen (Sued as the Legal Administrator of the Estate of Late Constantina Kabon Komen - Deceased) & 2 others (Environment and Land Case E009 of 2024) [2025] KEELC 5460 (KLR) (9 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5460 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ITEN  
ENVIRONMENT AND LAND CASE E009 OF 2024**

**L WAITHAKA, J  
JULY 9, 2025**

**BETWEEN**

**KOMEN CHEROP LEMAGON ..... 1<sup>ST</sup> PLAINTIFF**

**ALOISE YANO CHEBET ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF THE  
LATE LODOVIKO CHEPTOO ROTICH ALIAS CHEPTOO ROTICH ALIAS  
LOTOBIKO CHEPTOO ROTICH - DECEASED**

**AND**

**KENNETH KOMEN (SUED AS THE LEGAL ADMINISTRATOR  
OF THE ESTATE OF LATE CONSTANTINA KABON KOMEN -  
DECEASED) ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY LAND REGISTRAR ELGEYO MARAKWET ..... 2<sup>ND</sup> DEFENDANT**

**HON ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. By a plaint dated 20<sup>th</sup> December 2024, the plaintiffs instituted this suit seeking judgment against the defendants, jointly and severally, for the reliefs listed hereunder.
2. As can be discerned from the averments/contentions in the plaint, the plaintiffs' suit is premised on the grounds that land parcel number Irong/Iten/382 measuring 3.147 hectares or thereabout (hereinafter referred to as the suit property) belongs to the Estate of Lodoviko Cheptoo Rotich alias Cheptoo Rotich alias Lotobiko Cheptoo Rotich (hereinafter referred to as Lodoviko) whose Estate they represent; that the suit property was subject of a court case to wit Eldoret High Court Probate



- & Administration Succession Cause No. 159 of 2013 where the grant issued to Constantina Kabon Komen (hereinafter referred to as Constantina) whose estate the 1<sup>st</sup> defendant represents, was revoked and an order for filing of a fresh petition in respect of the Estate of Lodoviko given.
3. Contending that the effect of revocation of the grant given to Constantina was to revert the suit property to the Estate of Lodoviko, the plaintiffs complain that the 1<sup>st</sup> defendant fraudulently, unprocedurally, unlawfully, illegally and/or without any colour or right, filed a Succession Cause in respect of the Estate of Constantina to wit Iten SPMC Succession Cause number E013 of 2022 in which he included the suit property as part of the estate of Constantina.
  4. It is the plaintiffs' further pleaded case that the grant issued to the 1<sup>st</sup> defendant in Iten SPMC Succession Cause No. E013 of 2022 was confirmed and the suit property distributed to the beneficiaries of the estate of Constantina to their exclusion (exclusion of the plaintiffs) who are beneficiaries of the Estate of Lodoviko.
  5. Terming the actions of the 1<sup>st</sup> defendant which culminated in administration and distribution of the suit property as part of the Estate of Constantina fraudulent, the plaintiffs lament that attempts to amicably resolve the dispute regarding administration of the estate of Lodoviko were futile.
  6. For the foregoing reasons, the plaintiffs instituted the instant suit seeking the following reliefs: -
    - a. A declaration that registration of the 1<sup>st</sup> defendant as proprietor of the suit property stands revoked as per the directions and/or ruling and/or order made by Hon. Lady Justice H.A Omondi on 05<sup>th</sup> November 2020 in Eldoret High Court Probate & Administration Succession Cause No.159 of 2013 revoking the grant issued to the 1<sup>st</sup> defendant;
    - b. A declaration that the 1<sup>st</sup> defendant as proprietor of the suit property is fraudulent, unlawful, unprocedural, illegal, null and void;
    - c. An order of cancellation of the title deed for the suit property as issued to the 1<sup>st</sup> defendant and cancellation of the entries recorded in the green card as from entry No. 4, 5, and 6 as entered on 12<sup>th</sup> day of September 2008 by the 2<sup>nd</sup> defendant.
    - d. An order reverting and/or reinstating the name of Lodoviko deceased as the rightful, legal, absolute and indefeasible owner of the suit property and a new title deed and/or green card be issued for the purposes of taking out fresh petition as per the directions and/or ruling and/or order made on 5<sup>th</sup> November 2020 in Eldoret High Court Probate & Administration Succession Cause No.159 of 2013;
    - e. An order directing the 1<sup>st</sup> defendant to surrender the original title deed for the suit property to the 2<sup>nd</sup> defendant forthwith;
    - f. A permanent injunction restraining the 1<sup>st</sup> defendant by himself, his agents, servants, employees, other beneficiaries and/or otherwise whomsoever from transmitting, subdividing, transferring, auctioning, charging, dealing, interfering, advertising for sale, disposing off or in any other manner interfering with the suit property;
    - g. An order injunction, inhibition, caution or restriction that may be in place in respect of the suit property be discharged for full implementation of this court's decree or order and/or judgment and/or directions and/or ruling made on the 5<sup>th</sup> November 2020 in Eldoret High Court P & A Succession Cause No.159 of 2013 revoking the grant issued to the 1<sup>st</sup> Defendant;
    - h. A declaration that the late Lodoviko deceased is the lawful proprietor of the suit property;



- i. Costs of the suit;
  - j. Any other relief the Honourable court may deem fit to grant.
7. On 24<sup>th</sup> March 2025 the 1<sup>st</sup> defendant filed a notice of preliminary objection dated 21<sup>st</sup> March 2025 seeking to dismiss the plaintiffs’ suit and the application for interlocutory reliefs accompanying it on the grounds that:-
1. The suit and the application are fatally defective and cannot stand;
  2. The intestate and testamentary succession to and administration of the estate of the deceased persons are governed by the Law of Succession Act which under Section 47 gives the High Court jurisdiction to deal with any matter arising under the Act and that the High Court in this regard has concurrent jurisdiction to hear and determine disputes of succession relating to land;
  3. That the court has no jurisdiction to entertain succession issues;
  4. That the matter violates the clear provisions of Article 162(2) as read with Article 165(5) of the Constitution, which confers and limits the jurisdiction of the High Court and by extension the Environment and Land Court to matters assigned to the respective courts as it seeks to have the Environment and Land Court exercise supervisory jurisdiction over the High Court;
  5. That the suit is fatally defective, incompetent, bad in law and should be struck out with costs to the 1<sup>st</sup> defendant.
8. Pursuant to directions given on 25<sup>th</sup> March 2025 the preliminary objection was disposed of by way of written submissions.

#### DIVISION - Submissions

##### **1<sup>st</sup> Defendant’s submissions**

9. In his submissions dated 10<sup>th</sup> May 2025, filed on 21<sup>st</sup> May 2025, the 1<sup>st</sup> defendant submits that from the face of the plaint and the application, it is clear that the issues arising from the suit touch on the property forming part of an Estate and that the documentation attached thereto relate to succession matters before the High Court at Eldoret and the Senior Principal Magistrate’s court at Iten.
10. The 1<sup>st</sup> defendant makes reference to the case of *Mukisa Biscuit Manufacturing Company Ltd v west end Distributors Ltd* 1969 EA 696 where the law regarding what amounts to a preliminary objection was espoused and asserts that the issues raised in the suit relate to intestate and testamentary succession to, and administration of Estates of deceased persons governed by the Law of Succession Act and that Section 47 of the Act gives the High Court jurisdiction to determine such matters.
11. It is the 1<sup>st</sup> defendant’s case that pursuant to Section 71 of the Law of Succession Act, before distribution of the Estate, the court must satisfy itself that the beneficiaries are the legitimate beneficiaries of the Estate and that requires the court to hear evidence from concerned parties. Pointing out that the plaintiffs are claiming an interest in the suit properties which are registered in the names of and form part of the Estate of Lodoviko and contending that the plaintiffs’ claim over the suit properties are issues that should be handled before the Succession Court, the 1<sup>st</sup> defendant states that the parties to the instant suit have had a long standing dispute on who are the actual beneficiaries of the Estate, which issue is yet to be determined.



12. According to the 1<sup>st</sup> defendant, the issue of who are the rightful beneficiaries of the Estate hereto cannot be determined before this court (Environment and Land Court) but ought to be determined by a Succession Court, in particular, the High Court.
13. The 1<sup>st</sup> defendant further contends that no evidence has been adduced to the effect that the Succession Court cannot determine this matter; that the plaintiffs are asking this court to supervise the Succession Court which court, according to him, has concurrent jurisdiction over the issues in dispute. In that regard, the 1<sup>st</sup> defendant has placed reliance on the case of Salome Wambui Njau (Suing as an Administratrix of the Estate of Peter Kiguru Njuguna (Deceased) vs. Caroline wangui Kiguru (2013) e KLR.
14. The 1<sup>st</sup> defendant further submits that the instant suit violates the principle of sub judice set out in Section 6 of the Civil Procedure Rules. In this regard, the 1<sup>st</sup> defendant submits that the instant suit is sub judice Eldoret High Court Succession Cause No.159 of 2013.
15. Arising from the foregoing, the 1<sup>st</sup> defendant urges this court to strike out/dismiss the suit/application and the suit with costs to him.

### **Plaintiffs' submissions**

16. The plaintiffs filed lengthy submissions, dated 20<sup>th</sup> March 2025, in which they identify two issues for the court's determination. These are;
  - i. Whether the preliminary objection is competent and
  - ii. Whether this court has jurisdiction to hear and determine the instant suit.
17. On whether the preliminary objection is competent, the plaintiffs submit that it is not because the issues raised in it require evidence to prove hence not a pure preliminary objection.
18. As to whether this court has jurisdiction to hear and determine the dispute presented before it, the plaintiffs submit that the case involves cancellation of title to land on the ground that it was fraudulently acquired hence falls within the jurisdiction of this court.
19. Terming the contention by the 1<sup>st</sup> defendant that the High Court and Environment and Land Court have concurrent jurisdiction to hear and determine issues touching on land belonging to the Estate of a deceased person a misapprehension of the law, the plaintiffs' submit that under Rule 42(2) of the Probate and Administration Rules as read with Section 26 of the [Land Registration Act](#), only the Environment and Land Court can deal with matters touching on fraud in registration of land belonging to an estate of a deceased person.
20. Concerning the contention by the 1<sup>st</sup> defendant that the instant suit is sub judice Eldoret High Court Succession Cause No. 159 of 2013, the plaintiffs points out that contention/claim is not one of the grounds taken up by the 1<sup>st</sup> defendant in support of the preliminary objection and that it has been introduced through submissions. That notwithstanding, the plaintiffs have inter alia submitted that evidence is required to prove that the said suit is still pending in court. According to the plaintiffs, that suit was concluded hence alleged pendency cannot be relied on in support of the 1<sup>st</sup> defendant's preliminary objection.

### **Analysis and determination**

21. It is noteworthy that the 1<sup>st</sup> defendant did not file a statement of defence on which his preliminary objection can hinge. Be that as it may, it is clear from the court record and/or pleadings that the orders



pursuant to which the suit property was registered in the name of Constantina on 12<sup>th</sup> September 2000 were set aside/nullified vide the order of the High Court by H.A Omondi J (as she then was) thereby reverting the suit property to the Estate of Lodoviko. Thereafter, the 1<sup>st</sup> defendant filed a fresh petition in respect of the Estate of Constantina in which he included the suit property as part of the Estate of Constantina.

22. As a result of the impugned action of the 1<sup>st</sup> defendant of including the suit property as part of the Estate of Constantina leading to its administration contrary to the orders given by the High Court that a fresh petition in respect of the Estate of Lodoviko comprised in the suit property be filed, the suit property was administered as per the confirmed grant issued to the 1<sup>st</sup> defendant in Iten SPMC Succession Cause No. E013 of 2022 and distributed as indicated in the confirmed grant of that court.
23. Succession of the suit property as belonging to the estate of Constantina was clearly a misrepresentation of facts to the Succession Court leading to issuance of the impugned grant.
24. The impugned action of the 1<sup>st</sup> defendant entitles the plaintiffs to move the Succession Court for revocation of the grant issued to the 1<sup>st</sup> defendant.
25. In paragraph 19 of the plaint, the plaintiffs aver that after realizing the anomalies, illegality, fraudulent and/or misrepresentation by the 1<sup>st</sup> defendant, they have since filed summons for revocation and/or annulment of the grant issued to the 1<sup>st</sup> respondent in Iten SPMC Succession Cause Number E013 of 2022. That averment is an acknowledgement by the plaintiffs of existence of a pending suit where some of the issues forming the basis of filing this suit may be resolved.
26. Whilst there is apparent misrepresentation/ irregularity in the process that led to administration of the suit property by the 1<sup>st</sup> defendant as part of the estate of Constantina which entitles the plaintiffs to move to this court to challenge the title based on the alleged irregularity, illegality and/or fraud, there being a pending Succession Cause where the issue of misrepresentation/irregularity will be addressed, there is a danger of issuance of conflicting orders on the issue of the legal propriety or otherwise of the grant issued in favour of the 1<sup>st</sup> defendant in respect of the suit property and the subsequent distribution of the suit property.
27. That being my view of the matter, I stay hearing and determination of this suit and the application accompanying it pending the hearing and determination of the case/proceedings referred to in paragraph 19 of the plaint.
28. The costs of the preliminary objection shall abide the outcome of this suit.
29. Orders accordingly.

DATED, SIGNED AND DELIVERED AT ITEN THIS 9<sup>TH</sup> DAY OF JULY, 2025.

L. N. WAITHAKA

JUDGE

Ruling delivered virtually in the presence of;-

Mr. Isiji for the Plaintiff

Ms. Kimeli holding brief for Mr. Tororei for the 1<sup>st</sup> Defendant

N/A for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

Court Assistant: Lilian

