



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Edward Talam Limo (Deceased) (Succession Cause  
E040 of 2018) [2025] KEHC 2752 (KLR) (11 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2752 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E040 OF 2018  
RN NYAKUNDI, J  
MARCH 11, 2025**

**IN THE MATTER OF THE ESTATE OF EDWARD TALAM LIMO (DECEASED)**

**BETWEEN**

**RUTH JERUTO LIMO ..... 1<sup>ST</sup> PETITIONER  
BENJAMIN KIBUNGEI LIMO ..... 2<sup>ND</sup> PETITIONER  
MARY TALLAM ..... 3<sup>RD</sup> PETITIONER  
JOY JEROTICH LIMO ..... 4<sup>TH</sup> PETITIONER**

**AND**

**JOHN MACHARIA MULABI ..... INTERESTED PARTY**

**AND**

**RUTH JEPKOSGEI LIMO ..... BENEFICIARY  
RUTH CHEBET ..... BENEFICIARY  
RAYMOND KIPKEMEI LIMO ..... BENEFICIARY  
JEFFREY KIPKEMBOI MUSA ..... BENEFICIARY  
CHRISTINE CHELAGAT ..... BENEFICIARY  
RIZIKI MICHELLE KAWIRA ..... BENEFICIARY  
FAITH CHEMUTAI ..... BENEFICIARY**

**RULING**

1. The deceased passed away on 20<sup>th</sup> December, 2017, leaving a substantial estate. Initially, Letters of Administration were granted to Joseph Kipkemboi Limo. Following his death, these letters were



revoked through a court ruling dated 19<sup>th</sup> July, 2021. Subsequently, a new grant was issued to Ruth Jeruto Limo, Benjamin Kibungei Limo, Mary Tallam, and Joy Jerotich Limo. On 24<sup>th</sup> October, 2024, the 2nd Petitioner filed an application for confirmation of the grant issued to them and sought the following orders:

- a. The interested party/1<sup>st</sup> Respondent do render accounts in respect of E&T Concord Boys High School one of the assets of the estate for the period running from December, 2017 to date
  - b. The 2<sup>nd</sup> Respondent do render accounts in respect of E&T Concord Boys High School one of the assets of the estate for the period running from 10<sup>th</sup> October, 2020 to date.
2. A review of the records reveals a partnership deed between the deceased and the interested party, along with a registration certificate for Concord Boys High School. The interested party/Objector maintains that he was an equal partner in the institution. However, the other beneficiaries oppose allowing the interested party to benefit from this asset by virtue of the partnership deed.
  3. The court gave directions that it could deliver a decision addressing both the objection proceedings by the interested party and the question of distribution. The petitioners on the other hand suggested that the court ought to make two separate determinations: first, whether the interested party qualifies as a partner in the Concord Boys High School asset, and second, how the estate should be distributed. These earlier directions on the commencement of objection proceedings was clearly misunderstood by the parties. The anchor of this trial was the summons for confirmation of grant which triggered an objection from a Mr. Macharia as an equal partner with the deceased in so far as Concord Boys High School is concerned. As if that was not enough for clarity, any such substantive objection proceedings is to follow suit before a reformulation on the various proposals with regard to the distribution of the estate.

### **The Law**

4. The ordained provisions on the jurisdiction of the court is a constitutional imperative entrenched in Art. 50(1) which provides:

“ Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”
5. Similarly, Art. 27(1) reads:

“ Every person is equal before the law and has the right to equal protection and equal benefit of the law.”
6. From the onset, let me point out that court directions are procedural in nature and are issued to guide the orderly disposition of matters before the Court. Such directions do not determine substantive rights of parties but rather set out the manner in which the Court will proceed to hear and determine the substantive issues. The directions in question relate specifically to the Court’s decision to render a single comprehensive determination rather than bifurcating the issues as proposed by the Petitioners. This is squarely within the Court’s case management powers and discretion to regulate its own proceedings.
7. The succession proceedings procedures borrow heavily from the provisions of the *Civil Procedure Act*. Why do I say so? This country inherited common law adversarial system with its attendant practices and procedures which have been part of our heritage but which at the same time have been at the centre



of public criticism against our legal system for contributing to delays in the dispensation of justice. I am of the considered view that this what informed the drafters of our constitution to enact Art. 159 2(d) which expressly provides that justice shall be administered without undue regard to procedural technicalities with (e) stating that the purpose and principles of this constitution shall be protected and promoted.

8. It therefore became necessary for our Kenyan legal system at various levels of our courts to find ways and means of ensuring that the procedures in the administration of justice in commercial, civil, succession, family law etc. in the administration of justice would not lead to a miscarriage of justice. This brought in the enabling provisions of Section 1A as read with 1B commonly referred to as the overriding objective also known as the oxygen principle.
9. Sections 1A and 1B of the *Civil Procedure Act* encapsulates the overriding objective and this Court's inherent power as captured in Section 3A of *Civil Procedure Act*:

“

“ 1A.

- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

1B.

- (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims—
  - (a) the just determination of the proceedings;
  - (b) the efficient disposal of the business of the Court;
  - (c) the efficient use of the available judicial and administrative resources;
  - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
  - (e) the use of suitable technology...

- 3A. Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”



In addition, section 73(1) of the Probate and Administration Rules empowers the probate courts in the following language:

“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

10. The Court of Appeal in *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR stated as follows regarding the overriding objective:

“On the applicability of the overriding objective principle in the appellate jurisdiction, we wish to draw guidance from case law. The principle confers on the courts considerable latitude in the exercise of its discretion in the interpretation of the law and rules made there under. (See the case of *Mohamed Kasabuli suing for and on behalf of the Estate of Halima Wamukoya Kasabuli versus Orient Commercial Bank Limited Civil Application No. Nai 302 of 2008 (UR.199/2008)*). The aim of the overriding objective principle is to enable the Court achieve fair, just, speedy, proportionate, time and cost saving disposal of cases before it (See the case of *Kariuki Network Limited & Another versus Daly & Figgis Advocates Civil Application No. Nai 293 of 2009*); that the application of the overriding objective principle does not operate to uproot established principles and procedures but to embolden the court to be guided by a broad sense of justice and fairness(See the case of *Kariuki (Supra)*); that in applying or interpreting the law or rules made there under, the Court is under a duty to ensure that the application or interpretation being given to any rule will facilitate the just, expeditious, proportionate and affordable resolution of appeals (See the case of *Deepak Manlal Kamami and another versus Kenya Anti-Corruption and 3 others Civil Application No. 152 of 2009*); that there is a mandatory requirement that the Court of Appeal rules of procedure should also be construed in a manner which facilitates the just, expeditious, proportionate or affordable resolution of appeals (See the case of *Dorcas Indombi Wasike versus Benson Wamalwa Eldoret Civil Application No. 87 of 2004*); that the overriding objective principle is intended to re-energize the process of the court, a encourage good management of cases and appeals, and ensure that interpretation of any of the provisions of the Act and the rules made thereunder are “O2” compliant (see the case of *Hunker Trading Company limited versus ELF Oil Kenya Limited Civil Application No. Nai 6 of 2010 (UR3 (2010))*); that the principal aim of the overriding objective principle is to give the court greater latitude to overcome any past technicalities which might hinder the attainment of the overriding objective (See the case of *Caltex Oil Limited versus Evanson Wanjibia Civil Application No. Nai 190 of 2009 (UR)*). And, lastly, that the “O2” principle does not cover situations aimed at subverting the expeditious disposal of cases or appeals, mistakes or lapses of counsel, or negligent acts, or dilatory tactics or acts constituting abuse of the court process (See the case of *Kenya Commercial Bank vs. Kenya Planters Co-operative Union Nai Civil Application No.85 of 2010 (UR) 62 of 2010*)”.

11. The court also in *Inland Beach Enterprises Ltd v Sammy Chege & 15 Others* [2012] eKLR held:

“...in my view, with the cardinal principle of procedure that rules are handmaids of justice not mistresses; the rules must serve the justice of the case as the court may determine in the circumstances of the proceedings.”



12. The overriding objective in the *Civil Procedure Act* of Kenya is intended to enable the courts to deal with the cases fairly, efficiently, effectively, justly and proportionately which includes so far as it is practicable on a case to case basis:
- a. Ensuring that the parties are on an equal footing
  - b. Saving expense and incidental judicial resources for both the judiciary and the parties in the litigation alike.
  - c. Dealing with the cases in ways which are proportionate to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each party.
  - d. Ensuring that the case is dealt with expeditiously and fairly and allocating an appropriate share of the court's resources to each party without discrimination.
13. The oxygen rules capture the thought of justice in the maxim that equity regards as done what is ought to be done. There is also the scope of the High Court Practice and Procedure Rules, 2022 which is one of the Key legal instruments guiding the procedural administration of justice throughout the country at this level of courts. In Clause 28 of the Practice directions, the court is enjoined to work within the framework of the identifiable protocols which include:
- i. The court shall give direction on whether the hearing will be in open court, virtually or in camera.
  - ii. At every hearing the court must, where practicable:
    - a) set, follow or revise a timetable for the progress of the case;
    - b) ensure continuity of the case for the expeditious disposal of the case
  - iii. If a case cannot be concluded the court shall give further directions for its expeditious conclusion.
  - iv. The Judge may at any stage, where appropriate, refer a matter to Court Annexed Mediation.”
14. The pertinent issues which an inquisitive legal mind faces when presiding over a succession cause of this nature is the inordinate delay lengthy as it is with no compelling reasons for one to find a place where justice has been delayed in adjudication of this succession cause since its first inception on 16<sup>th</sup> December, 2018. In that initial stage before Githinji J, an application dated 4<sup>th</sup> December, 2018 was fixed for hearing on 17<sup>th</sup> December, 2018. That application was never heard on that date. The next session of significance was on 21<sup>st</sup> January, 2019 before another session judge of the High Court in which learned counsel Mr. Omboto moved the court that they have come on record having filed an application for the joinder of the interested party. The application was allowed by compromise of legal counsels appearing for the other beneficiaries. This was followed by various adjournments for one reason or another until the 10<sup>th</sup> of February, 2020 with various legal counsels duly instructed by their clients submitting on basically procedural issues. It was on this date that Ms. Koech Advocate moved a motion for rectification of the Grant issued on 12<sup>th</sup> November, 2018 with a rider on the application dated 4<sup>th</sup> December, 2018. A ruling was scheduled on 15<sup>th</sup> April, 2020. It is not clear from the record whether that outcome was achieved by the pronouncements of the court on the issues canvassed by the parties. In the midst of that delay, the session judge was transferred from the station and my first



- adjudicatory duties were exercised on the 17<sup>th</sup> of October, 2022. The substantive directions given were inter alia to expedite the matter with the commencement of the interested parties' application who raised an objection to the summons for confirmation of Grant. That one witness despite several hearings being issued by this court has taken more than two years to conclude and move to the next pillar as to the distribution of the estate.
15. The role of the probate court as contemplated in the *Law of Succession Act* is to identify the beneficiaries to the estate as defined in Section 29 of the Act and the inventory of the assets survived of the deceased under section 3 of the Act. The other consideration will be the applicability of section 93 which explicitly provides on the purchaser's interest and finally or other legal interests under the rubric of creditors and other legal rights which might accrue during the survivorship of the deceased. It is worth noting that a plausible understanding of the Oxygen rule in our *Civil Procedure Act* can be well grasped by recourse to an interpretive approach in case management rather than by seeking a precise meaning of the provisions as stipulated in the Act. The purpose of any litigation or dispute resolution process is to ensure fairness, expediency and inexpensive in terms of resource utilization. This court like any other courts in Kenya is duty bound to provide leadership and give effect to this overriding objectives whenever it is exercising its discretion in managing the pillars in adjudication of disputes to minimize inordinate delays and costs. Although we are not in the pulpit, for a rallying call to sinners to submit themselves to Christ, Ecclesiastes 8:11 as read with Deuteronomy 16:19 are sacred texts which mention the delay in dispensing justice is justice denied. This rule was subsequently endorsed in the threshold of equity by the courts of chancery where it is expressed that justice delayed is justice denied.
  16. If public confidence has got to be secured in the Kenya's legal system, certain factors must stay constant in mitigation. First, when citizens come to belief that inefficiency and delay will drain even a just judgment of its value, secondly when people who have long been exploited in smaller transactions of daily life come to belief that courts cannot vindicate their legal rights from fraud and overreaching. Lastly, when people come to belief that the law cannot fulfil its primary function of protecting them and their families in their homes at the work places and on the public streets
  17. In the present case, the controversy is whether this court should proceed and write a seminal judgment on the objection proceedings and thereafter proceed to determine the issues of identification of the beneficiaries, the free assets and the distribution matrix for each of the heirs in the estate. I stand to be corrected that the commencement of the objection proceedings by Mr. Macharia was just one of the issues tailored for this court to establish the kind of legal rights that would accrue to him to be allocated any of the shares in the intestate estate. His evidence has already been taken. The representative witness from the estate on oath has given a rejoinder to the claim by a Mr. Macharia. Notwithstanding the application by learned counsel Madam Chesoo on the titling and registration of parcel of land where Concord girls secondary school is sitting, all other issues must move to the proposals on distribution.
  18. First and foremost, the Kenyan Constitution does contain an explicit commitment justice on merits. As to what is called a review of directions, simply made clear to the parties, it is to attain the just, speedy and inexpensive determination of every interlocutory matter/application and proceedings as a twin issue to the primary jurisdiction of a probate court to identify the beneficiaries and the free assets of the deceased meant for disposal to the legitimate right holders to the estate. An approach which advocates that this court first delivers a ruling and pronounces itself as to the objection proceedings is not founded on substantive justice on the merits whose predominant aim is to reduce costs and delay in the administration of justice. For this court to be asked to change the focus to secure individual rights by pronouncing itself in various decisions is not a measure of a good legal system. As pointed out from the record, there has been inordinate delay in hearing and determining the issues in contention in this probate cause within a reasonable time.



19. For those reasons, in accordance to the provisions of sections 1A, 1B and 3A of the Civil Procedure Act, Rule 73(1) of the Probate and Administration Rules and Art. 159(2)(d)&(e) of the Constitution, the dispensation of justice in this cause must move in earnest and be concluded at most within 30 days from today's date. This court will not be conflicted in delivering one holistic judgment on the Objector's claims and the proposal by the Petitioner and beneficiary with regard to the distribution of the estate within the Constitutional and statutory legal framework. The motion so much agitated by Mr. Kenei and Ms. Koech for the court to proceed piecemeal and deliver individualized decisions is denied for want of merit. Status Conference on 20.3.2025

20. The costs shall be in the cause.

**DATED AND SIGNED AND DELIVERED VIA CTS AT ELDORET ON THIS 11<sup>TH</sup> MARCH 2025**

.....

**R. NYAKUNDI**

**JUDGE**

