



In re Estate of Elijah Kimilgo Chumo (Deceased) (Succession Cause 29B of 2022) [2025] KEHC 1048 (KLR) (3 March 2025) (Ruling)

Neutral citation: [2025] KEHC 1048 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 29B OF 2022
JK NG'ARNG'AR, J
MARCH 3, 2025**

BETWEEN

**ELIZABETH CHEPTONUI CHUMO 1ST PETITIONER
LUCY CHELANGAT 2ND PETITIONER**

AND

**ESTHER MILGO 1ST OBJECTOR
PAUL MILGO 2ND OBJECTOR
JANE MILGO 3RD OBJECTOR
ALICE MILGO 4TH OBJECTOR
RICHARD MILGO 5TH OBJECTOR
JOYCE CHERONO 6TH OBJECTOR
MUSA SANG 7TH OBJECTOR
SAMWEL SANG 8TH OBJECTOR
ZEDDY KITUR 9TH OBJECTOR
JOYCE KITUR 10TH OBJECTOR
BENARD LANGAT 11TH OBJECTOR
ROBERT LANGAT 12TH OBJECTOR
HELLEN LANGAT 13TH OBJECTOR
PETER LANGAT 14TH OBJECTOR
CHERONO KITUR 15TH OBJECTOR
GEOFFREY LANGAT 16TH OBJECTOR**



CHARLES LANGAT	17TH OBJECTOR
CHERUIYOT LANGAT	18TH OBJECTOR
CHEPNGENO KITUR	19TH OBJECTOR
BETTY KITUR	20TH OBJECTOR
SARAH TAPRANDICH SANG	21ST OBJECTOR
GRACE LANGAT	22ND OBJECTOR
MERCY CHEBET	23RD OBJECTOR
LILY CHEPKOECH	24TH OBJECTOR

RULING

1. The deceased Elijah Kimilgo Chumo died on 10th April 1988. The Petitioners petitioned the High Court in Kericho for Letters of Administration Intestate in their capacity as the second wife (1st Petitioner) and daughter (2nd Petitioner). They listed the beneficiaries of the deceased's estate as Mary Chepkemoi Chumo, Joseph K. Milgo, Sarah Taprandich Sang, David K, Kitur, Grace C. Langat, Leah Cheptonui, Lily Chepkoech, Elizabeth Cheptonui Chumo, Lucy Chelangat, Dennis Kiptoo and Peter Kipngetch.
2. The Petitioners were issued with a Grant in their joint names on 21st December 2017. David K. Kitur (deceased's son), Richard Kipkemoi Sang (deceased's grandson) and Samwel Kipkurui Sang (deceased's grandson) filed an Objection dated 15th January 2018 where they wanted the Grant revoked. It was the Objectors' case that they wanted the Grant revoked because they did not sign the Consent. The Objection was heard through viva voce evidence and in a Judgment dated 4th April 2019, Muya J. dismissed the Objection. Muya J. further held that David K. Kitur could not benefit from his illegal deeds as he had sold land to St. John's Catholic Parish unprocedurally and without undertaking succession proceedings.
3. The Petitioners filed Summons for Confirmation of Grant dated 14th June 2019. David K. Kitur, Richard Kipkemoi Sang, Samwel Kipkurui Sang, Sarah Taprandich Sang, Grace C. Langat, Leah Cheptonui, Lily Chepkoech and Esther Chelangat Milgo filed a Protest dated 27th August 2019. It was the Protesters' case that they wanted the Grant revoked because they did not sign the Consent. The Petitioners filed a Preliminary Objection dated 20th September 2019 stating that the issues raised in the Protest were *res judicata*.
4. In a Ruling dated 29th January 2021, Ongeri J. dismissed the Protest and upheld the Preliminary Objection dated 20th September 2019. Ongeri J. further held that the Protest was *res judicata* and that the addition of more objectors was not a reason to rehear the Protest.
5. Esther Chelangat Milgo, Sarah Taprandich Sang, Lily Chepkoech and Zeddy Chepkoech Kitur filed a further Summons for Revocation of the Grant dated 22nd February 2021. It was their similar case that the Grant was obtained fraudulently as the Petitioners failed to obtain Consent of the all the beneficiaries of the deceased's estate. In response, the Petitioners filed a Preliminary Objection dated 9th March 2021 stating that the matters raised by the Objection were *res judicata*.
6. In a Ruling dated 1st October 2021, Ongeri J. dismissed the Protest and upheld the Preliminary Objection dated 9th March 2021. Ongeri J. further held that the Protest was *res judicata* and that the



Protest sought to re-litigate on the same issue that had been determined in the Judgment dated 4th April 2019 and the Ruling dated 29th January 2019.

7. The Petitioners filed for Summons for Confirmation of the Grant dated 12th September 2023. Esther Milgo, Paul Milgo, Jane Milgo, Alice Milgo, Richard Milgo, Joyce Cherono, Musa Sang, Samwel Sang, Zeddy Kitur, Joyce Kitur, Benard Langat, Robert Langat, Hellen Langat, Peter Langat, Cherono Kitur, Geoffrey Langat, Charles Langat, Cheruiyot Langat, Chepngeno Kitur, Betty Kitur, Sarah Taprandich Sang, Grace Langat, mercy Chebet and Lily Koech filed an Objection dated 6th March 2024 which was the subject of this Ruling.

Objectors' case

8. The Supporting Affidavit was sworn on behalf of the Objectors by Dennis K. Kitur on 6th March 2024. Dennis stated that he was the deceased's son and denied that the Catholic Diocese of Kericho was the sole beneficiary of the deceased's estate. That the Petitioners did not disclose that they had fraudulently sold the entire estate without due regard to the law and further that they did not cater for the rest of the beneficiaries.
9. It was Dennis' case that the Environment and Land Court in Kericho through suit Number 43 of 2017 had issued a Decree against the Catholic Diocese of Kericho and cancelled all resultant titles (Kericho/Kimulot/1149, 1151, 1447 and 1448) that emanated from the mother title of the subject land i.e. Kericho/Kimulot/502. Further that the ELC court restored the mother title. It was Dennis's further case that as of 16th January 2023 the subject land was still registered in the name of the deceased.
10. Dennis stated that the Petitioners had fraudulently subdivided the subject land and failed to inform the court before they were issued with the Grant.
11. In their submissions dated 23rd October 2024, the Objector submitted that the Petitioners misled the court that the entire subject land had been sold to the Catholic Church. That none of the beneficiaries were privy to the sale and the Petitioners had no capacity to enter into such a sale as they had no Grant. It was the Objectors' case that after selling the subject land to the church, the 1st Petitioner settled in Kericho/Kimulot/698 and built her matrimonial home.
12. It was the Objectors' submission that the Petitioners sold the entire deceased's estate and there was nothing left to be confirmed by the Petitioners. That they did not agree with the Petitioners to sell the land to the church.
13. The Petitioners did not file a response to the Objection. They however filed their submissions dated 21st October 2024. They submitted that the Objection was *res judicata* as the Objectors had previously filed similar Objections dated 15th February 2018, 27th August 2019 and 22nd February 2021. That all the Objections were dismissed for being *res judicata*. The Petitioners further submitted that the Objectors wanted to revoke the Grant and the ground they relied upon were similar throughout the aforementioned Objections. They relied on section 7 of the [Civil Procedure Act](#) and [Kenya Commercial Bank Limited v Benjob Amalgamated Limited](#) [2017] KECA 98 (KLR).
14. It was the Petitioners' submission that the issues raised in the present Objection had been heard and determined in the three previous protests and that the Judgement and Rulings in the Protests had not been appealed.
15. The Petitioners submitted that after the death of the deceased, the two houses agreed to subdivide the subject land which measured approximately 14 acres into two. The first house through David Kitur took the 8 acres and the second house where the Petitioner belonged took 6 acres. That the 1st house through David Kitur sold their portion (8 acres) to St. John's Catholic Church and the second house



through the 1st Petitioner exchanged their portion with the church's portion (where she currently resides).

16. It was the Petitioners' submission that they did not seek to distribute the land but to transfer it to the church. That the ELC court cancelled the titles after the parties recorded a Consent to have the said resultant titles cancelled and have parties follow the succession process. It was their further submission that the church compensated all the sellers for value.

17. I have gone through and considered the Objection dated 6th March 2024, the Objectors' written submissions dated 23rd October 2024 and the Petitioners' written submission dated 21st October 2024. The only issue for my determination was whether the Objection was *res judicata*.

18. Section 7 of the *Civil Procedure Act* provides that:-

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

19. The Court of Appeal in *Independent Electoral & Boundaries Commission v Maina Kiai & 5 others* [2017] KECA 477 (KLR) held that:-

“The rule or doctrine of *res judicata* serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common sensical (sic!) protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute or calumny. The foundations of *res judicata* thus rest in the public interest for swift, sure and certain justice.”

20. Further, the Supreme Court of Kenya in *John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others* [2021] KESC 39 (KLR) held:-

“For *res judicata* to be invoked in a civil matter the following elements had to be demonstrated:

- i. there was a former judgment or order which was final;
- ii. the judgment or order was on merit;
- iii. the judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
- iv. there had to be between the first and the second action identical parties, subject matter and cause of action.

The doctrine of *res judicata* was based on the principle of finality which was a matter of public policy. The principle of finality was one of the pillars upon which the judicial system was founded and the doctrine of *res judicata* prevented a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it



ensured that litigation came to an end, and the verdict duly translated into fruit for one party, and liability for another party, conclusively.....

..... Though the doctrine of *res judicata* lent itself to promote the orderly administration of justice, it was not to be at the cost of real injustice. Rights kept on evolving, mutating, and assuming multifaceted dimensions it could be difficult to specify what was rarest and clearest.”

21. The Objectors wanted the Grant issued to the Petitioners on 21st December 2017 revoked. They stated that the said Grant was obtained fraudulently as the 1st Petitioner sold the entire subject land (Kericho/Kimulot/502) to St. John’s Catholic Church without their knowledge and with the intent to disinherit other beneficiaries. On the other hand, the Petitioners as captured earlier in this Ruling submitted that the 1st house where David Kitur came from and the 2nd house where the Petitioners came from sold the entire subject land to St. John’s Catholic Church for value and their (Petitioners) intention as administrators of the estate of the deceased was to transfer the subject land to the bona fide purchasers i.e. St. John’s Catholic Church.

22. In its Judgment dated 4th April 2019 for the first Objection dated 15th February 2018, the court (Muya J.) dismissed the Objection. The court in its Judgement held:-

“In this instant Succession Cause, the 1st Objector is the one who caused the subdivision of the estate, procures titles and proceeded to sell his portion of the land to the purchaser. The 1st Petitioner does not deny that she also did proceed to sell her portion of the estate to the same purchase. However, the 1st Objector while not denying to have sold his portion of the estate to the Purchaser now turns around and states that he had no capacity to sell and now protests to the issuance of Grant.

Under Section 45 of the [Law of Succession Act](#) he is an intermeddler and if found guilty should be liable to a fine. The same applies to the 1st Petitioner, although it is quite apparent that it is the 1st Objector who caused the subdivision and procurement of titles so as to cause the transfer of the LR No. Kericho/Kimulot/502 to a 3rd Party who is the Catholic Church.

It is trite law that one cannot benefit from his illegal deeds. He cannot sell land to a 3rd Party for consideration and in the same.... state that he had no capacity to sell.....

.....I find that there is no concealment of material facts. All the beneficiaries’ assets and liabilities were listed.”

23. From the above excerpt, the court found that the then 1st Petitioner, David K. Kitur sold a portion of the subject land to the Catholic Church and sought to benefit from his illegality. The court also found that the 1st Petitioner also sold the subject land illegally to the same church as they had sold the said land without having gone through succession proceedings. This Judgement has not been reviewed or appealed and it is therefore valid and in force.

24. In an attempt to state that the 1st Petitioner was the sole seller of the subject land to the church, the present Objection was the Objectors’ attempt to re-litigate a matter that had been determined. This was the classic definition of *res judicata* as provided for under section 7 of the [Civil Procedure Act](#). The court also noted with interest that the Objectors did not include David K. Kitur as an Objector in their latest Application but had him swear the Supporting Affidavit on behalf of the 24 listed beneficiaries.

25. I have also noted that throughout the Objections filed in this matter, the Objectors kept on changing in an effort to evade the doctrine of *res judicata*. To put this matter to rest, I concur and will quote Onger



J. in her Ruling dated 29th January 2021 in a similar Objection in this matter dated 27th August 2019. She held:-

“I find that the mere addition of more objectors is not a reason to rehear the Protest.....”

26. In the end, it is my finding that the Objection dated 6th March 2024 has no merit and it is dismissed with costs to the Petitioners.

Orders accordingly

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 3RD DAY OF MARCH, 2025.

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HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling delivered in the absence of the Petitioners, presence of the Objectors and Siele/Susan (Court Assistants).

