



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Kiplangat Arap Maina (Deceased) (Succession Cause  
11 of 2019) [2025] KEHC 4112 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4112 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
SUCCESSION CAUSE 11 OF 2019  
JK NG'ARNG'AR, J  
APRIL 2, 2025**

**IN THE MATTER OF THE ESTATE OF KIPLANGAT ARAP MAINA (DECEASED)**

**BETWEEN**

**TABUTANG CHEPKOSGEY KOROS ..... 1<sup>ST</sup> PETITIONER**

**PAUL KIPRONO LANGAT ..... 2<sup>ND</sup> PETITIONER**

**AND**

**NELSON SANG ..... OBJECTOR**

**RULING**

1. This matter relates to the estate of Kiplangat Arap Maina who died intestate on 8<sup>TH</sup> June, 2007.
2. Letters of administration intestate were issued by this court on 5<sup>th</sup> May, 2020 to Tabutany Chepkoskey Koros And Paul Kiprono Langat.
3. From the record there are two chamber summons one of 4<sup>th</sup> February, 2020 seeking enlargement of time for filing an objection to making of a grant and the other dated 16<sup>th</sup> June, 2020 is seeking substitution of the Alice Chepkorir Birir (now deceased) with the Objector in this cause.
4. The main application for determination in this cause is the dated 16<sup>th</sup> June, 2020 for substitution seeking the following prayers:
  - a. That Nelson Sang be substituted for the late Alice Chepkori Birir
5. The Objector raised the grounds that:
  - a. The Applicant is the son of the deceased and is equally a beneficiary.
  - b. The deceased is one of the beneficiaries of the estate
  - c. The substitution of the deceased is necessary.



- d. The Application is made in good faith.
6. The summons are premised to be brought pursuant to Order 1 Rule 10 of the *Civil Procedure Rules*.
  7. The Petitioner/Respondent in response to the application filed a replying affidavit dated 18<sup>th</sup> January, 2021.
  8. Directions were taken and parties filed statements and also gave viva voce testimonies
  9. The Objector avers that he is the grandson of the deceased (Kiplangat Arap Maina). He states that the deceased was married to two wives and that his mother was a daughter of the 2<sup>nd</sup> house.
  10. The Objector confirms that the 1<sup>st</sup> Petitioner is the mother of his deceased mother. He further claims that he has been residing in the estate since 1992 and does not know the properties of his deceased farther.
  11. He avows that the deceased brought his deceased mother from her marital home in the year 1992 and since the he has been residing at his grandmother's home, the grandmother being the 1<sup>st</sup> petitioner in this cause. He claims that his mother together with his siblings were residing in the estate doing crop and animal farming.
  12. On the other and the Respondent confirms that he is the 2<sup>nd</sup> Wife of the deceased and that the Objector is her Grandson the deceased (Alice Chepkorir Birir) being her daughter.
  13. The petitioner further submitted that before the Objector's mother died she was married and the deceased did not maintain the Objector and his siblings as they had a home described as LR No. Kericho/Kipwastuiyo/735. The 1<sup>st</sup> Petitioner claims that the Objector was brought by relatives and at no point did the deceased maintain the Objector.
  14. It is further contended that the Objector's late father owned LR Kericho/Kipwastuiyo/735, LR NO. Transmara/Kimintet/250 and Share in Sinendet Teas Multipurpose Cooperative. The Petitioner annexed documents evidencing such ownership of the said assets in her Replying Affidavit sworn on 18<sup>th</sup> January, 2021.

### **Determination**

15. I have considered the summons, the affidavits in support and against the summons together with the oral testimonies by both parties. The only material issue for determination is:

### **Whether the Objector should be substituted with his late mother**

16. The duty is for the objector to disclose all material facts in relation to such application. Section 109 of the *Evidence Act* states:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person”

17. The court finds that the Objector has failed to prove that he was a direct beneficiary of the estate of the deceased under Section 76 of the *Law of Succession Act*.



**B. Whether fresh letters of administration be issued to both the petitioner and the objector jointly.**

18. In determining this issue I am guided by the decision in *In Re Estate of Joel Cheruiyot Ronoh* [2016] eKLR where the court pronounced itself

“Perhaps I could exercise inherent power under Rule 73 of the *Probate and Administration Rules*, where such power is saved to meet the ends of justice or to prevent abuse of the process of court. The applicant has not invoked Rule 73, but the power is inherent, the court can tap on it at anytime when it appears that that may be necessary. I understand the applicant to be inviting me to set aside the confirmation orders that gave rise to the certificate of confirmation of grant dated 29<sup>th</sup> February 2012, on the ground that he was not granted opportunity to state his case for he was not served with the confirmation application or with notice of its hearing.”

19. This court is being invited by the objector, who is the grandson of the Petitioner to exercise its discretion for the interest of justice to substitute him with his deceased mother who was duly included in the list of beneficiaries.

20. This court notes that neither the objector nor this deceased mother did not raise an objection during the succession proceedings. This to me is an afterthought and a quest to deprive the 1<sup>st</sup> petitioner her rightful authority to administer the Estate .

21. *Black’s Law Dictionary* (Tenth Edition) defines judicial discretion as:

“The exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court’s power to act or not act when a litigant is not entitled to demand the act as a matter of right.”

22. It is noteworthy that the applicants/Objectors did not lodge any objection within the period stipulated, and therefore his affidavit application did not pass for an objection, but still the court was able to enlarge the objector’s time to file his objection. He was therefore not an objector under the probate process.

23. In light of the foregoing, I am not persuaded to allow the Chamber summons dated 16<sup>th</sup> June, 2020.

24. In the end, the court makes the following orders;

- i. That I hereby dismiss the summons for dated 16<sup>th</sup> June, 2020.
- ii. The letter of administration granted to the Petitioners issued on 5<sup>th</sup> March 2020 is hereby sustained and marks the close of this cause.
- iii. Being a family matter each Party to bear their own costs.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 2<sup>ND</sup> DAY OF APRIL, 2025.**

.....

**HON. JULIUS K. NG’ARNG’AR**

**JUDGE**

Ruling delivered, No appearance for the Petitioner, No appearance for the Objector and Siele/Susan (Court Assistants)

