



In re Estate of Cheruto Jepkosjei Mitei (Deceased) (Succession Cause 46 of 2011) [2025] KEHC 7155 (KLR) (23 May 2025) (Judgment)

Neutral citation: [2025] KEHC 7155 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 46 OF 2011
JRA WANANDA, J
MAY 23, 2025**

IN THE MATTER OF THE ESTATE OF CHERUTO JEPKOSGEI MITEI (DECEASED)

BETWEEN

DANIEL KIPCHUMBA TARUS (SUBSTITUTED IN PLACE OF THE LATE FRANCIS KIPTARUS ARAP CHERUIYOT) 1ST PETITIONER

JOMOH KIMOGOCH 2ND PETITIONER

AND

JULIUS TIROP 1ST OBJECTOR

STANLEY KIPNGETICH TARUS 2ND OBJECTOR

PAUL KIPKEMBOI TARUS 3RD OBJECTOR

JUDGMENT

1. This is an old matter which I took over when it first landed on my desk for the first time on 13032023, by which time it was already part-heard by way of viva voce trial before Hon. Justice E. Ogola who had already taken the testimony of 3 witnesses. Upon the parties' unanimous request, I proceeded to hear the matter from where it had stopped, and I then also took the evidence of 3 further witnesses.
2. Before Court for determination is basically the Petitioners' Summons for Confirmation of Grant seeking adoption of the mode of the distribution of the estate as proposed therein. There is however also a presumed "Protest" by the 2nd Objector challenging the mode of distribution proposed by the Petitioner and thus, proposing a different mode of distribution. Further, there is also an Objection by the 3rd Objector claiming that he is in fact the owner of the entire parcel of land in issue herein, which therefore does not form a part of the estate of the deceased herein, in the first place, and is therefore not available for distribution. He also claims that this Succession proceedings was commenced and conducted secretly without his knowledge, and by concealment of material facts since the fact of



his ownership of the suit land was not disclosed to the Court, and thus the Grant of Letters of Administration was obtained fraudulently, and should be revoked and/or annulled. He also argues that even if the suit land is determined to belong to the deceased, still his name (3rd Objector) was not disclosed to the Court by the Petitioners as being one of the beneficiaries. There are therefore 3 separate protagonist sides whose disputes this Court is called upon to resolve.

3. The background of the matter is that the deceased, Chepkoech Jepkosgei Mitei, is said to have died in the year 1980 at an undisclosed age. On 27/07/2010, one Francis Kiptarus Arap Cheruiyot filed a Citation, namely Eldoret High Court Succession Cause No. 26 of 2010 seeking to compel one Julius Tirop (1st Objector) to apply for or take out Letters of Administration over the estate of the deceased. By the orders issued by Mwilu J (as she then was) on 8/11/2010, the Citation was determined in terms that the said Francis Kiptarus Arap Cheruiyot and the said Julius Tirop do jointly, within 30 days, apply for the Letters of Administration.
4. Pursuant thereto, on 22/02/2011, the said Francis Kiptarus Cheruiyot, as a son of the deceased and himself aged 84 years old as at that date, and one Jomoh Kimogoch (2nd Petitioner/Administrator), as a grandson of the deceased, through Messrs Cheluget & Co. Advocates, petitioned for Grant of Letters of Administration Intestate in respect to the estate. In the Petition, they stated that the deceased left behind 3 survivors, namely the 2 Petitioners and another grandson, the said Julius Tirop. The only asset listed as comprising the estate was the parcel of land described as Kormaet Settlement Scheme 179 (hereinafter referred to as "the suit land"). The Letters of Administration was then granted to the 2 Petitioners, jointly, as co-Administrators, on 24/05/2011.
5. On 30/05/2011, the said Julius Kipkemboi Tirop (1st Objector), through Messrs Chebii & Co. Advocates, filed an Application seeking revocation/annulment of the Grant on the grounds that it was obtained fraudulently as the Petitioners omitted him in the list of survivors/beneficiaries of the estate. I however note that by the consent dated 11/10/2011 and filed in Court on 17/10/2011, the parties agreed to settle the Objection in terms that the suit land be distributed in the following terms:

<i>i)</i>	Francis Kiptarus Cheruiyot	12.50 acres
<i>ii)</i>	Julius Tirop	10.00 acres
<i>iii)</i>	<i>Jomo Kimogoch</i>	7.50 acres
	Total	30.00 acres

6. I note further that by the Summons dated 28/11/2011 and filed on 30/11/2011, the Administrators applied for Confirmation of the Grant in which they proposed distribution in a slightly varied manner, as follows:



i)	<i>Francis Kiptarus Cheruiyot</i>	9.00 acres
ii)	Julius Tirop	9.50 acres
iii)	<i>Jomo Kimogoch</i>	7.00 acres
iv)	Hillary Kiprugut Chumba	2.50 acres
	Total	28.00 acres

7. The Application was supported by the Affidavits sworn by the said Hillary Kiprugut, Chumba, and also by one Samson Kibiwot Karonei, who was also described himself as a beneficiary of the estate.
8. On 22022012, one Daniel Kipchumba (1st PetitionerAdministrator), through Messrs Cheluget & Co. Advocates, applied to be substituted as the 1st PetitionerAdministrator in the matter, in place of his father, the said Francis Kiptarus Cheruiyot, who had since died on 8122011. In the Application, he proposed his own mode of distribution of the suit land as follows:

i)	Julius Tirop	9.50 acres
ii)	Jomo Kimogoh	7.00 acres
iii)	Samson Kibiwott Karonei	5.00 acres
vi)	Stanley Kipngetich Tarus	4.00 acres
v)	Hillary Kiprugut Chumba	2.50 acres
	Total	28.00 acres

9. The Application for Confirmation of Grant is still pending but I gather that the Application for substitution was settled by way of the consent filed in Court on 26032012 in which the same was allowed and the said Daniel Kipchumba therefore substituted as the 1st PetitionerAdministrator, in place of his late father, Francis Kiptarus Cheruiyot.
10. However, before the Application for Confirmation of Grant could be heard, on 22032012, one Ezekiel Kipchichir, through Messrs Arap Mitei & Co., filed an Affidavit of Protest. His claim was that he had purchased a 0.8-acre portion of the suit land from the Administrators in the year 2000, and also another 1 acre from another member of the deceased's family, the said Stanley Kipngetich Tirop, around 2005-2006. This Protest does not however seem to have been pursued any further.
11. Further, on 25042012, one Paul Kipkemboi Tarus (3rd Objector), claiming as a grandson of the deceased, filed the Objection dated 24042012 in which he claimed that he was the legal owner of the entire suit land having purchased it in the year 1970 and that therefore, the suit land does not form part of the estate of the deceased. He filed the Objection in person but his Entry of Appearance filed on 26042012 was filed by Messrs Kigen & Co. Advocates, and by the Notice of Appointment filed on 28052012, Messrs Chepkwony & Co. Advocates was also indicated to have come on record for him.



12. The above Application was supported by the Replying Affidavit sworn by the 2nd Objector, Stanley Kipngetch Tarus, on 10102012 and filed on 13102012. He deponed that he is a grandson of the deceased, the registered owner of the suit land, that his father, Francis Kiptarus Arap Cheruiyot and another brother, applied for and obtained Letters of Administration, but upon his father's death, his uncles and step-brothers applied for substitution and have attempted to distribute the suit land but have only given him a smaller share. Regarding the said Hillary Kiprugut Chumba, he averred that he has not proved his dependency to the estate.
13. It was then directed that the matter proceeds to full hearing by way of viva voce trial. Pursuant thereto, the parties were given liberty to file Witness Statements and Lists (bundles) of documents. I will recite the contents of the Statements of the parties/witnesses who eventually testified, and also the relevant Affidavits, where necessary.
14. I may also state that there have been successive appointment and change of Advocates during the proceedings by, or for the parties. Going to the trial however, the representations were as follows:

Description of Party	Name of Party	Advocates
Petitioners/Administrators	Daniel Kipchumba Tarus & Jomoh Kimogoch	Isiaho Sawe & Co.
1 st Objector	Julius Tirop	Chebii & Co.
2 nd & 3 rd Objectors	Stanley Kipng'etich Tarus & Paul Kipkemboi Tarus	Kigen W. J & Co.

16. Naftali Tanui, in his Statement dated 14012022, also filed through Messrs Chebii & Co. Advocates, stated that he knew the deceased since 1971 as they were both members of the group known as Nandi Tuiyo in which he, Naftali Tanui was the Secretary, that he also knows, from his own knowledge, that the deceased purchased the suit land and that she had 2 sons and 1 grandson whom she stayed with until her demise. He then echoed the claim by the 1st Objector, Julius Tirop, that the deceased, before her death, distributed the suit land to her said 2 sons and 1 grandson under the proportions set out above by the 1st Objector.
17. Naftali Maswai, in his Statement dated 14012022, also filed through Messrs Chebii & Co. Advocates, stated that he knew the deceased since 1973 as they were both members of the said group known as Nandi Tuiyo. He stated that they both purchased parcels of land from one Chester Bitty, a settler, that the deceased purchased the suit land herein and he also knows that the deceased had 2 sons and 1 grandson whom she stayed with until her demise. He, too, echoed the claim by the 1st Objector, Julius Tarus, and the said Naftali Tanui, that the deceased, before her death, distributed the suit land to her said 2 sons and 1 grandson, in the proportions set out above.

Petitioners' Statement

18. Daniel Kipchumba Tarus, who as aforesaid was substituted as the 1st Petitioner/Administrator, in place of his late father, Francis Kiptarus Cheruiyot, in his Statement dated 4062021 and filed through Messrs Isiaho Sawe & Co. Advocates, stated that the deceased was his paternal grandmother. He stated that his father, before his death, had proposed a mode of distribution in which the estate of the deceased would



be distributed as proposed in the earlier consent dated 11102011. As already captured in my synopsis above, the mode of distribution proposed in the consent dated 11102011 was in the following terms:

i)	Francis Kiptarus Cheruiyot	12.50 acres
ii)	Julius Tirop	10.00 acres
iii)	Jomo Kimogoch	7.50 acres
	Total	30.00 acres

19. He stated that the said consent was reiterated in the subsequently filed Summons for Confirmation dated 28112011, that pursuant thereto, a resurvey of the suit land was conducted and which established that the size of the suit land was in fact, 28 acres, and not 30 acres, as had been proposed to be distributed earlier. He stated that in view thereof, he and his co-Administrator varied the proposed mode of distribution to the following:

i)	Samson Kibiwot Karonei	4.00 acres
ii)	Carolyne Kitur	1.00 acres
iii)	Sophia Jeptoo (jointly with Isaac Kiprotich Chepkwony	2.10 acres
iv)	Stanley Kipngetch Tarus	4.40 acres
v)	Ezekiel Kipchirchir Too	1.30 acres
vi)	Julius Tirop	9.50 acres
vii)	Jomoh Kimogoch	5.70 acres
	Total	28.00 acres

20. According to him, the other beneficiaries of the estate, including, Paul Kipkemboi Tarus (3rd Objector) and himself (Daniel Kipchumba Tarus) had already been allocated alternative parcels of land by their late father which parcels do not form part of these proceedings hence the reason their shares were not identified in the proposed distribution. He denied the 3rd Objector's allegations that he (3rd Objector) owned the suit land herein.
21. Philemon Kiprono Songok, in his Statement dated 4062020 and also filed through Messrs Isiaho Sawe & Co. Advocates, stated that the parties hereto are all known to him as was the deceased, who was married to one Cheruiyot Kibel Choge with whom they were blessed with 2 children, namely, Francis Kiptarus Cheruiyot and Micah Tirop Kisorio. He stated further that he is the son of one Chumo Kipsongok Kogo who was a cousin of the said Cheruiyot Kibel Choge as their fathers were brothers, the sons of one Kapchekin. He stated that it is within his knowledge, as informed by the said Francis Kiptarus Cheruiyot, that the suit land was purchased by the deceased from the Settlement Fund Trustee after the death of her husband but which parcel of land was, until her death, yet to be



transferred into her name. He stated further that before the deceased died, she bequeathed one Jomoh Kimogoch Tirop (who is the son of one Micah Tirop Kisorio) whom she resided with in her lifetime, 5 acres comprised in the suit land which was then believed to be 30 acres, and also directed that her 2 said children share the remainder of 25 acres equally at 12.5 acres each. He stated further that the said arrangement was respected even after the death of the deceased and that the 2 brothers later shared out their respective portions to their own sons, that however when they carried out a survey, it was established that the suit land was, in fact, 28 acres, and not 30 acres as earlier believed. He stated that the brothers decided not to interfere with the 5 acres given to Jomo Kimogoch and left it intact, and that Francis Kiptarus Cheruiyot, on his part, then shared out his 11.5 acres amongst his sons as follows:

i)	Samson Karonei	5.00 acres
ii)	Stanley Tarus	4.00 acres
iii)	Hillary Chumba	2.50 acres
	Total	11.50 acres

22. He stated further that Micah Tirop Kisorio later passed away and Francis Kiptarus Cheruiyot remained the sole heir to the estate of the deceased, that Francis Kiptarus Cheruiyot then moved the Court by filing these Succession proceedings to formalize the distribution and no objection was raised. According to him, problems began after Francis Kiptarus Cheruiyot died, upon which Paul Kipkemboi Tarus (3rd Objector) claimed that the suit land belonged to him, and not to the deceased.

Viva Voce Trial

23. Upon close of the pleadings, the matter proceeded for viva voce trial in which a total of 6 witnesses testified.

3rd Objector's Oral Testimony

24. The 3rd Objector, Paul Kipkemboi Tarus, testified as PW1 before Ogola J on 18072022 although he does not seem to have filed any Witness Statement. Led by his Counsel, Gemenet, he stated that he has no relationship with Daniel Kipchumba Tarus (1st Petitioner), and stated that the deceased is his grandmother but that the suit land is his. He stated that he bought the suit land from a group after he paid Kshs 6,200- for 1 share. He referred to a Receipt dated 22071970 said to be from Nandi Tuiyo which was then marked for identification. He then testified that he does stay on the suit land. Under cross-examination by Ms. Isiaho, he stated that he was born in 1948 and reiterated that he has no relationship with Daniel Kipchumba Tarus (1st Petitioner). However, on being probed further, he conceded that the 1st Petitioner is his step-brother and agreed that their father is one. He then stated that he purchased the suit land in 1970 and lived on it between 1971-1975 when he was thrown out at night, that he reported the matter to the police but they told him that he should discuss it with the people who threw him out as they were his family, and that he has never returned to the suit land ever since. He conceded that the Receipt he referred to does not indicate the particulars of the farm he bought and stated that they were 178 members when they bought the respective parcels of land by balloting and that he was member number 58. He conceded that the land rates payment show that the rates are being paid by a different person. He agreed that the farm still has no title deed but the rates are still being paid in the name of the deceased. Under cross-examination by Dr. Chebii, he stated that Francis Kiptarus Cheruiyot was his father, and stated that Julius Tirop (1st Objector) is the son of



Kimaika Tirop, who is his father's brother whose other son is Jomoh Kimogoch (2nd Petitioner). He testified that himself, he lives in plot No. 206 and insisted that his father, Francis Kiptarus Cheruiyot, was not correct when he claimed that the suit land belonged to the deceased herein.

1st Petitioner's Oral Testimony

25. DW1 was Daniel Kipchumba Tarus (1st Petitioner/Administrator), who also testified before Ogola J on 18072022. Led by his Counsel, Ms. Isiaho, he adopted his Statement earlier referred to and reiterated the matters already captured therein. He insisted that the suit land belongs to the deceased and that the land rates are still being paid in the name of the deceased. He reiterated that the 3rd Objector (PW1) does not appear in the list of beneficiaries because he was already taken care of separately and settled on the parcel of land known as NN dalat 206. He stated that when their father, Francis Kiptarus Cheruiyot filed this Succession Cause, the 3rd Objector did not raise any claims and that it was only after their father's death in 2012 that the 3rd Objector started raising claims that the suit land belonged to him. He then stated that he was born in 1968 and has never seen the 3rd Objector living on the suit land. Under cross-examination by Counsel Gemenet, he agreed that in 1970, he was 2 years old. He also stated that apart from plot No. 179 (the suit land), they were also given plot No. 253 and 206 (the one now owned by the 3rd Objector). Under cross-examination by Dr. Chebii, he stated that the 1st Objector, Julius Tirop is a son to his (1st Petitioner-DW1) other brother and insisted that both he (Julius Tirop) and his other brother, Chomo Tirop are entitled to a share of the suit land. In re-examination, he reiterated that he has no interest in the suit land since, like the 3rd Objector, he, too, was already given his parcel of land separately, and therefore has no inheritance claims herein.

Oral Testimonies of 1st Objector's Witnesses

26. DW2, Julius Tirop (1st Objector), also testified before Ogola J on the same 18072022. Led by his Counsel, Dr. Chebii, he stated that the deceased is his grandmother, mother to his father, Kimaika Tirop Kipsorio who was himself a brother to Francis Kiptarus Cheruiyot. He insisted that the 3rd Objector, Paul Kipkemboi Tarus (PW1), is not being truthful since the suit land belongs to the deceased, and not to the 3rd Objector. He insisted that the deceased bought the suit land as she was a businesswoman. He stated that his interest in the suit land is 9.5 acres. Under cross-examination by Counsel Gemenet, he stated that he started staying on the suit land in 1984 and it is his father who took him there and who also used to live in the suit land. He insisted that the suit land was purchased in 1969 and he started living there in 1970. According to him, the deceased (his grandmother) purchased the suit land from a "mzungu" at Kshs 6,200-. Under cross-examination by Ms. Isiaho, he stated that the land rates invoices still come in the name of the deceased.
27. DW3 was Naftali Tanui who testified before me on 20072023. Led by Dr. Chebii, he adopted his Statement and reiterated matters already contained therein, including that he was the Secretary of the Nandi Tuiyo Group under which the deceased, being a member, purchased the suit land. He stated that as Secretary, he was the one supervising survey and sub-division of the parcels of land, that they bought the land from one Chester Petty, and that the deceased had 1 share and each share represented 30 acres. He stated that currently, the sons of the deceased occupy the suit land and that he was called by the 1st Objector, Julius Tirop, who lives in the suit land, to come and testify in these proceedings and that he does not know how much acreage the 1st Objector occupies. He denied that it is the 3rd Objector who purchased the suit land and disowned the Receipt alleged by him which he stated, is not from the Group (Nandi Tuiyo). He stated that the 3rd Objector lives there but he does not know under what capacity. Under cross-examination by Mr. Asewe Osewe, he reiterated that he knew the deceased in 1971. He agreed that as Secretary, he was not the custodian of the Group documents but



insisted that he oversaw the processes. He also agreed that minutes of the Group meetings were kept by the Directors. He stated that the Group had about 178 members and as the Secretary, he knew them all although it is the Directors who kept the Register of Members. He agreed that he had not brought a copy of the Sale Agreement with the said Chester Petty or any person who witnessed the Sale Agreement. Shown his Witness Statement, he conceded that therein, he had mentioned that the deceased purchased 24.98 acres. He however clarified that the discrepancy was because of other items such as roads. He however conceded that he did not know the family of the deceased very well and also that he does not know how she distributed the land. He therefore admitted that his statements on the issue of distribution by the deceased had no basis. He also agreed that he did not produce any Receipt to prove that the deceased paid Kshs 6,200- for her share. Under cross-examination by Ms. Isiaho, he denied that the 3rd Objector was a member of the Group. He affirmed his knowledge that the deceased had 2 sons, namely, Francis Cheruiyot and Tirop Kisorio, and stated that the 3rd Objector used to live with the deceased in the suit land, that as the Nandi Tuiyo Group, they used to authenticate their Receipts by stamping them, and that a Receipt without a stamp was not genuine. He then poked holes” on the alleged Receipt referred to by the 3rd Objector but which, he was informed, was not formally produced as it had only been marked for identification.

28. DW4 was Naftali Maswai who also testified before me on 20072023. Led by Dr. Chebii, he, too, adopted his Statement and reiterated matters already contained therein. He however stated that the Identity Card number indicated on the Statement was not his but the Statement and the signature thereon are his. He, too, insisted that the suit land belongs to the deceased. He stated that the grandsons of the deceased live on the suit land and he named them as Julius Tirop, Chomo, Karonei and Stanley Tarus. Under cross-examination by Counsel Atieno Osewe, he reiterated that being a member of the Nandi Tuiyo Group, she purchased the suit land around 1971 after the Group purchased the block around 1969-1970 from the member’s contributions. He, too, reiterated that they were 178 members and stated that knew all of them but stated that he could not remember his own membership number. He, too, reiterated that members were issued with Share Certificates and upon payment, were given Receipts. He then gave the names of the Group’s 6 officials at the relevant time, including the Directors, Chairman and Secretary. He stated that he could not remember whether there was a Member’s Register but affirmed that the Secretary was Naftali Tanui (DW3 above). He stated that he was not an Official but only an ordinary member. According to him, the deceased purchased 30 acres but which the surveyors somehow reduced to 24 acres and which the grandsons have now sub-divided amongst themselves. Regarding his statement giving the acreages which he alleged the grandsons had distributed the suit land, he conceded that he had no proof thereof. He stated that he does not know the number of children the deceased had but he knows 2 sons. Regarding the grandsons, he also stated that he only knows those who live on the suit land and he does not know Paul Kipkemboi Tarus (3rd Objector) as he does not live there. In re-examination, he stated that he, too, purchased a share at Kshs 6,200- and got his title for his plot, which is number 78.
29. DW5 was Philemon Kiprono Songok who testified before me on 22112023. Led by Ms. Isiaho, he adopted his Statement and he, too, reiterated matters already contained therein. He then stated that he is a retired Chief and that the 1st Petitioner Administrator (Daniel Kipchumba Tarus) and the 2nd Petitioner (Jomo Kimogoch) are his first cousins. He reiterated that the suit land belongs to the deceased and he is surprised that the 3rd Objector, Paul Kipkemboi Tarus, is claiming the same land. She stated that the deceased was his grandmother and had lived there although she was buried elsewhere. Under cross-examination by Dr. Chebii, he insisted that the 2 sons of the deceased shared the suit land in 2 equal portions and that the 2nd Petitioner, Jomoh Kimogoch, was given 5 acres by the deceased. Under cross-examination by Mr. Osewe, he stated that the deceased died when he (DW5) was still in primary school as he was born in 1959. He conceded that he had not produced any documents to show



that the suit land belonged to the deceased. He conceded that in his Statement, he had stated that his knowledge regarding ownership of the suit land by the deceased was from information that he received from the said Francis Kiptarus Cheruiyot, but he sought to clarify that he knew that fact of his own knowledge. About his statement that the deceased had directed that the remaining 25 shares be shared between her 2 sons, he conceded that he did not have any proof thereof. In re-examination, he reiterated that the 3rd Objector's name does not appear in the list of proposed beneficiaries because the deceased had already allocated him land elsewhere. He stated that he knows the deceased was the owner of the suit land because they used to visit him there when he was young.

Directions on Filing of Submissions

30. Upon close of the trial, the parties filed written Submissions. Advocates for the 2nd & 3rd Objectors, Kigen W. J & Co., filed the Submissions dated 30/10/2024 while Advocates for the 1st Objector, Chebii & Co., filed the Submissions dated 18/12/2025. Up to the time of concluding this Judgment, I had not come across any Submissions filed by the Petitioner's Advocate, Isiaho Sawe & Co., either in the physical Court file or in the Judiciary Case Tracking System (CTS) online portal.

2nd & 3rd Objectors Submissions

31. Counsel for the 2nd and 3rd Objectors, Mr. Atieno Osewe, in respect to his plea for revocation/annulment of the Grant, cited Section 76 of the *Law of Succession Act*, and submitted that although the 3rd Objector is a grandson of the deceased, he was not involved or informed of these proceedings and that therefore the Succession Cause was commenced and conducted in secrecy and concealment of facts. He pointed out that in the Summons for Confirmation, he was not listed as a beneficiary yet his father who was a son of the deceased had passed on meaning that just like other grandchildren, he too, had the right to be informed and involved in the proceedings. According to him therefore, the Letters of Administration was obtained fraudulently by the making of a false statement and that the Court was also not informed that the suit land did not belong to the deceased, but was owned by him. He insisted that the 3rd Objector purchased the suit land in the year 1970 from the Nandi Tuiyo Farm at a consideration of Kshs 6,200.-.
32. Regarding ownership of the suit land, he reiterated that the same belongs to the 3rd Objector and that the Petitioners/Administrators, despite claiming that the suit land is owned by the deceased, did not produce any documents from the Ministry of Lands or Certificate of Search to prove that fact. He cited the case of *In re Estate of Joseph Mutua Munguti (Deceased)* [2018], the definition of "estate" and "free" under Section 3 of the *Law of Succession Act* and also the case of *Adan Chuda Sode v Madina Oshe Jira & Another* [2021]. According to him, the proprietorship of the suit land has not been established and as such it is not "free property" of the deceased, and does not form part of her estate, thus it is not available for distribution by this Court sitting as a Probate Court. He also cited the case of *In re Estate of Job Ndunda Muthike (Deceased)* [2018] KEHC 3138 KLR.
33. Counsel submitted further that without prejudice to the foregoing, the 2nd and 3rd Objectors were not included in the Summons for Confirmation of Grant, and after his father died, the 3rd Objector was still left out. He also averred that the Petitioners/Administrators have introduced strangers to the estate as beneficiaries, and that the allegation that the 2nd and 3rd Objectors had already been given shares by the deceased does not hold water as it was never proved.

1st Objector's Submissions

34. On his part, Dr. Chebii, Counsel for the 1st Objector, submitted that the 3rd Objector did not produce any documents to prove his claims that he purchased the suit land in 1970, that he has not stated why



he has never lodged any claims against the people who have been using the land since 1970, the year he alleges to have purchased the suit land, and that he has not explained why his own father petitioned for the Letters of Administration stating that the suit land belonged to the deceased. He also pointed out the 3rd Objector's claims that he was thrown out of the land in 1975 and questioned why the 3rd Objector has taken no action since then. He also averred that the 3rd Objector did not explain why the Farm Committee members, DW4 and DW5 would deny the 3rd Objector's claim along with DW1 and DW2, all who are members of the family. According to Counsel, the logical conclusion is that the suit land is the property of the deceased for which the beneficiaries were her 2 sons, Francis Kiptarus Cheruiyot and Kimaika Tirop Kisorio, both now dead, that in view of the deaths, their children, namely, the 2 Petitioners and their half-brothers succeed their fathers. He submitted that in view of the admission that their other brothers were taken care of elsewhere and that they have no interest in the suit land, it then becomes clear who the remaining beneficiaries are. He submitted further that there is evidence that the deceased gave 5 acres of the 28 acres to Jomoh Kimogoch, which then leaves 23 acres for distribution among the 2 sons of the deceased, namely Francis Kiptarus Cheruiyot and Kimaika Tirop Kisorio at 11.5 acres each, which is in turn to be shared out between their respective sons. He stated that the sons of Francis Kiptarus Cheruiyot will have to agree on how to share their 11.5 acres share while on the part of the sons of Kimaika Tirop Kisorio, they have already agreed to distribute their 11.5 acres share in terms that Julius Tirop gets 9.5 acres and Jomo Kimogoch gets 2 acres (in addition to the 5 acres gifted to him by the deceased earlier). In opposing the claims by purchasers, he cited the case of *Re Estate of Priscah Ongayo Nande* to the effect that creditors and purchasers ought not to be entertained at the distribution of the estate stage.

Determination

35. Upon considering the pleadings filed herein, the testimony of the witnesses and also of the parties who participated in the trial, the parties' respective Submissions, and all other material filed or presented herein, I find the broad issues that arise for determination herein, in my view, to be the following:
- i. Whether the suit land is owned by the 3rd Objector, and not by the deceased as alleged, and therefore whether the suit land forms part of the estate of the deceased, and thus available for distribution herein.
 - ii. If the suit land is available for distribution as comprising the estate of the deceased, whether the Grant of Letters of Administration should be revoked and/or annulled for having been obtained fraudulently by concealment of material facts.
 - iii. If the suit land is available for distribution as comprising the estate of the deceased, who then are the beneficiaries, and how should the suit land be distributed amongst them?
36. I now proceed to determine the said issues.

i. Whether the suit land forms part of the estate of the deceased

37. On the issue of whether the suit land described as parcel No. Kormaet Scheme 179 (also described as L.R. No. Uasin Gishu Kormaet Scheme 179) said to measure approximately 28 acres or thereabouts constitutes the "free property" of the deceased, first, it is not in dispute that no title deed or certificate of title, or search report or any such title document from the Lands office has been presented to this Court. The Court has been told that the title documents are yet to be extracted. All the parties, including the Objectors, are however in agreement that the parcel of land indeed exists. When this Cause was filed for purposes of the administration of the estate of the deceased herein, Cheruto Chepkosgei Mitei, only the suit land was listed as property forming the estate, and the narrative was all along that it was



- purchased by the deceased from a self-help group known as Nandi Tuiyo in which the deceased was a member. The issue of whether the suit land is the deceased's "free property" has however arisen because the 3rd Objector, Paul Kipkemboi Tarus, a grandson of the deceased, filed an Objection claiming that the suit land belongs to him, and not to the deceased.
38. I am not at all persuaded by the 3rd Objector's said claims. First, this Succession Cause was filed by his own father, Francis Kiptarus Arap Cheruiyot and who filed the same on the basis that the suit land belonged to the deceased. It is highly unlikely that the 3rd Objector's own father would take this position to dispossess his own son of the suit land. Secondly, it is unfortunate that the 3rd Objector's father, after filing this Succession Cause in February 2011, died in the same year in December 2011. What is however relevant is that there is no evidence that at any time between the filing of this Cause and the death of his father, did the 3rd Objector ever challenge his father's assertion that the suit land belonged to the deceased. It is curious that it is only after his father died in December 2011 that the 3rd Objector suddenly and conveniently "crawled from the woodwork" 4 months after his father's death and emerged with the Objection which he filed in April 2012 purporting to contradict his own father's assertions, sworn under oath, that the suit land belongs to the deceased. Further, although the 3rd Objector claims to have purchased the suit land in 1970, he has not offered any explanation why to date, there is no evidence whatsoever that he has made any attempts to occupy the same or cause the eviction of all the other people, including the beneficiaries herein, whom he admits, have been occupying the suit land since such 1970s. In fact, the 3rd Objector admitted that he has never occupied any part of the property since 1975 when he was allegedly thrown out therefrom.
39. Most damning however is that the 3rd Objector, apart from bare verbal claims, has not produced any single document whatsoever to demonstrate that the suit land belongs to him. Although he referred to a Receipt which he alleges to have been issued with by the Nandi Tuiyo Group, the initial owners of the suit land, the same was only marked for identification, and was never formally produced in evidence. It does not therefore form part of the record in this suit. The 3rd Objector has also not produced any document to demonstrate that he was even a member of the said Nandi Tuiyo. It is also not lost on me that two former members of the Nandi Tuiyo Group, one the former Secretary, DW3 and DW4, Naftali Tanui and Naftali Maswai, both testified that that it is within their personal knowledge that it is the deceased who purchased the suit land from the Nandi Tuiyo Group in which she was a member. They both disowned the 3rd Objector's ownership claims and vehemently rejected his claims that he was the purchaser. The 3rd Objector has also admitted that the land rates invoices have all along been issued and paid in the name of the deceased. It is also curious that all his family members, including his blood brothers, have all disowned his claims. Not a single one supported his claim and he did not also call any witness of his own to back up his claim. Even the 2nd Objector who was on his side, and is represented by the same Advocates, took a contrary position on the issue. The 2nd Objector, in his Replying Affidavit filed on 13102012, emphatically advanced the position that the suit land belonged to the deceased. Is it that the Advocates did not even notice this clear contradiction in their two clients' cases on that issue?
40. With all the above facts, it is clear that the 3rd Objector's claim over the suit land is nothing but "hot air", was not substantiated and was not proved in any shade or cloud whatsoever. Causing the parties to canvass that issue was a total waste of this Court's time and should never have been brought to Court for determination. The 3rd Objector has therefore hopelessly failed to displace his own father's assertion that the suit land was and still belongs wholly by the deceased.
41. I am alive to the 3rd Objector's argument that this Court has no jurisdiction to determine the issue of ownership of the suit land. I agree that the jurisdiction to determine disputes touching on ownership



of land lies with the Environment and Land Court (ELC). The situation herein is however different. The Petition herein was filed on the basis that the suit land is owned by the deceased and the Cause proceeded as such. It is the 3rd Objector who emerged subsequently with the claim that he is the owner of the property. It is therefore he, who has attempted towards determining ownership, which attempt this Court is not boarding. By rejecting his claim, this Court was not determining ownership of the suit land but only weighing whether the 3rd Objector has placed any prima facie evidence to displace the assertion that the suit is the deceased's "free property", which prima facie case this Court has found none. It was in fact the 3rd Objector who perhaps could have taken his claim to the Environment and Land Court and only thereafter come to this Court to seek an order of stay of proceedings pending determination of the ownership claim by the Environment and Land Court. What the 3rd Objector will appreciate is therefore that this Court has simply rejected his attempts to divest the suit land herein from those forming the estate of the deceased. This distinction is key and is in line with the provisions of Section 3 of the *Law of Succession Act* (Cap 160) which guides that upon the death of a deceased person, his estate means his "free property" when he was living. In other words, property that the deceased was legally competent freely to dispose of it and in respect of which his interest has not been terminated by his death. All that this Court has therefore done above is to determine that suit land herein constitutes property that the deceased was legally competent freely to dispose, nothing more.

ii. Revocation and annulment of the Grant

42. On the issue of revocation and/or annulment of Grant, the 3rd Objector argues that the Grant of Letters of Administration issued herein should be revoked or annulled because this Succession Cause was commenced in secrecy and without his knowledge. His other ground for seeking revocation is that it was concealed from the Court that the suit belonged to the 3rd Objector, which ground is however now moot and unavailable, I, having determined the same above.
43. Regarding revocation and/or annulment of Grant, was Section 76 of the *Law of Succession Act* referred to above, provides as follows:

“Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any Interested Party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or



(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.”

44. It is clear that the grounds that are likely to accommodate the matters raised by the Objector would possibly be sub-Sections (a), (b) and (c) above.
45. The 3rd Objector’s claims herein are again wholly baseless considering that the estate in issue herein is his grandmother’s and the Succession Cause was filed by the 3rd Objector’s own father, a son of the grandmother. The Objector’s father having been alive and taken out the Letters of Administration over the estate, on what basis then could the 3rd Objector, a grandson, insist on his consent being sought? Is he saying that he ranked above or at the same level of priority as his father in applying for the Letters of Administration? The more I say regarding this strange and unfortunate argument, the better.
46. The second limb of the 3rd Objector’s ground, namely, that when his father died, he ought to have been consulted on the identification and appointment of the person who would be substituted in place of his father, as co-Administrator. This sounds like a valid ground. However, I understand the Petitionersco-Administrator’s case to be that the 3rd Objector had already been allocated another parcel of land elsewhere, by his father, before the father’s death, and that the 3rd Objector therefore did not therefore have any further interest in these proceedings as he was no longer a beneficiary of the estate herein. I do not find this presumption to be far-fetched.
47. However, assuming that the 3rd Objector ought to have been consulted before the substitution, the question is whether that ground alone should automatically lead to revocation of the Grant. This question arises because Section 76 of the *Law of Succession Act* gives the Court discretion whether to revoke or annul a Grant. It is not therefore the position that any breach or violation must always or automatically lead to revocation of a Grant. Power to revoke a Grant is a discretionary power that must be exercised judiciously and only on sound grounds. The Court must take into account interests of all beneficiaries entitled to the estate and ensure that the action taken will be for the interest of justice. The discretion must therefore not be exercised whimsically or capriciously (see decision of Mwita J in the case of *Albert Imbuga Kisigwa v Recho Kavai Kisigwa* [2016] eKLR).
48. In applying the above principles, I am not persuaded that it would be wise, under the circumstances of this case, to revoke the Grant on the said ground alone. Having rejected the 3rd Objector’s claim that the suit land belongs to him, I do not see how revoking the Grant will benefit him in any way. I also consider that the deceased died around 1980, that is about 45 years ago, and this Succession Cause has, itself, been in Court since 2011, about 14 years now!. I do not therefore think that revoking the Grant and sending everybody back to the drawing board when there is even no sufficient basis for doing so would be an act that promotes the principle of expeditious resolution of disputes. I therefore find that it will not serve the interest of justice to revoke or annul the Grant.

iii. Identification of beneficiaries and distribution

49. It is not in dispute that the deceased herein, Cheruto Jepkosgei Mitei, had 2 children, namely Francis Kiptarus Arap Cheruiyot and Kimaika (Micah) Tirop Kisorio. Under the laws of succession, it is these two scions of the deceased who would inherit between themselves. The suit land having been said to



be approximately 28 acres, in the event of absence of any contrary evidence, the two brothers would ordinarily inherit at 50:50 equal proportions. There is however evidence that during her lifetime, the deceased gifted one of his grandsons, Jomoh Kimogoch (son of Kimaika (Micah) Tirop Kisorio) 5 acres portion of the suit land, which the said Jomoh Kimogoch has been peaceably occupying to date, without any challenge from anyone. This has consistently and regularly been acknowledged and recognized throughout these proceedings, and has been reflected in almost all the respective modes of distribution presented herein. No express challenge to this assertion has also been advanced by any of the parties. I will therefore accept and apply it.

50. The above therefore means that what is remaining as available for distribution is approximately 23 acres. It therefore follows that the 2 families (Francis Kiptarus Arap Cheruiyot's and Kimaika (Micah) Tirop Kisorio's) should share the 23 acres equally, with each getting 11.5 acres. Indeed, the family of Kimaika (Micah) Tirop Kisorio comprising his 2 sons, Julius Tirop and the said Jomoh Kimogoch, seem to have already agreed to share out at their 11.5 acres portion at 9.5 acres and 2 acres, respectively, between them. I will therefore adopt it.
51. As for the family of Francis Kiptarus Arap Cheruiyot, I have been presented with a clear picture of the identities and number of his children. I have also not seen a clear and andor well-explained proposed mode of distribution. For this reason, I will grant them time to discuss and attempt an amicable settlement of how they intend to share out their 11.5 portion.
52. There is however evidence in terms of reliable witness testimony, that two of the children of the said Francis Kiptarus Arap Cheruiyot, namely, Paul Kipkemboi Tarus (3rd Objector) and Daniel Tarus (1st Petitioner), were both already sufficiently allocated parcels of land elsewhere by the deceased, during his lifetime, as their inheritance and were therefore not to again inherit the suit land herein. In fact, Daniel Tarus, expressly confirmed this fact and emphatically told this Court that for the said reason, he has no claims over the suit land herein and so should his brother, Paul Kipkemboi Tarus (3rd Objector). According to Daniel Tarus, their parents, apart from plot No. 179 (suit land herein), also allocated plot No. 253 and 206 (the one now owned by the 3rd Objector) and otherwise known as NNdalat206. I believe this is the reason why the 3rd Objector does not appear in any of the various proposed modes of distribution presented to the Court by respective the parties. This position was also advanced by Philemon Kiprono Songok (DW5), a cousin. Looking at the evidence on record, I am satisfied that this, indeed, was the true position. I therefore find that the two are not eligible to again inherit from the suit land herein. They will therefore not benefit from the distribution of 11.5 acres portion now allocated to be shared out amongst the children of the said late Francis Kiptarus Arap Cheruiyot.

Final orders

53. The upshot of my findings above is that the Summons for Confirmation dated 28112011, the 3rd Objector's Objection dated 24032012, and the 2nd Objector's Protests contained in his Replying Affidavit sworn on 10102012, are determined in terms of the following declarations andor orders:
 - i. Although no title deed, certificate of title, search report or any such title document has been produced before this Court, the evidence on record herein sufficiently establishes the existence of the suit land herein, described as parcel No. Kormaet Scheme179 (also described as L.R. No. Uasin GishuKormaet Scheme179), and said to measure approximately 28 acres or thereabouts.
 - ii. It is hereby declared that the said suit land herein, described as parcel No. Kormaet Scheme179 (also described as L.R. No. Uasin GishuKormaet Scheme179), is wholly owned by the deceased herein, Cheruto Chepkosgei Mitei, it therefore forms part of the estate of the deceased and



comprises her “free property”, and is thus available for distribution amongst the beneficiaries of her estate.

- iii. The prayer for revocation and/or annulment of the Grant of Letters of Administration issued herein is declined.
- iv. The beneficiaries of the estate of the deceased are now hereby identified, and allocated shares in the suit land described as parcel No. Kormaet Scheme 179 (also described as L.R. No. Uasin Gishu Kormaet Scheme 179), to be distributed as follows:

	Beneficiaries	Acreage
Children of Kimaika (Micah) Tirop Kisorio	Jomoh Kimogoch	2.00 acres
	Julius Tarus	9.50 acres
Children of Francis Kiptarus Arap Cheruiyot	Samson Kibiwott Karonei, Stanley Kipnetich Tarus, and others, if any, jointly, to be shared out amongst themselves or with any other person nominated by agreement between them	11.50 acres
<i>Jomoh Kimogoch</i>		5.00 Acres
		28.00 Acres

- v. The status or family connection of one Hillary Kiprugut Chumba including whether he is a son of the said Francis Kiptarus Arap Cheruiyot, has not been clearly explained and for this reason, the family of the late Francis Kiptarus Arap Cheruiyot, which is the one that has advanced his interests, is at liberty to include him in the distribution of its 11.5 acres share.
- vi. In case of any discrepancy in the acreage of 28 acres approximated in order (i) and (iv) above, whether through an increase or a reduction thereof, each beneficiary shall equally receive or cede, acreage on an equal pro rata basis, in respect to such increase or reduction, as the case may be.
- vii. The children of the said the late Francis Kiptarus Arap Cheruiyot are granted a period of thirty (30) days to discuss and present to the Court, the mode of distribution of their 11.5 acres share, as agreed amongst themselves, for adoption by the Court. Should there be no agreement, the Court shall proceed to determine the mode of distribution.
- viii. It is however hereby declared that two of the children of the said Francis Kiptarus Arap Cheruiyot, namely, Paul Kipkemboi Tarus (3rd Objector) and Daniel Tarus (1st Petitioner), are not eligible to inherit from the suit land herein, described as parcel No. Kormaet Scheme 179 (also described as L.R. No. Uasin Gishu Kormaet Scheme 179), there being evidence that they were both already allocated parcels of land elsewhere by the deceased, during his lifetime. The two will not therefore again benefit from the distribution of the 11.5 acres portion now allocated to be shared out amongst the children of the late Francis Kiptarus Arap Cheruiyot,



and are therefore excluded from benefiting from the distribution formula andor mechanism provided in orders (iv), (v) (vi) and (vii) above.

- ix. This being a family matter, to promote reconciliation within the family, I order that each party shall bear his own costs.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 23RD DAY OF MAY 2025

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WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Ms. Kapei hb for Dr. Chebii for the 1st Objector

Mr. Osewe Atieno for the 2nd & 3rd Objectors

Court Assistant: Brian Kimathi

