



REPUBLIC OF KENYA



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**In re Estate of Chesang Chelagat Toromoo (Succession Cause  
89 of 1997) [2025] KEHC 6634 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6634 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 89 OF 1997  
JRA WANANDA, J  
MAY 23, 2025**

**IN THE MATTER OF THE ESTATE OF CHESANG CHELAGAT TOROMOO**

**BETWEEN**

**SALINA JEPKORIR SANG ..... APPLICANT**

**AND**

**WILLIAM KIMUTAI SANG ..... 1<sup>ST</sup> RESPONDENT**

**BARNABAS CHESANG TOROMOO ..... 2<sup>ND</sup> RESPONDENT**

**FREDRICK K SANG ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. On 13/10/2023, I delivered a Ruling in this matter in the following terms:

“ 33. In light of the above findings, I make the following orders:

- i. Both the Summons dated 29/10/2021 and the Notice of Motion dated 17/03/2023 filed by the Applicant are allowed in the terms set out hereinbelow:
- ii. The Grant of Letters of Administration intestate given herein on 3/03/1998 to one Chesang Chelagat Toromoo, who has since died, is hereby revoked and in its place, a fresh Grant is issued appointing two joint co-Administrators as follows:
  - a) The Applicant, Salina Jepkorir Sang; and
  - b) One other co-Administrator to be nominated by and among the 3 Respondents.



- iii. The Respondents are given thirty (30) days within which to agree on and present to the Court the name of the co-Administrator nominated by them, for adoption by the Court.
- iv. Pursuant to the above, this matter shall be mentioned after lapse of such thirty (30) days for purposes of formal appointment of the co-Administrators.
- v. Pending distribution of the estate or as shall be directed by the Court, an order of injunction is hereby issued restraining the Respondents either by themselves or through their servants, agents, employees or otherwise any person acting under their direction or authority from cultivating, planting or dealing in any way or preventing or stopping the Applicant from accessing/ entering into the portion of land forming part of the land parcel Uasin Gishu/Elgeyo Border/55 which portion the Applicant has been utilizing.
- vi. Pending distribution of the estate or as shall be directed by the Court, an order of injunction is hereby issued restraining the Respondents and/or prohibiting them from entering or trespassing onto the portion of land forming part of the parcel of land Uasin Gishu/ Elgeyo Border/55 which portion the Applicant has been utilizing, or in any manner whatsoever interfering with the same.
- vii. The Applicant is therefore hereby allowed and/or returned into possession and permitted use of the portion of land forming part of the parcel of land Uasin Gishu/ Elgeyo Border/55 which portion she has been utilizing.
- viii. It is directed that any lease, or conveyance of similar nature, given out in respect of any property comprised in the estate herein to any third party amounts to intermeddling with the estate, is null and void and such lease or leases or conveyance, if any, is or are hereby declared unlawful and are accordingly, revoked.
- ix. This being a family matter, each party shall bear his/her own costs.”

2. Regarding the background of the matter, as I also set it out in the said Ruling, the deceased, Chesang Chelegat Toromoo died on 7/9/1995 leaving behind a widow and 4 children, namely, the Applicant (the only daughter) and the 3 Respondents (sons). The parties are therefore all siblings. The Grant of Letters of Administration over the estate of the deceased was then issued on 3/03/1998 to the parties’ mother, widow of the deceased, Toiyoi Taptuwei Chesang who later on unfortunately died and upon which by the said Ruling, the Grant was revoked and the new Administrators appointed in her place.

3. Now before Court is the Applicant’s fresh Application, namely, the Notice of Motion dated 27/03/2024 filed through Messrs Omwenga & Co. Advocates. It seeks orders in the following terms:

- i. [.....] spent



- ii. [.....] spent
  - iii. The OCS Tembelio Police Station be and is hereby ordered to enforce the orders of the Honourable Court issued on 27.10.2023.
  - iv. Costs of this Application be provided for.
4. The Application is supported by the Affidavit sworn by the Applicant, Salina Jepkorir Sang. She deponed that the order issued herein on 27/10/2023 as described above was served upon all the Respondents on 10/11/2023 whose receipt they acknowledged, that the Respondents, and specifically, the 3<sup>rd</sup> Respondent, have acted in contempt of the said order by harrowing the parcel of land which the Applicant had cultivated in preparation for planting, that she reported the matter to the Tembelio Police Station whereby the Officer Commanding the Station (OCS) indicated that he could not enforce the order since there is no clause directing him to enforce it. She deponed further that orders are not issued in vain and ought to be obeyed.

### **Respondent's Replying Affidavit**

5. In opposition to the Application, the 3<sup>rd</sup> Respondent swore the Replying Affidavit sworn on 5/06/2024 and filed through Messrs Kalya & Co. Advocates. He deponed that by the orders in issue, the Court declared that any lease or conveyance in respect of any property comprised in the estate to any 3<sup>rd</sup> party amounts to intermeddling, that the Applicant has been farming 3 acres of the land known as Uasin Gishu/Elgeyo Border/55 measuring approximately 19.5 acres, that in January 2024, the Applicant unlawfully leased out 8 acres of the said property to one Kipkurui who, together with the Applicant, trespassed into the 3<sup>rd</sup> Respondent's portion of the land, uprooted the fence and started farming the same. He deponed further that the matter was reported to the Chief who summoned the Applicant who however defied the same, that although the said Kipkurui stopped his actions, he demanded from the Applicant a refund for the expenses he had incurred, that as a result of this demand, the Applicant unlawfully disposed of 2 cows from the estate at the sum of Kshs 120,000/- and refunded the said Kipkurui. He deponed further that the Applicant's 3 acres portion is still available for her to farm and utilize. He then urged that the Court order of 27/10/2023 does not clearly identify or particularize the portion of land "which the Applicant has been farming" and thus making it difficult to enforce the order on the ground, that if anyone deserves protection, it is the rest of the beneficiaries of the estate to be protected from the Applicant's intermeddling and that the Applicant is not acting in good faith

### **Applicant's Further Affidavit**

6. The Applicant, through Messrs Njiru Kabaruru & Co. Advocates, which had now replaced Messrs Omwenga & Co. as Advocates for the Applicant, filed the Supplementary Affidavit which she swore on 24/07/2024. She deponed that contrary to the allegations made in the 3<sup>rd</sup> Respondent's Replying Affidavit, she has been utilizing 8 acres of the subject parcel of land, and not 3 acres which fact she had reiterated in her Application which led to the Ruling the subject hereof, and which statement the Respondents did not challenge. She deponed that she lives in the subject parcel of land, namely, Uasin Gishu/Elgeyo Border/55 alone and the Respondents live on other separate parcels of land forming the estate which they are peacefully using but still, the Respondents choose to frustrate the Applicant on the basis of her gender. She denied the 3<sup>rd</sup> Respondent's accusations that she had invaded other beneficiaries' land.



## Hearing of the Applications

7. The Application was then canvassed by way of written Submissions. The Applicant filed the Submissions dated 26/11/2024 while the Respondents' Submissions is dated 20/01/2025.

## Applicant's Submissions

8. Counsel for the Applicant basically reiterated that the Applicant has been utilizing 8 acres of the subject parcel of land but despite the Court order of 27/10/2023, the 3<sup>rd</sup> Respondent harrowed all of it. According to Counsel, the 3<sup>rd</sup> Respondent, if he deemed that the order was vague, ought to have approached the Court for clarification and not to proceed to intermeddle and interfere in the manner that he did.

## Respondents' Submissions

9. Counsel for the Respondent apparently admitted that the Court Order dated 27/10/2023 was duly served but argues that the order could not be complied with because it was ambiguous and thus incapable of enforcement. She cited several authorities to buttress this argument and basically, submitted that the order did not identify the particulars, including the size of the portion of land in question noting that the whole land, namely, Uasin Gishu/Elgeyo Border/55 is 19.5 acres. Counsel also pointed out that the Applicant, in her Submissions, has introduced new matters not canvassed in the Affidavits, namely, the reference to the High Court Practice Directions thus raising new matters, and which is irregular. She also faulted the Applicant for arguing, in her Submissions, matters in respect to contempt of Court yet these are not contempt proceedings.

## Determination

10. The broad issue that arises in this matter is "whether the Court should direct the police to supervise or assist in the enforcement of the Court order made on 27/10/2023".
11. Before I delve further into this matter, I observe that although the firm of Kalya & Co., through Ms. Kesei, has, in some instances, given the impression that it is acting for all the 3 Respondents, in other instances, it has indicated that it is only on record for the 3<sup>rd</sup> Respondent, Fredrick K. Sang. From my assessment of the record, and there being no clear clarification from the said law firm, I get the impression that the law firm is only on record for the 3<sup>rd</sup> Respondent. I say so because the 3<sup>rd</sup> Respondent, even in his Replying Affidavit sworn herein has nowhere stated that he has the authority of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to swear the Affidavit on their behalf. Until and unless therefore the law firm of Kalya & Co. makes an express clarification on the issue representation, I will proceed on the understanding that the law firm is only on record for the 3<sup>rd</sup> Respondent.
12. It is also clear that the person majorly fingered by the Applicant as the one whose acts are frustrating the Applicant or blocking her from utilizing the parcels of land herein is the 3<sup>rd</sup> Respondent. I say so because there is only casual, passing reference to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents without any serious accusations being levelled against them.
13. On the issue of obedience to, or compliance with the order in issue, in my said Ruling of 28/10/2023, I made findings as follows:
  - “28. In her Affidavit, the Applicant deponed that she has been using a portion of the 8 acres of land parcel No. Uasin Gishu/Elgeyo Border/55 for cultivating and that she had always been doing so with her deceased mother when the



mother was still alive. She added that even after the mother died, the Applicant continued tilling that portion of the land for her subsistence and that her brothers, the Respondents, have been cultivating the other parcels of land comprising the estate. According to the Applicant, sometime in January 2019, the Respondents leased the entire parcel of land, Uasin Gishu/Elgeyo Border/55 to one Ben Ngetich who is now cultivating it and thus preventing the Applicant from entering into it. She exhibited a copy of a letter from their local Chief confirming the said state of affairs. The Applicant then submitted that she is unable to gain entry into the land to prepare it for planting because the Respondents have prevented her from accessing and entering thereto.

“29. None of the 3 Respondents filed a response to the Application despite being given ample time by this Court. In the circumstances, the matters deponed by the Applicant remain uncontroverted and presumed to be true.

“30. In the circumstances, I have no choice but to find that the Applicant has proved her allegations that she is indeed a beneficiary of the estate, that she is dependent on the said parcel of land having cultivated it for a long time for her subsistence farming even before the demise of their mother. I therefore find that the Applicant has proved that she shall suffer prejudice since according to her, the land has been leased out by the Respondents to a third party.

“31. Regarding the leasing out of the property, the same clearly offends the provisions of Section 45 of the Law of Succession Act which prohibits “intermeddling”. .....

.....

“ 32. In light of the above statement, which I wholly embrace, I am satisfied that the act of leasing out the land by the Respondents before distribution of the estate, if true, amounts to the criminal act of intermeddling and therefore unlawful. I also agree with the Applicant that the act of leasing out the land appears to be aimed at frustrating her and that she stands to suffer irreparable loss and damage should the purported Lessee continue occupying the land. I therefore find that the circumstances that justify the grant of an injunction have been met by the Applicant.”

14. The Applicant has deponed that after this Court’s said Ruling restoring her to possession of the portion of land the subject hereof, she proceeded to cultivate the same ready for cultivation and/or for other farming processes. She depones that after she did so, the 3<sup>rd</sup> Respondent “hijacked” the same portion, took it over and proceeded to harrow it, in readiness for planting on it by himself. The 3<sup>rd</sup> Respondent and his Advocate do not at all deny that the order emanating from the Ruling of 27/10/2023 was duly served. They also do not deny that, after the Ruling, it is the Applicant who cultivated the portion. Further, they also do not deny that after the Applicant cultivated the portion, the 3<sup>rd</sup> Respondent then moved in, took it over and proceeded to harrow the same portion ready for planting. The 3<sup>rd</sup> Respondent has, in his Affidavit, for all intents and purposes, just fallen short of declaring that he cannot and will not comply with the Court order of 27/10/2023 because it is vague, and thus incapable of compliance. His Advocate, in her Submissions, has put it across even more bluntly. The language and tone used is basically one that seems to dare the Court. The question they both avoid to answer, of course deliberately, is very simple; rather than proceed to act as he did and



thus, act as if there was no Court order at all in existence, even if vague, why did the 3<sup>rd</sup> Respondent and his Advocate not quickly return to this Court for clarification or interpretation of the order?

15. As I found in my said Ruling (the Respondents having chosen not to file any Replying Affidavits to the Application that was then in question), it is the Applicant who had all along been cultivating the said portion of the parcel of land known as Uasin Gishu/Elgeyo Border/55 measuring 8 acres. As I also found, in the earlier season before the Ruling of 27/10/2023, the 3<sup>rd</sup> Respondent did not cultivate on any portion of the whole land, namely Uasin Gishu, Elgeyo Border/55, but had, of course unlawfully, leased the whole property to a third party. After the Ruling of 27/10/2023, the Applicant returned to cultivating the said 8 acres portion as allowed by the Court. What then is this that suddenly pricked the 3<sup>rd</sup> Respondent to also compete in cultivating the land and go even further to forcefully harrow the portion already cultivated by the Applicant? If he genuinely felt, as he alleged in his Affidavit, that the Applicant, in cultivating the land, encroached into “his” presumed portion, what was so difficult for him to seek clarification from the Court? By taking the law into his own hands, seemingly revenging against the Applicant, what message is he sending to the Court? That he is above the law?
16. In light of the 3<sup>rd</sup> Respondent’s said unwarranted actions, I am trying very hard not to believe, at this stage, the allegation by the Applicant that the 3<sup>rd</sup> Respondent’s actions are motivated by the Applicant’s gender. By his actions however, the 3<sup>rd</sup> Respondent is working very hard to push me to that belief.
17. I find the 3<sup>rd</sup> Respondent to be a spiteful litigant and who seemingly, does not seem to believe that there is what we call rule of law. He seems to thrive in the law of the jungle and must be called out. I implore upon his Advocate to extend to him honest and proper advice about the consequences of deliberate disobedience of Court orders. Let him be warned that should he continue to dare the Court, the Court may just call his bluff and hit back viciously.
18. Returning to the allegation that the order made on 27/10/2023 is vague, it is agreed that the whole of the parcel of land known as Uasin Gishu/Elgeyo Border/55 measures approximately 19.8 acres. As aforesaid, the Applicant, in her Application then in issue, deponed that the portion of the said land which she had all along been cultivating and which the Respondents had dispossessed her of was a portion measuring 8 acres. This claim, the 3<sup>rd</sup> Respondent never challenged as none of the Respondents filed any Replying Affidavit to the said Application. Pursuant thereto, I, in the body of the Ruling, more than once, expressly held that the portion that the Applicant was seeking to be restored to her, measured 8 acres and in the end, I allowed the Application. The description of the parcel of land and the acreage of the portion in issue were therefore clearly identified in the Ruling and there can be no ambiguity thereon. The only item that I did not identify is the position of the beacons demarcating the said portion. This was for good reason as making that identification would have required survey work to be conducted. Further, the Respondents having opted not to file any Replying Affidavit to the Application then in issue, I formed the impression that all the parties were aware of, and in unison, in regard to the position and demarcation of the 8 acres portion. I am still convinced that they all do, and that the 3<sup>rd</sup> Respondent is simply being mischievous in feigning ignorance. Nonetheless, as the 3<sup>rd</sup> Respondent seemingly wishes to convolute this matter, I will satisfy him and now go the extra mile as will appear in my final orders.
19. Before I pen-off, as it will be noted in my said Ruling of 27/10/2023, I appointed 2 co-Administrators, one from each side, namely, the Applicant on one hand, and the second from the Respondents’ side. I did this with a view to fast-tracking the determination of this matter since it was clear to me that the frequent disputes that have kept on arising herein were partly being contributed to by the delay in distributing the estate. I then gave the Respondents’ side 30 days to nominate their preferred co-



Administrator amongst themselves. To date however, 2 years and 7 months later, the Respondents have still not complied with this portion of the order. There is no explanation offered for the non-compliance. I am not sure if that separate portion of the order will also be said to be vague and thus, also incapable of compliance, or whether it has simply not been complied with out of spite to the Court, as it now seems. I do not know. What I know is that this Court will not wait for the Respondents to act at their convenience and thus continue to delay everyone, or beg them to do so. They will not be allowed to hold everyone hostage. The Court will also not be made to continue writing successive but totally unnecessary interlocutory Rulings every now and then, and even so, on non-issues that continue to arise simply because of petty differences and egos. This Casuse would have by now have been long concluded had all the parties seen the need to co-operate with and/or assist the Court. I will in this Ruling also therefore confirm the Administratorship of the Applicant and give directions on the finalization of this entire Succession Cause, once and for all.

### **Final Orders**

20. In light of the above findings, I determine the Applicant's Notice of Motion dated 27/03/2024 in the following terms:
  - i. For avoidance of doubt, in respect to the Order/Ruling delivered herein and dated 27/10/2023, the acreage of the portion of land forming part of the parcel of land known as Uasin Gishu/Elgeyo Border/55 and described in the said Ruling/Order as "which portion the Applicant has been utilizing" is 8 acres.
  - ii. The Applicant shall within fourteen (14) days from the date hereof, file before this Court, by Affidavit, a clear drawing or plan, prepared by a qualified Surveyor, showing clear demarcations and measurements amounting to the 8 acres referred to in (i) above forming part of the parcel of land known as Uasin Gishu/Elgeyo Border/55 which she proposes to be adopted by the Court as identifying the portion described in the said Ruling as "which portion the Applicant has been utilizing". Upon service, the Respondents shall also have fourteen (14) days to file, by Affidavit(s), their own drawing or plan containing their said proposed demarcations and measurements amounting to the said 8 acres.
  - iii. The Respondents having failed, to date, as directed in the said Ruling dated 27/10/2023, to nominate a co-Administrator from their side, to be appointed as co-Administrator with the Applicant, to avoid further delay herein, I now hereby formally appoint the Applicant to be the Administrator of the estate of the deceased, Chesang Chelagat Toromoo.
  - iv. As the Administrator now appointed as above, the Applicant is given thirty (30) days to file and serve Summons for Confirmation of Grant containing her proposal on her preferred mode of distribution of the estate of the deceased. Upon service of the Summons for Confirmation, the Respondents shall have 21 days to file their response(s) to the Summons for Confirmation of Grant.
  - v. In the meantime, save for the purposes of conducting the survey referred to in (ii) above, the Respondents are restrained, by injunction, from trespassing into or accessing or carrying out any activity thereon, including any farming or agricultural activity whatsoever, on the said 8 acres portion of the said parcel of land known as Uasin Gishu/Elgeyo Border/55, that had been cultivated by the Applicant, and which the 3<sup>rd</sup> Respondent had purported to take over and proceeded to harrow as described hereinabove.
  - vi. Costs shall be in the Cause.



**DELIVERED, DATED AND SIGNED AT ELDORET THIS 23<sup>RD</sup> DAY OF MAY 2025**

.....

**WANANDA J. R. ANURO**

**JUDGE**

Delivered in the presence of:

Ms. Kesei for the Applicant

N/A for the Respondents

Court Assistant: Brian Kimathi

