



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Kipteling Kisorio (Deceased) (Probate & Administration
27 of 2021) [2025] KEHC 6718 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6718 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 27 OF 2021**

JR KARANJA, J

MAY 22, 2025

BETWEEN

JOSEPHAT KIPKEMBOI TOO 1ST PETITIONER

MARCELLA JEBITOK RUTO 2ND PETITIONER

LEGAL REPRESENTATIVE OF ESTATE OF SYLVESTER MUREI

AND

FLORENTINA MWEI OBJECTOR

RULING

1. The application dated 19th October 2020, made by Florentina Mwei [Objector] against the Petitioners, Sylvester Murei and Marcella Jebitok Rutto, contains five [5] prayers, but for now it is only prayer [d] which is vital as it is capable of settling prayer [c] if granted.
2. Where as prayer [c] is for a conservatory order restraining the Petitioners/ Respondents from removing or evicting the Objector from a parcel of land known as Nandi/Olessos/6X2 or in any other manner dealing with the property pending hearing and determination of the objection proceedings, prayer [d] is for setting aside the decree issued on 22nd November 2006 and nullification of the grant to allow the division of the property aforementioned be shared out between omitted beneficiaries and the creditor.
3. The application is based on the grounds set out in the Notice of Motion and fortified by the Objector's averments in the supporting affidavit dated 19th October 2020.
The first Petitioner [Sylvester Murei] opposes the application on grounds contained in his replying affidavit dated 21st March 2021, which erroneously refers to an application dated 23rd October 2020.
4. Section 45 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules were invoked as the enabling provisions of the law in bringing this application.



Section 45 provides for applications under Section 26 of the Succession Act which provides for grants of letters of administration.

Section 26[1], provides that letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the Applicant.

5. Rule 73 of the Probate and Administration Rules provides that: -

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

This application emanates from the petition for grant of letters of administration intestate respecting the estate of the late Kipleting Kisorio [deceased] made on 12th November 2003 by Second Petitioner [Marcella Rutto] in her capacity as the eldest daughter of the deceased amongst other siblings including the First Petitioner and the Objector.

6. The estate property comprises of a single parcel of land said to measure fifty two [52] acres and known as Chesumet Farm LR NO. 4281. The estate liabilities were said to be nil.

The necessary gazette was published on 28th May 2004 vide Gazette Notice No. 3952, but on 15th June 2004, the First Petitioner filed an objection to making of grant on the basis that there was already in existence a separate succession cause being ELD.HC P&A NO. 61 of 2001 respecting the same estate and due for issuance of grant.

7. In a judgment of the court made on 22nd November 2006, it was found that the Second Petitioner [Objector therein] was entitled to 17.6 acres of the estate property. The court proceeded to order that both Petitioners herein be the joint administrator of the estate of the deceased. Further, that the Second Petitioner be registered as the sole proprietor of the 17.6 acres of the estate property while the First Petitioner be registered as proprietor of 2 acres of the property known as Lelwak Farm.

8. This was followed by an application dated 8th October 2007 by the Second Petitioner to restrain the First Petitioner from interfering with her 17.6 acres. An interim injunction was granted against the First Petitioner in that regard on the 11th October 2007, pending the hearing and determination of the application inter-parties.

In the meantime, an application dated 15th July 2010 was filed by the beneficiaries of the estate viz Stephanie Cheptarus Leting and Rosemary Jelagat Kisorio, seeking a re-opening of Succession Cause No. 54 of 2010 and that they be appointed as the administrators of the omitted property belonging to the deceased i.e. Plot No. Nandi/Olessos/6X2.

9. However, the application was on the 27th July 2012 dismissed by the court and on the 31st October 2018, the First Petitioner made an application to enforce the courts judgment of the 22nd November 2006, by having the Second Petitioner execute transfer documents relating to Land Parcel No. Nandi/Olessos/6X2. This was followed by another application dated 9th March 2019 by the First Petitioner for review of the impugned judgment to have the Land Parcel known as Lelwak Farm given its legal description of Land Parcel No. Nandi/Olessos/6X2. Both applications, it would appear, remain pending hearing and determination.

10. Despite this state of affairs, on the 9th November 2020, the present application was filed herein vide the Notice of Motion dated 19th October 2020, by Florentina Mwei [Objector], a beneficiary of the subject estate property. The two petitioners in the application are the Respondents but it seems that it is only the First Petitioner [Sylvester Mwei] who opposed the application.



11. Unfortunately, the First Petitioner passed away on 15th January 2022 and was substituted by Josephat Kipkemboi Too, as the legal representative of his estate vide the grant of letters of administration ad litem dated 22nd April 2022 and as ordered by the court on 13th May 2024 on the basis of the application for substitution dated 23rd September 2022.
12. Be that as it may, the present application proceeded to hearing by way of written submissions which were duly filed by Manani Lilan Mwetich and Company Advocates on behalf of the Applicant/ Objector and by Messrs Kalya and Company Advocate on behalf of the Respondent/ First Petitioner. The Second Petitioner did not participate in the application and never did she ever attend court for mention or hearing of the application.
13. Having considered the application on the basis of the supporting grounds, the rival submissions and the history of this matter, it became clear to this court that the application is misconceived and incompetent for being pre-mature for reasons firstly, that the objection proceedings in this matter were concluded by the ruling or judgment of the court made on 22nd November 2006, which ordered that both Sylvester Murei and Marcella Jebitok Rutto be the joint administrators of the estate of the deceased comprising of two parcels of land known as Chesumet Farm and Lelwak Farm.
14. The court further ordered that 17.6 acres of the Chesumet Farm be registered in the name of the Second Petitioner [Marcella] as the sole proprietor and that two [2] acres of the Lelwak Farm be registered in the name of the First Petitioner [Sylvester] as the sole proprietor.
Although the order for grant of letters of administration intestate was effectively made in favour of both Petitioners no formal grant or instrument was ever extracted by the parties thereby implying that the grant is yet to issue.
This state of affairs therefore provides the second reason for this application being pre-mature, hence incompetent and premature for grant of any of the orders sought herein by the Applicant/ Objector.
15. Consequently, the application is hereby dismissed with each party hearing their own costs and pursuant to Rule 73 of the Probate and Administration Rules, it is hereby ordered that the grant for letters of administration intestate respecting the estate of the Late Kipleting Kisorio be issued forthwith to Josephat Kipkemboi Too, Marcella Jebittok Ruto and Florentina Mwei to faithfully administer the estate in accordance to law and to render a joint and true account thereof whenever required by the law to do so and ensure that they take out summons for confirmation of the grant within the next six [6] months from this date or any shorter period that they may deem necessary.
16. Matter be given a mention date on progress.

DATED AND DELIVERED THIS 22ND DAY OF MAY OF 2025

**HON. J. R. . KARANJAH,
JUDGE**

