



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Edwin Kiptoo Arap Koech (Succession Cause  
E059 of 2019) [2025] KEHC 6129 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6129 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E059 OF 2019  
RN NYAKUNDI, J  
MAY 16, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE EDWIN KIPTOO ARAP KOECH**

**BETWEEN**

**SALINA JEPTUM KENY ..... 1<sup>ST</sup> PETITIONER**

**TITUS SOROBIT KIPTOO ..... 2<sup>ND</sup> PETITIONER**

**AND**

**ISAAC KIPROTICH SAMOEI & 86 OTHERS ..... PURCHASER**

**RULING**

1. This court delivered a ruling on 26<sup>th</sup> April, 2023 in which the court indicated that the parties were unable to agree on the model of distribution and distributed the estate as follows:
  - a. That LR No. Cheptiret/Cheplaskei BLK 5 (Chemenei) 87 be distributed to the 1<sup>st</sup> house and 2<sup>nd</sup> house and be shared equally to the beneficiaries. Where a beneficiary is dead their respective share to be translated to a nominee in their estate.
  - b. That LR No. Cheptiret/Cheplaskei BLK 2 (Chemenei) 12 be distributed to the 1<sup>st</sup> House and 2<sup>nd</sup> House and be shared equally to the beneficiaries. Where a beneficiary is dead their respective share to be translated to a nominee in their state.
  - c. The County Surveyor, Uasin Gishu County to conduct a survey for purpose of distributing parcels of land known as LR No. Cheptiret/Cheplaskei BLK 5 (Chemenei) 87 and LR No. Cheptiret/Cheplaskei BLK 2 (Chemenei) 12 respectively to the bona fide purchasers who meet the criteria in section 93 of the *Law of Succession Act*.
  - d. Costs of the survey to be borne by the estate.



- e. The grant of letters of administration granted to Salina Jeptum Keny and Titus Sorobit Kiptoo on 19<sup>th</sup> November, 2020 be and is hereby confirmed. The administrators do provide an addendum particularizing the number of beneficiaries in each unit.
  - f. Each party shall bear its own noting that the claim herein is a succession cause involving members of one family.
2. In compliance with the court's orders, the County Surveyor visited the above parcels of land' LR No. Cheptiret/Cheplaskai Block 5(Chemenei)/87 and LR No. Cheptiret/Cheplaskai Block 2 (Chemenei)/12 on 8<sup>th</sup> August, 2023 and prepared a report dated 22<sup>nd</sup> August, 2023 filed in court on even date. The parcels of land were established to measure 227.50 Acres or 92.068 Ha. and 20.411 acres or 8.260 Ha.
  3. The purchasers through learned counsel Mr. Mathai filed an application dated 15<sup>th</sup> February, 2024 in which they sought orders as follows:
    - a. Spent
    - b. That there be stay of implementation or further implementation of the orders issued on the 26<sup>th</sup> April, 2023 by the Uasin Gishu County surveyor pending the hearing and determination of this application interparties and thereafter pending the Hearing of the distribution of this Estate.
    - c. That the Honourable Court be pleased to review/vary/set aside the orders issued on the 26<sup>th</sup> April, 2023.
    - d. That the Honourable court be pleased to issue an order of profiling of the purchase portion and location before distribution is done.
    - e. Costs of this application be provided for.
  4. From a careful examination of the record before this Court, it is evident that the purchasers fall into distinct categories with varying degrees of recognition. A significant number have been acknowledged as bona fide purchasers, either through admission by the current beneficiaries or through transactions executed by the deceased prior to his demise. Conversely, several other purchasers have not received such recognition, despite their vehement protestations and presentation of what purport to be valid sale agreements. This dichotomy necessitates a meticulous verification process to determine which purchasers legitimately qualify for protection under Section 93 of the Law of Succession Act.
  5. The scope of this court to handle succession matters was addressed in the case of Re Estate of Julius Ndubi Javan (Deceased) (2018) eKLR where the court held that: -

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues on the ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the *Probate and Administration Rules* was enacted so that claims which prima facie valid should be determined before confirmation.”
  6. Upon scrutiny of the mode of distribution proposed by the 1<sup>st</sup> Administrator, this Court observes that while she acknowledges certain purchasers as having legitimate claims, she has simultaneously raised a material concern regarding outstanding payment obligations. The 1<sup>st</sup> Administrator has specifically indicated that several purported purchasers have yet to remit the full purchase consideration



as contractually stipulated. This incomplete performance of the contractual obligations is legally significant, as it directly impacts the crystallization of proprietary rights in the subject parcels. In accordance with established principles of property law, the full rights of ownership cannot be deemed to have vested in these particular claimants until complete payment has been effected and all conditions precedent fulfilled. This consideration must necessarily inform the Court's determination of which purchasers qualify for protection under the relevant provisions of the [Law of Succession Act](#).

7. In the mode of distribution suggested by the 1<sup>st</sup> administrator, she acknowledges some of the purchasers and even indicated that some of them have not cleared their balance of the purchase, which essentially means that their rights on the estate have not crystallized.
8. Having considered the application by the purchasers and the survey report filed, it is evident that further steps need to be taken before final distribution can be effected. Section 93 of the [Law of Succession Act](#) provides safeguards for purchasers in good faith, but this requires proper verification of their claims.
9. Upon careful review of the County Surveyor's report dated 22<sup>nd</sup> August, 2023, the Court observes that while it competently establishes the gross dimensions of the subject parcels, it falls demonstrably short of delineating the specific portions claimed by the various purchasers. This deficiency is not merely procedural but substantive in nature. The report lacks crucial details regarding the precise location, metes and bounds, and respective sizes of the portions allegedly purchased by each of the 87 applicants. This limitation, however, must be contextualized within the broader legal framework governing land transactions. The Court recognizes that formal subdivision of the properties has not been effectuated precisely because the transfer of interests remains incomplete in numerous instances whether due to outstanding purchase price balances, absence of requisite consent from all beneficial owners, or non-compliance with statutory prerequisites for subdivision, given the ongoing cause herein. This incomplete transfer of interests has consequently prevented the technical process of survey demarcation and formal subdivision from proceeding to completion.
10. Furthermore, there are conflicting claims regarding which purchasers were recognized by the deceased prior to his demise, those acknowledged by the beneficiaries, and those whose claims are disputed. These conflicts must be resolved through proper evidence before confirmation of any rights to the estate.
11. This Court is gravely concerned by the evident intermeddling with the estate by both beneficiaries and the current administrators who purported to sell portions of the estate property without legal authority to do so. It bears emphasis that the grant of letters of administration was issued to Salina Jeptum Keny and Titus Sorobit Kiptoo on 19<sup>th</sup> November, 2020. Documentary evidence before this Court, including sale agreements and affidavits, reveals that several beneficiaries, and indeed the administrators themselves, had already engaged in selling portions of the estate prior to this date, when they possessed no legal capacity to transfer any interest in the estate property.
12. This unauthorized disposition of estate assets constitutes intermeddling within the meaning of Section 45 of the [Law of Succession Act](#). All parties involved in these premature sales, including the current administrators, have approached this Court with unclean hands, having arrogated to themselves powers they did not legally possess at the time of the transactions. Their collective actions have significantly complicated the administration process and created substantial uncertainty regarding the net estate available for distribution.
13. This court was confronted with several sale agreements between the sellers and purchasers indicative of transmission or conveyance of some shares constituting the intestate estate of the deceased. It is trite law in Kenya that a sale agreement itself is not typically considered the instrument that transmits or



conveys immovable property rights from one person to another. Whereas the instrument premafacie is a legally binding contract setting the terms as agreed between the parties named therein it is the transfer documents prepared after the agreement duly registered at the land registry within the locality of that suit land that officially transfers property rights to the new owner. From the reading of the sale agreements presented before this court some contain glaring evidence of breach as covenanted between the parties. Having held so as a probate court it is the duty of the administrators to discharge the burden of proof under Section 107(1), 108 & 109 of the Evidence Act as to the crystallization of property rights in favour of the so called purchasers. It also follows that the jurisdiction of this court deals with the net intestate estate of the deceased therefore demanding full disclosure of material evidence whether the sale agreements annexed as evidence meets the test and the provisions under Section 93 of the Law of Succession Act. As a consequence of the various contested averments as deponed in the various affidavits I take the view that the merit of the dispute on the purchasers is yet to be resolved with a qualitative outcome from this court. There is need for further probative material evidence to be adduced by the parties or the affected parties named as purchasers of the interests and rights which accrue from the intestate estate.

14. In the circumstances, and in the interim the following orders shall abide:
  - a. The County Surveyor of Uasin Gishu County shall appear before this Court on 27<sup>th</sup> June 2025 at 9:00 am to give oral evidence regarding the survey report dated 22<sup>nd</sup> August, 2023, particularly addressing the topographical view of the surveyed properties and the current occupation status of the various parcels claimed by purchasers.
  - b. The administrators, Salina Jeptum Keny and Titus Sorobit Kiptoo, shall, within 30 days, file a detailed account of the net estate available for distribution, clearly indicating which portions were sold before the grant of letters of administration and which were sold afterwards.
  - c. That the respective beneficiaries who transferred any share to the aforesaid purchasers is bound by the law to demonstrate whether he or she had the necessary prerequisite authority as specified in the Succession Act to deal with any portion of the intestate estate besides the appointed administrators.
  - d. The administrators are put on notice under Section 76 of the Law of Succession Act that any further delay places them at a risk of this court exercising inherent jurisdiction to revoke their appointments for not meeting the timelines in the Act on transmission of the estate to the beneficiaries.
15. Orders accordingly.

**DATED SIGNED AND DELIVERED AT ELDORET VIDE CTS AND E-MAIL THIS 16<sup>TH</sup> DAY OF MAY 2025**

**R. NYAKUNDI**

**JUDGE**

Representation:-

M/s Mathai Maina & Co. Advocates

M/s Isiaho Sawe & Co. Advocates

M/s Songok. & Co. Advocates

