



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of the Late James Kimarta Ruto (Probate & Administration
311 of 2013) [2025] KEHC 6403 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6403 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 311 OF 2013
RN NYAKUNDI, J
MAY 16, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE JAMES KIMARTA RUTO (DECEASED)

BETWEEN

HENRY K SANG 1ST PETITIONER

ISAAC K MARTA 2ND PETITIONER

AND

JAIRUS K RUTO 1ST OBJECTOR

ISAAC K KEMBOI 2ND OBJECTOR

RULING

1. What is pending before this court for determination is summons for the petitioners dated 24th March, 2025 expressed to be brought under the provisions of section 47 and section 83 of the [Law of Succession Act](#) together with Rule 49 of the Probate of Administration Rule. The applicant seeks orders as follows:
 - a. Spent
 - b. The OCS, Lessos Police station and OCS Kesses Police station together with their officers to provide security during the execution of the orders issued by this Honourable court on 24th December, 2024 and to ensure compliance with the said orders.
 - c. Costs of the application be borne by the Defendants
2. The application is anchored on grounds as follows:
 - a. That a grant was issued to the Petitioners in this cause and the same was confirmed on 27th September 2021 and a certificate of confirmation issued accordingly.



- b. That the Objectors/Respondents filed an application for revocation of the said grant dated 26th April 2022. The application was heard to conclusion interparties and a ruling was delivered on 20th September 2024. The orders issued were:
- i. That any two children of the deceased listed as the beneficiaries do avail themselves at the Government Chemist together with the 2nd Objector to give samples for the sibling DNA test within 21 days from the date of this order and costs shall be borne by the 2nd Objector.
 - ii. That the 2nd Objector shall avail instruments used for registration of his birth certificate at the Registrar of Births and Deaths for this court's scrutiny.
 - iii. The 2nd Objector is hereby directed to deposit in court all title documents in his possession to the estate of the deceased within 21 days' failure to which he shall be held in contempt and after a period of 21 days, the Land Registrar, Uasin Gishu County shall be at liberty to cancel the title documents on grounds of misplacement, particularly for parcels Tulwet/Tulwet/Block X (Terige) XX and Lessos Settlement Scheme/XXX.
 - iv. That the cost of the suit shall be borne by the estate.
- c. That the Objectors/Respondents failed to comply with the orders issued by this Honourable Court.
- d. That when the matter came up for status conference on 4th November 2024, the 2nd Objector was yet to comply with any of the court orders.
- e. That upon the court noting that the 2nd Objector had no intention of complying with the orders issued on 20th September 2024, the court went on to deliver a ruling on 24th December 2024 stating that the Objectors claim on dependency remains moot and that the Petitioners are at liberty to administer the estate and have it transmitted to the recognized heirs of the estate.
- f. That the Objectors/Respondents filed a Notice of Appeal appealing the ruling delivered on 24th December 2024.
- g. That the Objectors/Respondents did not seek leave to appeal to the Court of Appeal as required under Rule 41 of the Court of Appeal Rules.
- h. That the Objectors/Respondents made an application for stay of execution dated 10th January 2025 to the Court of Appeal and they were denied interim stay orders pending determination of the application.
- i. That as at now there are no stay of execution orders preventing the Petitioners from administering the estate of the deceased.
- j. That land parcels number Tulwet/Tulwet Block X(Terige)/XX, Nandi (Lessos Settlement)/XXX and Tulwet/Koisagat Block X (Sochoi)/XX have already been legally transferred to the Petitioners/Applicants by way of transmission.
- k. That the Petitioners/Applicants have already booked a Surveyor to undertake sub-division of the parcels but the same cannot be done without security from the police as the Objectors are in possession of the estate.



- l. That the OCS Kesses police station and Lessos police station have already verified that the ruling and the certificate of confirmation is legitimate but they directed that the Petitioners/Applicants obtain a court order directing that they provide security during the sub division process.
 - m. That unless this application is allowed, the Objectors/Respondents will continue to interfere with the land parcel numbers Tulwet/Tulwet Block X(Terige)/XX, Nandi (Lessos Settlement)/XXX and Tulwet/Koisagat Block X (Sochoi)/XX and that shall render the orders of the court nugatory and subvert the course of justice and the rule of law.
 - n. That Section 83 of the *Law of Succession Act* the administrators of the estate of the deceased should within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration; and such the Petitioners/Applicants are seeking the above orders to enable them discharge their duties as administrators.
3. In response to the application Isaac Kemboi filed a replying affidavit in which deposed as follows:
- a. The application herein is frivolous, vexatious and a total waste of Court's time and resources.
 - b. The application does not meet the threshold to warrant grant of orders sought.
 - c. That the applicant's application does not meet the threshold for grant of orders sought as the matter is inconclusive.
 - d. That the said application was filed in bad faith as our family is yet to come to an amicable settlement as regards to the beneficiaries excluded from the grant including myself.
 - e. That proceeding to subdivide the estate of the deceased to the exclusion of other legitimate beneficiaries would amount to miscarriage of justice.
 - f. That the Applicants herein were already given their share by the deceased back then and they have come to this court with unclean hands.
 - g. That I will lose my personal Motor vehicle registration No. KAS 908F which was previously listed as being part of the deceased estate.
 - h. That the said beneficiaries would be rendered homeless and destitute if they are unduly evicted from the only home they have known.
 - i. That there is a pending suit by one of the beneficiaries residing on the estate and their eviction would render the suit null and void together with Appeal No. E002 of 2025.
 - j. That the matter before the court of appeal is due for Ruling on 16th May, 2025 which ruling would affect the outcome of this application.
4. The Respondents equally filed a supplementary Affidavit in which they introduced the Last Will of James Kimarta Ruto dated 29th September, 2011 which the Respondent stated that was not available and should be considered. That the said Will was misplaced and thus could not be traced and filed in court earlier.



Analysis and determination

5. Having carefully considered the application, the response thereto, and all supporting documents, I now proceed to determine the matter before this Court. The key issues for determination are: Whether the Petitioners/Applicants are entitled to the orders sought for police security during the execution of court orders and Whether there exists any legal impediment to the execution of the orders issued by this Court on 24th December, 2024.
6. It is not in dispute that this Court confirmed a grant of letters of administration in favor of the Petitioners on 27th September, 2021. Subsequently, the Objectors filed an application for revocation of the said grant, which this Court determined on 20th September, 2024. In that ruling, this Court issued specific orders requiring the 2nd Objector to: a) Avail himself for DNA testing with any two children of the deceased; b) Produce instruments used for registration of his birth certificate; c) Deposit in court all title documents in his possession relating to the estate of the deceased.
7. The record clearly indicates that the 2nd Objector failed to comply with these orders. During the status conference on 4th November, 2024, it came out that there was no intention to comply with the Court's directives. Consequently, on 24th December, 2024, this Court issued a ruling declaring the Objectors' claim on dependency moot and authorizing the Petitioners to administer the estate and have it transmitted to the recognized heirs.
8. The 2nd Objector now contends that there is a pending appeal against this Court's ruling of 24th December, 2024. However, I note with concern that no documentary evidence has been adduced to substantiate this claim. While the Respondent alleges that Appeal No. E002 of 2025 is pending and due for ruling on 16th May, 2025, no copy of the appeal, notice of appeal, or any communication from the Court of Appeal has been placed before this Court.
9. Section 47 of the [Law of Succession Act](#) empowers this Court to make such orders as may be necessary for the proper administration of the estate. Further, under Section 83 of the same Act, administrators are obligated to complete the administration of the estate within six months from the date of confirmation of the grant, unless the Court allows a longer period.
10. The Petitioners/Applicants have demonstrated that they have already secured legal transmission of the properties in question, namely Tulwet/Tulwet Block X(Terige)/XX, Nandi (Lessos Settlement)/XXX, and Tulwet/Koisagat Block X (Sochoi)/XX. Their attempts to proceed with subdivision have been hindered by the Objectors' continued possession of the estate.
11. I am particularly troubled by the 2nd Objector's introduction of a purported Last Will of the deceased dated 29th September, 2011, at this late stage of the proceedings. The Will was allegedly misplaced and could not be traced earlier. This belated introduction raises serious questions about the authenticity and credibility of the document. In any event, this Court cannot delve into the merits of this newly introduced Will when the substantive matter regarding the administration of the estate has already been determined, and allegedly appealed against.
12. The Respondents have not provided any evidence of stay orders granted by any court. As matters stand, there are no stay orders in place to prevent the Petitioners from executing this Court's orders. I find it particularly noteworthy that the Objectors failed to seek leave to appeal as required under Rule 41 of the Court of Appeal Rules. This procedural irregularity further weakens their position in opposing the current application.



13. Having carefully weighed the circumstances, I am satisfied that the Petitioners/Applicants have established a prima facie case for the grant of the orders sought. The administration of the estate has been unduly delayed, and the Petitioners, as the legally recognized administrators, are entitled to execute their duties without hindrance or obstruction.
14. In light of the foregoing, I make the following orders:
- a. That the OCS, Lessos Police Station and OCS Kesses Police Station, together with their officers, are hereby directed to provide security during the execution of the orders issued by this Honourable Court on 24th December, 2024, and to ensure compliance with the said orders.
 - b. That the police officers shall specifically provide security during the subdivision process of land parcels Tulwet/Tulwet Block X(Terige)/XX, Nandi (Lessos Settlement)/XXX, and Tulwet/ Koisagat Block X (Sochoi)/XX.
 - c. That the costs of this application together with the facilitation expenses for the police officers who shall be assigned by the OCS to necessitate the execution of this order shall be met by the estate itself. I have in mind fuel expenses and other incidental for the security which shall be involved in implementing the civil process of this court.
 - d. That any matters arising from the OCS perspective with the compliance of this order shall be communicated directly to the Deputy Registrar of the High Court to ensure that any barriers are mitigated against this decreed directions of this court.
 - e. That in executing this order the OCS is put on notice that it is all about ensuring the fair administration of justice notwithstanding that the orders have been issued under the realm of civil law
15. It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 16TH DAY OF MAY 2025

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R. NYAKUNDI

JUDGE

In the presence of:

Coram: Before Justice R. Nyakundi

M/s Z.K Yego Law Offices

Ms. Daisy Chepkurui & Co. Advocates

