



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of John Kipkirui Tesot alias John Kipkirui Tesot (Deceased)**  
**(Succession Cause 219 of 2014) [2025] KEHC 5712 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5712 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KERICHO**  
**SUCCESSION CAUSE 219 OF 2014**

**JK SERGON, J**

**MAY 8, 2025**

**BETWEEN**

**CAROLYNN CHELANGAT ..... PETITIONER**

**AND**

**KIPNGENO ARAP KIRUI ..... 1<sup>ST</sup> RESPONDENT**

**JUSTINA CHEPKEMOI ..... 2<sup>ND</sup> RESPONDENT**

**RICHARD KIPROTICH KIRUI ..... 3<sup>RD</sup> RESPONDENT**

**GEOFFREY KIPKORIR ..... 4<sup>TH</sup> RESPONDENT**

**FRANSISCA CHEPKEMOI KIRUI ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. The application coming up for determination is a chamber summons dated 20th March, 2025 seeking the following orders;
  - (i) Spent.
  - (ii) That this Honorable court be pleased to issue conservatory order to prohibit son Festus Kiplangat Sang from and restrain the second respondent's son interfering, destruction, putting new structures on the subject suit in respect to Land Parcel L.R No Kericho/Chemoiben/827 pending the hearing and determination of this instant application inter-parties.
  - (iii) That this honorable court be pleased to issue an injunction to the second respondents son Festus Kiplangat Sang from interfering, destructing, and putting more new structures on the subject suit.



- (iv) That this Honorable court be pleased to direct the OCS Litein police station to enforce the order of this honorable court.
  - (v) That this Honorable court be pleased to restrain the 2nd Respondents son from entering into further destruction, subdividing, leasing, mortgage, putting more new structures, ploughing, alienating, and/or in any other way be construed in whatever way in respect to the parcel of land Known as L.R No Kericho/Chemoiben/827 pending hearing and determination of this instant application.
  - (vi) That the cost of this application be provided for.
2. The application is supported by the grounds on the face of it and the supporting affidavit of Carolyn Chelangat the Petitioner/Applicant herein hence competent to swear this affidavit.
  3. She avers that the 2nd Respondent through her son one Festus Kiplangat Sang has continuously been destructing and destroying the perimeter wall and putting new structures on the subject matter, the applicants parcel of land and that the 2nd respondents son's actions went against the provisions of the law and done notwithstanding the fact that there was a pending ruling on the subject suit on 13th March, 2025, which was deferred on 27th March, 2025.
  4. She avers that on 16th March, 2025, the 2nd respondent's son either by himself or through his agents, servants and employees raided the premises of the applicant herein situated inside known as L.R No Kericho/Chemoiben/827 and went on a destruction spree in the pendency of the matter herein.
  5. She avers that she reported the incidence at Litein Police station and was issued with an OB number and that there exists a need for the issuance of injunctive orders to protect myself and her family in respect to the parcel of land known as L.R No Kericho/Chemoiben/827.
  6. She avers that there's need for status quo orders to be issued in favour of her occupation on the parcel of land known as L.R No Kericho/Chemoiben/827 even as the matter proceeds and that she shall be greatly prejudiced if the Application herein is not allowed as she would likely be rendered homeless.
  7. She avers that the respondent has not disclosed what prejudice it will suffer, if her interests are protected arising from her long stay in the parcel of land known as L.R No Kericho/Chemoiben/827 or what defence it would probably have against her long continuous occupation.
  8. She avers that the instant application has merits and the balance of convenience tilts in her favour having made a prima facie case for the protection of her interest in the said parcel of land. She therefore urged this Honourable Court to allow the Application with costs.
  9. Geoffrey Kipkorir Kirui, the 4<sup>th</sup> Respondent herein, with the authority of the 2<sup>nd</sup> Respondent, filed a replying affidavit in response to the application dated 20<sup>th</sup> March, 2025 and that the said application is frivolous, mischievous, lacking in merit and is based on falsehoods, the same has been brought in bad faith and ought to be dismissed.
  10. He avers that the applicant is fond of filing numerous applications before this court, seeking similar orders, ostensibly to frustrate the beneficiaries of the estate.
  11. He avers that the Applicant herein is neither Beneficiary Nor A Dependant of the estate. She is an Intermeddler who ought to and should be cautioned and/or sanctioned by the court.



12. He avers that the prayers being sought herein are similar to the prayers sought in the earlier dismissed applications being the ones dated 4.6.2024 and 27.11.2024. The grounds advanced in the said two applications are similar to the current application under consideration.
13. He avers that the application herein is res-judicata, a similar application dated 27.11.2024 having been determined vide a ruling of 27.3.2025 and that in the said ruling, the court found that the application dated 27.11.2024 was filed in the wrong forum.
14. He avers that upon the confirmation of the grant vide a rectified grant dated 8.2.2021, this court became functus officio unless there is a summons for revocation of a grant, which is not the case herein and that this court therefore, has no powers to issue the orders of injunction that have been sought by the applicant herein and that the instant application should be dismissed.
15. The matter came up for inter partes hearing, the learned counsel for the respondent stated that having filed a replying affidavit, he would be relying on the averments on the replying affidavit. The learned counsel for the applicant sought for additional time to file a further affidavit.
16. I have considered the application and response by the parties and find that the issue (s) for determination are whether to issue an injunction. This court is alive to the following legal provisions Section 47 of the Law of Succession Act which provides that “The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.” and Rule 73 of the Probate and Administration Rules which vests the probate court with inherent power and provides as follows; “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.” Courts have also pronounced themselves on the issue of the powers of the court to grant injunctive orders in a probate matter. In *Floris Piezzo & Another v Giancarlo Falasconi* (2014) eKLR, while considering whether an injunction can issue in a succession cause the Court of Appeal expressed itself as follows; “We have no doubt at all that the Law of Succession Act gives the Court wide jurisdiction in dealing with testamentary and administration issues of an estate. Indeed Section 47 of the said Act gives the Court jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decree and orders as may be expedient. It cannot be said that such decrees and orders would exclude injunction orders. In other words, we are of the same view that Section 47 of the Act gives the Court all embracing powers to make necessary orders, including injunctions where appropriate to safeguard the deceased’s estate. This section must be read together with Rule 73 of the Probate and Administration Rules which further emboldens Court’s jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court. We would imagine such orders would also include injunctive orders.” However, in the instant succession cause, the applicant is neither a beneficiary or dependant of the estate of the deceased, the applicant is a third party and therefore her proprietary interest in the subject parcel is beyond the scope and power of this court sitting as a probate court. In *Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR it was held as follows; “The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules.”
17. Consequently, the notice of motion dated 20th March, 2025, is hereby dismissed.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 8TH DAY OF MAY, 2025**



**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Lang'at for the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents

No Appearance for the Applicant

