



REPUBLIC OF KENYA



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In re Estate of Maritim arap Chebochok (Deceased) (Succession Cause 28 of 2020) [2025] KEHC 5624 (KLR) (Family) (7 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5624 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 28 OF 2020

JK NG'ARNG'AR, J

MAY 7, 2025

**IN THE MATTER OF THE ESTATE OF MARITIM ARAP
CHEBOCHOK (DECEASED)**

BETWEEN

**EDWIN KIPLANGAT CHERUIYOT 1ST PETITIONER
WILSON CHERUIYOT ROTICH 2ND PETITIONER
ANDERSON CHERUIYOT 3RD PETITIONER**

AND

REBECCA CHEPKORIR BENEFICIARY

AND

JOHN TONUI PURCHASER

RULING

1. Maritim Arap Chebochok died intestate on the 10TH April, 1982 within Areyiet Location in Bomet, and a grant of letters of administration intestate was made to the 1st Petitioner/Applicant herein, Edwin Kiplangat Cheruiyot by this Court on the 30th April, 2021.
2. The Applicants filed this application on 28th October 2020 seeking the following orders:
 - a. Spent
 - b. That the 1st and 2nd Respondents be restrained by way of injunction from intermeddling with the estate of the above mentioned deceased and in particular from entering, remaining on, occupying, using, selling, purchasing, leasing, cultivating, grazing and/or in any other way or



manner interfering and/or dealing with the portion of land currently and which has been in the occupation of the Applicants and/or demolishing their residential quarters and any other developments therein and/or preventing the said Applicants from the peaceful occupation and use of the said portion of land until the hearing and determination of the summons for confirmation of grant issued herein

- c. Spent
 - d. Spent
 - e. Costs of this application be provided for.
3. The Respondents contested the said application by filing their Replying Affidavit dated 1⁹th November 2020. The gist of this application is whether the Applicants have established and/or demonstrated the threshold of principles of temporary injunction.
 4. They aver that In this instant application the 1st Respondent purportedly sold the estate land of the deceased namely Title Number Kericho/Tumo/5X9 to the 2nd Respondent and after the said illegal sale, the said Respondents attempted to evict the Applicants from the said estate suit land to pave way of their occupation therein.
 5. The Applicants have annexed chief's letter to demonstrate the said illegal action of the Respondents who are claimed to be using the Area chief and Assistant County Commissioner of Sigor Sub County.
 6. The Applicants claims that the Respondents are intermeddlers to the said estate land since the 1st respondent cannot purport to sell the land of the deceased before this Succession cause in concluded.
 7. Further, they assert that it is not true that the 2nd Respondent had purchased the estate land. They lay evidence of a Letter of Area chief and the Deputy Commissioner of Sigor. The Applicants annexed to the Applicant's Supporting Affidavit the said letters in evidence that the Respondent were intimidating the Applicants in the survey of land and to forcibly install the 2nd Respondent in the estate land. They claim that purported sale of land was done in recent times hence proving intermeddling.
 8. It is claimed that the Applicants will therefore continue to suffer irreparable damage by Respondents' illegal action of demarcation of the estate land aforesaid if the 2nd Respondent is put in possession therein. Hence the Applicants shall have no place of abode and will be rendered destitute.
 9. They lay claim that Applicants have no alternative land to live in and if displaced by the Respondents, they will suffer damages and irreparable injury if the injunctive orders.
 10. They further argue that the 1st Applicant herein Edwin Kiplangat Cheruiyot is Administrator of the estate of the deceased herein and was issued with letters of Administration on 30th April, 2021 by this court and further have been given authority by the 2nd and 3rd Applicants herein to prosecute this Application. That the 1st Applicant herein have legal capacity and/or locus standi to institute this application.
 11. On the other hand, the Respond through a replying affidavit sworn by the 1st beneficiary/Respondent and also on behalf of the 2nd Purchaser/Respondent on 19th November, 2020 opposed the application by claiming that the application is frivolous and an abuse of court process as the Petitioners have not obtained and/or filed grant of representation and/or grant of letters of administration ad litem before commencing the matter herein on behalf of the estate of the deceased. They claim that from the search dated 31st august, 2020 the late Maritim arap Chebochok which forms the subject matter



of the application. That failure by the Petitioners' to obtain grant ad litem, the Petitioners' lack locus standi to bring the Application before court.

12. They contend that the application is premature, defective and ought to be struck out in the first instance. It is claimed that the 1st Beneficiary/respondent is the sister to the 2nd Beneficiary applicant hence having equal right to inherit the father's estate in equal shares.
13. The 1st Beneficiary/respondent claims that the 2nd Beneficiary/Respondent is a bonafide purchaser and has been living on the piece of land since 1985 when he bought the land and the petitioners have not reported the matter to any police station.

Determination.

14. I have considered the summons for the Application, the affidavits in support and against the summons together with the submissions by both parties. The issues for determination is whether the application meets the threshold of issuance of orders sought.

4. Generally, the law governing the grant or refusal of interlocutory injunctions is set out under Order 40(1) (a) and (b) of the Civil Procedure Rules 2010 which provides as follows:

“Where in any suit it is proved by affidavit or otherwise—

(a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
.....;

(b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit;

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further.”

15. The conditions for consideration in applications for injunctions were settled in the celebrated case of *Giella v Cassman Brown & Company Limited* (1973) EA 358, where the Court expressed itself in the following terms:

“Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”



16. The duty is for the Applicant to disclose all material facts in relation to such application. Section 109 of the Evidence Act states:

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person”

17. The court finds that the Applicant has pointed out a case under Section 76 of the Law of Succession Act with a probability. The second issue for determination therefore does not arise. The 1st Beneficiary/ applicant mentioned in her affidavit that the 2nd Purchaser/Applicant a 1s bonafide purchaser having purchased the property in 1885 but from the courts record the deceased died on 10th April, 1982. This means that the land was purchased posthumously amounting to intermeddling.

18. I note though that the parties herein are family members and it would be unsafe to allow the application in total. This court is persuaded to issue status quo pending the confirmation of grant and distribution of the estate.

19. In the end, the court makes the following orders;

i. That application dated 28th October 2020 is allowed with an order of status quo being maintained pending the confirmation and distribution of the estate.

ii. Each Party to bear their own costs.

DATED AND DELIVERED AT BOMET THIS 7TH MAY, 2025

JUDGE

J. K. NG'ARNG'AR

