



REPUBLIC OF KENYA



**In re Estate of Tuwei Arap Maritim (Deceased) (Succession Cause  
32 of 2021) [2025] KEHC 5640 (KLR) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5640 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
SUCCESSION CAUSE 32 OF 2021  
JK NG'ARNG'AR, J  
MAY 7, 2025**

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

**BETWEEN**

**IN THE MATTER OF ELIZABETH CHEPKORIR MARITIM ..... PETITIONER**

**AND**

**IN THE MATTER OF ALEX KIPKORIR BETT' ..... APPLICANT**

**RULING**

1. This matter relates to the estate of Tuwei Arap Maritim who died intestate on 26<sup>th</sup> November, 2021.
2. A petition was made by Elizabeth Chepkorir Maritim and letters of administration intestate were issued by this court on 27<sup>th</sup> April, 2022 to Elizabeth Chepkorir Maritim.
3. An affidavit of protest was filed by the Objector on 04<sup>th</sup> July, 2024. The affidavit of protest was sworn on 30<sup>th</sup> May, 2024. From the record the matter was referred to mediation on 4<sup>th</sup> June, 2024 where the parties failed to reach a settlement.
4. The Objector raised the issues in his affidavit of protest the following main issues:
  - a. That the Applicant/Objector is the son to the Joseph Langat(Deceased) who was a beneficiary of the late Tuwei Arap Maritim by virtue of being his son.
  - b. That the petitioner filed the instant succession secretly without involving all the members of the family of the late Joseph Langat
  - c. That the Petitioner failed to include all the properties which include commercial property in Kericho County that is under the occupation of the Petitioner.
  - d. That the petitioner has failed to give accounts of all the earnings derived from the sad commercial properties for the last Six months when she took possession of the same.



- e. That the petitioners concealed material facts with an intention of depriving several beneficiaries their share in the deceased's estate.
5. The Petitioners filed submissions on 25th November 2024 and there seems to be no submissions filed by the Applicant/objector.

### **Determination**

6. I have considered the summons, the affidavits in support and against the summons together with the written submissions by both parties. The only material issue for determination is:

### **Whether the Objector is a beneficiary of the Estate of the deceased.**

7. The duty is for the objector 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”

8. The court finds that the Objector has failed to prove that he was a direct beneficiary of the estate of the deceased under Section 76 of the *Law of Succession Act*. I note that he claims to be the son of the late Joseph Langat but has not tended proof that the said Joseph Langat who is claimed to be deceased was a son to the deceased.

9. I am being invited by the objector, who claims to be grandson of the deceased to include him as a beneficiary of the estate. This court notes that the objector did not raise an objection during the succession proceedings. This to me is an afterthought and a quest to deprive the petitioners their rightful authority to administer the Estate.

10. It was clear to this court if the Cause herein had already been advertised in the Kenya Gazette and a window period was given to the objector to make his object. Suffice it to state that the Objector would have filed a succession cause over the estate of his deceased father and not in this particular cause.

11. The Objector avers that the petitioners concealed material facts with an intention of depriving several beneficiaries their share in the deceased's estate but did not give a list or proof of the existence of such several beneficiaries. I further note that the objector has not given a full description of the alleged commercial property.

12. *Black's Law Dictionary* (Tenth Edition) defines judicial discretion as:

“The exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right.”

13. The procedure of how the Objection to a grant of letters of administration is to be made is given in rule 17 of the *Probate and Administration Rules*. It states as follows:-

1. Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person may do so by lodging within the period specified in the notice of the application published under rule 7(4), or such longer period as the court may allow, either in the registry in which the pending application has been made or in the principal registry, an objection in Form 76 or 77 in triplicate stating



his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection.

2. A request by an intending objector for an extension under section 68(1) of the Act of the period specified in the notice under rule 7(4) shall be made to the registry at which the application for a grant was made or by which the notice was issued, as the case may be, by summons supported by an affidavit, if necessary, and upon notice to the applicant for the grant.
  3. There shall be maintained at each registry a register of objections, answers and cross-applications in which the registrar shall enter particulars of every objection, answer and cross-application lodged under this rule in the registry and of every withdrawal of objection and withdrawal and amendment of every answer or cross-application under this rule.
  4. Upon receipt of an objection in triplicate within the period referred to in subrule (1), or an extension thereof, the registrar shall forthwith file and retain the original thereof and cause an appropriate entry to be made in the register and shall transmit forthwith by registered post a notification in Form 61 of the receipt of the objection, together with a copy thereof, to the person or to each of the persons by whom the application for a grant has been made and also, save where the objection is lodged in the principal registry, transmit a copy of the notice and objection to the principal registrar by whom it shall be filed and retained.
  5. The registrar of the registry in which the objection is lodged shall forthwith upon the lodgement of the objection cause a notice in Form 67 to be sent to the objector, by registered post or otherwise as he may think fit, requiring him to file in the registry within such period as the registrar may specify in the notice an answer in Form 25 to the petition for a grant together with a petition by way of cross-application in Form 84, supported by affidavit, for a grant to the estate of the deceased to be made to the objector.
  6. If within the period specified in subrule (5) the objector has filed in the registry in the proper form an answer to the petition for a grant, together with a petition by way of cross-application for a grant to himself, the registrar shall refer the matter to the court for directions, and shall notify the petitioner and the objector of the time and place set for the hearing of the petition, answer and cross-application.
14. In light of the foregoing, I am not persuaded to allow the protest brought by way of affidavit dated 30<sup>th</sup> May, 2024.
15. In the end, the court makes the following orders;
- i. That I hereby dismiss the summons for dated 16<sup>th</sup> June, 2020.
  - ii. The letter of administration granted to the Petitioners issued 27<sup>th</sup> April, 2022 is hereby sustained.
  - iii. Being a family matter each Party to bear their own costs.

**DATED AND DELIVERED AT BOMET THIS 7<sup>TH</sup> DAY OF MAY, 2025**

**JUDGE**

**J. K. NG'ARNG'AR**

Court of Assistant: Siele/Susan

Petitioner: present



Koech for the Objector.

