



REPUBLIC OF KENYA



**In re Estate of Seronei arap Kili (Deceased) (Probate & Administration  
08 of 2021) [2025] KEHC 9175 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9175 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
PROBATE & ADMINISTRATION 08 OF 2021**

**JR KARANJA, J**

**JUNE 18, 2025**

**IN THE MATTER OF THE ESTATE OF SERONEI ARAP KILI:.....(DECEASED)**

**BETWEEN**

**TERESA JEPKIRONG SERONEY ..... 1<sup>ST</sup> APPLICANT**

**BENARD KIPLAGAT KOSGEI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**SIMATWO A MARITIM ..... 1<sup>ST</sup> RESPONDENT**

**KIPSANG ARAP RUTO ..... 2<sup>ND</sup> RESPONDENT**

**KIPLAGAT MAIYO ..... 3<sup>RD</sup> RESPONDENT**

**KIPTOO A MOSBEI ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The grant of letters of Administration Intestate respecting the estate of the Late Seronei Arap Kili [deceased] who passed away on the 6<sup>th</sup> May 1973 at the age of thirty three [33] years as per the death certificate dated 4<sup>th</sup> June 2019 was issued on the 19<sup>th</sup> November 2020, to Teresa Jepkirong Seroney and Bernard Kiplagat Kosgei in their respective capacities as widow and son of the deceased who was actually survived by the said widow and four [4] sons as indicated in the affidavit in support of the petition for the grant dated 26<sup>th</sup> November 2019.
2. The property identified in the petition as being available for distribution was Land Parcel No. Nandi/ Kipkaren/Salient/202 which was apparently encumbered by a liability in favour of a purchaser named Francis Keino Baroswo.



The asset was distributed wholly to the deceased's widow to hold in trust of the rest of the beneficiary in terms of the Certificate of Confirmation of grant issued to the two Petitioners, mother and son, on the 3<sup>rd</sup> August 2022.

No provision was made for the estate's liability which was acknowledged in the Petition for the grant.

3. It may also be noted that the grant was confirmed in the name of the First Petitioner [Teresa] although other dependants of the deceased were identified by the court on the date of confirmation as Bernard Kiplagat Koiget, Joseph Kipkemboi Ngetich, Vincent Kipkirui Rutto and Peter Kipserem.

*Vide* the Notice of Motion dated 21<sup>st</sup> March 2022, the First Petitioner/Applicant sought to have the County Surveyor Nandi County to proceed and ascertain the boundary and measurement of the estate suit property which was allegedly registered jointly between the deceased and four [4] other persons.

4. The application was however, dismissed on the 8<sup>th</sup> May 2023 for want of attendance in court and want of prosecution, but *vide* the Notice of Motion dated 22<sup>nd</sup> May 2023, the Applicant sought to have the dismissed application reinstated for hearing. However, when the matter came up for hearing on 21<sup>st</sup> November 2023, the Applicant applied to withdraw the application for reinstatement and this was effectively allowed on 13<sup>th</sup> February 2024.
5. The aforementioned turn of events brought into the fore the present Notice of Motion dated 17<sup>th</sup> November 2023, by the Applicants/Petitioners against the four Respondents namely, Simatwo A. Martim, Kipsang Arap Rutto, Kiplagat Maiyo and Kiptoo A. Mosbei.

At this juncture, it is only Prayers [2] and [3] of the application that fall for determination.

In Prayer [2], the Applicant seek an order directing the Nandi County Surveyor to survey the suit estate property pending the hearing and determination of the application inter-parties in order to give effect to the demarcation of the property to establish the shares of the respective proprietors thereof basing on the existing boundaries.

6. The Applicants indicate that the title deed respecting the estate property does not specify the shares of each of the five proprietors, namely, the First Petitioner/Applicant and the four [4] Respondents.

The Applicants therefore, in Prayer [3] seek leave to file summons for rectification of the certificate of confirmation of grant issued with regard to the material grant on the 3<sup>rd</sup> August 2022, so that the mode of distribution of the estate be in accordance with the shares of each of the aforementioned proprietors.

7. In essence, the Applicants are seeking a rectification or amendment of the existing Certificate of Confirmation of grant to accord with the report of the County Surveyor on the shares of each of the proprietors of the suit estate property. This means that the intended application for rectification [i.e. prayer 3] is wholly dependent on the grant of Prayer [2] in favour of the Applicants by the court. Therefore, if Prayer [2] fails, the Prayer [3] would invariably also fail.
8. Although at the instance of the Applicant the cause was consolidated with *Kapsabet Miscellaneous Case E002 of 2024*, the parties in both cases are not exactly the same. However, the subject matter in both cases is the material estate property Land Parcel No. Nandi/Kipkaren/Salient/202, hence the consolidation was justified.

9. Be that as it may, the present application is based on the grounds set out in the Notice of Motion as fortified by the averments in the Applicant's supporting affidavit dated 17<sup>th</sup> November 2023.

On the 12<sup>th</sup> May 2025, the court directed that the present application be heard in priority to separate application dated 10<sup>th</sup> March 2025.



In that regard, written submissions for and against the application were filed by both sides.

10. The Second Respondent, Kipsang Arap Ruto, in opposition to the application challenged the jurisdiction of this court to hear and determine this matter, specifically Prayer [2] of the application.

Consequently, the court directed that the question of jurisdiction vis-à-vis Prayer [2] be dealt with as a preliminary issue. Therefore, this ruling is specifically with regard to the preliminary issue on jurisdiction of this court to deal with Prayer [2] of the application.

11. The issue is addressed in the Second Respondent's further submissions dated 9<sup>th</sup> June 2025, and the Applicants' further or supplementary submissions dated 17<sup>th</sup> May 2025. In that regard, the Second Respondent submitted that the manner in which Prayer [2] is framed suggests that the issue in dispute is actually occupation of the estate property by different persons and/or estates which therefore places this matter or application within the jurisdiction of the Environment & Land Court by dint of Article 162 of the Constitution, rather than the jurisdiction of this Succession Court.
12. According to the Second Respondent, an issue pertaining to occupation of land would invariably relate to ownership of the land hence suitable for determination by the Environment & Land Court. The Applicants disagreed with this contention by the Second Respondent and submitted that the present application does not touch on ownership of the estate property which in any event is undisputed, but rather on the actual shares of each of the proprietors in the land.
13. In effect, what the Applicants are saying is that the whole cake belongs to all of them, but the bone of contention is the manner and mode of sharing the cake so that each one of them may have their own piece and decide how to eat it. In that regard the Applicants think that the shares of each of the proprietors of the suit estate property should first be ascertained before being handed over. They [Applicant] also think that the previous mode of sharing of the estate property which was approved by the court may not have been proper.
14. Taking into account all the sentiments expressed by both sides as well as the facts and circumstances leading to the present application and more so, prayer [2], the opinion of this court is that the actual issue herein is not occupation and/or ownership of the estate property "per se", but each of the proprietors share in the property for purposes of proper distribution amongst the beneficiaries and to correct an apparent error which occurred in the confirmation proceedings which ended in the entire suit estate property being distributed wholly to the first Applicant/Petitioner as if it was wholly owned by the deceased thereby totally disregarding the proprietary interest of the Respondents in the estate. What was lawfully available for distribution to the First Applicant/ Petitioner and all other dependants of the deceased was only the part of the estate which belonged to the deceased.

The remaining parts which belonged to other joint proprietors of the land were not available for distribution in this succession court.

15. But, the information which was availed to the court for purposes of confirmation of the grant was provided by the Applicants which meant that they gave false statements pertaining to the estate property and concealed material facts on the ownership of the property.

Under Section 71[2] of the Law of Succession Act, the grant of letters of administration intestate shall not be confirmed until the court is satisfied as to the respective identifies and shares of all persons beneficially entitled and when confirmed the gran shall specify all such persons and their respective shares.

16. Pursuant to the information given by the Applicants at the confirmation proceedings the objective aforementioned was never achieved. Therefore, the estate property although jointly owned by the



deceased and four others [read- Respondents] was wrongly distributed to the Applicants as a whole therefore “blacklisting” the Respondents propriety interest in the property.

17. The chief’s letter dated 13<sup>th</sup> November 2019 obtained by the Applicants to obtain the subject grant and have it confirmed did not mention the Respondents as having an interest in the estate property, but it mentioned a Purchaser called Francis Keino Baroswa.

The certificate of search filed herein by the Applicants on the 9<sup>th</sup> December 2019, clearly indicated that the estate property was co-owned by the deceased and the Respondents, yet it was wholly and solely distributed to the Applicants on the basis of the false statements made by them coupled with concealment of material facts.

18. So, all the foregoing factors show that this is a pure succession matter for which this court has the necessary jurisdiction to deal with thereby blocking any purported jurisdiction of the Environment & Land Court to deal with it. It is not the ownership and/ or occupation of the estate property that it is in dispute but rather the shares of each of five proprietors in the property for the sole purpose of proper and lawful distribution as provided for under the Law of Succession Act.

19. The objection by the Second Respondent to this court’s jurisdiction to deal with this matter is therefore misconceived and devoid of merit. It is hereby overruled and dismissed.

However, this court having noted material defects in the entire process of obtaining the subject grant by the Applicants/Petitioners and having it confirmed in their names to the total exclusion of the other proprietors of the estate property, is unable and considers it improper to grant Prayer [2] of the present application and indeed, Prayer [3].

20. Instead, this court deems it just and fair to invoke Rule 73 of the Probate & Administration Rules as well as Section 76 [a] [b] and [c] of the Succession Act and hereby order that the Certificate of Confirmation of grant issued by the court on 3<sup>rd</sup> August 2022 be revoked forthwith and a fresh summons for confirmation of grant be taken out by either the Applicants/ Petitioner’s and/or the Respondents upon their agreement on the respective shares of each of the five proprietors of the estate property and the ultimate mode of distribution of the estate.

21. It is hereby further ordered that the Fresh Summons for Confirmation of grant be confirmed in the next six [6] months from this date hereof or any other shorter period that the parties may deem fit.

22. The matter may be given a mention date to confirm status and/or compliance and/or further orders. With this ruling, the present application and any other respecting the impugned estate property within this succession cause may be treated as having been resolved and/or obsolete and/or overtaken by events.

**DELIVERED AND DATED THIS 18<sup>TH</sup> DAY OF JUNE, 2025**

**HON. J. R. KARANJAH,**

**JUDGE**

