



REPUBLIC OF KENYA



In re Estate of William Kiptui Rotich (Deceased) (Succession Cause E001 of 2024) [2025] KEHC 8352 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8352 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
SUCCESSION CAUSE E001 OF 2024**

RB NGETICH, J

JUNE 12, 2025

IN THE MATTER OF THE ESTATE OF WILLIAM KIPTUI ROTICH (DECEASED)

BETWEEN

DORCAS JEPSONGOL KIPTUI 1ST APPLICANT

LUCY J ROTICH 2ND APPLICANT

AND

FESTUS BARASEL ROTICH RESPONDENT

RULING

1. The Applicants/administrators filed an application dated 12th February, 2025 seeking following Orders:-
 - i. Spent.
 - ii. That directions do issue on the disposal and determination of the ownership of Baringo/Ravine/102/133.
 - iii. That upon directions being issued, this court be pleased to take evidence and determine whether or not Baringo/Ravine/102/133 is part of the estate of William Kiptui Rotich.
 - iv. That directions do issue on distribution of the fair remainder of the entire estate of William Kiptui Rotich.
 - v. That this court gives directions that favours the enjoyment of the Estate to all the beneficiaries unlike now when only a few are enjoying the same.
2. The application is supported by affidavit sworn by Dorcas Jepsongol Kiptui. She avers that she is one of the Administrators of the estate of the deceased herein and has the authority of her Co-Administrator to swear the affidavit on her behalf. She avers that a grant was issued on 21st November, 2024 and so



far, no objection has been filed and amongst the properties listed as belonging to the Estate of his late father William Kiptui Rotich is Baringo/Ravine/102/133 measuring 38.5 hectares and the property is currently registered in the name of her brother Festus B. Rotich as confirmed by the Green Card annexed to the affidavit.

3. She further avers parcel number Baringo/Ravine/102/133 belonged to the Estate of her late father William Kiptui Rotich. She stated that her father William Kiptui Rotich died on 16th August, 2017 as confirmed by the death certificate annexed to the affidavit and that the original title of the said parcel of land was issued in the year 1994 as confirmed by a copy attached to the supporting affidavit.
4. She stated that the deceased herein applied for a new title to correct his name which Consent was granted on 8th March, 2006 and copy of the Land Board Consent is attached to her affidavit and a new title in his name was issued in 2013; and in the year 2013, the deceased applied for sub-division of the said parcel of land as confirmed by the Application for Consent to sub-divide and the Consent thereof dated 22nd March, 2013 attached to the applicant's affidavit. She avers that the sub-division was intended to gift inter-vivos 19.25 hectares or (50 acres) part of Baringo/Ravine/102/133 to her brother FESTUS BARASEL ROTICH and her other brother Kennedy Kipruto Rotich had been given 50 acres being Baringo/Ravine/102/425.
5. She stated that on 25th July, 2017, she conducted a Search that showed her late father was the Registered Owner but was shocked when she learnt that her brother FESTUS B. ROTICH had the entire Baringo/ Ravine/102/133 transferred to himself on 5th November, 2019 more than two years after their father's death.
6. She further stated that after acquiring the title fraudulently, her brother Festus Barasel Rotich charged the property to Kenya Industrial Estates Limited for large sums of money and this fraudulent transfer was reported to the Police and there is an ongoing Criminal Case. She avers that the title issued and the Charge are therefore fraudulent given the circumstances of this Case and they pray that the title registered in the name of Festus B. Rotich issued on 5th November, 2019 and all consequential entries be cancelled and Baringo/Ravine/102/133 to revert to the Estate of William Kiptui Rotich.
7. The applicant further stated that she is aware that her late father had given Festus B. Rotich 50 acres and the same can be allocated to him but the other half being 50 acres should be available for distribution among the other Beneficiaries.
8. She stated that the issue of ownership of this parcel of land should be determined before final distribution and Confirmation of Grant is done. She further avers that the issue of Ownership of this disputed parcel of land arose in Eldama Ravine Succession Cause No. E11 of 2020 Estate of William Kiptui Rotich (Deceased) which was withdrawn for Want of fiduciary jurisdiction and Festus B. Rotich claimed it was not part of the estate.
9. On 3rd April, 2025, this court directed that in respect to ownership of property Baringo/ Ravine/102/133, hearing to proceed by way of viva voce evidence and parties are at liberty to file additional witness statements within 14 days.

Applicant's Oral Evidence

10. PW1 the 1st administrator testified that the deceased herein William Kiptui Rotich is her late father and that she is the last-born child of the family. She said the other children are: - Michael Kiptui who passed on in 1991, Leah Rotich, Kennedy Rotich, Roselyne, Rosa Rotich, Festus Barasel Rotich, Lucy Rotich and Dorcas Rotich. She said that one child by the name Joseph passed on as an infant.



11. She testified that she has listed many properties in the petition and in her affidavit signed on 13th February,2025. She adopted her affidavit as evidence in court and stated that the issue before court concerns one piece of land that her father owned being parcel No. Baringo/Ravine/102/103 measuring about 38.5 Ha which is about 100 acres and is located at Benonin sublocation, Kabiyet Location, Kaplelechwa village.
12. She testified that her father had 2 large pieces of land among other properties and that her father divided into 2 and gave Festus half of the parcel No.133 but he did not transfer it. That at the demise of his father on 16th August, 2017, he had not transferred to Festus and they did a search on the 25th July,2017 and confirmed the land was in her father's name. That the search dated 25th July,2017 showed that the land belonged to William Kiptui Rotich which she produced in court. She said that Mr. Kiburi advocate did the search as per their instructions and that they did not do succession since their mother was alive and she was not comfortable.
13. She said that their mother passed on 29th June,2019 and they pursued succession after the death of their mother and when they listed the properties, Festus said the land was his and they did search and found that it was transferred to Festus two years after the death of their father. She said that did search on 5th November,2019 and found that the property is charged to K.I.E for an amount of 30Million, first on 8th July,2020 for 10M then 8th July,2020 for 10M then 6th September,2022 for Kshs. 20M. she said that the land belonged to their father and Festus did not have letters of administration. She said that she has documents to show that his father sought consent to transfer 50 acres to Festus but he did not complete the process of transfer, she produced the documents before court.
14. The applicant said that she has a copy of the title to land and the title was issued in 1994 and in 2013, the deceased requested that his middle name Kiptui be included in the title and the next action was for subdivision. She said that she has not seen any documents transferring the entire land to Festus and that Festus was to get 50 acres as their father had informed them that Festus was to get 50acres and the rest to go to other family members. She said Kennedy was to get 50 acres from the other parcel of land and Kennedy got 50 acres title in Baringo/Ravine/102/425 and the remaining 50 acres remained in their father's name being Baringo/Ravine/102/.
15. She said that they were all aware of the sub-divisions and the gifting of their two brothers but were all shocked to learn that Festus had the whole 100 acres registered in his name and prayed that the title be cancelled and returned for them to proceed with succession and that they have no problem with Festus having 50 acres. She further stated that their brothers are enjoying the properties and daughters are left out. She said they have no access to the home and even when they come to court, they cannot reach their home. She said they filed succession cause in the lower court which Festus objected on jurisdiction and when they filed in this court, Festus filed another case in Kabarnet court which they were not involved.
16. She prayed for cancellation of title for parcel No.102/133 and that it reverts to the estate. She said when they confronted Festus, he threatened them and told them that they will not get the land back. She said they were once a family but now they do not even talk to one another and there have been many incidences which they reported to DCI.
17. Kennedy Kipruto Rotich testified that he is number 2 in the list of beneficiaries and in response to the application dated 12th February,2025 in respect to parcel number Baringo/Ravine/102/133, he agrees that his brother Festus Barasel Rotich was given 50% of Parcel Baringo/Ravine/102/133 and he (Kennedy) was also given 50% from parcel Baringo/Ravine 102/84 land owned by his father. He said that it was divided into two in 2005 and 2006 and 50% given to him and shortly thereafter, his father and mother called him and his brother Festus and his wife requested to sell land he had been given to



- pay for his education as at the time he was doing a masters degree and he did not have funds to pay which did not attract positive response from their mother. He said his father and himself sympathized with him but his mother objected and finally in tears, their mother accepted.
18. He said that in that discussion also, is when their father informed Festus that he had divided Parcel/102/84 and given him (Kennedy) half which offended his brother (Festus) and it became an issue in the family and in December 2009, their parents called for a meeting to discuss the issue and his father said he was going to divide parcel 102/133 into two and 50% to Festus and give 50% to their mother and their father requested Festus to process the subdivision. He said that the meeting almost turned violent between him and Festus because he was to relocate from 424 to the portion of 50% he had been given. That shortly thereafter, himself, parents and Festus went to parcel 102/133 and their parents requested Festus to choose the portion of the half of about 100 acres or 104 acres but Festus refused to choose the portion.
 19. He said that his father gave him title deed of parcel 84 to process the transfer and he got 425 and 424 and Festus was to process the subdivision also 50% to himself and 50% to their mother. That after the demise of their father, his sister Dorcas became violent in the presence of their mother and he walked out with Festus but he later advised his mother to call the family and decide on the way forward and in the year 2009, their sisters had demanded to also be given portion of land and their father said the matter could be discussed later.
 20. He said that their parents declined to allocate land to their sisters. He said their mother declined to take a stand and that she later fell sick and passed on in the year 2019. He said they held a meeting after burial though Festus left early and in 2019, it came to their knowledge that parcel Baringo/Ravine/102/133 was transferred to Festus instead of it being divided into two and having half registered in their brother Festus' name. He said that it was not right for him to register the whole parcel in his name and that he informed his uncle who advised him to call his brother Festus and inquire from him whether he had transferred the whole parcel to himself but Festus told him to go back to the people who informed him and confirm from them. Further that when he asked Festus whether he charged the property to the bank, he told him to refer to the answer to the first question. He said he called his uncle to inform him what Festus said and his uncle told him if Festus had decided to be a criminal then they leave it at that.
 21. He said shortly after they had a meeting with their sisters and they confirmed that Festus had charged the whole parcel to the bank. He said he only has a receipt showing that Festus paid registrar for subdivision and at the time of their father passing, the land was still in their father's name. He said that the receipt for sub-division is from around 2013 which he paid for subdivision of land into two. He said he learnt that he had transferred the whole parcel to his name in 2020; that he transferred 100% to himself instead of 50% and hence Festus Barasel's transfer in 2019 is illegal. He said their father died on 16th August, 2017 and they had not applied for letters of administration in the year 2019.
 22. He said they started succession process in 2020 and urged this court to cancel the title issued to Festus in 2019; and 50% of the title to go to Festus and the remaining 50% to be subjected to succession. On the allegations that their sisters are denied entry to the estate, he said it is not true as they have a key to their home and they are enjoying the land.

Analysis and Determination

23. The main issue for consideration is whether property parcel number Baringo/Ravine/102/133 measuring 38.5 hectares forms part of the estate of the deceased herein William Kiptui Rotich. The property is currently registered in the name of FESTUS B. ROTICH as confirmed by the Green Card filed. From evidence adduced, the original title for Baringo/Ravine/102/133 was issued in the year



1994. That in 2013, the deceased herein applied for sub-division of the said parcel of land which sub-division was intended to gift inter-vivos 19.25 hectares or (50 acres) part of Baringo/Ravine/102/133 to his son FESTUS BARASEL ROTICH.T] From the death certificate filed herein, the deceased died on 16th August,2017. The search conducted revealed that the property was transferred to Festus Barasel Rotich on FESTUS B. ROTICH had the entire Baringo/ Ravine/102/133 transferred to himself on 5th November,2019 a period of more than two years after the death of the deceased herein.

24. Under Section 47 of the [Law of Succession Act](#), the High Court has inherent powers to make appropriate orders in the interest of Justice and for the preservation of the deceased's estate. It reads as follows;

“The High Court shall have jurisdiction to entertain any application and determine any dispute under the Act and pronounce such decrees and make such orders therein as may be expedient; provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”

25. Rule 73 of the P&A also provides;

“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.

26. Section 45 of the [Law of Succession Act](#) prohibits intermeddling with a deceased person's estate. The section provides as follows;

1. Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
2. Any person who contravenes the provisions of this section shall;
 - a) Be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment, and;
 - b) Be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administrations.”

27. In the Estate of Veronica Njoki Wakegito (2013) eKLR, Justice Musyoka stated as follows:-

“The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a serious view of intermeddling and makes it a criminal offence.”

28. From evidence adduced, it is clear that Festus Barasel Rotich who is the son of the deceased herein, transferred to himself parcel numbered Baringo/Ravine/102/133 which was registered in the name of the deceased herein William Kiptui Rotich 2 years after the death of the deceased without following the right legal process. It therefore amounted to intermeddling with the deceased's property/estate.



29. In *Santuzzabilioti alias Mei Santuzza (deceased) vs Giancarlo Felasconi* (2014) eKLR, the court said as follows regarding the jurisdiction of the court in succession matters;

“This cannot be the case as the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancellation of the title deed. Further, a succession court can order a cancellation of title deed if a deceased’s property is being fraudulently taken away by non-beneficiaries such as where the property is being sold before a grant is confirmed.”

30. In view of the above, this court has jurisdiction to order cancellation of a title in a succession cause if the title has been fraudulently or irregularly transferred. In *Succession Cause 265/2004 Munyasya Mulili vs Sammy Muteti Mulili*; the court cancelled titles after revoking the grant. The court in the above case relied on the decision of J. Musyoka in *Re Estate of Alice Mumbua Mutua (deceased)* (2017) eKLR where the Judge considered when a case can be heard as a succession cause or when it can be heard in other courts with concurrent jurisdiction – like the ELC. The Judge said;

“The *Law of Succession Act*, and the Rules made there under, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.

31. From the foregoing, the Applicants having proved that the title deed was transferred after the demise of the deceased herein and before the parties filed succession, I find that Festus Barasel Rotich fraudulently registered parcel Baringo/ Ravine/102/133 in his name. I take note of the fact that the applicant and her brother confirm that he is entitled to 50% of the parcel number parcel Baringo/ Ravine/102/133 and are all agreeable to the fact that he was gifted 50%. In view of the fact that he illegally transferred the who parcel to him, I am inclined to cancel the said title and the property revert back to the estate of the deceased. The family should follow the right succession process thereafter to allocate 50% of the said parcel to Festus Brasel. The registration of the title number and subsequent charging to the bank as alleged amount to intermeddling with the estate of the deceased herein.

32. Final orders: -

- a. Parcel Baringo/ Ravine/102/133 form part of the estate of the deceased William Kiptui Rotich.
- b. Registration of parcel Baringo/ Ravine/102/133 in the name of Festus Barasel Rotich is hereby cancelled and the parcel to revert back to initial owner who is the deceased herein.
- c. Costs in the cause.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 12TH DAY OF JUNE 2025.

.....

RACHEL NGETICH

JUDGE

In the presence of:



- Mr. Kamonjo Kiburi for 1st & 2nd Petitioners.
- 1st Petitioner present.
- Beneficiary Leah present.
- CA, Karanja.

