



REPUBLIC OF KENYA



KENYA LAW
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**Kitur v Kitur (Family Appeal E010 of 2023)
[2025] KEHC 10043 (KLR) (23 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 10043 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
FAMILY APPEAL E010 OF 2023
JM NANG'EA, J
JUNE 23, 2025**

BETWEEN

ELIJAH KITUR APPELLANT

AND

ALICE CHEPKOECH KITUR RESPONDENT

*(Being an appeal from the Chief Magistrate's Court at Molo Succession
Cause No. 12 of 2019 delivered by Hon. D. Mosse (SRM) on 19.06.2023)*

JUDGMENT

1. This Appeal arises from the decision of learned trial magistrate dated 19th June 2023 by which she issued Grant of Letters of Administration in respect of the Estate of Chemwachi Arap Chumo, with regard to property known as Molo South/Langwenda Block 4/260 (Chebara "A"), to Alice Chekoech Tigoï alias Alice Chepkoech Kitur ("the Administratrix"). The lower court further stated that the rest of the family of the deceased were at liberty to "petition for grant of the remaining estate."
2. By Memorandum of Appeal dated 14th July 2023 the Appellant urges the following grounds of Appeal.
 1. That the learned magistrate erred in law and fact by relying on extraneous and inadmissible evidence which resulted in erroneous finding that Mr. Chemamwach Arap Chumo (deceased) had other parcels of land that were already given to his sons to the exclusion of the late Benson Kitur.
 2. That the magistrate judge erred in law and in fact by purporting to confirm the grant partially in favour of the respondent herein while holding the rest of the family of Mr. Chemamwach Arap Chumo (deceased) are at liberty to Petition for grant of the remaining estate.



3. That the learned magistrate erred in law in fact by writing a judgement that is unlawful and incoherent thus casting doubt as to whether the grant issued to the respondent was confirmed and if so, in what manner?
4. That the learned magistrate erred in law and fact by disregarding the evidence of the appellant and by failing to properly evaluate and consider the evidence on record, the enabling provisions of law of succession, the probate and administration rules thus entering an erroneous judgement.
3. The Appellant therefore prays as hereunder;
 - a. That this appeal be allowed.
 - b. That the judgement of the Chief Magistrate court at Molo in Succession Cause No. 12 of 2019 delivered by Justice Hon. D. Mosse (SRM) on 19-06-2023 as well as all consequent orders arising from the same be vacated.(sic)
4. I have perused written submissions put forth by learned Counsel for the Respondent. It appears that the Appellant has not put in submissions. As held in the famous case of *Selle vs Associated Boat Company (1968) EA 123*, a first appellate court is required to re-evaluate the lower court's record with a view to reaching its own conclusions on both matters of fact and law in the determination of the appeal. This court is accordingly guided.
5. Having reviewed the lower court's record, it is unclear what proceedings took place before the court leading to confirmation of Grant of Letters of Administration therein, as is apparent from the impugned decision. The record does not include a consent to transmission of the deceased's estate executed by beneficiaries. It is not also shown if there was an objection to a proposed mode of distribution of the estate, and if so, how the objection was determined. The lower court therefore unlawfully purported to partially confirm the Grant. The correct legal procedure was not adhered to.
6. This appeal therefore succeeds as follows;-
 - a. The Judgement dated 19th June 2023 and resultant Certificate of Confirmation of Grant dated 22/6/2023 are set aside.
 - b. The Application for Confirmation of Grant dated 4th February 2021 be fixed for hearing and disposal in accordance with the law, before a Magistrate with jurisdiction other than D. Mosse – SRM.
 - c. No order is made as to the costs of the appeal.
7. Judgement accordingly.

RULING DELIVERED VIRTUALLY THIS 23RD DAY OF JUNE, 2025 IN THE PRESENCE OF:

J.M NANG'EA , JUDGE.

Mr. Bore Advocate for the Appellant

Ms Mungai Advocate for Mr. Orege Advocate for the Respondent

Court Assistant (Jeniffer)

