



REPUBLIC OF KENYA



**In re Estate of the Late King Arap Talam Simon (Succession Cause
333 of 2015) [2025] KEHC 10501 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10501 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 333 OF 2015
JRA WANANDA, J
JULY 18, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE KING ARAP TALAM SIMON

BETWEEN

JOHN KORIR 1ST OBJECTOR

JOEL KOECH 2ND OBJECTOR

AND

SALLY SIGEI TALAM ADMINISTRATOR

AND

SABINA TALAM ADMINISTRATOR

RULING

1. This Ruling determines two separate Applications.
2. The background of the matter is that the deceased, King Arap Talam Simion, said to be a polygamous man with 2 wives, died on 6/12/2006 at the age of 82 years. On 31/08/2015, the 1st and 2nd Administrators, Sally Sigeti Talam and Sabina Talam, claiming as a daughter and widow, respectively, of the deceased, through Messrs Kiboi Tuwai & Co. Advocates, jointly applied for Grant of Letters of Administration over the estate of the deceased. They listed several assets, including 6 parcels of land, as comprising the estate, and 18 survivors. From the record, I note that the 1st Administrator is a daughter of the 1st wife, while the 2nd Administrator is the 2nd wife of the deceased.
3. The Grant of Letters of Administration was then issued to the Administrators, jointly, on 29/02/2016. The relationship between the Administrators however seems to have “fallen apart” since Messrs Ngigi Mbugua & Co. Advocates then came on record for the 2nd Administrator, Sabina Talam, leaving the law firm of Kiboi Tuwai & Co. on record for only the 1st Administrator, Sally Sigeti Talam.



4. The 2nd Administrator then, through her said new Advocates, Messrs Ngigi Mbugua & Co., applied for confirmation of the Grant, which Application, was allowed by Hon. Justice Githinji on 29/10/2018, who basically, found that the 1st Administrator, despite being given ample opportunity, had failed take steps to file any challenge the Application. The Grant was thus confirmed, the estate distributed, and the Certificate of Confirmation dated 29/10/2018 issued. Several subsequent attempts by the 1st Administrator to obtain a Stay of execution or implementation of the schedule of distribution proved futile, and the 1st Administrator also filed the Notice dated 15/11/2018 signifying her intention to Appeal against the decision.
5. Of significance herein is the 1st Administrator's Chamber Summons, filed through the same firm of Kiboi & Co. whereof she sought an order of stay of execution pending Appeal and which Application was heard by Hon. Justice Githinji on 29/10/2018 and dismissed on 2/07/2019.
6. On 20/03/2023, the 2nd Administrator, through the said Ngigi Mbugua & Co. Advocates, then filed an Application seeking the striking out of the said Notice of Appeal filed by the 1st Administrator earlier on 15/11/2018, on the ground that the 1st Administrator had failed to file any Appeal ever since. By the same Application, she also sought that the Deputy Registrar of this Court be authorized to execute documents transmitting the shares of the estate to the beneficiaries as distributed by the Court on 29/10/2018 as the 1st Administrator had failed to co-operate in signing the same. Satisfied that the Application had been duly served but remained unopposed, I allowed the 1st prayer on 20/06/2023, and the second prayer on 19/12/2023.
7. On 26/11/2024, the 1st Administrator, undeterred, through her said Advocates, Messrs Kiboi Tuwai & Co., filed yet another Application, the Notice of Motion dated 23/11/2024 [one of the two Applications the subject of this Ruling] whereof she sought orders as follows:
 - i. [.....] spent
 - ii. [.....] spent
 - iii. The Honourable Court be pleased to issue orders staying all further proceedings and any other orders emanating therefrom in this matter pending the hearing and final determination of the Appeal filed by the Applicant against the Ruling and/or orders of the Honourable Justice S. M. Githinji delivered on 29th October, 2018.
 - iv. The Honourable Court be pleased to set aside the proceedings and all orders emanating therefrom in respect to the Application dated 20.3.2023 and set the same for a fresh inter parte hearing and final determination on merit.
 - v. The Honourable Court be pleased to Review the orders made on 29.10.2019 by setting aside the same and re-distributing the estate afresh.
8. I note that the Application refers to orders made on 29/10/2019 when the correct date when the Summons for Confirmation of Grant was allowed was, in fact, 29/10/2018. I will excuse this as a simple typographical error.
9. The Application is supported by the Affidavit sworn by the 1st Administrator in which she deponed that her step-mother, the 2nd Administrator, filed a proposed mode of distribution which the Court wholly adopted without considering any proposed mode from the 2nd house, and that aggrieved by the decision, she filed the Notice of Appeal dated 02/11/2018. She urged that the Appeal is arguable and will be rendered nugatory if the Application is not allowed.



10. The 2nd Application is the Summons for Revocation of Grant dated 5/01/2025, filed by John Korir and Joel Koech, through Messrs Momanyi Gichana Advocates. The remaining substantive prayer in the Application is Prayer [4] thereof which is premised as follows:

“That the Grant of Letters of Administration to Sally Sigei Talam and Sabina Talam herein made on the 2nd March 2016 and that was confirmed on 29th November 2018 by Justice Hon. S.M Githinji at Eldoret be revoked by this Honourable Court.”

11. Again, I will excuse the wrong reference to the date of confirmation of the Grant as 29/11/2018, and deem it as referring to 29/10/2018, which is the correct date.
12. From the record, it is clear that the said John Korir and Joel Koech are brothers of the 1st Administrator, the said Sally Sigei Talam. Both Applications are therefore filed by members of the same 1st house, but through separate Advocates.
13. In their joint Affidavit in support of the Application, the Applicants deponed that the Grant, as issued, cannot be executed since the two families are at logger-heads, that their late father had already distributed the estate between the two families and each settled on the portions already demarcated according to their father’s wish, and that beneficiaries have since made considerable developments and established themselves on their allocated portions. They deponed that the Grant, as issued, will relocate families and cause suffering to the already established boundaries. They then highlighted instances of disturbances that have since occurred as a result of the distribution mode adopted by the Court, including sale of portions by some beneficiaries, taking of occupation by purchasers and also by beneficiaries, and invasion by trespassers. They therefore urged that unless the Court intervenes, the family will disintegrate into anarchy and turmoil.
14. In response to the two Applications, the 2nd Administrator, Sabina Talam, filed one composite Replying Affidavit which she swore on 6/03/2015, and which is filed through her Advocates, Ngigi Mbugua & Co.
15. In the Affidavit, the 2nd Administrator deponed that the 1st Administrator had earlier filed the Application dated 14/11/2018 in which she sought stay of execution pending Appeal on the basis of the Notice of Appeal dated 29/10/2018, and that vide the Ruling delivered on 2/07/2019, this Court dismissed the Application. She deponed that she [2nd Administrator] thereafter made efforts to cause transmission of the estate to the two households without success as the 1st Administrator refused to sign the forms that would facilitate the process, that this led to the 2nd Administrator’s Application dated 20/03/2023 whereof she sought Court assisted transmission, and that this seems to have jolted members of the 1st house into action after being inactive since 2019. She urged further that the Application dated 23/11/2024 is utterly hopeless and totally misconceived for the reason that it is a mirror image of the earlier Application dated 14/11/2018, that there is on record the Ruling of this Court on a similar Application dated 2/07/2019 which has not been set aside, or reviewed or appealed against, and that the Application is Res Judicata and this Court is functus officio.
16. In respect to the 2nd Application, the 2nd Administrator urged that the same is made in contravention of the provisions of Section 82 and 83 of the Law of Succession Act as it is made by beneficiaries instead of through the Administrator duly appointed, that it is made by members of the 1st house simultaneously with another Motion seeking orders that are at variance, and that the Application is meant to tire the 2nd Administrator to give up the share due to her household and is therefore actuated by malice and not equity. She deponed further that the Application is an attempt to relitigate the failed 1st Application dated 14/11/2018, in which a similar argument about the deceased having made certain bequeaths



in his lifetime was advanced. She also urged that the Application is made too late in the day as it seeks to alter what the Court decreed more than 7 years ago when it confirmed the Grant, that the narrative about beneficiaries having been allocated certain portions of the estate earlier or having sold the same to third parties are all acts of intermeddling which the Law of Succession Act frown upon and cannot therefore be the basis to annul or revoke a Grant which is already being implemented. She therefore urged that the Application does not meet the threshold for annulling or revoking a Grant as contemplated by the Law of Succession Act.

17. The Applications were canvassed by way of written Submissions. The 1st Administrator, through Messrs Kiboi Tuwai & Co. filed the Submissions dated 1/04/2025, while the 1st and 2nd Applicants, through Messrs Momanyi Gichana Advocates, filed the Submissions dated 24/03/2025. Up to the time I concluded writing this Ruling, I had not come across any Submissions filed by or on behalf of the 2nd Administrator, represented by Messrs Ngigi Mbugua & Co. which firm I had, on 12/03/2025, granted 14 days to do so.

1st Administrator's Submissions

18. Mr. Kiboi, Counsel for the 1st Administrator, in support of the Application seeking stay of proceedings, setting aside and Review of earlier orders made herein, recounted the history of this matter and also recited his client's Affidavit. He then cited several authorities, and also restated the principles applicable to the Application. He submitted that the Application qualifies to be granted due to the impending injustices and errors that are likely to be visited upon innocent dependents by the Court not allowing all the beneficiaries to be present in Court and/or to present their modes of distribution.
19. In respect to the Application seeking Revocation of the Grant, he cited several authorities and also recited the principles applicable thereto and submitted that none of the beneficiaries from the 1st house consented to the mode of distribution, nor were they informed or involved in the mode of distribution adopted by the Court, and that the 2nd Administrator falsely presented a misconception that the two houses are entitled to equal distribution of the estate, which is against the provisions of Sections 40 of the *Law of Succession Act*. He then submitted that the 2nd Administrator and other persons have now started to fraudulently encroach and trespass into some parcel of land. He then introduced a new matter, not deponed in any Affidavit, that the 2nd Administrator misled the Court or concealed from it the information that it is the 1st Applicant who solely offset a charge lodged on some parcel of land. He further introduced a new matter not deponed to, by submitting the 1st house's proposed mode of distribution.

1st and 2nd Applicants' Submissions

20. Counsel for the 1st and 2nd Applicants, too, recounted matters already contained in his clients' Affidavit, then cited Section 47 and 76 of the *Law of Succession Act* in respect to the Court's inherent powers, and the Court's powers to revoke a Grant, respectively. He also cited several authorities and submitted that the Applicants have satisfied the threshold for revocation of Grant. The Submissions is basically a complete replica of the version filed by the 1st Administrator's Counsel, including the introduction of the new matter not deponed, that regarding some parcel of land, it is the 1st Applicant who solely offset a charge lodged thereon, and also presenting the 1st house's proposed mode of distribution. He, too, submitted that the distribution ought to be in accordance with the deceased's dying wishes and oral declaration made sometime in 1995 and that that the deceased engaged the services of a surveyor who demarcated the respective portions as per his wishes, and that in the alternative, if it is taken that the deceased died polygamous, then Section 40 of the *Law of Succession Act* should apply.



Determination

21. The issues that arise for determination from the two Applications are evidently the following:
- i. Whether this Court should stay proceedings herein, and set aside or review the orders made herein distributing the estate, and order for a fresh hearing thereon.
 - ii. Whether the Grant of Letters of Administration should be revoked.
22. Before I proceed further, I need to recall that the 2nd Administrator has raised the issue that the current Applications touch on matters that have already been ruled upon by this Court and are thus Res Judicata.
23. The effect of the doctrine of Res Judicata is described in Section 7 of the [Civil Procedure Act](#) in the following terms:

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

24. In this matter, the 2nd Administrator filed the Summons for Confirmation of Grant [dated 28/08/2017] on 5/09/2017, and which Hon. Justice Githinji, frustrated by the lack of progress in the hearing thereof by reason of adjournments caused by the 1st Administrator, determined as follows:

“Procedural legal actions should be taken within a specified time. It's not disputed that Summons for Confirmation was filed on 5.9.2017. On 29.10.2018 the 1st Petitioner was represented before me and the very same reasons were given in seeking adjournment to today. The Court indulged them. Today it's the same story. They are either not opposed to the application and only wishes to buy time or are not serious about it. They should have opposed it by now, of which is a hearing date. As of now the application is unopposed and is granted as prayed.”

25. Upon delivery of the above order, Mr. Kiboi, acting for the 1st Administrator, made an oral Application seeking leave to Appeal and also for stay of execution of the orders pending Appeal. The Judge granted leave to Appeal but in respect to the prayer for stay, he directed Mr. Kiboi to file a formal Application. Mr. Kiboi then filed, on 15/11/2018, the Notice of Appeal dated 29/10/2018 and on 15/11/2018, the formal Application [Chamber Summons dated 14/11/2018] seeking stay of execution pending Appeal, as directed by the Judge. This Application was then heard and dismissed. In dismissing the Application, by his Ruling dated 2/07/2019, Githinji J held as follows:

“Summons for confirmation of the grant was filed on 5th September 2017. A hearing of the application never took place due to numerous adjournments, all of which were sought by the respondents. This consequently led to this proceeding and confirming the application for letters of administration on the 29th of October 2018.

.....

The applicant hasn't established on balance of probabilities that unless the order for stay is granted, she stands to suffer irreparable loss.



.....
As to whether the appeal is arguable, the applicant did not file a memorandum of appeal and this court lacks sufficient information on which to base such a finding.

I therefore find that sufficient grounds have not been established to warrant granting of the orders sought. The application lacks merit and is dismissed with costs to the Respondents.”

26. Now, 7 years after the Grant was confirmed, and 6 years after the Application for stay pending Appeal was dismissed, with the intended Appeal still not having being filed to date, the same 1st Administrator, through the same Advocate, returns to this same Court with an Application, this time, seeking stay of proceedings, setting aside and Review of the same orders that she sought to Appeal against and unsuccessfully sought to stay pending Appeal. The grounds advanced also mirror, if not the same as, those cited in the earlier Application 6 years ago.
27. Although the current Applications advance prayers that appear different from the earlier prayer for stay of execution sought and declined in 2019 by Githinji J, a closer scrutiny thereof reveals that they technically seek to achieve exactly the same result that would have been attained had Githinji J granted the Application for Stay of execution. It is also clear that the grounds that the 1st Administrator is now presenting are the same that she previously raised herein. Realizing that the route of Appeal has now closed, the 1st Administrator and the 1st and 2nd Applicants have now “cleverly” replaced the prayer for “stay of execution” with a prayer for “stay of proceedings”, and the prayers intended to be made in the aborted Appeal with the prayers for “setting aside” or “Review” or “Revocation of the Grant”, since the order impugned is the same. Anyone with a legal background can easily see through this mischief.
28. The finding by Githinji J that the hearing of the Summons for Confirmation of Grant filed in 2017 never took place due to numerous adjournments caused by the 1st Administrator and that this, consequently, led to the Court allowing the Summons on 29/10/2018 and confirming the Grant, is a substantive finding, and is clearly not a ground for Review, but for Appeal. It is evidently out of this realization that the 1st Administrator did not, at that time, seek Review of the orders, but opted, instead, to file an Appeal to the Court of Appeal. That intended Appeal having aborted, the 1st Administrator cannot now, 7 years later, revert to the Review jurisdiction by returning to this Court.
29. Even if the matters raised were to be deemed as not being not Res Judicata within the strict meaning of that term, they would still be caught up by the closely related principle of Issue estoppel. This principle was explained by the House of Lords in the case of *Arnold & Others v National Westminster Bank PLC* [1991] 2 A.C in the following terms:

“Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant one of the parties seeks to re-open that issue.”
30. This Issue estoppel principle therefore prevents a party from re-litigating an issue of fact or law that has already been determined in earlier proceedings between the same parties or their privies, or which ought to have been brought or raised at the same time with the rest, even if the subsequent proceedings involve a different cause of action. Like Res Judicata therefore, Issue estoppel bars a party from asserting a fact that is contrary to a previous determination made by the Court. The basis thereof, as the old age says, is that “there must be an end to litigation”



31. The 1st Administrator has also “cleverly” sought to return to Court through a different door, proxies. This is by using the 1st and 2nd Applicants, her brothers, to file the separate Application seeking Revocation of the Grant and/or the distribution long made and concluded by the Court in 2018, 7 years ago. She has therefore, through her brothers, but through a different law firm, simply replaced the prayers intended to be sought in the aborted “Appeal” with the prayer for “Revocation of the Grant”. Again, the Court can easily see through this. It is clear that the what the 1st Administrator is doing is making an attempt to have “a second bite at the cherry” in the disguise of re-litigating through the 1st and 2nd Applicants. As earlier observed, save for the prayers, the grounds relied in all the Applicants are basically the same and/or identical.
32. The 1st Administrator, having filed a Notice of Appeal 7 years ago, and litigating exhaustively on that ground, but 7 years later having still not filed the Appeal, and as such, that Appeal having aborted by effluxion of time, is now seeking to re-open the concluded case and re-litigate the same matters long determined and concluded by this same Court. To this end, this Court is clearly functus officio and cannot entertain the Applications.
33. Further, the prayer for “stay of proceedings” is misconceived, this Court having long confirmed the Grant and distributed the estate way back in the year 2018. There is therefore nothing still pending in this matter, save for execution action. Under these circumstances, what proceedings are still there to be stayed?
34. Regarding the prayer for Review, the same is governed by Rule 63[1] of the Probate and Administration Rules, which Rule specifies the limited provisions of the Civil Procedure Rules that are imported to the Law of Succession Act, one of which is stated to be Order 45 of the Civil Procedure Rules relating to the power of Review. Order 45 provides for 3 circumstances under which an order for Review can be made. The first one is where the Applicant demonstrates that there has been “discovery of new and important matter or evidence”. The second is where there has been “a mistake or error apparent on the face of the record”, and the third is “for any other sufficient reason”.
35. In respect to the above, the 1st Administrator has not at all made any attempt whatsoever, to demonstrate that any of the 3 said grounds exists in this case. In fact, none of the grounds has even been alleged, leave alone demonstrated. The Application is simply seeking to litigate substantive matters that ought to have been raised at the stage of hearing the Summons for Confirmation of Grant, not to be brought 7 years later as grounds for Review under Order 45.
36. Order 45 also requires that an Application for Review must be made “without unreasonable delay”. The 1st and 2nd Applicants have not alleged that they have not been aware of the order of 29/10/2018 that they now seek to be revoked, so what is the explanation for the inaction over all this time? A delay of 7 years cannot by any stretch of imagination be termed as an excusable delay, particularly, as herein, where no explanation whatsoever has been offered.
37. Returning the prayer seeking revocation of the Grant, the same is governed by Section 76 of the Law of Succession Act which provides as follows:

“Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any Interested Party or of its own motion—

[a] that the proceedings to obtain the grant were defective in substance;



- [b] that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- [c] that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- [d] that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - [i] to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - [ii] to proceed diligently with the administration of the estate; or
 - [iii] to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs [e] and [g] of section 83 or has produced any such inventory or account which is false in any material particular; or
- [e] that the grant has become useless and inoperative through subsequent circumstances.”

38. Looking at the Application for Revocation of the Grant and the grounds cited, and considering my statements above, I cannot discern the demonstration of any of the matters provided in Section 76 above as justifying such Revocation or annulment of a Grant. Further, no new ground different from those that have previously been alleged in this same case by the 1st Administrator, has been demonstrated by the 1st and 2nd Applicants.
39. It is evident that the only reason why the 1st Administrator and the 1st and 2nd Applicants, her brothers, have suddenly returned, running to this Court, is simply because the 2nd Administrator recently obtained orders from this Court permitting the Deputy Registrar of this Court to sign transfer and/ transmission documents that the 1st Administrator has, for 7 years, in defiance to the Court order which distributed the estate, declined to execute, thus frustrating finalization of the transmission of shares. Before that, for 7 years, they were comfortably sitting pretty, on their laurels, unbothered.
40. For reasons already cited above, namely, the 7 years delay, re-litigating through proxies, re-arguing matters already determined by Githinji J, and also, the display of bad faith as demonstrated by the refusal to sign transmission documents for 7 years now, which is a clear display of defiance of a Court order, it is clear that the Summons for Revocation, too, cannot succeed. As aforesaid, there is nothing new that the 1st and 2nd Applicants have presented, which had not previously been presented by their sister, the 1st Administrator.

Final Orders

10. In the premises, I dismiss both the 1st Administrator’s Notice of Motion dated 23/11/2024 and the 1st and 2nd Applicant’s Summons for Revocation dated 5/02/2025, with costs to the 2nd Administrator.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 18TH DAY OF JULY 2025

WANANDA J. R. ANURO

JUDGE



Delivered in the presence of:

Ngigi Mbugua for the 2nd Administrator

Ms. Otuma h/b for Mr. Momanyi for 1st Objector

Ms. Kiboi for 1st Petitioner

Court Assistant: Brian Kimathi

