



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Kipleting Arap Choi (Deceased) (Probate & Administration
01 of 2022) [2025] KEHC 10304 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10304 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
PROBATE & ADMINISTRATION 01 OF 2022**

JR KARANJA, J

JULY 17, 2025

BETWEEN

**FRANCISCA LAGAT CHEMUTAI [SUING AS LEGAL REPRESENTATIVE OF
THE ESTATE OF WILLIAM KIPSONGOK LAGAT - DECEASED] .. APPLICANT**

AND

JANE CHEPKEMBOI CHOI 1ST RESPONDENT

FRANCIS KIPCHUMBA KOGO 2ND RESPONDENT

RULING

1. The application vide the summons dated 25th July 2024 is made under Section 47 of the [Law of Succession Act](#) together with Rule 63 of the Probate and Administration Rules and Order 45 of the Civil Procedure Rules.

The Applicant, Francisca Lagat Chemutai, seeks against the Respondents, Jane Chepkemboi Choi and Francis Kipchumba Kogo basic orders that the certificate of confirmation of grant dated 28th March 2022 respecting Parcel No. Nandi/Ollessos/X0 be reviewed for purposes of distributing 7.0 Acres to the Applicant as decreed in Kapsabet Environment and Land Case NO. E002 of 2022[os].

2. That, the said certificate of confirmation of grant dated 28th March be amended to include the Applicant in the distribution schedule with an interest of 7.0 acres of the estate property and that upon review and amendment of the certificate, the Respondent, be ordered to execute the necessary conveyance documents to enable registration of the Applicant as the registered owner of 7.0 Acres of the estate property No. Nandi/Ollessos/X0. In default, that the Deputy Registrar and/or Court Administrator be at liberty to execute all such necessary documents to give effect to the judgment and decree of the Environment and Land Court.
3. The grounds in support of the application are in the body of the summons and fortified by the Applicant's supporting affidavit dated 25th July 2024 and supplementary affidavit dated 13th May 2025.



The Respondents, in their replying affidavits dated 2nd January 2025 and 4th June 2025, opposed the Application which was canvassed by written submissions from both sides.

4. Having given due consideration to the rival submissions it was notable to this court that the jurisdiction of this court to grant the orders sought by the Applicant was challenged on account of a judgment of the Environment and Land Court on the ownership of the suit land which is hereby the estate property. Indeed, the present application germinates from the impugned judgment in as much as it seeks a review and/or amendment of the impugned certificate of confirmation of grant and have a portion of the estate property transferred to the Applicant as the lawful owner thereof.
5. Jurisdiction being everything, any issues pertaining thereto must be treated as a preliminary issue to be determined before consideration and determination of other issues.

The question would therefore be whether this succession court has jurisdiction to grant review or amendment orders for purposes of actualizing or implementing a decision made by the [Environment and Land Court, which decision is the subject of an ongoing appeal before the Court of Appeal.

6. The Court of Appeal in the owners of the M/V “Lillians” Vs. Caltex Oil [Kenya] Limited [1989] eKLR, stated that: -

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

The starting point in determining the jurisdiction or lack of it of this court in dealing with the present application would be the impugned decision of the Environment and Land Court in Kapsabet Environment and Land Court Case No. E002 of 2022 which was commenced by the originating summons dated 15th July 2024 [sic] [Annexure marked “ELC 1” in Applicant’s supplementary affidavit.

7. In the judgment, the originating summons was said to have been dated 15th July 2024, yet the judgment was dated and delivered on 19th February 2024. This meant that the judgment was delivered before the originating summons was made and filed. This was clearly not the case thereby implying that an error occurred in the actual date of the originating summons.
8. Be that as it may, the pertinent prayers sought in the Originating summons included: -
 1. A declaration that the Respondent’s right to recover 7.0 [Seven decimal zero] acres of land Parcel No. Nandi/Olessos/X0 is barred under the limitations of Actions Act Cap 22 of Laws of Kenya and title over a portion in occupation/ use of the Plaintiff thereto extinguished on the grounds that the Plaintiff herein as openly, peacefully and continuously been in occupation/ use and possession of the aforesaid land parcel for a period exceeding 12 years.
 2. That there be an order that the Applicant be registered as the proprietor of land Parcel No. Nandi/Olessos/X0, in place of the Respondents and for the register thereof be rectified to reflect the Plaintiff’s ownership of the aforesaid Land Parcel No. Nandi/Olessos/X0.
 3. That the Respondents herein be ordered to execute all the requisite conveyance documents necessary to have the Plaintiff be registered as owner of whole of land Parcel No. Nandi/Olessos/X0 decreed by the Court in default, the Deputy Registrar and/or Court



Administrative officer be at liberty to execute all such necessary documents to give effect to the judgment and/or decree of the court.

9. As may be deciphered from the prayers foregoing, the claim before the Environment and Land Court was for ownership of part of the estate or suit property on account of the doctrine of adverse possession. It is instructive to note that prayer [3] above is copy and paste of prayer [4] of the present summons. In effect, the originating summons was allowed in favour of the Plaintiff [Applicant herein] against the Respondents herein and others.
10. It is also instructive to note that the grant of prayers [2] and [3] of the present application would amount to implementation of the judgment and decree of the Environment and Land Court vide this succession court as desired by the Applicant. This would by itself amount to an abuse of the court process by the applicant.
11. In that regard, this court would lack the jurisdiction to grant the orders sought herein by the Applicants and since there is a pending appeal against the judgment of the Environment and Land Court, the jurisdiction to deal with the matter on the ownership of part of the estate/suit property now lies with the Court of Appeal.

As far as this succession cause is concerned, the estate property has since been distributed to the beneficiaries, hence spent. There is nothing left for distribution and/or redistribution and any dispute arising therefrom on ownership of the distributed portions of the estate property would fall within the jurisdiction of the Environment and Land Court and not this court.
12. Indeed, long before the impugned originating summons was filed in the Environment and Land Court when this matter came up before this court on 20th April 2025, it was observed by this court that the subject grant was issued on 11th June 2019 and confirmed on 28th March 2022 and that an application for revocation of the grant was made on 1st November 2022, which application was seemingly invalidated by the court on 26th January 2023 rather than 26th January 2022 as indicated, thereby confirming the distribution of the estate property in terms of the Certificate of Confirmation of Grant dated 28th March 2022.
13. This court further observed that any issue arising out of the confirmed grant respecting ownership of the estate property or part thereof was a preserve of the Environment and Land Court. Consequently, this succession cause was closed.

For all the reasons foregoing, this court must and hereby divests itself of the jurisdiction to deal with this matter and grant the orders sought herein by the Applicant. With this finding on jurisdiction, a need does not arise to consider whether or not the Applicant provided satisfactory grounds for exercise of the court's discretion in her favour.
14. In sum, the present application is misconceived, improper and incompetent before this court for want of jurisdiction. It is therefore dismissed with costs to the Respondents.

Ordered accordingly.

DELIVERED AND DATED THIS 17TH DAY OF JULY, 2025

HON. J. R. KARANJAH,

JUDGE

