



**In re Estate of Kiptoo Cheboi (Deceased) (Succession Cause
E015 of 1985) [2025] KEHC 10174 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10174 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E015 OF 1985
RN NYAKUNDI, J
JULY 15, 2025**

BETWEEN

KEEME LOITAREM PETITIONER

AND

ANNE LOITAREM 1ST OBJECTOR

SIMION KIRUI CHEBOI 2ND OBJECTOR

RULING

1. On 11th October, 2024, the court delivered a judgment revoking a Grant of Administration that had been issued to Keeme Loitarem on 17th January, 1986. Recognizing that the original administrator had unduly delayed the estate's administration and that the objector had been excluded from the distribution process, the court appointed the objector as the new administrator to take over and properly administer the estate. Consequently, the court directed the former administrator to provide a comprehensive account of the estate's assets to enable the court to determine the net estate and ensure equitable distribution among all beneficiaries. In compliance with this directive, the administrator filed an affidavit on 23rd April, 2025, containing the following statements:
 - a. That I am an adult of sound mind, the Petitioner/Respondent herein and well versed with the facts surrounding this matter as of personal knowledge, hence competent to swear this affidavit.
 - b. That I have been informed of the directions by the Honourable Court to render full and accurate accounts of the estate herein according to section 83 of the *Law of Succession Act* and the same having been explained to me by the advocates on record and having understood its import and tenor I wish to respond to as hereunder;-
 - c. That I remember in the year 1982 when the late Kiptoo Cheboi was ailing from throat cancer, he called a meeting of myself, my brother Simon and a few neighbours with the agenda of



distributing his land parcel known as West Pokot/Siyoi/104 in two equal portions between my said brother and myself.

- d. That this distribution was done and marked with a road that passes through the said land parcel and which road exists to date.
- e. That my said late father then built a house for me on the part that he had given me and my brother Simon who is our last born, was to inherit the homestead of my parents, which was on the other half of the said land, on the part that our late father had given him.
- f. That this has been the how the said land parcel was occupied and utilized ever since our late father shared the said land parcel to both of us.
- g. That on the 28th June 1985, our said late father then succumbed to the said throat cancer, when he was just about 54 years old.
- h. That this cause was thereafter instituted and on or about the 17th January 1986 the grant of Letter Administration intestate (hereinafter referred to as "the said letters of administration") was issued to me as the administrator of the estate of Kiptoo Cheboi.
- i. That the said grant was issued by the court after each and every of my family members, including our sisters herein, consented to the said issuance.
- j. That I later on married and settled on the part that I was settled by my said late father, same to my brother Simon.
- k. That both of my parents passed on and we remained with my brother Simon on the said land, utilizing the portions that our father had given to us.
- l. That the said land parcel is in West Pokot County, and we are Marakwets, and in the 1990s, we started experiencing hostilities by Pokot bandits who had engaged themselves in the practice of cattle rustling.
- m. That we were always subject of these hostilities and lost a lot of properties and our lives were threatened, an example being when I was shot with an arrow through the chest and at the same time when my brother narrowly escaped death and in fact my sister Ann Osilingi Loitarem is still in possession of the bullet cartridges that were fired during the incident.
- n. That the above really affected my brother Simon and he decided to sell the land and relocate near Eldoret.
- o. That I equally came up with the same idea of selling my part and relocating to a place where there may be no security issues.
- p. That a lot has happened since then and on the 16th February 2015 the said grant of letters of administration was confirmed distributing the estate herein which constituted only one land parcel known as West Pokot/Siyoi/104 in the following manner; -
 - a) Myself.....9.4 acres
 - b) Simon Kirui (2nd Objector/Applicant)9.4 acres
 - c) Samuel Losem.....9.7 acres
 - d) Francis Kiyapyap.....5 acres
 - e) Nicholas Kubar.....1 acre



- f) Loktari Makumbi.....1 acre
- g) Johnstone P. Chochoi.....1 acre
- h) Joseph Lodengo.....1/2 acre
- q. That on or about the 25th May 2015, my sister Ann Osilingi Loitarem and my Brother Simon Kirui filed a Petition by way of Cross Application for Grant, Summons for Preservation & Protection of the Estate and a Summons for Revocation or Annulment of Grant.
- r. That in the said summons for preservation & Protection of the Estate, the Objectors/ Applicants sought the following order, inter alia.
 - “That pending the hearing and determination of this application interpartes the Honourable Court be pleased to issue a preservation order and / or an order of Temporary injunction restraining the Respondent and / or his agents and / or assigns from subdividing, trespassing, distributing, constructing, wasting, destroying /transferring, selling, leasing, alienating and /or in any other way dealing with land parcels No. West Pokot/Siyoi/104 and other properties of the late Kiptoo Cheboi (Deceased) in a way detrimental to the interests of the objectors”.
- s. That an ex-parte order was granted to that effect on the 5th June 2015 but the order was poorly extracted on the same day by copying verbatim the aforesaid narration on the said Summons for Preservation & protection of Estate leading to a very ambiguous order that did not reflect the orders of the Honourable Court.
- t. That I am advised by my advocates which advice I verily believe to be true that any order of court ought to be extracted in a manner that it is framed in the words of the Honourable Court as contained in the proceedings and not as if it is that of the Applicant in the application with a seal of court.
- u. That judgement was delivered on the 11th day of October 2024, giving the following final orders:
 - i. That the said summons for revocation of grant dated 25th March 2015 is allowed;
 - ii. All conveyances made in immovable property to the purchasers by myself on whom probate letters had been granted notwithstanding this subsequent revocation be subjected to the Environment and Land Court jurisdiction.
 - iii. That the revocation of grant among other things was undertaken by the Honourable court for a good cause given the fact of the objection proceedings by my sister Ann loitarem and the failure by me to comply with court orders to satisfy the criteria of section 83(g) of the [Law of Succession Act](#).
 - iv. A declaration was made that myself and my other three siblings are beneficiaries in the estate of the late Kiptoo Cheboi under section 38 of the [Law of Succession Act](#).
 - v. The costs of the application be in the cause.
- v. That I hereby fully comply with the said section 83(g) of the [Law of Succession Act](#) by disclosing the aforesaid and that the said parcel that constituted the estate herein has been sub-divided and transferred to other parties, some of which have sworn affidavits and filed in this matter.



2. In response to the affidavit, Ann Loiterm filed an affidavit stating as follows:

- a. That, submission of affidavit of accounts by the respondent after the court pronounced itself on this matter is ill motivated and it is intended to delay The Confirmation of Grant. It is in record that the court asked for submission of accounts in 2015, 2018 and 2022. No accounts were submitted to this court by the respondent.
- b. That the submission is riddled with lies intended to mislead the court and waste its time. In the instance of;

Accounts

That the respondent is in record in his sworn affidavit to this court of 1985 (ALO 1(Item 4) 'That when my father died he left behind some properties, which had not been fully transferred into his names..... (For clarity, these were the Bendera plot and plot 10 in Makutano I have submitted in inventory to the court)

That, In 2015(ALO 2(b) item 11) and 2025 (ALO 3(a) item 3), the respondent mentions only land West Pokot Siyoi/104A.

That, The collective proceeds of West Pokot /Siyoi/104A (ALO3(c)items 14 & 15) to the tune of (at least) Ksh.11, 350, 000.00 (ALO4) received by the Respondent and Mr. Simon Kirui, is not declared, or the disbursements (if any) to the beneficiaries of estate, disclosed. (Extracted from various sale agreements in record)

That in Item 13 (ALO3(b), The responded did not account the mentioned ' a lot of properties lost.

That, if in item 3 (ALO3(a), (c)) the land was divided in to two by , father, what is he distributing in item 16?(ALO3(c)

That if Simon already owned the land, what is he contesting/objecting to in item 17? (ALO3(c)

Reason for fleeing Kapenguria.

That It is reckless to attribute the fleeing of the two brothers to an unknown destination to hostility from the Pokots. We have lived in Kapenguria since 1950 and at no time did we face hostility that other tribes including the Pokots did not face. After the demise of our parents, Keeme, and eventually Simon misrepresented themselves to the locals. In the act, they unscrupulously received money for properties they did not own or had no authority to transfer. In fullness of time, the truth showed up with a bill of over Ksh.11,350,00.00 to their lies.

Truth why Simon moved.

- i. That Constant harassment and arrests instigated by Keeme Loitarem with the help of Chief Charles Ng'oletukei, the Police, the buyers and their relatives (especially Samuel Losem and his sister in-law Pauline Cheptakar Losem, Loice Chepkite Kiyapyap). This was to force Simon to Sell the remaining land and be part of the logistics to acquire false title deeds. Which he succumbed to in 2020.
- ii. That two criminal cases against Keeme are pending in Kapenguria court. In both cases, they are atrocities meted on Simon by Keeme (ALO20(a)-ALO21(b)).
- iii. That Keeme targeted Simon's wife and children with unprintable insults and aggression culminating to the issuance of statement to the police by Simons wife.

The truth why Keeme fled Kapenguria



- i. That having sold everything, he had no space to warrant his presence in the property.
 - ii. That after he sold the house I built for him, the new owner could no longer wait for the conclusion of the succession case.
 - iii. That having sold one portion to two people, (Samwel Losem and Joseph Lodengo(the offended)) the aggression by the offended jolted him to flight and hefty compensation to the same.
 - iv. That it is not a secret to the locals as to how he has dealt with Simon and his siblings as the administrator of Kiptoo's estate built for him, while he and his family ate the food I brought for them. Pokot neighbours opened their homes to my orphaned nieces and me) It made him a pariah. He had to leave.
 - v. That Keeme has come to court with unclean hands with the sole purpose to defeat justice and to mislead the court into denying his siblings rightful inheritance. While he claims to be a Marakwet, he states to the sisters. Contradicting his item 3 that in 1982 our father entitled him the land.
3. The 1st objector filed an inventory identifying three properties that belong to the deceased. the properties are:
- a. 50*100 commercial plot – Bendera shopping centre
 - b. Commercial Plot 10 (c/8) – Makutano shopping centre
 - c. Parcel No. 104 (15 Ha) – West Pokot/Siyoi A

Determination

4. With the said affidavits as filed, this court is then called upon to make a determination on the allocation or distribution of the properties belonging to the deceased to the rightful beneficiaries. Let me start by highlighting the primary duty of the Probate Court. This court derives its jurisdiction from Section 47 of the [Law of Succession Act](#) and rule 73 of the Probate and Administration Rules.
5. Section 47 of the [Law of Succession Act](#) provides that:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to 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.”

Rule 73

“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.”



6. The court in the case of *In re Estate of Julius Ndubi Javan (Deceased)* [2018] eKLR, in discussing the jurisdiction and or duty of the Probate Court stated:-

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries.”

7. In the present circumstances, the question as to the beneficiaries of the deceased person has been settled. What is pending is to ascertain the net estate of the deceased available for distribution. The court in the case of *Adan Chuda Sode vs Madina Oshe Jira & another* [2021] eKLR the court stated:-

“Section 3 of the *Law of Succession Act* defines an “estate” to mean the free property of a deceased person, while “free property” in relation to a deceased person is defined to mean the property of which that person was legally competent freely to dispose of during his lifetime and in respect of which his interest has not been terminated by his death. In *In re Estate of Job Ndunda Muthike (Deceased)* (2018) eKLR the court (Odunga J) while expounding on the said section stated that:

It is therefore clear that any property which the deceased was not legally competent freely to dispose during his lifetime and in respect of which his interest had been terminated by his death cannot form part of his estate and cannot be the subject of an application for confirmation of grant.

In my considered view, I would think that “free property” of a deceased person such as land can be proved by documents such as a title deed, allotment letter, lease agreement, sale agreement etc. The question in this case is whether unregistered land constitutes free property of a deceased person.

The answer to this question can be determined by examining the duty of a probate court. The duty of a probate court is to identify the estate of a deceased person, identify the lawful beneficiaries to the estate and distribute the same to the beneficiaries. In *Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR Musyoka J. elucidated this role as follows:

“.....The *Law of Succession Act* and the Rules made thereunder 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.

The duty of a probate court ends at distribution of the estate and the process is then taken over by other bodies who have the mandate to transmit the property to the beneficiaries. The process of distribution is therefore the beginning of other processes geared towards transmission of the property from the deceased to the beneficiaries...What it means in the whole of this process is that the property to be distributed by a succession court has to be identifiable and clearly defined. Where the property involved is land, it has to be identified by a land reference number. Otherwise where the land is not registered as in this case, a succession court would be engaging in an exercise in futility in dealing with such land as the process of transmission cannot be completed at the lands office. Courts of law do not act in vain. In my considered view, unregistered land cannot be construed to mean “free



property” of a deceased person. Distribution of such land does not fall within the mandate of a succession court.”

8. Having considered the principles enunciated in the above authorities, this court must now grapple with the fundamental question of what constitutes the actual estate of the late Kiptoo Cheboi available for distribution at present. The passage of nearly four decades since the deceased's demise in 1985, coupled with the protracted nature of these proceedings, calls for a careful examination of the current status of the assets claimed to form part of the estate.
9. From the record, it is evident that the only property that was initially identified and distributed in the confirmed grant of 16th February, 2015 was West Pokot/Siyoi/104. This property was distributed among various parties including the two sons of the deceased, Keeme Loitarem and Simon Kirui, as well as several alleged purchasers. However, according to the administrator's own affidavit filed on 23rd April, 2025, this very property has since been subdivided and sold to third parties, with sale proceeds allegedly totalling approximately Ksh. 11,350,000. The administrator candidly admits that the said parcel that constituted the estate herein has been sub-divided and transferred to other parties.
10. The 1st objector has now filed an inventory identifying three properties allegedly belonging to the deceased: a 50*100 commercial plot at Bendera shopping centre, Commercial Plot 10 (c/8) at Makutano shopping centre, and Parcel No. 104 (15 Ha) West Pokot/Siyoi A. However, a critical examination of the record reveals a complete absence of any documentary evidence to support these claims of ownership. No title deeds, allotment letters, certificates of lease, or official search documents from the Ministry of Lands have been produced before this court to establish that these properties were indeed registered in the name of the deceased or form part of his estate.
11. The court in *Adan Chuda Sode vs Madina Oshe Jira & another* [Supra] emphasized that "free property" of a deceased person, particularly land, must be proved by documents such as title deeds, allotment letters, lease agreements, or sale agreements. More instructively, in *Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR, Musyoka J. observed that property to be distributed by a succession court must be identifiable and clearly defined and where land is involved, it has to be identified by a land reference number. The learned judge further noted that where land is not registered, a succession court would be engaging in an exercise in futility in dealing with such land as the process of transmission cannot be completed at the lands office.
12. The inventories filed by the parties, standing alone, cannot settle questions of ownership or establish legal title to the properties listed therein. An inventory is merely a list of assets claimed to belong to the deceased, but without supporting documentation establishing ownership, it remains an unsubstantiated claim. This court cannot distribute assets based on mere assertions or unverified inventories, as to do so would exceed its jurisdiction and potentially prejudice the rights of legitimate owners or third parties.
13. With regard to the property that was initially distributed, namely West Pokot/Siyoi/104, the evidence before this court indicates that this asset has since changed hands through various transactions. The administrator's own admission that the property has been subdivided and transferred to other parties means that there is presently no net estate remaining from this property for distribution. Whether these transactions were lawful or unlawful, and whether any proceeds remain in the hands of the administrator or beneficiaries, are matters that would require separate determination and are not before this court in the current proceedings.
14. As for the two additional properties mentioned in the objector's inventory - the commercial plots at Bendera and Makutano shopping centres - these have never been the subject of any confirmed



- distribution by this court. While the objector claims these properties belong to the deceased's estate, no tangible evidence of ownership has been presented. The mere listing of these properties in an inventory, without more, cannot establish ownership or create any basis for distribution by this court.
15. This court's jurisdiction in succession matters is specifically confined to the distribution of identified and verified estate assets to rightful beneficiaries. However, this duty presupposes the existence of identifiable assets that legally formed part of the deceased's estate and are available for distribution.
 16. Where no tangible evidence of ownership is presented, or where the alleged estate assets have been disposed of or their ownership is disputed, this court cannot proceed with distribution. Questions of title, ownership disputes, and claims for recovery of assets that may have been wrongfully disposed of fall within the jurisdiction of the Environment and Land Court established under the [Environment and Land Court Act](#), 2011, not succession courts.
 17. The situation before this court is therefore clear. There is presently no verified net estate available for distribution. The property that was previously distributed has admittedly changed hands, while the additional properties claimed by the objector lack any documentary proof of ownership. In these circumstances, any purported distribution would be premature and legally unsustainable.
 18. This court can only act upon tangible evidence of assets that legally belonged to the deceased and remain available for distribution. At such time as any party presents credible documentary evidence establishing that specific properties formed part of the deceased's estate and are currently available for distribution, this court will be in a position to consider the appropriate distribution among the rightful beneficiaries. Until then, there is no estate to administer or distribute.
 19. In the circumstances, this court finds that there is presently no net estate of the late Kiptoo Cheboi available for distribution. The succession proceedings cannot proceed further until such time as verified assets forming part of the estate are identified and presented to the court with proper documentary evidence of ownership.
 20. The averments by Anne Loitarem who is also the administrator of the estate ought to be accompanied by the registration documents or any such material evidence indicative that the properties in question were acquired and owned by the deceased Kiptoo Cheboi during his lifetime.
 21. That Keeme Loitarem the former administrator duly appointed by this court under Section 66 of the [Law of Succession Act](#) has not complied with Section 83 of the Act to submit a probate account. The applicable law highlights the crucial role of administrators in managing and distributing a deceased person's estate. These cases emphasizes the administrator's duties to collect assets, pay debts and distribute the remaining estate to beneficiaries according to the will or the rules of intestacy. Legal precedents also address issues like the revocation of grants, the appointment of administrators, and the handling of trusts within and estate. Therefore in consonant for purposes of this subject matter, Section 83 (g) & (h) of the Act provides as follows: “ That the administrator within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration. (h) That to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assents and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account
 22. Given this strength of the law, the aforesaid purported probate account submitted before this court by the previous administrator Keem Loitarem does not comply with the letter and spirit of the law as stipulated under Section 83 of the Act.



23. For those reasons this court cannot act in vain. As a consequence an order be and is hereby made for Keem Loitarem to file a comprehensive probate account in compliance with Section 83 within 21 days from today's date. In addition, the current administrator one Anne Loitarem to file a proper inventory of the assets capable of being distributed following the revocation of the certificate of confirmation of grant previously being the legal instrument used by Keem Loitarem to administer the estate of the deceased Kiptoo Cheboi. This compliance clause for the current administration shall also be within 21 days from this decision of the court. It follows therefore that a Status Conference be held on 5.8.2025 to lay the road map on what clearly happens to this Succession Cause lodged before this court way back on 17.1.1985. I make no orders to costs

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 15TH DAY OF JULY 2025

.....

R. NYAKUNDI

JUDGE

