



REPUBLIC OF KENYA



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**In re Estate of Taplele Chebokibii alias Taplele w/o Chebokibii (Deceased)  
(Succession Cause 4 of 2019) [2025] KEHC 9902 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9902 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
SUCCESSION CAUSE 4 OF 2019**

**JK NG'ARNG'AR, J**

**JULY 10, 2025**

**IN THE MATTER OF THE ESTATE OF TAPLELE  
CHEBOKIBII ALIAS TAPLELE W/O CHEBOKIBII(DECEASED)**

**BETWEEN**

**HENRY KIPKEMOI KOSKEI ..... PETITIONER**

**AND**

**TERESIA CHEPKWONY ..... PROTESTOR**

**RULING**

1. Taplele Chebokibii died intestate on the 11<sup>th</sup> December, 1981 at Ndubai area in Bomet, and a grant of letters of administration intestate was made to the Petitioner/applicant herein, Tabsabei Chepkosgei Chepkwony (deceased) by this Court on the 23<sup>rd</sup> October, 2015 vide Kericho HC Succession cause number 196 of 2015. The court on 13<sup>th</sup> November, 2017 appointed Henry Kipkemoi Kosgei the petitioner herein as administrator in place of Tabsabei Chepkosgei Chepkwony and he was issued with grant of letters of administration dated 19<sup>th</sup> day of July 2021. The chamber summons filed by the Petitioner are dated 2<sup>nd</sup> may, 2017 and supported by an Affidavit sworn on the same date.
2. The matter was transferred to this court on 30<sup>th</sup> day of January 2019. The directions were taken that the matter be heard by way of viva voce evidence on 1<sup>st</sup> July, 2021. Parties filed and exchanged their statements but no documents were filed.
3. Parties relied on their respective witness statements in Court on 27<sup>th</sup> day of October 2021. The Petitioner submitted that L.R No. Kericho/Ndubai/217 Measuring, approximately 3.6 hectares (8.8956 acres) forms part of the estate of the deceased, and therefore need to be distributed equally among the Beneficiaries/Dependents of the deceased.
4. He claims that the Beneficiaries/Dependents of the deceased herein were:



- i. Kiptobit Arap Chepkwony alias Samwel Kiptobit Chepkwony (Deceased).
  - ii. Chelule Chepkwony (Deceased)
  - iii. Kipsigei Chepkwony (Deceased)
  - iv. Kimutai Chepkwony (Deceased)
5. But however the above stated Beneficiaries/Dependents who are now deceased, left their survivors who are daughter- in-law (Objector), and grandchildren as follows:
- Kiptobit Arap Chepkwony Alias Samwel Kiptobit Chepkwony (Deceased)
- a. Teresia Chepkwony (Widow)- Objector
  - b. Zakayo Kiptonui Ngetich -(Son)
  - c. Thomas Ngetich (Son)  
Chelule Chepkwony (Deceased)
  - a. Henry Kipkemoi Koskei  
Kipsigei Chepkwony (Deceased)
    - a. David Sigei (Son)
    - b. Wesley Sigei (Son)
    - c. Richard Sigei (Son)
    - d. Stephen Sigei (Son)
    - e. Michael Sigei (Son)  
Kimutai Chepkwony (Deceased)
      - a. Willy Kones (Son)
      - b. Simion Mutai (Son)
6. The petitioner claim that the certificate of official search dated 29<sup>th</sup> day of July 2015, filed in Court on 2<sup>nd</sup> day of July 2015, while filing the succession herein clearly indicated that L.R No. Kericho/ Nduba1/217 was registered in the name of the deceased Taplelei W/O Chebokibii. That the entries show that the deceased was the first registered owner. There is nothing on record in the land's registry which indicates that the land was initially registered in the name of Samwel Kiptobit Arap Chepkwony as claimed by the Objector.
7. The petitioner herein submits that there isn't any clear evidence that the land in dispute was purchased by the late husband of the Objector. He avers that the Objector's and or Protestor's contention in her protest are merely statements, but, which are not supported by evidence. That there is no sale agreement written by the late husband of the Objector and the person whom she alleges that her husband purchased from.
8. Further, he claims that there is no sufficient reasons cited as to why the parcel of land was not registered, in his late husband's name, and or no reason was given as to why the deceased herein didn't transfer the land to the husband of the Objector during her life time.



9. Further, the allegations by the Objector that one of the deceased's sons the late Chesimet Arap Chepkwony caused the deceased to be registered as proprietor during the adjudication process is not supported by evidence. No document has been produced to indicate that indeed the said son of the deceased participated in fraudulently registering the land in dispute in the name of the deceased so as to look like the land in question is a family land.
10. The Petitioner continue to submit that the Honourable Court doesn't have jurisdiction to determine adverse possession on issues dealing with inheritance, and or succession matters. The Law of Succession doesn't enumerate adverse possession as one of the reason for distributing the estate of the deceased. The Court which has jurisdiction is the Environment and Land Court (ELC).
11. He submits that being the grandson of the deceased herein is entitled to the land of his grandmother. The Objector and her witnesses filed their witness statements vide further list of witnesses dated 23<sup>rd</sup> day of February 2021. However, they submit that the witnesses raised contradictory issues in respect of the parcel of land in dispute.
12. He avers that the Objector stated in her statement that, her late husband, Kiptobit Arap Chepkwony purchased the parcel of land in dispute for the deceased, contradicting the contents in her protest wherein she stated that her late husband purchased the land in dispute for himself, but, was registered fraudulently by his late brother, one Chelule Chepkwony during adjudication period to look like a family property. That is in her witness statement like the deceased gave the parcel of land in dispute to the husband of the Objector as a gift, further contradicting the issue of purchase stated in protest.
13. They further submit that all the witnesses of the Objector stated that the parcel of land was given by the deceased herein to her late son, the husband of the Objector as a gift therefore contradicting the issue of purchase stated by the Objector in her protest. He claims that it is safe to conclude that the parcel of land L.R No. Kericho/Ndubai/ 217 forms part of the estate of the deceased which is available to be distributed equally among her four late sons.
14. He claims that the deceased herein, before land adjudication, allocated all her late sons their parcels of land as follows: -
  - a. Chelule Chepkwony  
L.R No Kericho/Ndubai/206, measuring approximately Five (5) hectares (12.355 acres) registered in his names
  - b. Kimutai Chepkwony  
L.R No. Kericho/Ndubai/209, measuring approximately three decimal four (3.4) hectares (8.4014 acres) registered in his names
  - c. Kipsigei Chepkwony  
L.R No. Kericho/Ndubai/210, measuring approximately two decimal six (2.6) hectares (6.4246 acres) registered in his names.
  - d. Kiptobit Chepkwony  
L.R No. Kericho/Ndubai/211, measuring approximately three (3) hectares (7.413 acres) registered in his names.
15. He states that the registered her parcel in dispute L.R No. Kericho/Ndubai/217, measuring approximately 3.6 hectares (8.8956 acres) registered in her name. It was clearly stated by her to all of the Beneficiaries/Dependents that she was going to use it during life time. However, on her demise,



the parcel of land was to be equally sub-divided among her four (4) sons. He claims that confirmed by the son of the Objector herein in his statement, one Thomas Kibet Ngetich, filed on 11<sup>th</sup> day of March 2025, but, signed by him on 6<sup>th</sup> day of March 2025. That in his statement that his late father died on August 2014, when the issues herein had just started. Further he says that his late father wanted the parcel of land in dispute to be distributed equally among the children of the deceased herein, but however, the Objector who is his mother, and his brother Zakayo Kiprono Ngetich, refused, and stopped the surveyors from sharing equally the said parcel of land. 16. He proceeds to state that the father of the said witness is the one who the Objector alleged to have purchased the parcel of land in dispute. We have filed Green Cards in respect of the above stated parcels of land for consideration by the Honourable Court so as to arrive at a fair and just decision. It is therefore their submission that based on the reasons stated hereinabove the parcel in dispute forms part of the estate of the deceased, therefore should be distributed equally. It is made before two or more competent witnesses. He submits that there wasn't any form of Will made by the deceased bequeathing the entire parcel of land to her late son Samwel Kiptobit Arap Chepkwony, the husband to the Objector. They conclude that the parcel of land in dispute be distributed equally among the Beneficiaries/Dependents.

17. On her part the objector filed written statements by herself, Zakayo Kiptonui Ngetich, James Tuiya David Kipkemoi Chebusit, Carrick Langat and Thomas Kibet Ngetich.
18. The objector stated that she is the widow to the late Kiptobit Arap Chepkwony who was the son of the deceased Tablele Chebokibii, the registered proprietor of LR. No. Kericho/Ndubai/217. She claims that the deceased Tablele Chebokibii was her mother in law who died in the year 1991 after giving her husband the late Kiptobit arap Chepkwony the subject matter in this cause. She claims her late husband had purchased the said land for her mother in law when he was working as a land and Environmental Officer as it was then known.
19. She avers that the said land was given exclusively and he constructed a house for her son Zakayo Kiptonui Ngetich who has resided there from the year 1978 to date. The Petitioner in this cause (who is now deceased) was a wife to her bother in Law, the late Kiposno Arap Chepkwony and she had her own land registered as Kericho/Ndubai/206 which is registered in her deceased husband name. That the current petitioner resided in that parcel upon the demise of his mother and he is the only son of the previous petitioner.
20. She states that the current Petitioner has no right to enter into the subject property as he has never lived in the same and the deceased did not allow him or his parents to enter into the land together with her two other sons Kipsigei Chepkwony and Kimutai Chepkwony both deceased whom the deceased had allocated Kericho/Ndubai/210 and 209 respectively.
21. She lays a claim that in the year 2007, the husband to the previous Petitioner launched a case before the elders against her husband over the subject matter where a verdict was arrived at in favor of her husband having been given exclusively to her deceased husband. The statement was corroborated by other five (5) witnesses who stated that the land was bestowed to the Objector's husband.

### **Determination**

23. I have considered the objectors' application, the affidavits in support and against the Application together with the submissions by the Petitioner. I note that Protestor did not file submission since the same cannot be seen both in the physical file and electronically. The issue for determination is whether the protest has merit as it seeks to exclude a property L.R No. Kericho/Ndubai/217 in distribution



24. The duty is for the Protestor to disclose all material facts in relation to such application. Section 109 of the *Evidence Act* states:
- “The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person”
25. Section 68 of the *Law of Succession Act* provides as follows:
- “i. Notice of any objection to an application for a grant of representation shall be lodged with the court, in such form as may be prescribed, within the period specified by such notice as aforesaid, or such longer period as the court may allow.
- Where notice of objection has been lodged under sub-section (1), the court shall give notice to the objector to file an answer to the application and a cross-application within a specified period”
26. Rule 17 (1) of the *Probate and Administration Rules* provides:
- “any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person may do so by lodging within the period specified in the notice of the application published under rule 7(4), or such longer period as the court may allow, either in the registry in which the pending application has been made or in the principal registry, an objection in Form 76 or in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection”
27. What this provisions of law mean are that an objection to issuance of a grant has to be filed within a prescribed time after petition has been filed and not more than 30 days after the notice has been published in the Kenya Gazette. The provisions also are to the effect that if one wishes to file an Objection out of time, it has to be with the permission of the court meaning that one has to seek leave to file an objection out of time.
28. In this case, the Gazette notice was made on 14<sup>th</sup> August, 2015, the Grant was issued on 23<sup>rd</sup> October, 2015. and the Objection was filed on 18<sup>th</sup> May, 2018. From 14<sup>th</sup> August, 2015, 30 days were to expire on 14<sup>th</sup> of September, 2015. The Objection/protest was filed on 18<sup>th</sup> May, 2018 was therefore filed approximately 4years later after the Gazette notice.
29. Rule 17 (2) of the *Probate and Administration Rules* is clear that for seeking an extension of a longer period the objector is required to file an application to the registry at which the application for grant was made or by which notice was issued by summons supported by an affidavit, if necessary, and upon notice to the applicant for the grant. The filing of an objection after the period given in the published Kenya Gazette has lapsed and receipt of the objection by registry cannot suffice however it is understandable that the delay must have been caused by the demise of the former petitioner.
30. The court cannot stop what has already passed. The law of Succession is made in such a manner that the obtaining of the grant is not an end to aggrieved party’s rights. One can challenge the grant by seeking its revocation or annulment or even file a protest to the mode of distribution.



31. The petitioner has relied on Section 38 of The Law of Succession Act, states as follows;
- “where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of Sections 41 and 42, devolve upon the surviving child, if there is only one, or be equally divided among the surviving children.
32. In re estate of Agnes Ogolas Akoth (Deceased) [2016] eKLR it was held that:
- “The Law of Succession is a self-contained Act of Parliament which has clearly set out provisions on how matters of succession cause can be dealt with. An aggrieved party cannot ignore the express provisions of the law like in the case in raising any matter regarding specific provisions in the Act and claim that he is doing so, so as to get substantive justice in respect of his claim. In my view even when a party is seeking substantive justice, such justice must be attended to through some definite process.”
33. In view Article 159 (2) (d) of the Constitution in regard to administration of justice without undue regard to procedural technicality is known to this court, as bringing in technicality would breed anarchy and would mean injustice to those who are vulnerable or weak. Procedures and rules are in my view good, and makes things move in an orderly and predictable manner and cannot be wished away but in some instances, when found to bring an unjust finding can be twisted to suit the path of justice.
34. The upshot is that I find the Objector has meritorious facts having lived in the subject matter uninterrupted. It was acquired by her late husband and should not be subject to division. The Objection is plausible and is allowed. The objector to file letters of administration in relation to her husband in regards to Kericho/Ndubai/217.
35. Being a family matter, each Party to bear their own costs.
- a. That any Party has the liberty to apply.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 10<sup>TH</sup> DAY OF JULY, 2025.**

.....

**HON. JULIUS K. NG'ARNG'AR**

**JUDGE**

Ruling delivered in the absence of the Petitioner and the Protestor. Siele/Susan (Court Assistants).

