



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Julius Cheruiyot Ngeno alias Julius Arap Ngeno (Deceased)
(Succession Cause 3 of 2019) [2025] KEHC 9493 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9493 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 3 OF 2019
JK NG'ARNG'AR, J
JULY 3, 2025**

**IN THE MATTER OF THE ESTATE OF JULIUS CHERUIYOT
NGENO ALIAS JULIUS ARAP NGENO (DECEASED)**

BETWEEN

DAVIS KIPRONOH CHERUIYOT APPLICANT

AND

DAVID KIMUTAI CHERUIYOT 1ST RESPONDENT

RAYMOND KIMUTAI CHIRCHIR 2ND RESPONDENT

RULING

1. The Applicant filed a Notice of Motion Application dated 3rd April 2025 which sought the following orders: -
 - I. Spent.
 - II. That pending the distribution of the estate, the Honourable Court be pleased to grant an order that the administrators herein, David Kimutai Cheruiyot and Davis Kipronoh Cheruiyot do within 14 days from the date of issuance of this order, open a joint bank account in a reputable commercial bank in Kenya for purposes of collecting the monetary proceeds of the estate of the deceased herein.
 - III. That pending the distribution of the estate, the Honourable Court be pleased to grant an order to Kapset Tea Factory Co. Ltd to manage all the tea on land parcel numbers KER/ Kimulot/146, 147 & 11 by offering farm management services, by collecting all the tea proceeds, by paying the labourers, cater for the transport for the tea to the factory, deduct their charges and deposit the net proceeds in the joint bank account held by the two administrators.



- IV. That in the alternative, that pending the distribution of the estate, the Honourable Court be pleased to grant an order that all KTDA proceeds emanating from James Finlay Outgrowers, rent net income from Plot No. 35 and 1 Kimulot market and any share of proceeds/rental income from Soi and other buildings in Kericho town, all proceeds from Sacco, shares at Konoin, Kimbilio Daima Sacco and shares at K-Pillar Sacco Society Limited and dividends due to the estate of Julius Cheruiyot Ngeno, be channelled/deposited to the joint bank account held by the two administrators in a reputable commercial Bank in Kenya.
 - V. That this court be pleased to make any further or such further orders as it may deem fit and just to grant.
 - VI. That costs of this application be in the cause.
2. The Application was brought under section 1A, 1B and 3A of the *Civil Procedure Act*, section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules. It was based on the grounds on the face of the Application and further by the Supporting Affidavit sworn by Davis Kipronoh Cheruiyot on 3rd April 2024.

The Applicant's Case.

3. The Applicant stated together with the 1st Respondent, they were appointed joint administrators of the deceased's estate. That the deceased's estate was vast and comprised of tea leaves sales from KER/ Kimulot/146, 147 and 11 from James Finlay Outgrowers, rental income from Plot No. 35 & 1 Kimulot Market, rental share to the estate from Soi and other buildings in Kericho town and shares at Konoin, Kimbilio Daima Sacco and from K-Pillar Sacco Society Ltd.
4. It was the Applicant's case that the 1st household where the 1st Respondent came from was dealing with the deceased's estate to the exclusion of the 2nd household where the Applicant came from and it was contrary to this court's Judgement dated 10th November 2023. That the deceased's estate was being wasted and the wastage needed to be stopped. It was the Applicant's further case that he had tried to reach out the 1st Respondent in an effort to agree on distributing the estate to no avail.
5. The Applicant stated that it was necessary that the deceased's estate is gathered and its income deposited in a joint bank account to be opened and operated by the joint administrators. The Applicant further stated that he had approached Kapset Tea Factory Ltd to offer management services in the management of the tea farms on behalf of the deceased's estate and they confirmed that they were ready to do so.
6. Through his Further Affidavit dated 15th May 2025, the Applicant stated that the Ruling dated 10th November 2023 appointed the Applicant and 1st Respondent as joint administrators and the 1st Respondent was attempting to re-litigate matters that had already been settled. That there was no application in court for distribution of the estate. He further that the Application dated 26th November 2024 was dismissed by this court on 28th January 2025 hence there was no pending Application.
7. In his submissions dated 15th May 2025, the Applicant submitted that given the hostility and stalemate, it was necessary that this court invokes its jurisdiction to preserve the deceased's estate pending the confirmation of Grant and distribution of the estate. That the 1st Respondent was keen on enjoying the status quo where he was in full control of the estate, with him being sidelined despite being a co-administrator. It was his further submission that it was necessary that an independent estate agent be appointed to collect rental income derived from the estate to avert possible wastage. He relied on re estate of Makokha Idris Khasabuli (Deceased) (2019) eKLR, Rule 73 of the Probate and Administration Rules and section 47 of the *Law of Succession Act*.



8. It was the Applicant's submission that it was trite law that the responsibilities of joint personal representatives of the estate lie on both administrators without sidelining the other and that the duty to render a true account of the estate fell on both Administrators. It was his further submission that the orders he sought were meant to ensure that the deceased's estate was managed in favour of all the beneficiaries and reliance was placed on the estate of Esther Wangui Chege (Deceased) (2021) eKLR.
9. The Applicant submitted that the 1st Respondent was enjoying the deceased's estate while excluding the 2nd household and he sought Kapset Tea Factory to manage the tea farms contained in the deceased's estate. He relied on the estate of Weru Joseph (Deceased) Succession Cause No. 485 of 2018 (2023 KEHC 243377). He further submitted that administrators hold an office of trust and they had to account for every single cent that came into their hands.
10. It was the Applicant's submission that if a joint bank account was not opened, they would suffer prejudice.

Response

11. The 1st and 2nd Respondents filed their Replying Affidavit dated 14th April 2025 and stated that prior to his death, the deceased resided on Kericho/Kimulot/146 and 147 where he had his home with their mother, Zaddie and that together with his family and siblings, they resided and lived in the same home. That the deceased entrusted him (1st Respondent) as the custodian of his estate and further that the deceased asked the 2nd Respondent to take over Kericho/Kimulot/11 where he has since established tea bushes with the deceased's blessings.
12. It was the 1st Respondent's case that this court had ruled on 10th November 2023 that the Applicant and 1st Respondent be joint administrators of the deceased's estate. That being aggrieved with the Ruling applied for Review of the Judgment. It was his further case that the question of his mother's estate which constituted matrimonial property was still pending determination and that his mother's property formed part of the deceased's estate as it was jointly acquired during their marriage.
13. The 1st Respondent stated that the Applicant had not reached out to him in an effort to distribute the estate. The 1st Respondent further stated that he had diligently and honestly dispensed his duties as an administrator of the estate and shall provide a full and accurate inventory of the estate if called upon. That the Applicant had never made any attempt to produce a full and accurate inventory of the deceased's estate or pay any of the debts owing and accruing.
14. The 1st Respondent stated that the deceased's estate comprised of:
 - i. Kericho/Kimulot/11.
 - ii. Kericho/Kimulot 146 and 147.
 - iii. Plot Number 35 in Kimulot Market 1974.
 - iv. Plot Number 1 in Kimulot Market.
 - v. Plot at Kapset Market.
 - vi. Plot at Sotik Town.
 - vii. Shares in Soy and others whose status was unknown.
 - viii. Shares in Kapset Tea Factory.
 - ix. Shares in Konoin Sacco.



- x. Shares in Kimbilio Daima Sacco.
15. The 1st Respondent further stated that the deceased's estate had liabilities i.e. outstanding KTDA fertilizer debt at Kshs 70,000/= and outstanding land rates.
 16. It was the 1st Respondent's case that he was opposed to the proposal of Kapset Tea Factory managing the deceased's estate. It was his further case that he was not wasting the deceased's estate but was residing on the estate as it was the only home he has ever known.
 17. The 1st Respondent stated that there was a pending Application dated 26th November 2024 which sought to put to rest the issue of whether the deceased had two houses and whether the Applicant and his siblings were beneficiaries of the deceased's estate.
 18. By the time of writing this Ruling, the Respondents had not filed their written submissions despite being granted 14 days to do so on 30th April 2025.
 19. I have gone through the record, the Notice of Motion Application dated 3rd April 2025, the Replying Affidavit dated 14th April 2025 and the Applicant's Further Affidavit and written submissions all dated 15th May 2025. My only issue for determination was whether the Notice of Motion Application dated 3rd April 2025 was merited.
 20. As a preliminary issue, the 1st Respondent stated that there was a pending Application dated 26th November 2024. That this Application was yet to be heard and determined and if it was determined it would put to rest the issue of whether the deceased had two houses and whether the Applicant and his siblings were beneficiaries of the deceased's estate.
 21. I have perused the court record and I have noted that the said Application asked this court to defer the Ruling that was scheduled for 27th November 2023 with respect to the Application dated 11th December 2023 and further asked this court to file a Further Affidavit dated 11th December 2023. This Application was dismissed by this court (Korir J.) on 28th April 2025. This was a futile attempt by the 1st Respondent to mislead this court.
 22. Regarding the substantive Application, the Applicant sought an order to open a joint bank account with the 1st Respondent in respect of the proceeds of the deceased's estate. The Applicant stated that despite being appointed a joint administrator with the 1st Respondent, the 1st Respondent had been enjoying the proceeds of the deceased's estate to the exclusion of the 2nd household where the Applicant was a member.
 23. On the other hand, the 1st Respondent stated that the deceased had entrusted him in running of his estate and further gave the 2nd Respondent, Kericho/Kimulot/11 to grow tea leaves. The 1st Respondent denied wasting the deceased's estate and stated that together with his family and siblings, they resided in the deceased's estate and knew no other home.
 24. I have gone through the record and I have noted that this court (Korir J.) in her Ruling dated 10th November 2023 appointed David Kimutai Cheruiyot (1st Respondent) and Davis Kipronoh Cheruiyot (Applicant) as joint administrators in the estate of Julius Cheruiyot Ngeno (deceased). A Grant was issued in their joint names on 15th November 2023. It is salient to note that the Ruling dated 10th November 2023 has not been reviewed or appealed against and the Grant has not been revoked and this made the Applicant and the 1st Respondent joint administrators of the deceased's estate.
 25. The duties of administrator(s) in respect of a deceased's estate are captured in section 83 of the [*Law of Succession Act*](#) thus: -



Personal representatives shall have the following duties—

- (a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;
- (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
- (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
- (d) to ascertain and pay, out of the estate of the deceased, all his debts;
- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
- (g) 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) 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 assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration. (Emphasis mine)

26. I have keenly looked at the 1st Respondent's Replying Affidavit dated 14th April 2025 and I have noted that the 1st Respondent did not respond to the Applicant's prayers to open a bank account in their joint names for the purpose of collecting the income from the deceased's estate. The 1st Respondent raised the issues that his mother's matrimonial property which formed part of the deceased's estate and that the court had not resolved their issue of whether the 2nd house and the Applicant were beneficiaries of the deceased's estate. It is important however to state that the 1st Respondent was opposed to a third party (Kapsat Tea Factory) managing the proceeds from the deceased's tea estates.

27. The above issues raised by the 1st Respondent were resolved by this court in its Ruling dated 10th November 2023. The 1st Respondent having been aggrieved by the said Ruling, filed an undated Notice of Motion Application seeking to review the Ruling. This court on 28th January 2025 dismissed the Review Application. I agree with the Applicant's assertion that the 1st Respondent was attempting to relitigate matters that had been decided upon. I will say no more on this issue.

28. The upshot of the above is that the 1st Respondent did not deny being a co-administrator of the deceased's estate. Further, the 1st Respondent did not object to the opening of a bank account in



the joint names of the administrators but only objected to having Kapset Tea Factory manage the deceased's tea estates.

29. I have noted that the Grant issued on 15th November 2023 has not been confirmed and the deceased's estate has not been distributed. In light of the above assertions by both parties, it is evident that there is no concurrence in the running of the deceased's estate by both administrators and it is my view that the deceased's estate needs to be preserved before its distribution.
30. Both the Applicant and the 1st Respondent bear the responsibility of gathering the deceased's estate and provide a full inventory to this court either upon its own motion or upon an application of an interested party within the estate. I shall make the necessary orders at the end of this Ruling.
31. In regards to the prayer for managing the income of the deceased's estate, I am guided by re Estate of Weru Joseph (Deceased) [2023] KEHC 24377 (KLR) where the court held: -

“It must be pointed out that in a situation where more than one administrator is appointed, the appointment is made jointly and not to each individual administrator. It is anticipated that the administrators will act jointly for the benefit of the estate.....”

32. Similarly, in re Estate of Teresia Wanjiru Thuo (Deceased) [2016] KEHC 4325 (KLR), the court stated: -

“I have noted from the record that the administration of the estate of the deceased was committed on 30th June 2014 to three individuals – James Wachiuri Thuo, Elias Rwigi Thuo and Simon Gikiri Thuo. This required the administration of the estate to be a joint effort of all three. None of them should shoulder the responsibility of administering the estate alone, without consulting or working together with the other administrators. Where there are income-generating assets, the income must be held in bank accounts opened in the joint names of the three administrators, and any withdrawals from the account or expenditure of the money held in such accounts must be at the concurrence of all three. Ultimately all three must account jointly for the income.”

Further, in *Arodi & another (Suing Through their Attorney Nicodemus Atito Arodi) v Midiwo; Housing Finance Company – Kenya & another (Third party)* [2024] KEELC 4658 (KLR), the court while quoting *Re estate of Makoha Idris (2019) eKLR* held: -

“It must be stated that even though there are four administrators in places, in law there is only one administration or representation to the estate of the deceased. The four administrators hold one grant.....The powers conferred on the administrators by section 82 of the *Law of Succession Act* are exercisable by all of the administrators named in the grant and all the duties imposed on administrators by section 83 of the act fall on all four Administrators.”

33. Flowing from the above, it is my finding that the income from the deceased's estate be managed by both Administrators (Applicant and 1st Respondent) and not by the 1st Respondent as in the present case.
34. In the end, I make the following orders: -
- I. That pending the distribution of the estate, an order is issued that within 14 days of this date, the administrators David Kimutai Cheruiyot and Davis Kipronoh Cheruiyot open an interest earning account in their joint names in a reputable commercial bank for the purpose of collecting the monetary proceeds of the estate of the deceased herein, that is all KTDA proceeds emanating from James Finlay Outgrowers, rent net income from Plot No. 35 and 1 Kimulot



market and any share of proceeds/rental income from Soi and other buildings in Kericho town, all proceeds from Sacco, shares at Konoin, Kimbilio Daima Sacco and shares at K-Pillar Sacco Society Limited and dividends due to the estate of Julius Cheruiyot Ngeno.

- II. The joint administrators shall file in this court a full and accurate inventory of the estate of the deceased.
- III The joint administrators shall take the necessary steps towards agreeing on the mode of distribution and bringing summons for confirmation of the Grant already issued.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 3RD DAY OF JULY, 2025.

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HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling delivered in the presence Kiamba and Koech for the respondents, Kiget holding brief for petitioner and Siele/Susan (Court Assistants).

