



REPUBLIC OF KENYA



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In re Estate of the Late Alois Rotich Chepkong (Deceased) (Succession Cause 467 of 2015) [2025] KEHC 9258 (KLR) (1 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9258 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 467 OF 2015**

RN NYAKUNDI, J

JULY 1, 2025

**IN THE MATTER OF THE ESTATE OF THE LATE
ALOIS ROTICH CHEPKONGA (DECEASED)**

IN THE MATTER OF

SALINA CHEPKONGA ADMINISTRATOR

RULING

1. What is pending before me for determination are summons dated 3rd December 2024 brought pursuant to section 71 of the [Law of Succession Act](#), Cap 160 and Rule 40 of the [Probate and Administration Rules](#) in which the Applicant is seeking the following orders:
 - a. That Christine Chebaibai Chepkonga be appointed as co-administratrix to Salina Chepkonga in compliance with the ruling/order of the court made on the 20th September 2024.
 - b. That the grant of letters of administration intestate as made to Salina Chepkonga and Christine Chebaibai Chepkonga in respect of the estate of the late Alois Rotich ChepkongaA- deceased be confirmed pursuant to section 71(3)(b) of the [Law of Succession Act](#), Cap 160 before the lapse of the 6 months' period.
 - c. That the costs of this summons be sourced from the estate of the deceased.
2. The Summons are supported by the annexed affidavit dated 3rd December 2024 sworn Salina Chepkonga who avers as follows;
 1. That a grant of letters of administration intestate of the said estate was made to me afresh by this Honourable Court in this matter on the 20th September 2024 based on the ruling delivered.
 2. That a co-administrator was required to be appointed and a proposal to make Christine Chebaibai Chepkonga to be has been made.
 3. That the deceased herein died intestate on the 3/5/2014 and left the following surviving him:



- a. Salina Chepkonga Widow Adult
 - b. Francisca Chelagat Sawe Daughter Adult
 - c. Mary Chepkorir Chepkonga Daughter Adult
 - d. Christine Chebaibai Chepkonga Daughter Adult
 - e. Emily Chepkonga Daughter Adult
 - f. Consolata Jepchumba Kipchumba Daughter Adult
 - g. Janet Chebet Chepkonga Daughter Adult
 - h. Jackline Cherono Chepkonga Daughter Adult
 - i. Peter Kipruto Chepkonga Son Adult
 - j. Thomas Kipkosgei Chepkonga Son Adult
 - k. Thaddeus Kangogo Chepkonga Son Adult
 - l. Charles Cheruiyot Chepkonga Son Deceased
 - m. Francis Kiproop Chepkonga Son Deceased
4. That the two named sons of the deceased CHARLES Cheruiyot Chepkonga and Francis Kiproop Chepkonga died as adults and left behind their respective wives and children.
 5. That there are no other dependants of the deceased herein.
 6. That the deceased left behind the following assets:
 - a. Tembelio/Elgeyo Border Block 14 (Ngobeliani)/67.
 - b. Elgeyo Marakwet Mosop/Kaptarakwa/16.
 - c. Kapkoi Forest/124.
 - d. Centre Plots Kapkoi (Plot No 18 and 28)
 - e. Kapito/715.
 - f. Chepsigot/1314
 7. That the identification of the assets and the shares of all persons beneficially entitled to the said estate have been ascertained and determined.
 8. That I am currently occupying land parcel known as Kapkoi Forest/124 measuring approximately 10 Acres and that is the same plot where my late husband the deceased herein was buried.
 9. That I propose that the estate of the deceased be divided equally amongst his above listed beneficiaries/dependants in the following manner: -
 - a. Tembelio/elgeyo Border Block 14 (Ngobeliani)/67 [9.20 Ha]

The whole portion to be subdivided in equally and registered to the following: -



| Name | Shares |
|---------------------------------------|------------|
| Salina Chepkonga | 2.84 Acres |
| Francisca Chelagat Sawe | 2.84 Acres |
| Christine Chebaibai Chepkonga | 2.84 Acres |
| Tom Kipkosgei Chepkonga | 2.84 Acres |
| Consolata Jechumba Kipchumba | 2.84 Acres |
| Jackline Cherono Chepkonga | 2.84 Acres |
| Janet Chebet Chepkonga | 2.84 Acres |
| Estate of Charles Cheruiyot Chepkonga | 2.84 Acres |

b. Elgeyo Marakwet Mosop/kaptarakwa/16... (11.8 Acres)

The whole portion to be subdivided equally and registered to the following: -

| Name | Shares |
|---|------------|
| Salina Chepkonga | 2.95 Acres |
| Mary Chepchirchir Chepkonga | 2.95 Acres |
| Peter Kipruto Chepkonga | 2.95 Acres |
| Anne Chepkonga, Oliver Kiprotich Chepkonga, Alex Chepkonga and Victoria Chepkonga (to hold jointly being the share of Francis Kiprop Chepkonga) | 2.95 Acres |

c. Kapkoi Forest/124...10 Acres

The whole portion to be subdivided and registered to the following: -



| Name | Shares |
|---|------------|
| Salina Chepkonga | 2.95 Acres |
| Mary Chepchirchir Chepkonga | 2.95 Acres |
| Peter Kipruto Chepkonga | 2.95 Acres |
| Anne Chepkonga, Oliver Kiprotich Chepkonga, Alex Chepkonga and Victoria Chepkonga (to hold jointly being the share of Francis Kiprop Chepkonga) | 2.95 Acres |

d. Centre Plots Kapkoi

| Name | Description of Property | Share of Heirs |
|------------------|-------------------------|----------------|
| Salina Chepkonga | Plot No 18 and 28 | Full Share |

e. Kapito/539... 1Acre

The whole portion to be shared and registered in the joint names of the seven daughters of the deceased being: -

| Name | Description of Property | Share Of Heirs |
|------------------|-------------------------|----------------|
| Salina Chepkonga | Plot No 18 and 28 | Full Share |

f. Chepsigot/1314... 1 Acre

The whole portion to be shared and registered in the joint names of the sons of the deceased being: -

| Name | Shares |
|--|--|
| Peter Kipruto Chepkonga Thomas Kipkosgei Chepkonga Thaddeus Kangogo Chepkonga Estate of Charles Cheruiyot Chepkonga Estate of Francis Kiprop Chepkonga- to be registered in the joint names of the above | To be Shared Equally and Peter Kipruto Chepkonga to Be A Trustee to hold On his behalf and That of: - A. thomas Kipkosgei Chepkonga B. Thaddeus Kangogo Chepkonga c. Estate of Charles Cheruiyot Chepkonga D. Estate of Francis Kiprop Chepkonga |



10. That no estate duty is payable (remains unpaid) in respect of the estate of the deceased.
11. That I further make this application in line with the order of the court issued on the 21/11/2024 when I was physically present in the open court.
12. That the circumstances surrounding this cause which include non-compliance with some of the beneficiaries would only warrant that the grants herein be confirmed expeditiously.
13. That I am the deceased's widow and my age is advanced as I am currently 79 years of age and it would be my wish to have this matter concluded expeditious and in a manner that would see the family of my late husband remain united.
14. That the pendency of this matter which has been occasioned by some of the beneficiaries who want to see this matter drag in court has greatly affected me psychologically, emotionally and even had my health deteriorate as days go by and I would wish to see the matter come to an end so that I may have peace and rest as I focus on my health.
15. In response to the summons for confirmation, various affidavits have been filed by the beneficiaries and purchasers from the estate seeking recognition of their share.
16. Jackline Jerono Chepkonga swore an affidavit on 13th December, 2024 in which she deposed that she is the 10th born child of the deceased and that during the lifetime of the deceased, she was bequeathed a piece of land measuring 1/8 of an acre from Tembelio/Elgeyo Border Block 14(Ngobelioni) 67. She averred that she has since sold out the share to one David Kipkorir Kimitei and that the mode of distribution as proposed by the applicant does not factor in that share. That she is opposed to the proposed mode of distribution on respect to Tembelio/Elgeyo Border Block 14(Ngobelion)67 in as far as the same allocates her a non-existent portion as the same was given to her brother Charles Cheruiyot Chepkonga and Thomas Chepkonga who have since sold their portions to purchasers who are currently living on the Land, including David Korir. She proposed that David Kipkorir be given his share of 1/8 of an acre Tembelio/Elgeyo Border Block 14(Ngobelion)67. The said David Kipkorir Kimitei equally filed an affidavit confirming that he bought land from Jackline and attached a land sale agreement.
17. Thomas Kipkogei Kiprop being a purchaser equally filed an affidavit and deposed that he is entitled to 1/8 of an acre from Tembeleo/Elgeyo Border Block 14(Ngobelioni) 67, having bought it from the deceased herein in the year 2012 before the deceased died. He stated that he has been utilizing the said piece of land since 2012 and no one has ever raised an issue. That the proposed mode of distribution by Salina Chepkonga aims to dispossess him of his rightful share.
18. Anthony Kipkogee Chelimo in his capacity as a purchaser swore an affidavit and stated that he is a purchaser of a parcel of land hived from that parcel of land known as Tembeleo/Elgeyo Border Block 14(Ngobelioni) 67 measuring 1/3/4 acres, which he bought from Charles Cheruiyot Chepkonga, a son of the deceased and the administrator herein. He opposed the mode of distribution as proposed by Salina Chepkonga and proposed that he be allocated that share. In support of his averment he attached a sale agreement to that effect dated 2nd November, 2022.
19. Eunice Jemeli Seurey being a secretary to Kimnatet Women Group who are purchasers from the estate of the deceased swore an affidavit on behalf of the rest stating that the group bought two pieces of land of land known as Tembeleo/Elgeyo Border Block 14(Ngobelioni) 16 each measuring 1/8 of an acre. She stated that they bought the said parcel of land from the late Alois Chepkonga on 25th April, 2013 and 27th June, 2013. Further that they are opposed to the mode of distribution. They proposed that they be recognized and be given ¼ of their share from the said parcel of land.



20. Thadeus Chepkonga, being a son of the deceased swore an affidavit as well stating that during the lifetime of the deceased, he bequeathed him a portion of land measuring 10 acres from Kapkoi Forest/124 and he has since settled on the said piece of land. He opposed the mode of distribution as proposed by Salina Chepkonga since it fails to recognize his entitlement.
21. Next in was Thomas Kipkosgei Chepkonga, a son of the deceased who filed an affidavit in protest stating that during the lifetime of the deceased, he bequeathed him a portion of land measuring 11 acres from Tembeleo/Elgeyo Border Block 14(Ngobelioni) 67 and he has since sold the parcel to various people and the family is aware of the same. That he is therefore opposed the mode of distribution as advanced by Salina Chepkonga. Further that the sales as deposed are supported by respective sale agreements.
22. Finally, Peter Kipruto Chepkonga being a son of the deceased filed an affidavit of protest stating that he is the son of the deceased and that during his lifetime he bequeathed him a portion of land measuring 8 acres from Elgeyo Marakwet Mosop/Kaptarakwa/16. That he has settled on the said land and all family members are aware of the same. He deposed that he is opposed to the mode of distribution as proposed by Salina Chepkonga. That the proposed mode of distribution aims at dispossessing him of the said portion.

Analysis and Determination

23. This matter concerns the estate of the late Alois Rotich Chepkonga who died intestate on 3rd May 2014. The present application seeks confirmation of the grant of letters of administration intestate made to Salina Chepkonga and the appointment of Christine Chebaibai Chepkonga as co-administratrix. What has emerged from the various affidavits filed in response to the summons for confirmation is a web of purported land transactions, claims of bequests, and competing interests that are at the heart of the legal framework governing succession in Kenya.
24. The central issue before this court is whether the various claims advanced by purported purchasers and beneficiaries who assert rights based on alleged lifetime bequests can be entertained within these succession proceedings, and more fundamentally, whether the transactions they rely upon are legally valid under the *Law of Succession Act*.
25. The *Law of Succession Act*, Cap 160, establishes a comprehensive framework for the administration of deceased estates. This framework is built upon fundamental principles that preserve the integrity of estate assets pending proper administration and distribution. Two key provisions form the cornerstone of this protective regime: the prohibition against intermeddling with estate property under Section 45, and the restriction on sale of immovable property before confirmation of grant under Section 82(b)(ii).
26. The rationale behind these provisions is clear. They ensure that estate assets remain intact and are properly accounted for before any distribution occurs. This protects the interests of all beneficiaries and creditors while maintaining the orderly administration of justice in succession matters.
27. Section 45 of the *Law of Succession Act* provides unambiguous protection for estate assets. The provision states:
 - “(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
 - (2) Any person who contravenes the provisions of this section shall-



- (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
- (b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

28. The application of this principle has been consistently upheld by our courts. *In Re Estate of John Gakunga Njoroge (Deceased)* [2015] eKLR, Muriithi J observed that:

“A person can only lawfully deal with the estate of a deceased person pursuant to a Grant of Representation made to him under the *Law of Succession Act*...For the transactions between the applicants and the beneficiaries of the estate of the deceased entered into before the Grant of Letters of Administration to them and before the Confirmed Grant, the contracts of sale are invalid for offending the provisions of section 45 and 82 of the *Law of Succession Act*. Even if the sale transactions were by the administrators, the dealings with immovable property of the Estate is restricted by the provisions on the powers duties of the personal representatives under section 82 (b) Proviso (ii), which provides that:(ii)no immovable property shall be sold before confirmation of the grant.The persuasive authority of Wakiaga J. in *Stephen Waweru Ng’ang’a v Kimani Ng’ang’a*, Nyeri HC P&A No 1 of 2011 would be relevant in a claim against the beneficiaries who sold their interest so that they should not defraud the innocent purchasers of their money.”

29. In the present case, several individuals have filed affidavits openly acknowledging transactions that constitute clear violations of Section 45. David Kipkorir Kimitei admits to purchasing land from Jackline Jerono Chepkonga after the deceased's death. Thomas Kipkogei Kiprop claims to have bought land from the deceased in 2012, and that he has been utilizing the land since that time without any formal transfer. Anthony Kipkogee Chelimo acknowledges purchasing land from Charles Cheruiyot Chepkonga through a sale agreement dated 2nd November 2022, well after the deceased's death. The Kimnatet Women Group, through their secretary Eunice Jemeli Seurey, admit to purchasing land from the late Alois Chepkonga on 25th April 2013 and 27th June 2013, but given that the deceased died on 3rd May 2014, this purported transaction actually occurred before the deceased's death, though it still lacks proper documentation and formal transfer procedures.
30. The second pillar of the protective framework is found in Section 82(b)(ii) of the *Law of Succession Act*, which provides that "No immovable property shall be sold before confirmation of the grant." This prohibition is absolute and admits of no exceptions.
31. The Court *in re Estate of M’Ajogi M’Kiugu (Deceased)* [2017] eKLR, per Gikonyo J, emphasized this principle in no uncertain terms:

“Courts have said time and again- and I will not be tired of stating it again- that, under section 82(b) (ii) of the *law of succession act*, sale of immovable property of the estate before confirmation of grant is prohibited. Again, under section 55 of the *Law of Succession Act*, the law has placed restriction on distribution of any capital assets of the estate before confirmation of grant. Therefore, no person shall have any power or legal authority or capacity to sell immovable property of the deceased before confirmation of grant. As such, any such attempted sale of immovable property of the estate before confirmation of grant



shall be null and void for all purposes and intents. I need not also state that beneficial interest of a person beneficially entitled to a share in the estate must be identified and be capable of registration in his name before it could be sold or pledged as security or exchanged with another type of property.”

32. This principle finds practical application in the present case where multiple parties claim to have purchased portions of the estate’s immovable property before any grant was confirmed. Such transactions are null and void regardless of the parties’ good faith or the consideration paid.
33. The question of whether purported purchasers can participate in succession proceedings has been definitively settled by our courts. In *Paul Gituma Kiogora v Doris Mukiri Magiri & another* [2017] eKLR, Gikonyo J held that:

“I see the claim by the Protestors is that of a purchaser and is based on a sale of land agreement with the widow of the deceased. Doubtless, the agreement was done after the death of the deceased and before confirmation of the grant herein. Such purchaser is not a beneficiary of the estate and should not be tried in a succession cause...As the protestors are not beneficially interested in the estate, their claim cannot be litigated in this succession cause or even be set aside by this court under rule 41(3) of the *Probate and Administration Rules*. Given the circumstances of the case and the fact that the sale of the land violated the *Law of Succession Act*, the court cannot draw from its inherent jurisdiction to assist an unlawful transaction. I do not, however, wish to say much about the legality or otherwise of such transaction or the validity and enforcement of the agreement in question in order to avoid any prejudice to any future litigation on it. There are, however, ample judicial decisions on the matter and I do not wish to rehash them.”

34. Similarly, in *Boniface Munyao Muinde v Mutinda Muindi & 2 others* [2016] eKLR, Nyamweya J observed as follows:

“The Citor did not bring any evidence that Kaesa Muindi, with whom he entered into a sale agreement, had a confirmed grant of representation with respect to the Deceased’s estate at the time of the alleged sale of the land known as Wote/Iiani/415 on September 5, 2009. It is thus my finding that a portion of the said parcel of land could not have been legally sold to the Citor by the said Kaesa Muindi, and any purported sale of the said land is thus of no legal effect. The Citor therefore does not qualify to be a creditor of the deceased within the meaning of the section 66 of the *Law of Succession Act*, as he did not purchase the said portion of the deceased’s land from the deceased, or a person authorized to sell the said property, and on the contrary actually intermeddled with the estate of the deceased contrary to section 45 of the *Law of Succession Act*. He therefore has no interest in the estate of the deceased to entitle him to cite the Citees, and his Citation dated September 9, 2013 is thereby dismissed with costs to the Citees.”

35. Our courts have consistently held that claims by third parties against estate property should be resolved through separate civil proceedings. *In Re Estate of Stone Kathuli Muinde (Deceased)* [2016] eKLR, Musyoka J stated that:

“Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the *Civil Procedure Rules*. This could mean filing suit at the magistrates’ courts, or at the Civil or Commercial



Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it."

36. This principle was further emphasized in *In Re Estate of Mbai Wainaina (Deceased)* [2015] eKLR, where Musyoka J held:

"Even if there was material establishing that there was such a trust, I doubt that the resolution of this issue would be a matter of the probate court. The mandate of the probate court under the *law of succession Act* is limited. It does not extend to determining issues of ownership of property and determination of trusts. It is not a matter of the probate court being incompetent to deal with such issues but the provisions of the law of succession and the relevant subsidiary legislation do not provide a convenient mechanism for determination of some issues. A party who wishes to have such matters resolved ought to file a substantive suit to be determined by the Environment and Land court. Consequently, and for the reasons above stated, I wish to find and hold that this court has no mandate to resolve the proprietary interest on land based on the alleged trust".

37. *In Re estate of Solomon Mwangi Waweru (deceased)* (2018) eKLR, Ndungu J remarked:

"Therefore, claims by interested third parties against the estate of the deceased ought to be litigated in separate proceedings. It is imperative that any adverse claims against the estate of a deceased person are determined through settlement or where inapplicable through suits against the administrator (s) of the estate and not through an objection like the one before court."

38. Some of the beneficiaries have filed affidavits claiming that the deceased bequeathed certain portions of land to them during his lifetime. Thaddeus Chepkonga claims he was bequeathed 10 acres from Kapkoi Forest/124. Thomas Kipkosgei Chepkonga asserts he was bequeathed 11 acres from Tembeleo/Elgeyo Border Block 14. Peter Kipruto Chepkonga claims he was bequeathed 8 acres from Elgeyo Marakwet Mosop/Kaptarakwa/16.

39. These claims are problematic for several reasons. First, the deceased died intestate, meaning there is no will to substantiate these alleged bequests. Second, even if such bequests were made during the deceased's lifetime, they would require proper documentation and transfer procedures to be legally effective. Third, the fact that these claimants have allegedly sold portions of these lands to third parties without proper title documents raises serious questions about the validity of their claims.

It is trite in Kenya that the sale of an intestate asset, specifically immovable property, before the confirmation of the grant of letters of administration is generally prohibited and considered null and void. This is because, under the *Law of Succession Act*, the personal representatives (administrators) only gain the power to deal with the deceased's property, including selling it, after the grant of letters of administration has been confirmed. Furthermore, transactions involving agricultural land require the consent of the Land Control Board, and failure to obtain this consent renders the transaction void under Section 6 of the *Land Control Act*. Lest we forget I am reminded of the provisions of Section 82 of the *Law of Succession Act* which provides that no immovable property of a deceased person shall be sold before confirmation of grant yet some of the agreements purported to devolve rights to the creditors seem to fall under the spectrum when the certificate of confirmation of grant is yet to be issued by this court. It follows in my view that such sales will amount to illegal, null, and void transactions which cannot confer any good title to the claimants. In the case of *re Estate of Jamin Inyanda Kadambi (deceased)* (2021) eKLR the court was emphatic a valid sale of estate property can only be sold by



those to whom the assets vest by virtue of Section 79 and who have the power to sell the property by virtue of Section 82. Even then immovable assets like land such as the one within the cause of action of this succession, cannot be disposed off by any beneficiary or administrators before their grant has been confirmed and if land has been sold before confirmation, then leave or permission of the court must be obtained. That is the purport of Section 82(b) (ii) of the Law of Succession Act. Clearly, the sale transaction that was carried out by the administrators was contrary to Section 45 and 82(b) (ii) of the Law of Succession Act, and was invalid for all purposes. It cannot be asserted at all, and I am surprised that persons to whom administration of the estate herein can purport to support a sale transaction that was carried out contrary to the very clear provisions of the law.

a. For avoidance of doubt, sections 45, 79 and 82 of the Law of Succession Act provide as follows:

b. “45. No intermeddling with property of deceased person

(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall—

be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

“79. Property of deceased to vest in personal representative

The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”

“82. Powers of personal representatives

Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;

to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that—



ii. no immovable property shall be sold before confirmation of the grant...”

34. For the foregoing reason, I find that the grant should therefore be revoked

35. *In Re Estate of Moses Wachira Kimotho (Deceased)* Succession Cause 122 of 2002 [2009] eKLR, the court made pronouncements on the importance of disclosing all material facts before a court of law while seeking letters of administration and confirmation thereof. It observed;

“I am certain that had the Applicants been made aware of the application for the confirmation of grant by being served they would have brought to the fore their aforesaid interest in the estate of the deceased and the resultant grant would have taken care of those interests. Further had the Respondent been



forthright
and candid
and included
the
Applicants as
beneficiaries
of a portion
of the estate
of the
deceased as
purchasers
for value,
the court
in confirming
the grant
would have
taken into
account their
interest in the
estate of the
deceased. As
it is therefore
the grant
was obtained
fraudulently
by making
of a false
statement
and or
concealment
from court
of something
material to
the cause.
The
Respondent
knew of the
Applicants'
interest in the
estate of the
deceased yet
she chose to
ignore them
completely in
her petition
of letters of
administration
intestate. She



also ignored
them
completely
when she
applied for
the
confirmation
of grant.

40. The above position as also held by the court in the case of *Morris Mwiti Mburungu v Denis Kimathi M'Mburungu* (2016) as follows: “ Where any person interferes with the free property of the deceased or deals with an estate of a deceased person contrary to the provisions of Section 45 and 82 of the Act that is intermeddling, is unlawful and cannot be protected by the court. The transaction is subject to be nullified and set aside at the instance of innocent beneficiaries who may have been affected by the act but were not involved in the same.”
41. The court has taken cognizance that this estate has remained undistributed for more than 9 years and in complete disregard of the statutory timelines in the law of success Act which sets an ideal period of 12 months from the time of gazettelement of the cause. There are compelling reasons or sufficient cause demonstrated by the beneficiaries or the administrators. Yes, I agree I have seen them attend court but there is a role they must play which is more significant in the administration of justice. The effects of a failure to deliver justice on time particularly on Succession matters, can have deleterious impact on lives of all beneficiaries involved as there is a legitimate expectation for the rights to devolve to facilitate entitlement of the economic Social Rights as provided for in the *Constitution*. It is trite that justice delayed is justice denied being the reason the drafters of the *Constitution* expressly incorporated it in Article 159 of a Supreme Law. The component of delay in Succession Matters from a practical point of view lies squarely on the beneficiaries who prefer weaponizing each other before a court of law under the guise of seeking justice. Why do I say so? The current justice system on succession disputes operates within a legal framework of legislation, precedent, the *Constitution* and International Law. The *Law of Succession Act* addresses itself to the issues of identification of beneficiaries, free net estate of the deceased, and any other person with rights which accrue from the estate as commonly referred to as purchasers or creditors. As highlighted in the *Law of Succession Act*, Sections 35, 36, 37, 38, 40, & 42 examined holistically provides an integrated approach with the distribution of the estate whether it is a polygamous or monogamous consequently and affinity. The right to a fair trial in our article 50 of the *Constitution* is considered one of the most essential and fundamental human rights. It embodies aspect of both institutional and procedural fairness in the determination of succession disputes in order to ensure achievement of justice to the beneficiaries. I hear this all the time about the delay in processing succession disputes within our legal system. However, if we were to apportion contribution on liability as to the delay on adjudication of cases within the family branch of law in Uasin Gishu County, the standard set forth in the law as early as 1981 is never followed by the administrators or the beneficiaries. This crisis of years and years of litigation occurs against the country’s constitutional lands scape. Unfortunately, the empirical reality is that in adjudicating this succession matters the beneficiaries or other interested parties have litigated in our courts against the provisions of the *Constitution* on speedy trials and very clear timeline set by parliament in the Succession Act. It should be noted that no sooner a certificate of confirmation of grant is issued and before the ink dries an application would be filed either under Section 76 of the *Law of Succession Act* or the import of Section 80 of the *Civil Procedure Act* or Order 45 Rule of the *Civil Procedure Rule* on review jurisdiction.
42. Given this background of the law one wonders why it has taken the parties this long to resolve the issues around distribution of this estate touching on the creditors or purchasers for that matter. According



to the latest evidence, it is not very clear how the land rights were devolved to the purchasers before the demise of the deceased or after the petition for grant of representation was filed before this court. In Succession matters, can this court rely on the doctrine of bona fide purchasers for value to devolve or transmit rights which may be in contravention of the *Law of Succession Act*. My answer to this question is in the negative. The basic law being that the seller must hold a certificate of title and to be able to transmit any such rights to a third party. This are the fundamental questions which the affidavit evidence does not seem to resolve at this stage. It is the expectation of this court that the parties have been economical on full disclosures as which is the net estate of the deceased and which part of it is under claims by the purchasers. The law presumes that citizens of this republic are aware of the laws that apply to them hence the maxim that ignorance of the law is no defence. This means essentially, that a person cannot avoid legal consequences by claiming they were unaware of the law they violated.

43. The law requires that any disposition of land must comply with the statutory requirements for validity. Mere assertions of lifetime bequests, without proper documentation or compliance with land transfer procedures, cannot be accepted as establishing valid title. A land sale agreement cannot in my considered view confer ownership rights.
44. Given the complexities that have emerged in this matter and the need for proper administration of the estate, it is both necessary and prudent to appoint Christine Chebaibai Chepkonga as co-administrator alongside Salina Chepkonga. The appointment of a co-administrator will ensure that the estate is managed with the benefit of multiple perspectives and will provide additional oversight in the administration process.
45. Christine Chebaibai Chepkonga, being a daughter of the deceased and an adult beneficiary, has the requisite interest in the proper administration of the estate. Her appointment as co-administrator will also ensure that the estate benefits from collaborative management, which is particularly important given the widow's advanced age of 79 years and her expressed desire to see the matter concluded expeditiously.
46. Accordingly, Christine Chebaibai Chepkonga is hereby appointed as co-administrator of the estate of the late Alois Rotich Chepkonga, to act jointly with Salina Chepkonga in the administration of the said estate.
47. Before this court can proceed with confirmation of the grant and distribution of the estate, several preliminary steps must be taken to ensure proper administration. The competing claims and the various transactions that have allegedly taken place necessitate a comprehensive assessment of the estate's assets.
48. Rule 73 of the *Probate and Administration Rules* empowers this court to make such orders as may be necessary to meet the ends of justice. Given the web of competing claims, alleged transactions, and purported bequests that have emerged in this matter, and in the interest of ensuring proper administration of the estate, I find it necessary to direct specific steps before confirmation can be granted. For those reasons, the following orders shall abide:
 - a. That this court exercises jurisdiction under Section 66 of the *Law of Succession Act* as read with Rule 73(1) of the *Probate and Administration Rules* to amend the operative grant of letters of administration due to the advanced age of the administrator one Salina Chepkonga to give effect to the governance structure of the estate.
49. Accordingly, the administrators Salina Chepkonga and Christine Chebaibai Chepkonga and Peter Kipruto Chepkonga, shall, within fourteen (14) days from the date of this ruling, file with this court a comprehensive inventory detailing on all assets of the estate with precise descriptions, measurements,



All liabilities and debts of the estate, The current occupation status of each parcel of land, identifying all persons in occupation and the basis of their occupation.

50. Further, the administrators are hereby directed to engage a county surveyor to conduct a survey on the net estate of the deceased considering the habitual residence of the beneficiaries. Such a survey will dispel any doubts about boundaries and measurements, and will provide the administrators with the accurate information necessary for proper distribution.
51. That the administrators distill the sale agreements of the purported purchasers and further provide which category of them acquired rights to possession of land from the deceased during his lifetime and those claiming transmission of property rights from the administrators or beneficiaries
52. That the administrators or administrator for that matter duly appointed by this court under Section 66 of the Act provide an interim detail account to demonstrate that she had leave of this court to devolve the rights to the purchasers in absence of the certificate of confirmation of grant.
53. In addition to the above, the aforesaid administrator to provide evidence that the sale was consented to by the other beneficiaries.
54. That the interim account and time set of 14 days is indispensable
55. Orders accordingly.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 1ST DAY OF JULY 2025.

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R. NYAKUNDI

JUDGE

