



REPUBLIC OF KENYA



**In re Estate of David Kipkeni Chelal (Deceased) (Succession Cause
22 of 2008) [2025] KEHC 12859 (KLR) (17 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12859 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

SUCCESSION CAUSE 22 OF 2008

JM NANG'EA, J

SEPTEMBER 17, 2025

IN THE MATTER OF THE ESTATE OF DAVID KIPKENEI CHELAL (DECEASED)

BETWEEN

MUSA KIPCHIRCHIR CHELAL 1ST ADMINISTRATRIX

PIUS KOMEN CHELAL 2ND ADMINISTRATRIX

EUNICE JEPTUM KINIGA 3RD ADMINISTRATRIX

AND

EDNAH JEMELI CHEBOI 1ST PROTESTOR

JULIETH JERUTO LIMO 2ND PROTESTOR

JUDGMENT

1. This judgement follows a protest dated 14th February 2024 lodged by Ednah Jemeli Cheboi and Julieth Jeruto Limo (hereinafter referred to as “Ednah” and “Julieth” respectively) against the proposed mode of distribution of the deceased’s Estate. They contend that on 10/4/2019 they purchased one acre of land comprising the Estate and took possession thereof. The Protestors therefore want the part of the deceased’s landed Estate to be transmitted to them as Creditors of the Estate.
2. The Protest was heard by means of viva voce evidence. Only Julieth testified for the Protestors, adopting her Affidavit shown on 15th February 2024 and filed herein as her evidence. She also exhibited their bundle of documents filed on the same date. Julieth reiterates that she and Ednah bought the land in contention in 2019 from Magdalene Talai Chelal (now deceased) who was a widow of the deceased herein and an Administratrix of the Estate. Magdalene is said to have represented herself as the land owner and desired to sell the portion to take care of medical expenses. Julieth added that they paid part of the agreed purchase price.



3. Two of the Administrators/Administratrix of the Estate testified in opposition to the Protestors' claim also relying on their Affidavits sworn on 6th March 2024. The 1st Administrator (Pius Komen Chelal) confirmed the purported sale but impugns the transaction on the ground that the deceased Magdalene lacked legal capacity to dispose of the deceased's Estate. He blames his brothers named Percy Kipchumba Chelal and Chris Chelal for participating in the alleged lawful sale of part of the Estate by witnessing the transaction. According to the 1st Administrator, the Protestors ought to claim from those who unlawfully sold the land to them.
4. The 3rd Administratrix (Eunice Kiniga) adopted her two Affidavits sworn on 15th March 2024 and 5th June 2024 as her evidence. Stating that the deceased Magdalene was her mother, she told the court that she was not involved in the sale of the land in question to the Protestors. The 3rd Administrator questioned authenticity of the ostensible sale telling the court that the purported seller was illiterate, elderly and unwell. According to her, deceased mother did not even require funds to cover her medical bills since she had medical insurance. The witness contended that the Protestors should not be allowed to benefit from an illegality.
5. The Protestors and the 1st Administrator filed Written Submissions which I have perused together with the rival evidence and the record. The Protestors claim part of the Estate on the ground that they purchased it while the Administrators dispute validity of the purported sale transaction. Based on the said Sale Agreement, the transaction is represented to have occurred on 10th April 2019, well after the demise of the deceased in respect of whose Estate these proceedings relate (David Kipkeni Chelal) who passed away on 13th January 2000 as per the record. It is not in dispute that the transaction took place before confirmation of the Grant herein by transmission of the Estate to identified heirs.
6. The Court identified one issue for determination to wit; whether the Protestors are lawful Creditors of the deceased's Estate entitled to the part thereof ostensibly sold to them.
7. The Protestors in their submissions cite case law in *Re Estate of John Gakunga (Deceased) (2015) eKLR* in support of their claim. The decision is relevant to the matter as the Estate of the deceased therein was sold in similar circumstances. The decision deprecates sale of any part of a deceased person's Estate before Confirmation of Grant for violating the provisions of Sections 82 and 45 of the *Law of Succession Act*. The former enactment outlaws sale of immovable property of a deceased person before Confirmation of Grant of Letters of Administration issued over the Estate. The latter statutory provision criminalizes any intermeddling with any of the deceased person's free property unless expressly authorized under the law or a confirmed Grant of representation has been made. My brother (Edward M. Muriithi, J) , however, gave the Claimants in that case a chance to negotiate an amicable settlement with the Administrators and/or Beneficiaries of the Estate, failure to which the Estate would be distributed to lawful Beneficiaries and the Claimants as purported purchasers evicted.
8. The 1st Administrators' Submissions underscore the same legal position. He relies on the judicial determinations in *Re Estate of Jonathan Ngewa Kitolo (Deceased) Succession Cause 146 of 2010 (2021) KEHC 9368 (KLR) (8 February 2021) (Ruling)* and *Morris Mwiti Mburugu vs Dennis Kimanthi M'Mburugu (2016) KEHC 5639 (KLR)*. This court in the two cases found that the purported purchase of a deceased person's property before confirmation of Grant of legal representation is intermeddling with the Estate and thus liable to nullification. I agree that the only option available to the Protestors is to seek recovery of the purchase price or any other lawful remedies before the Environment and Land Court with the requisite pecuniary jurisdiction.



9. This court thus therefore finds and holds on the authorities cited that the Protestors are not lawful Creditors of the Estate entitled to any part thereof through these proceedings. The Protest dated 14th February 2024 is accordingly dismissed with no order as to costs.

10. Judgement accordingly.

JUDGEMENT DATED, DELIVERED AND SIGNED AT NAKURU THIS 17TH DAY SEPTEMBER, 2025.

J. M. NANG'EA, JUDGE.

In the presence of:-

1st Administrator's Advocate, Ms Ochieng for Ms Mungai

2nd Administrator's Advocate, Absent

3rd Administrator's Advocate, Absent

Protestors' Advocate, Mr. Matoke H

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

