



**In re Estate of Christopher Kipchirchir Sum (Deceased) (Succession Cause 38 of 2018) [2024] KEHC 1025 (KLR) (9 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1025 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 38 OF 2018**

**JRA WANANDA, J**

**FEBRUARY 9, 2024**

**IN THE MATTER OF THE ESTATE OF CHRISTOPHER KIPCHIRCHIR SUM (DECEASED)**

**KENNETH KIPRPO SUM.....PETITIONER**

**VERSUS**

**VERONICA CHEPSAT SUM.....OBJECTOR**

**RULING**

1. In my earlier Ruling in this matter delivered 26/05/2023, I set out the background to this Cause. I stated that the Cause relates to the estate of the late Christopher Kipchichir Sum who was the son of the late Ernest Sum, that the estate of the said Ernest Sum was or is being dealt with in Eldoret High Court Succession Cause No. 23 of 1985, that in that Cause, the late Christopher Kipchichir Sum (the deceased herein) was allocated 150 shares of the estate as his inheritance, that the Petitioner herein, Kenneth Kiprop Sum, claiming to be a son of the late Christopher Kipchirchir Sum, filed this Cause to pursue his alleged share of the allocation made to the late Christopher Kipchichir Sum (his alleged father) in Eldoret High Court Succession Cause No. 23 of 1985, and that the Petitioner claims that he is entitled to 200 acres out of the property known as L.R. No. 2226 which is still registered in the name of the late Ernest Kimngetich Sum.
2. I further stated that on 30/01/2019, Letters of Administration were issued herein in favour of the Petitioner appointing him the Administrator, that the Grant was then confirmed on 26/11/2019 but that on 6/03/2020, the Objector filed Summons seeking revocation or annulment of the Grant.
3. I also observed that since then, there has been a plethora of Applications and counter-Applications in this matter from both sides seeking various orders.
4. Regarding the description of the Objector, she is the widow of the late Ernest Kimngetich Sum and is the Court appointed Administrator over the estate of her late husband, Ernest Kimngetich Sum which appointment was made in the said Eldoret High Court Succession Cause No. 23 of 1985. The Objector is therefore the mother to the late Christopher Kipchirchir Sum. The Petitioner therefore claims that being a son of the late Christopher Kipchirchir Sum, the Objector is her grandmother



and the late Ernest Kimngetch Sum is his grandfather. On her part, the Objector's position is that the said Christopher Kipchirchir Sum never had any child and never married during his lifetime. She therefore denies any knowledge of the Petitioner as being her grandson or a son of the late Kipchichir Christopher Sum.

5. After filing the Objection, the Objector through her then Advocates, Messrs Kutto & Kaira Nabasenge Advocates, on 16/05/2022 filed the Notice of Preliminary Objection now the subject of this Ruling. The objection is premised as follows:

“Take Notice that the Objector herein, Veronica Chepsat Sum, shall at the hearing of this instant Succession Cause vide Petition dated 11<sup>th</sup> September 2018 raise a Preliminary Objection (P.O) based on the following points of law:

- i. That the instant Petition offends the provisions of Section 3 as read together with other provisions of the *Law of Succession Act*, Cap. 160 Laws of Kenya.
- ii. That the only asset claimed by the Petitioner in this Succession Cause is 200 acres comprised in land parcel LR 2226 which land is duly registered in name of the late Ernest Sum deceased, whose estate is pending final distribution and/or transmission vide Eldoret High Court Succession Cause No. 23 of 1985.
- iii. That the Petitioner, Kenneth Kiprop Sum is claiming to inherit 200 acres of land purportedly distributed to the late Christopher Kipchichir Sum in the estate of the late Ernest Sum and yet the said distribution is incomplete and no transmission has taken place to that effect.
- iv. That technically there is nothing to be inherited by the Petitioner herein in so far as the Estate of the late Christopher Kipchirchir Sum is concerned.
- v. That the beneficial interests in the estate of the late Christopher Kipchichir Sum are yet to be crystallized and ripe for inheritance since the alleged 200 acres forming part of land parcel LR 2226 which land is comprised in the Estate of the late Ernest Sum are yet to be transmitted to the said the late Christopher Kipchichir Sum and as such ripe for inheritance.
- vi. That the estate of Christopher Kipchichir Sum was duly distributed in Eldoret H.C Succession Cause No. 268 of 2000: In the Matter of the Estate of the late Christopher Kipchichir Sum of which the Petitioner has never objected and or sought revocation and or annulment of the Grant herein.
- vii. That the Petitioner cannot purport to inherit the estate of his alleged grandfather through the estate of his alleged father.
- viii. That generally the instant Petition offends the provisions of the *Law of Succession Act*, Cap 160 Laws of Kenya

### **Hearing of the Application**

6. The Preliminary Objection was canvassed by way of written Submissions. Pursuant to directions given, the Petitioner's Advocates Messrs Miyenda & Co. Advocates filed their Submissions on 17/06/2022 while the Objector's current Advocates, Messrs Momanyi Gichana, filed theirs on 28/07/2023.



## Objector's Submissions

7. Counsel for the Objector reiterated the matters already set out in the Preliminary Objection. He submitted further that it is now a well-established legal principle that there cannot be two Succession Causes over the same estate of the deceased, in this case the Objector applied for and obtained Letters of Administration and later a Certificate of Confirmation of Grant over the estate of the late Christopher Kipchichir Sum in Eldoret High Court Succession Cause No. 268 of 2000. He cited the case of Peter Muiruri Waithuo & Another v Margaret Nyakarima Waithuo & Another [2016]. He added that it was incumbent upon the Petitioner to bring Objection proceedings in the aforementioned Succession proceedings and therefore it was a nullity for him to institute completely new proceedings over the very same Estate. He also cited the case of Re Estate of Saleh Awke (Deceased) [2019] eKLR.
8. Counsel submitted further that the Petitioner is yet to show that he has locus to initiate the instant Cause in the first place, that he has alleged that he is a grandson of the late Ernest Kimn'getich Sum but his allegations are yet to be backed by any tangible evidence. He cited Section 107 of the *Evidence Act* and submitted that "he who alleges must prove". He submitted further that the Petitioner's statements that he is the son of the late Christopher Kipchirchir Sum remains a mere allegation unless they are buttressed with concrete evidence such as Birth Certificate, and that this burden lies on him to discharge. He cited the case of In re Estate of the late M'Muraa M'Rutere (Deceased) [2019] eKLR.
9. Counsel reiterated that no rights in the estate of the late Ernest Sum have crystallized so as to entertain any claim herein, that this is because the estate is yet to be ascertained in terms of the assets and liabilities and then distributed and that secondly, the various beneficiaries are yet to be ascertained so that the assets may be distributed accordingly, that it is only after this has been done would the Petitioner then establish a claim in the estate of the late Christopher Kipchirchir Sum and obtain a limited Grant to represent that estate that he would then be permitted to institute such a claim. According to Counsel, these factors render the Petition herein premature.
10. It was Counsel's further contention that while it is in dispute that the Petitioner is the grandchild of the deceased herein, nonetheless there exists no legal provision that entitles him to automatically inherit from the estate. He cited the case of Cleopa Amutala Namayi v Judith Were, Succession Cause 457 of 2005 [2015] eKLR. He submitted further that Section 35 provides that where a deceased person dies intestate and has left one surviving spouse and child or children then the surviving spouse shall be entitled to the personal and household effects of the deceased absolutely and a life interest in the whole residue of the net intestate as long as the surviving spouse is a widow, and that the interest shall determine upon her re-marriage. He cited the case of Tau Kakungi v Margrethe Thorning Katungi & Another [2014] eKLR and submitted that the purpose of Section 35 was to prevent a spouse of the deceased from being impoverished after the demise of the other spouse by distributing the entire estate to the children. He contended that the Petitioner does not automatically qualify to inherit directly from the estate of the Ernest Kimn'getich Sum where there is a surviving spouse, that by dint of Section 35(5) if he was dissatisfied with the power of appointment as exercised by the surviving spouse then he ought to apply to the Succession Court for the apportionment of his share, that this Application ought to have been filed in said Eldoret High Court Succession Cause No. 23 of 1985 but only after the Petitioner had obtained authority to represent the estate of Christopher Kipchirchir Sum. He also cited the case of Re Estate of Wahome Njoki Wakagoto [2013] eKLR.

## Petitioner's Submissions

11. The Submissions that are relied upon by the Petitioner's Counsel was composite Submissions for both the Petitioner's Application dated 12/05/2022 and the instant Preliminary Objection dated



16/05/2022. Since by my Ruling delivered on 26/05/2023, I already determined the Application dated 12/05/2022, I will sieve through the Submissions and only recite the portions relating to the Preliminary Objection.

12. Counsel submitted that Eldoret High Court Succession Cause No. 23 of 1985 involves the estate of Ernest Kimngetich Sum who is still the registered proprietor of L.R. No. 2226, Moiben, Uasin Gishu, that the Grant of Letters of Administration therein was granted to the Objector - wife to the deceased - on 26/02/1986 which Grant was later confirmed on 18/04/1988, and that the said parcel of land is the main family land available for distribution.
13. Regarding Eldoret High Court Succession Cause No. 268 of 2000, Counsel submitted that it involves the estate of Christopher Kipchichir Sum who was the 1<sup>st</sup> born son of Ernest Kimngetich Sum and the Objector, that the same was filed by the Objector in 2000 at which time the Petitioner was a very young man and did not know about the existence of the Cause, that it only came to light in this instant Cause when the Objector annexed a copy of the Grant in opposition to this Cause herein. He contended that the Petitioner is the only son of the late Christopher Kipchirchir Sum.
14. Regarding the instant Cause, Counsel submitted that the Petitioner filed it as a matter of right and procedure since he desired to inherit/succeed his deceased father, that what also moved the Petitioner to file this Cause was the fact that whenever he ploughed the portion of land belonging to his deceased father, the Objector's daughters would interfere.
15. Counsel submitted further that nothing in this Cause offends the provisions of Section 3 of the *Law of Succession Act*, that it is not true that the only asset claimed by the Petitioner is 200 acres forming part of L.R. No. 2226, that the Petitioner is entitled to a larger portion, that the Petitioner is only utilizing a portion estimated at 200 acres set out for his deceased father, and that the 150 shares are much more than what the Petitioner has been utilizing. He submitted further that the Objector unashamedly knows that she is the one who sent for the Petitioner to be brought home before the burial of Christopher Kipchichir Sum and she knows that several cows were paid to the relatives of the Petitioner's mother as is the custom.
16. Counsel further contended that this Cause was filed without knowing that the Objector had filed Eldoret High Court Succession Cause No. 268 of 2000, that this Cause being a duplication of the earlier Cause, the two need to be consolidated, that the Petitioner does not wish to continue with this Cause and wishes to have it consolidated with Eldoret High Court Succession Cause No. 268 of 2000.

### **Analysis and Determination**

17. Upon examination of the Pleadings, Affidavits, Submissions and the entire Record, I find the following two issues as arising for determination in this matter:
  - i. Whether this Cause should be struck out on the ground that the Petitioner's claim herein has not crystallized and that he has also not proven his locus.
  - ii. Whether this Cause should be struck out there being an already ongoing and earlier filed Succession Cause relating to the same estate as herein.
18. I now proceed to analyze and address the said issues.



**i. Whether this Cause should be struck out on the ground that the Petitioner's claim herein has not crystallized and that he has also not proven his locus**

19. The Objector contends that the only asset claimed by the Petitioner in this Cause is 200 acres comprised in land parcel LR 2226 which land is registered in name of the late Ernest Sum whose estate is pending final distribution and/or transmission in Eldoret High Court Succession Cause No. 23 of 1985, that the Petitioner is claiming to inherit the said 200 acres purportedly distributed to the late Christopher Kipchichir Sum in the estate of the late Ernest Sum and yet the said distribution is incomplete and no transmission has taken place to that effect. She therefore contends that technically, there is nothing to be inherited by the Petitioner insofar as the Estate of the late Christopher Kipchichir Sum is concerned. According to the Petitioner therefore, the beneficial interests in the estate of the late Christopher Kipchichir Sum are yet to crystallize and therefore not ripe for inheritance since the alleged 200 acres are yet to be transmitted to the estate of the late Christopher Kipchichir Sum.
20. The Objector also contends that the Petitioner has not demonstrated that he has locus to initiate the instant Cause in the first place, that although the Petitioner has alleged that he is a grandson of the late Ernest Kimn'getich Sum, these allegations are not backed by any tangible evidence. Further, the Objector argues that while she disputes that the Petitioner is the grandchild of the late Ernest Kimn'getich Sum, even assuming that he was such grandson, there is also no legal provision that entitles the Petitioner to automatically inherit from the estate of the grandfather.
21. I decline to delve into the said arguments for the reason that they clearly fall afoul of the rule in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 in respect to what should properly constitute a Preliminary Objection. The arguments preferred do not raise pure points of law since they relate to factual matters that would need to be determined after production of substantive evidence. The law pertaining to Preliminary Objections was well set out in the said locus classicus case of *Mukisa Biscuit* (supra) in which the Court of Appeal for Eastern Africa, stated (Law JA), in part, as follows:
- "So far as I'm aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration."
22. In the same case, Sir Charles Newbold, President of the Court went on to state as follows:
- "a Preliminary Objection cannot be said to be such if any fact has to be ascertained or if what is sought is the exercise of judicial discretion."
23. Applying the above principles to this case, I observe that the matters raised, besides not being pure points of law, cannot also be determined in this Cause since they are also contested facts. The proper forum to raise and canvass the same would have been in the said Eldoret High Court Succession Cause No. 23 of 1985, that is, had the Petitioner filed an Objection in that Cause. Contested matters in issue in the said Eldoret High Court Succession Cause No. 23 of 1985 cannot be canvassed in this Cause, which is separate proceedings.
24. I therefore decline to entertain the arguments on whether or not the Petitioner's claim herein has crystallized or whether he has proved his locus by demonstrating that he is a grandson of the late Ernest Sum or a son of the late Christopher Kipchichir Sum.



**ii. Whether this Cause should be struck out there being an already ongoing and earlier filed Succession Cause relating to the same estate as herein**

25. Among the issues that I determined vide my Ruling of 26/05/2023 aforesaid was the Petitioner's prayer that this Cause be consolidated with other already existing Causes alleged to be related to the instant one. Another issue I determined was the prayer by some other parties to be joined into this Cause as interested parties. In the Ruling, while dismissing the said prayers, I made several remarks, the relevant portions which I set out below:

“ 58. The Applicants' claims are that they are entitled as beneficiaries or purchasers or giftees of portions of the land parcel LR No. 2226. It is however not in dispute that the land is still registered in the name of the late Ernest Kimngetich Sum whose estate is being or was dealt with in the different Cause - Eldoret High Court Succession Cause No. 23 of 1985. This being so, it has not been explained why the Applicants cannot lodge their claims in that other Succession Cause No. 23 of 1985 which clearly is where their interest, if any, can be determined. The parcel LR No. 2226 is said to measure approximately 1,276 acres. I have looked at the Petition filed herein and observed that out of the said acreage, the Petitioner only claims 200 acres thereof as being his share. It is therefore only this 200-portion acres that is the subject of this instant Petition. Even assuming that the 220 acres could be isolated and determined separately in this Cause, the rest of the acreage would still be under administration in the said Succession Case No. 23 of 1985.

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“65. I have already, in determining issue (i) above, ruled that Eldoret H.C.P&A Succession Cause No. 23 of 1985 – estate of Ernest Kimngetich Sum, is separate and different from this instant Cause. The only relation that I can discern is that one relates to administration of the son's estate while the other relates to the estate of the father. This connection alone cannot justify consolidation of the two. Apart from only 200 acres in LR No. 2226, the rest of the properties involved are different, the beneficiaries are also different. As submitted by Counsel for the Objector a Court cannot engage in determining “a succession within a succession”. Accordingly, I decline to order for consolidation of this Cause with Eldoret Succession Cause No. 23 of 1985.

“66. Regarding Eldoret H.C.P&A Cause No. 268 of 2000 - estate of Christopher Kipchirchir Sum, I had stated that I will refrain from making comments on it since it is still the subject of the yet to be heard Objector's Preliminary Objection dated 16/05/2022. I however quote the following statements made at Paragraphs 20, 21 and 22 of the Supporting Affidavit of Ambrose Kipkorir Bitok:

20. That I have also been informed that Veronica Chepsat Sum obtained a grant



in of letters od administration over the estate of Christopher Kimngetich Sum in Eldoret HCP&A No. 268 of 2000 (see copy marked “B”)

21. That I am also ably advised by my Advocate herein, with the occurrence of the Petitioner herein, Kenneth Kiprop Sum that when Kenneth Kiprop Sum applied for representation in this Cause, he did not know that Veronica Chepsat Sum had obtained a Grant in the year 2000 because she kept all these things to herself.
22. That I am further advised by my Advocates that there is therefore duplication of matters affecting the same estate and it is only fair that Eldoret HCP&A No. 268 of 2000 be consolidated with this Cause for determination.

“66. The Applicants therefore readily concede that there are now two parallel Succession Causes existing side by side and both relating to the estate of the same deceased - Christopher Kimngetich Sum. While the first one was filed in the year 2000 by the Objector, there is now this second one filed subsequently by the Petitioner herein in the year 2018. Do the rules allow this situation to continue prevailing? Of course not.

.....

“68. My view is that where subsequent proceedings relating to an estate is commenced when there was already an earlier one in existence over the same estate, save in exceptional cases, the remedy or cure is not to consolidate the two Causes but to terminate the second one. It is not and cannot be an excuse that the second one was filed without knowledge of the first one. As soon as the existence of the earlier one comes to the knowledge of the initiator of the subsequent proceedings, he needs to move fast to terminate it.

69. I subscribe to the principle that a Court should not proceed with the trial of proceedings in which the matter in issue is also directly in issue in another Court in previously instituted proceedings between the same or similar parties, over the same



subject matter. In the circumstances. This is also known as the Res sub-judice rule.”

26. In my said Ruling dated 26/05/2023, I also quoted the Petitioner to have, in his Supporting Affidavit to the Application thereto, deponed as follows:

“11. The deponent then states that he is aware that the Objector obtained a Certificate of Confirmation of Grant over the estate of his late grandfather Ernest Kimngetich Sum on 18/04/1988 in Eldoret HCP&A Cause No. 23 of 1985, that this Cause be consolidated with this Cause for determination as the matters are related, ..... the Objector obtained a Grant of Letters of Administration over the estate of Christopher Kipchirchir Sum in Eldoret HCP&A No. 268 of 2000, when the Petitioner herein applied for representation in this Cause, he did not know that the Objector had obtained a Grant in the year 2000 because she kept all things to herself, there is therefore duplication of matters affecting the same estate and it is only fair that Eldoret HCP&A No. 268 of 2000 be consolidated with this Cause for determination .....”

“29. Counsel submitted further that the Petitioner is the only son of the late Christopher Kipchichir Sum, once the Objector disclosed the existence of the Cause, as Counsel they advised the Petitioner that they could not continue pursuing two Causes touching on the estate of the same deceased person, it is upon this advice that they urged the other beneficiaries to file the present Application to bring on board all of them to claim their shares as against the Administrator after seeking consolidation, this instant Succession Cause No. 38 of 2018 was filed as a matter of right by the Petitioner who desired to inherit/succeed his deceased father, what also moved the Petitioner to file this Cause is the fact that whenever the Petitioner ploughed the portion of land belonging to his deceased father, the Objector’s daughters started interfering with his usage of the land, due to the interference by the daughters, the determination of this Cause changed course necessitating the filing of the numerous Applications as listed in the Case Summary filed in Court on 16/05/2022.”

27. Then, in his Submissions in this instant matter, the Petitioner’s Counsel has submitted as follows:

“Eldoret HCP&A No. 268 of 2000

This suit and/or Cause involves the estate of Christopher Kipchichir Sum who was the 1<sup>st</sup> born of Ernest Kimngetich Sum and the Veronicah Chepsat Sum. This Cause was filed by Veronicah Chepsat Sum in 2000. At that time Kenneth Kiprop Sum was a very young man. The Petitioner did not know about the existence of the Cause. It only came to light in this current Cause when Veronicah Sum annexed a copy of the grant in opposition to this Cause .....

28. It is therefore clear from the foregoing that both in his earlier Affidavits and in his Submissions, present and previous, the Petitioner readily concedes that there are now two parallel Succession Causes existing



side-by-side and both relating to the estate of the same deceased person - Christopher Kimngetch Sum. The Petitioner also concedes that while the first one was filed in the year 2000 by the Objector, he (Petitioner) filed this second Cause subsequently, 8 years later, in the year 2018. The Petitioner also concedes that the rules of procedure do not allow this situation to continue prevailing. It is as a result of this appreciation of the law that the Petitioner had applied for consolidation of the two suits. It is therefore clear that the moment this Court declined to consolidate the two Causes, and since the two Causes cannot continue remaining in existence side-by-side, the only remaining consequence is termination of the latter filed Cause – this instant one. As I held in my said earlier Ruling herein, it is not and cannot be an excuse to retain this Cause simply because the Petitioner, when he filed it, had no knowledge of the first one. As soon as the existence of the earlier Cause came to the knowledge of the Petitioner, there and then he ought to have withdrawn this subsequently filed Cause.

29. The Objector’s Counsel cited the decision of Mativo J (as he then was) in the case of Peter Muturi Waithuo & another v Margaret Nyakarima Waithuo & another [2016] eKLR, in which he made the following remarks, which I fully agree with:

“In the words of Oputa J.SC (as he then was) in the Nigerian case of Amaefule & other Vs The State[6] he defined abuse of judicial process as:

“A term generally applied to a proceeding which is wanting in bona fides and is frivolous vexations and oppressive. In his words abuse of process can also mean abuse of legal procedure or improper use of the legal process.”

In yet another Nigerian case of Agwusin V Ojichie. Justice Niki Tobi JSC observed:-

“that abuse of court process create a factual scenario where appellants are pursuing the same matter by two court process. In other words, the appellants by the two court process were involved in some gamble a game of chance to get the best in the judicial process.”

In the above cited case, this court observed as follows:-

“It’s settled law that a litigant has no right to pursue paripassu two processes which will have the same effect in two courts at the same time with a view of obtaining victory in one of the process or in both. Litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by judicial process where the parties place on the table of justice their different position clearly, plainly and without tricks. In my humble view, the two processes are in law not available to the petitioners simultaneously. The petitioners cannot lawfully file two similar petitions as they have done. The pursuit of the two processes at the same time constitutes and amount to abuse of court/legal process.”[7]

Thus, the multiplicity of actions on the same matter between the same parties even where there exist a right to bring the action is regarded as an abuse.[8] The abuse lies in the multiplicity and manner of the exercise of the right rather than exercise of right per se. The abuse consists in the intention, purpose and aim of person exercising the right, to harass, irritate, and annoy the adversary and interfere with the administration of justice.[9]

Turning to these two cases, I find no difficulty in concluding that the two cases relate to the same estate and that the act of filing the second case amounts to gross abuse of court process. I hold that this is a proper case for the court to invoke the provisions of Rule 73 cited above to make such an order as may be necessary for the ends of justice to be met and



in this connection, I find that ends of justice do demand that succession cause number 854 of 2014 be struck off and I hereby dismiss the said cause.”

30. The Objector’s Counsel also cited the decision of E.C. Mwita J made in the case of re Estate of Saleh Awke (Deceased) [2019] eKLR, in which he held as follows:

“ 18. First, counsel for the Petitioner/applicant has admitted that he has never perused the High Court file in Cause No. 237 of 1967 and that he is not sure whether the full grant issued on 2<sup>nd</sup> October 1967 was still in force. Without ascertaining whether or not that grant was in force, the Petitioner could not seek to have another grant for the same estate. And as this court stated on 4<sup>th</sup> April, 2019, there cannot be two administrators for the same estate appointed through different grants of administration whether full or limited. In other words, there cannot be two succession causes over the same estate.”

31. The parties agree that in Eldoret High Court Succession Cause No. 268 of 2000 - Estate of Christopher Kipchichir, the Objector herein was appointed the Administrator and a Certificate of Confirmation of Grant was also later issued to her. They also agree that the Objector was also the only person named as the beneficiary of the deceased’s estate in that Cause by virtue of being the mother of the deceased. They also agree that the said Grant has never been challenged nor revoked. In the circumstances, the present Succession Cause being a latter filed Cause and relating to the very same estate as in the earlier Cause, is therefore clearly misconceived and cannot be salvaged.

32. Since the parties agree that the distribution of assets in Eldoret High Court Succession Cause No. 268 of 2000 - Estate of Christopher Kipchichir, is yet to be concluded, the Petitioner is not left without a remedy. Although the full factual position in that Cause is not within my knowledge, I believe the Petitioner is at liberty to present his claims in that Cause.

### **Final Orders**

72. In view of the foregoing, it is clear that the Petition herein cannot be sustained. Accordingly, I order as follows:

- i. The Preliminary Objection dated 16/05/2022 and filed by the Objector is hereby upheld.
- ii. The upshot of the above is that the Petition herein dated 11/09/2018 and by extension, this entire Succession Cause is dismissed.
- iii. Considering the circumstances of this case, and with a view to attempting to cultivate a cordial relationship between the parties and reconciliation, I make no order on costs.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 9<sup>TH</sup> DAY OF FEBRUARY 2024**

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**WANANDA J.R ANURO**

**JUDGE**

