



In re Estate of the Late Joseph Cheruiyot Arap Koech (Deceased) (Succession Cause 123 of 1982) [2024] KEHC 10346 (KLR) (8 August 2024) (Ruling)

Neutral citation: [2024] KEHC 10346 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 123 OF 1982
SM MOHOCHI, J
AUGUST 8, 2024
IN THE MATTER THE ESTATE OF THE LATE
JOSEPH CHERUIYOT ARAP KOECH (DECEASED)**

BETWEEN

RODAH CHEROTICH KOECH 1ST PETITIONER

SAMWEL CHELULE KOECH 2ND PETITIONER

AND

NELSON KIPNGETICH KORIR 1ST RESPONDENT

ALICE JANRE CHEBET 2ND RESPONDENT

RULING

1. This is a troubling probate and administration that appears not to have been concluded or settled almost thirty-two (32) years since it was filed and a grant made on the May 5, 1992.
2. The Deceased the late John Cheruiyot Arap Koech Died on the 16th May 1992 at Londiani, he left behind according to the petition filed on the 17th June 1992 the following dependants;
 - i. Rodah Cherotich Koech (Wife)
 - ii. Samuel Chelule Koech, Son (Married)
 - iii. Ruth Cheronno Koech, Daughter (Spinster)
 - iv. Paul Kiplangat Koech Son (Married)
 - v. Ann Chebet Yator, Daughter (Married)
 - vi. Sara Rono Daughter, (Married)



- vii. Sophie Chepkoech Koech, Daughter (Spinster)
 - viii. Alice Chelangat Lagat, Daughter (Married)
 - ix. Mary Chepkurui Koech Daughter (Spinster)
 - x. Emily Chepchirchir Koech - Daughter (Spinster)
 - xi. Daniel Kipyegon Koech Son (Bachelor)
 - xii. John Korir Koech, Son (Bachelor)
3. At the point of death, the Deceased owned the following portfolio of assets and Liabilities;
- Assets
- i. Parcel of land known as L.R. No. 5438/2 situate at Londiani measuring 297 acres or thereabouts estimated value KShs. 7,000,400.00 (seven million four hundred thousand) only.
 - ii. Parcel of land known as L.R. No. 5436/3 situate at Londiani measuring 36.8 acres or thereabouts estimated value KShs. 920,000:00 (Kenya Shillings nine hundred and twenty thousand) only.
 - iii. Parcel of Land known as L.R. No. 7195/3 situate at Londiani measuring 536 acres or thereabouts estimated value kshs. 13,000,400:00 (Kenya Shillings thirteen million four hundred) only.
 - iv. A plot situate at Londiani township known as Plot No. 38 estimated value KShs. 120,000:00 (Kenya Shillings one hundred and twenty thousand) only.
 - v. Parcel of land known as L.R. No. 4730/56 situate at Lanet Nakuru measuring 20 acres estimated value KShs. 6,000,000:00 (Kenya Shilling six million) only.
 - vi. Plot of land known as L.R. No. 451 situate at Nakuru town measuring 2.5 acres or thereabouts estimated value KShs. 1,800,000:00 (Kenya Shillings one million eight hundred thousand) only.
 - vii. A commercial plot at Londiani township worth about KShs. 30,000:00 (Kenya Shillings thirty thousand) only. Details of plot number to be ascertained on confirmation of Grant.
 - viii. 787 (seven hundred and eighty-seven) shares of KShs. 20:00 each at K.C.C. Limited estimated value KShs. 15,740.00 (Kenya Shillings fifteen thousand seven hundred and forty only).
 - ix. 100 (one hundred) shares of KShs. 5:00 each at N.I.C. Limited estimated value KShs. 500:00.
 - x. 125 (one hundred and twenty-five) shares at Brook Bond Ltd estimated value KShs. 2,000:00.
 - xi. Unspecified Shares in East African Breweries estimated value KShs. 1,000:00.
 - xii. 100 (one Hundred) shares of KShs. 10:00 each at Kenya Commercial Bank Limited estimated value of KShs. 2,000.00.
 - xiii. Insurable value of vehicle registration number KAA 6364 written off at an accident estimated at KShs. 400,000:00 (Kenya Shillings four hundred thousand) only.
 - xiv. H.F. Tractor registration number KUN 053 estimated value Kshs. 300,000.00 (Kenya Shillings three hundred thousand) only.



- xv. H.F. Tractor registration number KXH 708 estimated value KShs. 350,000.00 (Kenya Shillings three hundred and fifty thousand) only.
 - xvi. Trailer registration number ZA 8381 estimated value KShs. 80,000:00 (Kenya Shillings Eighty Thousand) only.
 - xvii. H.F. Tractor registration number KLY 577 estimated value KShs. 80,000:00 (Kenya Shillings eighty thousand) only.
- Livestock
- xviii. The Following Livestock;
 - a. Fifty-three (53) cows estimated value KShs. 265,000.00
 - b. One Hundred and Seventy-five (175) heifers estimated value KShs. 1,225,000.00
 - c. Forty-four (44) calves estimated value KShs. 44,000.00
 - d. Three (3) bulls estimated value KShs. 45,000.00
 - e. Fifty-Two (52) goats estimated value KShs. 26,000.00
 - f. One Hundred and Ninety-Two (192) sheep estimated value KShs. 96,000.00
 - xix. Monies deposited at Barclays Bank Nakuru East Branch Savings Account No. 3815708
 - xx. Monies deposited at Barclays Bank Merchant Finance Ltd. Deposit Account Nairobi
 - xxi. Monies deposited at Barclays Bank Nakuru East Branch Current Account No. 1111983
 - xxii. Monies deposited at Barclays Bank Nakuru East Branch F.D.R. Account No. 250652
 - xxiii. Monies deposited at National Bank of Kenya limited Nakuru Current Account No. 110102.
 - xxiv. The amount held at the above Bank Accounts were to be divulged at the confirmation of Grant.
4. It would Appear to the Court that, the Applicant/Petitioners had appetite to obtain limited grant to access liquid assets of the deceased with no appetite to obtain a grant or seek to confirm the same.
 5. It goes without say that, the deceased left a vast estate and the Applicants/Petitioners are beyond reproach and have contributed to the situation becoming.
 6. The Estate of the Deceased appear to have remained under administration without the grant being confirmed until the 3rd February 2012 whereby the 2nd Respondent filed a summons for revocation of grant twenty (20) years after the demise of the deceased, alleging to have been a widow of the deceased and that the grant was defective having been obtained fraudulently.
 7. It was in the Affidavit in support of the summons for revocation where the 2nd Respondent alleges to have been married to the deceased under the Kipsigis Customary Law in 1981 and that they had been blessed with five (5) children namely;
 - i. Kenneth Cheruiyot
 - ii. Irene Chepkemoi
 - iii. Leonard Chepngeno



- iv. Dorothy Chepkoech
 - v. Meshack Cheruiyot
8. The Summons for Revocation of grant was withdrawn on the 30th April 2024, where Advocate Mutai Stated to the Court that, the Summons had been filed prematurely and the court allowed the same, directing the parties to file written submissions in support of or in opposition to the Applications Dated 15th April 2024 and that one dated 24th April 2024 that were to be heard and determined by way of written Submissions.
9. Before this Court is the Summons for substitution dated 15th April 2024 by the 1st and 2nd Respondents filed pursuant to Order 40 Rule (1) and (2) of the Civil Procedure Rules, Section 3A of the [civil procedure act](#), rule 59 and 63 of the probate and administration rules Seeking the following specific reliefs;
- a. SPENT;
 - b. That, this court do cause Nelson Kipngetich Korir & Alice Jane Chebet Koech to be substituted and be made parties in this cause and to proceed with this cause in place of Samuel Chelule Koech.
 - c. That, such other and or further directions be given by this Honourable Court to meet the ends of justice.
 - d. That, the cost of this Application be provided for.
10. The Application is Supported by a sworn Affidavit of Nelson Kipngetich Korir the 1st Respondent dated 15th April 2024 and is anchored on the following grounds;
- a. The Petitioners/Respondents herein filed this succession cause without involving and or listing all the beneficiaries to the estate of the deceased from the 1st and 2nd house who are now likely to be disinherited should orders sought herein not be granted.
 - b. The Applicants and the rest of the beneficiaries stand to lose their rightful share in the vast estate of the deceased pursuant to adverse activities by this matter.
 - c. Despite issuance of temporary Grant in 5th May, 1993 the same is yet to be confirmed due to the indolence of the Petitioners Respondence and the Applicants herein intent to have the grant confirmed once orders herein are granted.
 - d. Unless the orders herein are granted the Applicant and the rest of the beneficiaries are likely to suffer irreparable loss and damage which might not be adequately compensated in monetary terms and the Application herein may be rendered nugatory
11. In the Aforesaid Affidavit of Nelson Kipngetich Korir the 1st Respondent dated 15th April 2024, he identifies as a son of the deceased and one of the beneficiaries from the second (2nd) house and that the 2nd Respondent was the 3rd wife to the deceased and proceeded to identify the alleged three (3) Houses of the deceased and beneficiaries as follows;
- 1st HOUSE
- i. Rodah Cherotich Koech – Widow
 - ii. Esther Koech-Daughter;



- iii. Samwel Chelule Koech-Son;
- iv. Ruth Cheronno Koech – Daughter;
- v. Samuel Kipyegon Langat-Grandson;
- vi. Ann Chebet Yator-Daughter;
- vii. Sarah Rono-Daughter;
- viii. Sophie Chepkoech Kofch-Daughter;
- ix. Alice Chelangat Langat-Daughter;
- x. Mary Chepkurui Koech – Daughter;
- xi. Emily Chepchirchir Koech-Daughter;
- xii. Daniel. Kipyegon Koech-Son;
- xiii. John Korir Koech - Son

2nd HOUSE

- i. Mary Chepkoech Chepkwony – Daughter;
- ii. Evaline Chepkoskei Mosonik – Daughter;
- iii. Nixon Kimutai Chepkwony-Grandson;
- iv. Peter Kipkemoi Bii – Son;
- v. John Kibet Bii – Son;
- vi. Anthony Kiprotich Korir – Son;
- vii. Stanley Kipkurui Korir-Son;
- viii. Benard Cherutyot Korir – Son;
- ix. Nelson Kipngetch Korir – Son;

3rd HOUSE

- i. Alice Jane Chebet-Widow;
- ii. Kenneth Kibiegion Cheruiyot-Son;
- iii. Irene Chepkemoi – Daughter;
- iv. Linet Chepkemoi-Daughter;
- v. Dorothy Chepkoech Koech-Daughter;
- vi. Meshack Mutai Cheruiyot – Son;

- 12. The 1st Respondent thus seeks to be substituted with the 2nd Applicant to fast track the conclusion of the stalled succession and that no prejudice shall be occasioned.
- 13. Remarkably the 1st Respondent provides a letter dated 12th April 2024 by Yvonne Odhiambo Assistant County Commissioner Londiani which authoritatively identify the deceased having had three wives



- and twenty-seven (27) children the Assistant County Commissioner was never called to testify and no underlying justification is provided.
14. While the Application Seeks to substitute Samwel Chelule Koech it is silent on the fate of Rodah Cherotich Koech. This court is alive to the advanced ages of over sixty (60) years of the Applicants and 2nd Respondent save for 1st Respondent who is 38 years old.
 15. The Summons for substitution dated 15th April 2024 provoked a response from the 2nd Applicant who swore a Replying Affidavit dated 26th April 2024 challenging the Jurisdiction of the Court as invoked by the Respondents, that the Application is incompetent to the extent that, there is no proof of authority to act by the many named individuals and that the Application is an abuse of the process of the court, that the persons alleging interest in the estate of the deceased are strangers.
 16. That the Summons for revocation of grant dated 3rd February 2012 prevented the Applicants from confirming the grant and that the 1st Respondent is not related to the deceased and that a number of meetings have been held following the invasion of the deceased farms which was reported on the 26th March 2024 at Londiani Police Station.
 17. That the 2nd Applicant had sought to establish the truth regarding the 2nd Respondent claims and he established from her own father (Turgut) that Alice Jane Chebet used to work for the Deceased as a petrol station attendant and he was unaware of any marriage between the two and further that he never received any dowry.
 18. The 2nd Applicant further provides a list of Seven (7) witnesses plus their respective sworn affidavits denying any relations of the Respondents and persons they claim to represent indicating of his desire to tender the same evidence orally.
 19. The 2nd Applicant admits of not having included the three assets of the deceased as he never had the details and that, it is within his knowledge that, the allegations of mismanagement of the estate are unfounded and baseless, and that no iota of evidence has been proffered as proof.
 20. That, it is within his knowledge that, the allegations that he has been bullying, harassing and discriminating the Respondents is not only preposterous but an outright lie as they remain strangers to him and as a matter of fact, it is the Respondent's kin who sometime in the month of march 2024 invaded the Estate and started menacingly ploughing the land while issuing threats, incident that he reported to the police vide OB/30/26/03/24, as stated above, whereupon they were advised by the OCS Londiani Police to follow the law if they were aggrieved.
 21. That, it is within his knowledge that, he never filed this succession cause in secrecy alleged and that, the same was notified to the whole republic vide the gazette notice no. 1440.
 22. Before the hearing and determination of the Application above discussed, the Respondents filed an Application dated 25th April 2024 Pursuant to Order 40 Rule (1) and (2) of the Civil Procedure Rules, Section 3A of the *civil procedure act*, rule 59 and 63 of the probate and administration rules seeking that;-
 - I. SPENT;
 - II. That, the Respondents/ Administrators herein be and is hereby restrained by an Order of Temporary injunction from intermeddling with the said estate of the deceased, comprised in either by themselves, servants, agents or whoever acting through them from intermeddling with the estate of the deceased by selling, and or leasing any part of said estate or doing anything



whatsoever on the estate in total disregard of the succession proceedings currently pending in court.

- III. That, whatsoever on the plot in total disregard of the succession proceedings currently pending in court.
 - IV. That, all the beneficiaries to the estate be allowed the access and use of the estate pending the conclusion of this succession cause.
 - V. That, Officer-in-Charge (O.C.S) Londiani Police station to ensure compliance of the orders of this Honourable court and to maintain the peace.
 - VI. That necessary directions be given; and
 - VII. That, the Costs of the Application be provided
23. The 2nd Applicant equally filed a ping-pong Application dated 13th May 2024 pursuant to Section(s) 45 and 47 of the [Law of Succession Act](#), Cap 160, Rule 73 of the Probate and Administration Rules and all enabling provisions of the Law seeking the following relief(s);
- I. SPENT.
 - II. That, this Honourable Court be pleased to issue preservatory orders restraining the Respondents, whether by themselves, their agents, assigns or anyone howsoever from intermeddling with the deceased's property to wit, L.R No. 5438/2 situate at Londiani, together with the general Estate of Joseph Cheruiyot Arap Koech (Deceased) by either, cultivating, grazing animals, taking possession, carrying on any activities or interfering with the Applicants' possession, management and control thereof, pending the hearing and determination of this application inter partes.
 - III. That, this Honourable Court be pleased to issue preservatory orders restraining the Respondents, whether by themselves, their agents, assigns or anyone howsoever from intermeddling with the deceased's property to wit, L.R No 5438/2 situate at Londiani together with the general Estate of Joseph Cheruiyot Arap Koech (Deceased) by either, cultivating, grazing animals, taking possession thereof, carrying on any activities or interfering with the Applicants' possession, management and control thereof pending the hearing and determination of this Cause.
 - IV. That, the OCPD Londiani police station to provide security for peace execution and compliance of this order.
 - V. That, the costs of this application be borne by the Respondents.
24. The 2nd Applicant alleges that the Respondent have been forcefully intermeddling with the deceased's property to wit, L.R No. 5438/2 situate at Londiani by either, cultivating, grazing animals, taking possession, carrying on any activities or interfering with the Applicants' possession, management and control thereof, pending the hearing and determination of this application inter partes and this situation has persisted since march 2024 and that the local security can only act upon specific orders issued by this court. He depones that the invaders remain strangers irrespective and that his life is in danger since they continue trespassing at will.
25. The Applicants further filed an Application dated 15th May 2024 seeking to remedy directions relating to the pending Applications and the court ex-parte issued Addendum to Directions Dated 14th of May 2024 taking a dim view of counsel deploying and unleashing application after application, piling-up



unprosecuted interlocutory applications, obfuscating the real dispute, which not only delays justice, but negates all constitutional principles of the exercise of judicial authority, directing as follows;

- i. That, any party disagreeing with, any aspects of, the directions by this court dated 14th May 2024, they are granted leave to incorporate such argument(s) in their written submissions to be filed in compliance and disposal of the interlocutory Applications pending.
- ii. That, the Application dated 15th May 2024, shall be Marked as “Spent” without need to serve the same on the Respondents.
- iii. That, the Timelines and Directions on all interlocutory Applications remains unaffected.
- iv. That, Ruling on All interlocutory Applications remains the 11th July 2024

26. As of today, the following Applications subsist in this cause;

- I. The 1st Application is summons by Nelson K. Korir and Alice J. Chebet supported by a sworn Affidavit all evenly dated 15th April 2024 seeking substitution;
- II. The 2nd Application by Nelson K. Korir and Alice J. Chebet supported by a sworn Affidavit all evenly dated 25th April 2024 seeking injunctive reliefs against the current Administrator;
- III. The 3rd Application by the Administrators- Rhoda C. Koech and Samwel koech supported by a sworn Affidavit all evenly dated 13th May 2024 seeking injunctive reliefs against Nelson K. Korir and Alice J. Chebet.
- IV. The 4th Summons is for confirmation of grant filed pursuant to the Court’s direction dated 28th May 2024.
- V. A 5th Application dated 22nd July 2024, by the Administrators seeking to hold Nelson K. Korir and Alice J. Chebet in contempt of court.

Analysis and Determination

27. Having considered the Multiple Applications, the Supporting and opposing affidavits and the filed written submissions this court has refined the issues to consider as follows;

- i. Whether Nelson K. Korir and Alice J. Chebet have locus standi to file the Applications?
- ii. Whether Nelson K. Korir and Alice J. Chebet can substitute the 2nd Administrator Applicant?
- iii. Against whom should the injunctive reliefs be issued? And
- iv. Should the grant be confirmed?

28. In essence this court is to determine the first four (4) Applications while holding the last one in abeyance. It should be recalled that the Respondents moved the court triggering the flurry of motions and that the onus was upon them to demonstrate locus standi.

29. Locus standi is basically the right to appear or be heard in court or other proceedings. That means if one alleges the lack of the same in certain court proceedings, he means that party cannot be heard, despite whether or not he has a case worth listening. The issue herein is whether Nelson K. Korir and Alice J. Chebet lacks the requisite locus standi to seek relief from the court to be substituted and be made parties in this cause and to proceed with this cause in place of Samuel Chelule Koech. In my view, issues as regards locus standi are critical preliminary issues which must be dealt with and settled before dwelling into other substantive issues.



30. The position in law as regards locus standi in succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited or a full grant of letters of administration in cases of intestate succession. In *Otieno v Ougo* [1986-1989] EALR 468, the Court rendered itself thus:

“... An administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception.”

31. Under Section 76 of the *Law of Succession Act*, any party interested in the estate of the deceased may bring the application contemplated under that section and/or Rule 2 as read with Rule 17(1) of the Probate & Administration Rules. Rule 17(1) of the Probate & Administration Rules provides that: -

“Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has already applied for by another person may do so.”

32. Substitution of administrators is anticipated under Section 81 of the Act, in the event of the death of one or more of joint administrators, where there are several administrators, the surviving administrator or administrators would then have the mandate to continue with their duties to completion without the need to replace the deceased ones. That Section states thus:

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executor or administrators shall become vested in the survivors or survivor of them...”

33. In this respect the position taken *Re Estate of Mwangi Mugwe alias Elieza Ngware (deceased)* [2003] eKLR, by Hon. Khamoni, J. which this court subscribes to, is that:

“...the operative word is “substitution”. The *Law of Succession Act* has no provisions talking about substitution of a deceased single administrator...In the circumstances therefore, it is my considered view that the proper provisions of the law to apply is section 76(e) of the *Law of Succession Act* and Rule 44 of the Probate and Administration Rules whereby the Applicant would apply for revocation or annulment of a grant on the ground “that the grant has become useless and inoperative through subsequent circumstances.” The Applicant would proceed to put a prayer in the same application that a new grant be made to him and could as well add a further prayer, if need be, for confirmation of the new grant. The application, should, of course, be supported by consent from adult beneficiaries in the estate of the first deceased person, the second deceased person being the deceased administrator.”

34. In the same line of thought, Hon. Musyoka J. held as follows in *Re Estate of George Ragui Karanja (Deceased)* [2016] eKLR:

The *Law of Succession Act* does not expressly provide for substitution of personal representatives who die in office, particularly in cases where the estate is left without one. The closest provision is section 81 of the Act, which provides for vesting of the powers and duties of personal representatives in the survivor or survivors of a dead personal representative... It would appear to me that once all the holders of a grant die, section 81 of the Act would be of no application. Indeed, the said grant becomes useless and inoperative, and liable to revocation under section 76(e) of the *Law of Succession Act*, to pave way for appointment of new administrators. The appointment of fresh administrators to take the



place of the previous ones following their death is subject to the provisions of sections 51 through to section 66 of the Act.”

35. And in the case of Florence Okutu Nandwa & Another vs. John Atemba Kojwa, Kisumu Civil Appeal No. 306 of 1998, the Court of Appeal made it clear that:

“A grant of representation is made in personam. It is specific to the person appointed. It is not transferable to another person. It cannot therefore be transferred from one person to another. The issue of substitution of an administrator with another person should not arise. Where the holder of a grant dies, the grant made to him becomes useless and inoperative, and the grant exists for the purpose only of being revoked. Such grant is revocable under section 76 of the Law of Succession Act. Upon its revocation, a fresh application for grant should be made in the usual way, following procedures laid down in the Law of Succession Act and the Probate and Administration (Rules)...”

36. This Court is persuaded that the 1st and 2nd Respondents had the duty to demonstrate locus standi to prove that the 1st Respondent was a son to the deceased and that the 2nd respondent was a surviving widow of the deceased as the entry point of maintaining any action herein, that the said Nelson K. Korir and Alice J. Chebet had the obligation to demonstrate authority to represent

- i. Mary Chepkoech Chepkwony;
- ii. Evaline Chepkoskei Mosonik;
- iii. Nixon Kimutai Chepkwony;
- iv. Peter Kipkemoi Bii;
- v. John Kibet Bii;
- vi. Anthony Kiprotich Korir;
- vii. Stanley Kipkurui Korir;
- viii. Benard Cherutyot Korir
- ix. Kenneth Cheruiyot
- x. Irene Chepkemoi
- xi. Leonard Chepngeno
- xii. Dorothy Chepkoech
- xiii. Meshack Cheruiyot

37. This Court thus finds that without satisfying the provisions of section 29 of the law of succession Act, the 1st and 2nd Respondent could not move the court for any relief and that the Application for substitution fails on arrival.

38. A similar situation arose in Re Estate Of Alfred Mutune Munyao (Deceased) [2019] eKLR, where the Court held as follows:

“...9. A perusal of the pleadings indicates that the applicant has not been listed as a beneficiary of the estate of the deceased and his claim cannot be tried in a succession cause. Section 29 of the Law of Succession Act is to the effect that a brother of the deceased will only be considered



a dependant if maintained by the deceased prior to his death and hence is entitled to the estate of the deceased. In the absence of evidence of maintenance, I am unable to find that the applicant is a beneficiary of the estate of the deceased. Merely stating that the deceased was his brother is not enough for the applicant to lay claim to the estate of the deceased without any proof that he was being maintained by the deceased as a dependant.

39. Looking at the Respondent's pleadings there is no evidence them to estate of the deceased or anything to prove that the 1st Respondent was a child of or dependant of the deceased. He has not explained his interest in the properties of the deceased and as such he should not prevent the Applicants from administering the estate of the deceased. The Assistant county Commissioner's introductory letter dated 14th April 2024, has listed the Respondents as beneficiaries of the deceased. The Same is prepared thirty (32) years after the demise of the deceased and the same does not have any further corroboration save for the continued assertions by the Respondents who had the burden of establishing the same. The Respondents have not satisfied me that the 1st Respondent is a child of or a dependant of the deceased and the 2nd Respondent being a surviving spouse or dependent of the deceased. Entertaining the Respondents in the proceeding herein will serve no useful purpose other than to convolute the matter. The Respondents have not satisfied this court that they merit the orders they are seeking as they lack locus standi.
40. Nelson K. Korir and Alice J. Chebet had the obligation of accounting for their thirty-two years delay and their multiple pleadings herein remain stealth silent on the question of delay or there whereabouts since 1993 up to now.
41. This Court is alive to the subsisting standoff on the asset of the deceased commonly known as L.R No. 5438/2 situate at Londiani where the Respondents and or their representatives forcefully invaded and occupied in March 2024 which this court finds the same to be criminal intermeddling with the deceased estate.
42. The Respondents have not established their legal interest in the estate of the Deceased, they are neither a beneficiary nor a dependant and have not shown any proprietary interest in the Estate.
43. In the light of the foregoing, it is manifest that the Summons for substitution dated 15th April 2024 is untenable. The same is hereby dismissed with an order that the costs thereof be costs in the cause.
44. Consequently the 2nd Application by Nelson K. Korir and Alice J. Chebet dated 25th April 2024 seeking injunctive reliefs against the Administrators is equally without merit and the same is dismissed.
45. With regards to the Applicants Applications dated 13th May 2024 and the one dated 28th May 2024, this court observes that while the Applicants/Administrators have not been eager to conclude the probate, they have had to contend with a marauding group of invaders specifically L.R No 5438/2 situate at Londiani and that this court is of the considered view that the invasion has occurred thirty-two years after the demise of the deceased and that, there is thus urgent need of the court to restore the situation ante by issuing injunctive reliefs. The Court is satisfied that the conditions for grant of injunctive reliefs have been satisfied. This court equally notes the scanty handwritten mode of distribution of the estate of the deceased that focuses solely on land leaving silent all other asset of the deceased.
46. This was not a summons for partial confirmation and as such the court cannot allow the confirmation of the grant in the present form.
47. This Court in further exercise of its inherent Jurisdiction necessary for the ends of justice or to prevent abuse of the process of the court hereby issues the resultant orders;



- i. The 3rd Application by the Administrators dated 13th May 2024 is found to be of merit and the same is allowed;
- ii. Preservatory Orders are hereby issued restraining Nelson K. Korir and Alice J. Chebet, whether by themselves, their agents, assigns or anyone howsoever from intermeddling with the deceased's property to wit, L.R No 5438/2 situate at Londiani, together with the general Estate of Joseph Cheruiyot Arap Koech (Deceased), by either, cultivating, grazing animals, taking possession thereof, carrying on any activities or interfering with the Applicants' possession, management and control thereof pending the hearing and determination of this Cause;
- iii. That, the Officer Commanding Police Station (OCS) Londiani police station is hereby Ordered provide security for peaceful execution and compliance of this order;
- iv. The Summons for Confirmation of Grant dated 28th May 2024 is conditionally allowed, Pending filing of a detailed and comprehensive mode of distribution of all assets of the deceased;
- v. The Administrators are to forthwith file comprehensive mode of distribution of all assets of the deceased within seven (7) days of this ruling;
- vi. The Application for contempt dated 22nd July 2024, shall be heard by way of written submissions;
- vii. The Administrators have fourteen (14) days leave (from the date of this ruling) to file any supplementary affidavit(s) plus Written Submissions;
- viii. The Respondent shall have a corresponding fourteen (14) days to file Written Submissions within twenty-eight (28) from the date of this ruling;
- ix. Mention for compliance and fixing a ruling date shall be on the 29th October 2024.
- x. Costs of the Applications are granted to the Applicants

It is So Ordered

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 8TH DAY OF AUGUST 2024.**

S. MOHOCHI

JUDGE

