



In re Estate of Teriki Tapkigen Rokocho (Deceased) (Succession Cause 304 of 2007) [2025] KEHC 13398 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13398 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 304 OF 2007
JRA WANANDA, J
SEPTEMBER 30, 2025**

IN THE MATTER OF THE ESTATE OF TERIKI TAPKIGEN ROKOCHO (DECEASED)

BETWEEN

KOBILO CHEPKIYENG 1ST PETITIONER

ESTHER KIPSAT 2ND PETITIONER

AND

ESTHER KABON ROKOCHO 1ST OBJECTOR

WILSON KIPRONO ROKOCHO 2ND OBJECTOR

RULING

1. I delivered a Ruling in this matter on 29/11/2024 in which, at paragraphs 20-22 thereof, I stated the following:

“20. it is clear that since this matter was filed in the year 2007, the Objectors have consistently attempted to have it terminated or suspended for the reason of the existence of the said Nairobi High Court Succession Cause No. 313 of 1978. First, there was an Application by the Objectors seeking to strike out this Cause on the ground that there is a confirmed Grant in the said Nairobi High Court Succession Cause No. 313 of 1978. This Application was dismissed by Hon. Omondi J (as she then was) on 10/07/2019 upon which the Objectors sought to Appeal. In the intervening period, the Objectors filed an Application before this High Court seeking stay of proceedings pending Appeal. This Application, too, was dismissed by Hon. Omondi J (as she then was) on 10/07/2019. Undeterred, the Objectors filed another Application before the Court of Appeal, namely, Nairobi Court of Appeal Civil Application No. E059 of 2020, seeking stay of these proceedings. This



Application equally collapsed when it was held that the Application was a non-starter in the absence of proof that the Objectors had obtained leave to Appeal. Not litigants to give up easily, it appears that the Objectors returned to this High Court and regularized matters by obtaining leave to Appeal. They thereafter returned to the Court of Appeal with a fresh Application seeking stay of these proceedings, namely Eldoret Court of Appeal Civil Application No. E112 of 2021. This Application was heard on merit and once more, was dismissed on 11/02/2022.

“21. After the dust settled and this matter cleared to proceed, the Petitioners, on one part, and the Objectors, on the other, each applied to be appointed the Administrators of the estate. In simultaneously determining the two Applications, Hon. Ogola J, by his Ruling of 18/07/2022, ruled in favour of the Petitioners and appointed them as the Administrators. Regarding the Objectors’ Application, the Judge held as follows:

“17. The 2nd objector’s claim is that he lived with the deceased and that the deceased held parcel of land No Soy/Soy Block 4 (Kongasi) 6 in his trust. By virtue of the aforementioned the 2nd objector seeks to be appointed as an administrator of the estate of the deceased. It is worth noting that issues touching on land ownership can only be dealt with by the Environment and Land Court as provided by article 162 (2)(b) of *the Constitution*, and section 13(1) and (2) of the Environmental and Land Court Act. The 2nd objector’s claim over the subject land can therefore only be dealt with by the Environment and Land Court and not this court.

“22. Both this Court and the Court of Appeal having previously declined to grant orders of stay of proceedings, it will, in my view, amount to re-opening matters already determined and which practice this Court cannot permit. It is also not lost on me that Hon. Ogola J, in his Ruling of 18/07/2022 stated or commented that the Objectors’ claims should be filed at the Environment & Land Court.



2. At paragraph 26, I then added that:

“26. Considering the above circumstances, allowing the prayer for stay of proceedings will only perpetuate the already long delay endured in the determination of this matter and will clearly not serve the interest of justice.”

3. In my final orders in the said Ruling, at paragraph 28(i) thereof, I directed as follows:

“28. In the end, I order as follows:

“i) The Objectors’ Notice of Motion dated 24/03/2023 is hereby dismissed with costs to the Petitioners.

“ii) The parties shall now take directions on the expeditious hearing and disposal of this matter.”

4. From the above statements, it is clear that the instant Application, the Notice of Motion dated 4/02/2025, despite my orders that the parties “now take directions on the expeditious hearing and disposal of this matter”, is the latest in a long line of successive Applications that have come fast and furious from the Objectors, and filed through their Messrs Z.K. Yego Law Offices Advocates, in this Cause.

5. The current Application came only about 2 months after I delivered the Ruling referred to above on 29/11/2024. It seeks orders as follows:

a. Nairobi High Court Succession Cause Number 313 of 1978: Estate of Rokocho Bartore be consolidated with Eldoret High Court Succession Cause No. 304 of 2007: Estate of Teriki Rokocho and be heard together by Honourable Court.

b. Costs of this Application be in the Cause.

6. The grounds of the Application are as set out on the face thereof, and the same is supported by the Affidavit sworn by the 1st Objector, Esther Kabon Rokocho.

7. In the Affidavit, the 1st Objector deponed that she is the only surviving widow of the late Rokocho Bartore (deceased herein), and her co-wife, Teriki Rokocho, is also deceased, and whose estate, the devolution thereof is the subject of the Cause. She deponed further that her step-daughters, the Petitioners/Respondents herein, who are the Administrators of the estate of her co-wife in this Cause are the Objectors in Nairobi High Court Probate & Administration Cause No. 313 of 1978: Estate of Rokocho Bartore, which has now been placed before this Court for determination. She urged further that the property (only property) the subject of this instant Cause, namely, Kipsangui Farm Land Parcel No. Soy/Soy Block 4 (Kongasis)6, is also the subject of the said Nairobi High Court Probate & Administration Cause No. 313 of 1978: Estate of Rokocho Bartore, which also has the same parties as this Cause. She thus urged that the two Causes need to be consolidated as there is risk of the Court making decisions that are contrary, and which may embarrass the Court.

8. The Application is opposed by way of the Replying Affidavit sworn jointly by the Petitioners on 7/05/2025, and filed through Messrs Kogo Kimutai & Co. Advocates. The Petitioners deponed that their late mother, Teriki Rokocho, inherited the said parcel of land No. Soy/Soy Block 4 (Kongasis)6, from her late husband vide Nairobi High Court Succession Cause No. 313 of 1978: Estate of Rokocho Bartore, which was finalized after the Grant was confirmed on 6/08/1993, and the property devolved to beneficiaries. They averred that the Objectors were also beneficiaries in the distribution, their



entitlements transmitted, and there is therefore nothing outstanding with respect to the estate. They deponed further that the said distribution in Nairobi High Court Succession Cause No. 313 of 1978: Estate of Rokochi Bartore, excluded the Petitioners, and that the Objectors have once again, in their quest to have the Petitioners disinherited from their parents' estates, approached the Court with a fresh proposal on distribution touching only the properties that devolved to the Petitioners' late mother.

9. According to the Objectors, the Application for consolidation is a well-orchestrated scheme to mislead this Court into setting aside the orders made in 1993 confirming the Grant, the Court having dismissed the Objectors' Application for lack of merit, and that consolidation of the two Causes serves no purpose but to complicate the matter further, the estates being separate, and it does not matter that they relate to spouses and/or the same asset. In conclusion, the Petitioners deponed that there should be an end to litigation and this Court should stamp its authority and protect the Petitioners from endless abuse and harassment by the Objectors.
10. The Application was canvassed by way of written Submissions. The Objectors filed their Submissions on 25/03/2025 while the Petitioners filed theirs on 27/05/2025. The Submissions, apart from citing authorities, statutory provisions and restating the principles applicable in handling Applications seeking consolidation of suits, basically repeated the matters already recounted in the parties' respective Affidavits. I will not therefore again reproduce the same save to say that the Petitioners contended that there is no new evidence that has been presented to warrant re-opening of the Nairobi Succession Cause.

Determination

11. The one issue that arises for determination in this matter is "whether this Succession Cause should be consolidated with Nairobi High Court P & A Cause Number 313 of 1978".
12. Regarding the principles to be considered when dealing with an Application seeking the consolidation of different Succession Causes, Gikonyo J, in the case of Cecilia Kiajimbae & another v Evangeline Tirindi Josphat & another [2015] eKLR, in his usual succinct, sober and well researched style, stated the following:

"(5) I have keenly and meticulously considered all matters and arguments that each party has presented in a rather forceful manner. The law on consolidation is now settled by a long line of judicial authorities as well as eminent literary works. According to the Black's Law Dictionary (8th Edition), a consolidation of suits means;

"...to combine, through court order, two or more actions involving the same parties or issues into a single action ending in a single judgment or, sometimes, separate judgments..."

A consolidation of suits does not necessarily result into a single judgment; it may lead to separate judgments. But the important thing to note is that, consolidation will be ordered:

- a. Where there are two or more suits or matters pending in the same court;
- b. Some common question of law or fact arises in both or all of them; or



- c. The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or
- d. For some other reason it is desirable to make an order for consolidating the suits.

See the case of Nyati Security Guards & Services Ltd vs - Municipal Council of Mombasa [2004] eKLR. But even in making an order for consolidation of suits, the court is minded to ensure that the course taken will serve the overriding objective of the law to attain efficient and expeditious disposal of disputes as an enabler of fair hearing in the suits. Therefore, a consolidation should not lead into injustice or prejudice or unnecessary hardships to any party. See Korean United Church of Kenya & 3 others vs. Seng Ha Sang (2014) eKLR. Looking at both suits, there are no common issues of law and fact except that the deceased are father and son, and the two disputants are common in both causes. The estates are distinct and relate to different properties. It has not been claimed that the two deceased persons had properties in common ownership. Accordingly, care should be taken not to consolidate causes in respect of different estates, except in only very clear cases. As a matter of law and fact, a careless intermingling of two distinct estates through consolidation may result into; a distortion of entitlement of heirs as well as the distribution of the estates in question; or injustice or prejudice to one or more of the beneficiaries thereof. Such distortion is likely to occur in these causes if they are consolidated especially given the arguments being preferred by the Applicant. Similarly, such arguments by the Respondent that these two estates are governed by different laws as one of them the deceased died in 1970 before the enactment of the *Law of Succession Act* while the other died in 1991 are not trivial or inflated trivial matters; they are real and substantial legal matters which make a lot of legal sense. Therefore, combining the two estates will introduce legal as well as factual complexities around the forgoing issues - a path which will just convolute the two causes for nothing. I do not also wish to brush aside the Respondent's arguments that the Applicant lacks capacity to litigate in these proceedings; it has been claimed that (1) he is not a beneficiary in this estate or in the alleged trust; (2) the person he is pretending intervene for has denied the alleged trust;



and (3) his intention in asking for consolidation is to get more share than the Respondent. These issues and that of capacity are important and will be properly canvassed by keeping these causes separate. If the children of the Respondent or the beneficiaries of the alleged trust have any objections, such should be properly raised by them and determined in each cause. I also do not see the basis of the Applicant's fear that the Respondent will conceal the facts of cause No 274 of 2012 when such judicial proceedings may be tendered in evidence in another judicial proceeding. In fact, the Applicant is already pleading the facts of those proceedings in this cause and nothing will prevent him from relying on the said cause in evidence herein to prove his claims. The fears expressed and points being raised by the Applicant in his arguments will be best and conclusively resolved when these causes are kept separate, except, however, there is nothing wrong to have the two matters heard back-to-back so that anything useful may be drawn from one to the other as a matter of evidentiary diffusion, if at all. In the premises, there is absolutely no reason or anything which makes it desirable to make an order for consolidation of the two causes. Accordingly, I dismiss the request for a consolidation of and the two causes shall remain distinct and separate, and be so heard and determined. The course I have taken will allow the suits to be dealt with separately and in a more efficient manner. It is so ordered."

13. The above is so well presented that I have absolutely nothing more to add on the issue of the principles applicable and how they ought to be applied.
14. Back to the instant case, my understanding of its history is that the deceased having died in 2003, this Cause has been in Court since 2007, the last 18 years, but to date, the Grant of Letters of Administration has not been confirmed because the Objectors, in April 2008, filed an Objection. Although the viva voce trial of the Objection had commenced before G.K. Kimondo, J on 27/06/2011 when the 1st Objector, Wilson Kiprono testified, the trial was directed to commence de novo on 11/06/2018 when it was taken over by S.M. Githinji J. Restart of the trial has however since then stalled and frustrated by the various successive Applications that the Objector has kept on filing in this matter, as enumerated above.
15. Regarding Nairobi High Court Succession Cause Number 313 of 1978: Estate of Rokocho Bartore, which is being sought to be consolidated with this Cause, it is clear that it deals with a different person. There is however the relation between the two Causes that they relate to spouses, a husband and a wife, respectively, now both deceased. The Objectors have also alleged that the parcel of land No. Soy/Soy Block 4 (Kongasis)⁶, the sole property the subject of this Cause, also features in the said Nairobi High Court Succession Cause Number 313 of 1978. I have perused the said Nairobi Succession Cause file which has now, by the orders made by S. Riechi J on 18/11/2024, been transferred to this High Court at Eldoret, and which contains the Certificate of Confirmation of Grant dated 6/08/1993, and



I cannot find any specific reference therein to the parcel of land No. Soy/Soy Block 4 (Kongasis)⁶ as being a subject thereof.

16. Be that as it may, even if the said parcel of land is indeed also a subject of the Nairobi Succession Cause, apart from merely alleging that the Court may make contradictory orders in the two matters, the Objectors have made no attempt whatsoever to demonstrate how any contradictions are likely to arise. This was the one and most relevant burden that the Objectors are required to discharge in an Application of this nature. It is not enough to simply state that the parties and the property in issue are the same. What about the deceased persons being different? A clear argument ought to have been presented.
17. In any case, there being a Certificate of Confirmation of Grant in Nairobi High Court Succession Cause Number 313 of 1978, it means that the said Cause is long concluded. What then is this decision that the Court in that Nairobi Succession Cause, which is an already concluded Cause, is still expected to make that may contradict orders yet to be made in this instant Cause? What is so difficult for the Objectors to simply exhibit or include in their bundle of documents, copies of pleadings filed, or orders made in the said Nairobi High Court Succession Cause Number 313 of 1978 for the Court in this instant Cause to look at and consider in rendering its verdict?
18. In the absence of any demonstration of how the Courts are likely to issue contrary decisions in the two Succession Causes if they are handled separately, my view is that consolidating the two will only lead to complicating the litigation, and will lead to this Court engaging in the cumbersome exercise of determining “a succession within a succession”. Consolidating the two Causes will not therefore serve the overriding objective of the law, which is, to facilitate efficient and expeditious disposal of disputes, as combining the estates is likely to introduce factual complexities whose determination will only further delay the conclusion of this Cause.
19. In the circumstances, I decline to order for consolidation of this Cause with Nairobi High Court Succession Cause Number 313 of 1978.
20. I however confirm that this Court still retains the power to order for consolidation of the two Causes at any time during its handling this matter, if in the course of so hearing, it establishes that there is indeed justifiable reason to so consolidate. That can still be done as at any time, but for now, no justification for consolidation has, in my view, been demonstrated.
21. Regarding a persistent litigant filing successive unending Application after Application in a case, in my Ruling in the case of *Ondiek v Deputy Registrar, High Court of Kenya at Eldoret & another* (Miscellaneous Civil Application E113 of 2023) [2024] KEHC 5744 (KLR) (15 May 2024) (Ruling), I held as follows:

“ 33. Before I pen off, I wish to draw the Applicant’s attention to Section 2(1) of the *Vexatious Proceedings Act*. That provision empowers the Court, if satisfied that a person has habitually and persistently and without reasonable grounds instituted what the Act terms “vexatious proceedings”, to make an order declaring that person to be such “vexatious litigant”. Section 3 thereof then provides as follows:

“No suit shall, except with leave of the High Court or of a judge thereof, be instituted by or on behalf of a vexatious litigant in any Court, and such leave shall not be given unless the Court or the



judge is satisfied that the suit is not an abuse of the process of the court and that there is a prima facie ground for the suit.”

“34. From the background, history and chronology of events in these matters, it is evident that despite both the Court of Appeal and also this Court having repeatedly declared the Applicant’s successive actions as breaching the Res Judicata rule, undeterred, the Applicant continues to insist on returning to this same Court with fresh actions every other time arising from or touching on the same matters, time and time again. I must caution the Applicant that he is now treading on dangerous grounds and should he persist with filing such unmeritorious actions based on the same facts and against the same parties as he has habitually been doing, both before this Court and before the Court the Court of Appeal, he may soon find himself attracting the above provisions of the law against him.

“35. The Applicant commenced his series of actions relating to the matters herein in the year 1999. Despite all the actions having failed, 25 years later, he is still attempting to re-open the same matters for determination. Litigation must come to an end and the Applicant should now find it in his heart to realize and accept that the litigation herein long came to an end the moment the said Eldoret HCCC No. 175 of 1999 was dismissed on the ground of being Res Judicata and which dismissal was upheld by the Court of Appeal, then the highest Court in Kenya. He should now let the matter rest, once and for all, and move on with his life.

22. Like in the above case, the Objectors are now tottering on the brink of being declared “vexatious litigants”. I trust this will now serve as a caution to the Objectors that the Court is fast running out of patience with their conduct, and may have no choice but to act accordingly. I will not as yet declare the Objectors to be vexatious litigants under the said Act but will invoke this Court’s inherent powers under Section 3A of the *Civil Procedure Act*, and bar the Objectors from filing any further Applications in this matter save with leave of the Court. The trial of this matter must now be allowed to move forward.

Final Orders

23. In the end, I order as follows:
- i. The Objectors’ Notice of Motion dated 4/02/2025 is hereby dismissed with costs to the Petitioners.



- ii. The Objectors are now hereby barred from filing any further Application before this Court before hearing and determination of the Objection proceedings pending in this Cause, save only with prior leave obtained from the Court for that purpose.
- iii. As ordered in my Ruling dated 29/11/2024, I again order that the parties shall now take directions on the expeditious hearing and disposal of this matter.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 30TH DAY OF SEPTEMBER 2025

.....

WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Ms. Chebet h/b for Yego for Applicants

Ms. Kogo for Petitioners

Court Assistant: Brian Kimathi

