



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of John Maritim Soi (Deceased) (Succession Cause
E059 of 2022) [2025] KEHC 14711 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14711 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE E059 OF 2022
JK NG'ARNG'AR, J
OCTOBER 22, 2025
IN THE MATTER OF THE ESTATE OF JOHN MARITIM SOI (DECEASED)**

BETWEEN

CHRISTINE CHEBII SOI PETITIONER

AND

RAYMOND KIPTOO 1ST OBJECTOR

ESTHER CHELANGAT SOI 2ND OBJECTOR

FAITH CHEPKIRUI 3RD OBJECTOR

RULING

1. The Applicant filed a Notice of Motion Application dated 3rd November 2023 which sought the following orders: -
 - I. That the Honourable Court be pleased to order that the 2nd and 3rd Applicants be identified as the biological children (identified as beneficiaries of the estate of the deceased) and present themselves to the Government Chemist at Nairobi for extraction of Deoxyribonucleic Acid (DNA) sample for testing.
 - II. That the DNA test be ordered at the Government Chemist Laboratories at a date to be agreed upon to establish whether the 2nd and 3rd Applicants had a paternal relationship with the late John Maritim Soi.
 - III. That the Government Chemist Report on the DNA test be filed and admitted in court as evidence.
 - IV. That a parallel and independent test be undertaken by Lancet Kenya at each parties' costs for their own purpose, if they so desire.



- V. That the costs of the DNA be provided for.
2. The Application was brought under Articles 24, 27, 40 and 50 of *the Constitution* of Kenya, sections 3, 5, 26, 27 and 29 of the *Law of Succession Act*, sections 1A, 1B and 3A of the *Civil Procedure Act*, section 47 of the *Law of Succession Act* and Order 51 Rule 1 of the Civil Procedure Rules. It was based on the grounds on the face of the Application and further by the Supporting Affidavit sworn by Raymond Kiptoo on 3rd November 2023.

The Applicant's Case.

3. Through his supporting affidavit dated 3rd November 2023, the Applicant stated that the deceased was his biological father and the biological father to the 3rd Objector. The Applicant further stated that the 1st Objector was his mother.
4. It was the Applicant's case that since the petitioner had denied their paternity with the deceased, paternity could be resolved through a DNA test. That there would be no prejudice suffered by the Petitioner if the order for the DNA test was granted.
5. The Applicant stated that the deceased died in the year 1995 which was a long time ago and that it would be expedient to order a DNA test in the circumstance. That this Application had been brought in good faith.

Response

6. Christopher Kipkemoi Maritim (former Petitioner and now deceased) filed a Replying Affidavit dated 23rd April 2024. He stated that the Application was incompetent and an abuse of the court process. He further stated that the statements made by the Applicant could not be used to warrant a DNA test.
7. It was Christopher's case that the Applicant was not a beneficiary of the deceased's estate.
8. On 6th November 2023, this court directed that the present Application be canvassed through written submissions. Parties were again reminded and ordered to do the same on 3rd March 2025 and 15th May 2025. At the time of writing this Ruling, there were no submissions filed in the court file or in the CTS system. I shall proceed to determine the Application with the pleadings on record.
9. In the present matter, a Grant dated 13th March 2023 was issued to Christopher Kipkemoi Maritim (deceased) and Christine Chebii Soi (Petitioner). The Objectors filed an Application dated 20th April 2023 seeking revocation of the Grant. They stated that the 1st Objector was the deceased's widow and the 2nd and 3rd Objectors were the deceased's children from the union between the deceased and the 1st Objector.
10. In the said Summons for Revocation, the Objectors stated that the deceased had two widows i.e. the Petitioner and the 1st Objector. The Objectors filed witness statements in court all dated 20th July 2023 reiterating the deceased as their husband and father.
11. I have keenly gone through the court record and I have noted that Faith Chepirui (3rd Objector) swore and filed an Affidavit dated 29th January 2024. She stated that she wished to withdraw the witness statement dated 20th July 2023 as she did not sign it. The 3rd Objector further stated that she no longer wanted to be a party in this suit.
12. Additionally, the 1st Objector swore and filed an Affidavit dated 11th March 2025. She stated that the witness statement dated 20th July 2023 was done without her knowledge. That the contents of the



statement were false. She further stated that she had never been married to the deceased and that none of her children were sired by the deceased.

13. It was the 1st Objector's averment that she had no interest in the deceased's estate and wished to withdraw from the succession proceedings.
14. From the above it is quite clear that there was mischief in filing the Objection and the present Application for a DNA test. The 2nd Objector's main ground for the prayer for a DNA test was that the 1st Objector was his mother and the 3rd Objector his sister. This ground as demonstrated above had been eviscerated by the sworn affidavits by the 1st and 3rd Objectors where they denied being the widow and daughter of the deceased respectively. Essentially, the 2nd Objector had no leg to stand on as his co-Objectors have denied any marital and paternal relationship with the deceased. I must also state that the parties' reluctance to file any written submissions on the same since 6th November 2023 led credence to the mischief in the present Application.
15. That said, even though courts have discretion on whether or not to order for extraction of DNA samples, they ought to exercise extreme caution and deal with such prayers on a case-to-case basis while keeping in mind the unique circumstances of each case. In the case of R N C & 2 others v S M G [2017] KEHC 9769 (KLR) the court held as follows: -

“...an order for exhumation of a deceased person in order to have a DNA testing to carry out a paternity or maternity test of a child is a drastic order which must only be made in exceptional and compelling circumstances. The deceased was buried some 10 years ago and to make an order after the said years in my view would be a drastic order. His body should be left in the grave undisturbed.”

16. Similarly, in re Estate of NKM (Deceased) [2021] KEHC 2956 (KLR), the court held: -

“I must however take note of the fact that science has proven DNA samples from a deceased person may not necessarily generate DNA profiles from the deceased's body due to degeneration of samples over time. This observation was made and acknowledged in the case of E. M. M Vs I.G.M and Another (2014) e KLR where sibling sample extraction was submitted after the samples extracted from the deceased were found to have degenerated to the extent that it could not produce reliable DNA profiles for testing. It then follows that, besides letting a deceased person rest in peace without unnecessary disturbance, there is the next challenge of costly logistics in disinterring a body, psychological trauma caused to the relatives by reminding them of the death of their loved one hence calling for further counselling expenses or process.”

17. Flowing from the above, I have noted from the deceased's Death Certificate that he died on 14th September 1995. That is over 30 years ago and the chance of complete degeneration of the deceased's body was high. Further, the Applicant had not demonstrated any exceptional circumstances to warrant this court to issue an order for the extraction of the deceased's DNA sample.

18. In the end, the Notice of Motion Application dated 3rd November 2023 has no merit and is dismissed.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 22ND DAY OF OCTOBER, 2025.

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HON. JULIUS K. NG'ARNG'AR

JUDGE



Ruling delivered in the presence of:

Siele/Susan (Court Assistants).

J.K. Koech for the Petitioner/Respondent

Kirwa for the Objectors

