

**BLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**SUCCESSION CAUSE NO 12 OF 2001**

**IN THE MATTER OF THE ESTATE OF THE LATE WILLIAM MOROGO**  
**SAINA (DECEASED)**

**RUTH JEPCHIRCHIR SAINA.....DECEASED**  
**PETITIONER**

**VERSUS**

**STELLA CHEPCHUMBA SAINA.....1<sup>ST</sup> PROPOSED**  
**PETITIONER/APPLICANT**

**MICHELLE CHEBET SAINA.....2<sup>ND</sup> PROPOSED**  
**PETITIONER/APPLICANT**

**Coram: Justice R. Nyakundi**  
**M/s Kenei & Associates Advocates LLP**  
**M/s Munyaga Githaiga Advocates LLP**  
**M/s Mayende & Busiega Advocates**

**RULING**

- 1.** What is pending before this court for determination is summons dated 3<sup>rd</sup> September 2025 brought pursuant to Articles 48 and 159 of the Constitution of Kenya, sections 47 and 76 of the Law of Succession Act, Rules 49, 59 and 73 of the Probate and Administration Rules and Rule 3 of the High Court Practice and Procedure Rules where the Applicants are seeking the following orders: -
  - a. Spent
  - b. Spent
  - c. The Petitioner herein, the late Ruth Jepchirchir Saina, is hereby substituted as a Petitioner jointly by the proposed

Petitioners/Applicants herein, Stella Chepchumba Saina and Michelle Chebet Saina.

- d. The Grant of Letters of Administration intestate issued by this Honourable Court to the late Ruth Jepchirchir Saina on 12<sup>th</sup> July 2001 is hereby revoked having become inoperative by dint of death of the sole administratrix.
  - e. The Amended Petition for Grant of Letters of Administration Intestate dated 20<sup>th</sup> August 2025 be deemed as duly filed.
  - f. The proposed Petitioners/Applicants Stella Chepchumba Saina and Michelle Chebet Saina are hereby appointed as the administrators of the estate and a Grant of Letters of Administration intestate issued to them forthwith.
  - g. The parties are granted leave to lodge Summons for Confirmation before a lapse of a period of 6 months from the date of issuance of the Grant.
- 2.** The Application is made on the Grounds on the face of it among others;
- a. The deceased herein, the late William Morogo Saina died on 29<sup>th</sup> July 2000 at Nairobi Hospital.
  - b. The Petitioner herein, the late Ruth Jepchirchir Saina commenced the instant succession proceedings vide the petition dated 30<sup>th</sup> January 2001 or thereabouts.
  - c. The Petitioner, the late Ruth Jepchirchir Saina was appointed a sole administratrix of the estate with a consent of all the beneficiaries and issued with a Grant of Letters of Administration on 12<sup>th</sup> July 2001.
  - d. The late Ruth Jepchirchir Saina fell critically ill and ultimately succumbed to the illness on 15<sup>th</sup> June, 2009.
  - e. The late Ruth Jepchirchir Saina died before conclusion of the administration of the estate and transmission of the assets of the estate to the ultimate beneficiaries.

- f. The Grant issued to the late Ruth Jepchirchir Saina became inoperative by dint of her demise having been appointed as a sole administratrix of the estate.
  - g. The Applicants ranked in the same hierarchy of priority being the children of the deceased herein hence the *bonafide* parties to substitute the deceased Petitioner and be appointed as administrators.
  - h. The failure to appoint effective administrators will expose the estate to waste, intermeddling and maladministration.
  - i. The administration of the estate can only progress upon substitution of the deceased Petitioner, revocation of the inoperative Grant and appointment of new administrators.
3. The summons is supported by the annexed affidavit dated 3<sup>rd</sup> September sworn by Stella Chepchumba Saina, the 1<sup>st</sup> Applicant who deponed as follows;

- a) *That I am the 1<sup>st</sup> Applicant herein.*
- b) *That I have the authority of the 2<sup>nd</sup> Proposed Petitioner/Applicant, Michelle Chebet Saina to swear this Affidavit on her behalf hence competent to do so.*
- c) *That the deceased herein, the late William Morogo Saina died on 29<sup>th</sup> July 2000.*
- d) *That the deceased was survived by the following beneficiaries;*

NAME	RELATIONSHIP	AGE
a. Ruth Jepchirchir Saina	Widow	Deceased
b. Linda Chelimo Saina	Daughter	Adult
c. Patricia Chepkemboi Saina	Daughter	Adult
d. Joan Cherotich Saina	Daughter	Adult
e. Stella Chepchumba Saina	Daughter	Adult
f. Michelle Chebet Saina	Daughter	Adult
g. Calvin Kiptoo Saina	Son	Adult

- e) *That the Petitioner herein, the late Ruth Jepchirchir Saina, commenced the instant succession proceedings vide the petition dated 30<sup>th</sup> January 2001 or thereabouts.*
- f) *That the Petitioner, the late Ruth Jepchirchir Saina, was appointed a sole administratrix of the estate with a consent of all the beneficiaries and issued with a Grant of Letters of Administration on 12<sup>th</sup> July 2001.*
- g) *That the late Ruth Jepchirchir Saina died before conclusion of the administration of the estate and transmission of all assets to the ultimate beneficiaries.*
- h) *That the late Ruth Jepchirchir Saina only managed to successfully transmit land parcels numbers Nandi/Kipkaren Salient Scheme/251, 254 & 289 which are no longer part of the instant proceedings.*
- i) *That the late Ruth Jepchirchir Saina did not manage to transmit the following assets as at the time of her demise;*
  - a. *LR No. 2217/2 - Kibuswa Farm; and*
  - b. *Motor Vehicle Registration Number KAA 699C.*
- j) *That the above-mentioned properties need to be subjected to the probate and administration processes under the instant cause upon apportionment of substantive administrators of the estate.*
- k) *That the Grant issued to the late Ruth Jepchirchir Saina became inoperative by dint of her demise having been appointed as a sole administratrix of the estate.*
- j. *That the Applicants rank in the same hierarchy of priority being the children of the deceased herein hence the bonafide parties to substitute the deceased Petitioner and be appointed as administrators.*
- l) *The failure to appoint effective administrators will expose the estate to waste, intermeddling and maladministration.*

- m) *The administration of the estate can only progress upon substitution of the deceased Petitioner, revocation of the inoperative Grant and appointment of new administrators.*
- n) *That the estate herein has been without a properly authorized administratrix for the last 16 years hence the need for an urgent appointment as envisaged under the instant Application.*
- o) *That the instant matter has been in the court's docket for close to 25 years hence the need to conclude it to safeguard the dignity and integrity of our justice system.*
- p) *That it will be in the best interest of all the beneficiaries to have the orders sought herein granted to facilitate realization of the right to inheritance.*
- q) *That the Applicants rank in equal priority to the other beneficiaries save for Linda Chelimo Saina who is disqualified by dint of her pervious intermeddling with the estate.*
4. The Application is opposed vide a Replying Affidavit dated 29<sup>th</sup> September 2025 sworn by Linda Chelimo Saina in which she deponed as follows: -
- a) *That I am the interim administratrix of the subject estate in this matter, hence I am duly authorized, competent, and capable of swearing this affidavit.*
- b) *That having carefully read, understood, and been duly advised by my advocates on record, M/s Busiega Mwanga & Co. Advocates, on the Amended Petition for Letters of Administration dated 20<sup>th</sup> August 2025, and the Affidavit in Support thereof sworn jointly by Stella Chepchumba Saina and Michelle Chebet Saina, together with the Application dated 3rd September 2025, and in opposition to the same, I wish to respond as hereunder.*
- c) *That I am advised by my advocates on record, M/s Busiega Mwanga & Co. Advocates, whose advice I verily believe to be true, that the*

- instant Amended Petition is procedurally defective, misconceived, bad in law, incompetent, and ought to be struck out.*
- d) *That the intended administrators filed summons dated 8<sup>th</sup> April 2021 seeking revocation or annulment of grant, alleging that I fraudulently obtained an Amended Certificate of Confirmation of Grant dated 27<sup>th</sup> June 2011 without their knowledge or consent, and that as a result, I had disinherited them.*
- e) *That Michelle Chebet Saina, through an affidavit sworn on 11<sup>th</sup> January 2022, averred that I obtained the amended letters of representation fraudulently and without the participation or involvement of the other beneficiaries; that no family meeting was held to approve me as sole administrator, and no consent was filed in court to that effect.*
- f) *That I responded to the said summons through a Replying Affidavit sworn on 16<sup>th</sup> September 2021 wherein I clarified that, following the demise of my mother Ruth Jepchirchir Saina, who was the sole administratrix of the estate of my late father William Morogo Saina, the family held a consultative meeting in August 2009 where it was deliberated, resolved, and unanimously agreed that, since both our parents had passed on, letters of administration to the estate of my late father be issued to me as the eldest daughter in whom all members of the family had bestowed trust. There was no objection to this resolution.*
- g) *That this matter was heard and determined on merit, and upon consideration, this Honourable Court, through a Ruling delivered on 29<sup>th</sup> July 2025, made the following factual findings:*
- i. *At paragraph 31, the Court stated: "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.”*

*ii. At paragraph 36, the Court further stated: “In the appointment of administrators under section 66 of the Law of Succession Act, although the court retains the residual jurisdiction, the process is participatory and inclusive of all the beneficiaries of the intestate estate as defined under section 29 of the Act. The panoramic view of the record does not show that upon the demise of Ruth Saina and on subsequent substitution, Linda obtained the necessary consent from the objectors. This statutory framework is not optional for one to elect not to comply.”*

*h) That consequently, the Court delivered its ruling in favour of the Petitioners and against me, revoking the Amended Certificate of Confirmation of Grant dated 27<sup>th</sup> June 2011 for having been obtained through procedures not recognized under the Law of Succession Act.*

*i) That upon revocation of the said grant, this Honourable Court appointed me as interim administrator of the estate and issued joint obligations to both parties as set out under paragraph 47 of the Ruling, directing inter alia that:*

*“47 b. Linda Chelimo Saina, as outgoing administrator, shall within sixty (60) days of the order file a comprehensive account of my administration of the estate under section 83 of the Law of Succession Act, detailing:*

- i. All distributions made to beneficiaries;*
- ii. The current status and location of all estate properties;*
- iii. Any outstanding liabilities or obligations of the estate;*
- iv. A complete inventory of undistributed assets; and*

- v. *The nature and character of the administration and transmission of the estate as devolved by the late Ruth Saina.*
- c. *The objectors were directed to provide updated inventories and instruments of transfer of properties devolved in favour of inheritance.*
- d. *Notices were to be issued to third parties who had acquired interests in the estate properties.*
- e. *I was appointed to act as interim administrator pending further orders of the court.*
- f. *Both parties were ordered to engage a licensed surveyor within forty-five (45) days to conduct a comprehensive survey of the original estate lands to determine boundaries, undistributed portions, acreage, and exact locations of all remaining estate assets, and that the Land Registrars were to provide mutation forms, green card details, and other relevant records.*
- j) *That in compliance with the court's directions, I reached out to all beneficiaries via email dated 24th August 2025 under the subject "Compliance with High Court Order of 29<sup>th</sup> July 2025 - Estate of William Morogo Saina", addressing two major aspects — the probate account and the survey of estate lands.*
- k) *That regrettably, the said email elicited no response or cooperation from the beneficiaries. None of the required documents — including transfer instruments, inventories, or sale agreements — were provided.*
- l) *That I further requested that all beneficiaries, their counsel, or appointed representatives attend the estate survey scheduled for 26th August 2025 with a licensed surveyor I had engaged to commence the exercise. However, this request too was ignored.*
- m) *That the Applicants have thus impeded compliance with the court's orders by neither cooperating nor communicating. Instead, in*

*contempt of the said orders, they have prematurely filed the instant application.*

- n) That the salient features of the ruling show that I took out letters of administration without the requisite consent from all beneficiaries and that the procedure was therefore flawed, leading to the revocation of the grant.*
- o) That the proposed administrators have now, in disregard of the court's findings, sought to take out fresh letters of administration without obtaining consent from all beneficiaries entitled in equal or higher degree as required under Rule 26 of the Probate and Administration Rules.*
- p) That the estate of the deceased is survived by the following beneficiaries who have not consented to the intended administrators taking out the grant:*

<i>1. Linda Chelimo Saina</i>
<i>2. Patricia Chepkemboi Saina</i>
<i>3. Joan Cherotich Saina</i>
<i>4. Stella Chepchumba Saina Kinsman</i>
<i>5. Michelle Chebet Saina</i>
<i>6. Calvin Kiptoo Saina</i>

- q) That the intended grant is being pursued irregularly and in blatant violation of the Law of Succession Act and Rules. In their continued pursuit to disinherit me and my younger brother, Calvin Kiptoo Saina, the intended administrators now seek to cunningly obtain the said letters of administration.*

- r) *That what remains troubling is the contrast between the intended administrators' actions in 2021 and their current conduct in 2025. In 2021, they themselves filed summons for revocation alleging lack of consent; yet in 2025, they are attempting to obtain the same grant without consent, in defiance of the same law they once invoked.*
- s) *That I am advised by my advocates, whose advice I verily believe to be true, that the law has not changed. Rule 26 of the Probate and Administration Rules expressly provides that any application for a grant must be supported by the consent of all adult beneficiaries.*
- t) *That further, the equitable maxim "He who comes to equity must come with clean hands" applies. The Petitioners, having failed to comply with the law and with existing court orders, are undeserving of the equitable relief they now seek.*
- u) *That the Applicants have:*
- a. *Refused and ignored to comply with court orders of 29th July 2025;*
  - b. *Failed to seek requisite consents from all beneficiaries;*
  - c. *Willfully attempted to obtain letters of administration to disinherit me and my brother; and*
  - d. *Acted contrary to equity and the law, thereby disentitling themselves to any favourable orders of this Court.*
- v) *That further, the Applicants have already sold their share of the estate and part of my brother Calvin Kiptoo Saina's share, squandered the proceeds, and now maliciously seek to interfere with the remaining portion belonging to us.*

- w) *That in totality, the Applicants have not made out a case to warrant the issuance of fresh letters of administration, and the Petition should therefore be dismissed with costs.*
- x) *That I am advised by my advocates, whose advice I verily believe to be true, that the Petition is misconceived, untenable in law, and an abuse of the court process.*

## **Resolution**

5. Before I delve into the substantive issue which arise from the above application and replying affidavit, I take note that this Honourable Court vide its ruling dated 29<sup>th</sup> July 2025 gave the following orders and/or declarations;

*“47. From the foregoing, the following orders do abide:*

- a. *The Amended Certificate of Confirmation of Grant dated 27<sup>th</sup> June, 2011, is hereby revoked as having been obtained through procedures not recognized under the Law of Succession Act.*
- b. *Linda Chelimo Saina, as the outgoing administrator, shall within sixty (45) days of this order file a comprehensive account of her administration of the estate under Section 83 of the Law of Succession Act. from 27<sup>th</sup> June, 2011, to date, detailing:*
  - i. *All distributions made to beneficiaries;*
  - ii. *The current status and location of all estate properties;*
  - iii. *Any outstanding liabilities or obligations of the estate;*
  - iv. *A complete inventory of any undistributed assets.*
  - v. *The nature and character of the administration on transmission of the estate devolved by her late mother Ruth Saina.*
- c. *The objectors to this summons for revocation shall provide the updated inventory and instruments of transfer of the properties duly devolved in favour of the inheritance and which certificate of*

- confirmation of grant was used under Section 38 to transmit the identifiable estate of the deceased.*
- d. That in view of the prima-facie evidence on record that some shares of the properties have devolved to third parties who were not part of this proceedings a notice be issued to each one of them for purposes of taking further action to safeguard their registrable interest within 45 days.*
  - e. That the inheritance rights so far conveyed to the beneficiaries and other third parties shall not be interfered with until further orders from this court.*
  - f. That in the interim, Linda Saina is appointed in the acting capacity to hold forth the administration of this estate including providing and submitting the probate account to inform the court on how best to liquidate the estate in the event nothing shall be purposed so as to render the parties to suffer substantial loss by dint of the provisions of Section 76 of the Law of Succession Act.*
  - g. The parties shall jointly engage a licensed surveyor to conduct a comprehensive survey of the original estate lands within ninety (45) days of this order to:
    - i. Establish precise boundaries of current beneficiary holdings;*
    - ii. Identify any undistributed portions of the estate;*
    - iii. Determine the exact acreage and location of any remaining estate assets.*
    - iv. The Land Registrars of both registries in which the intestate estate is domiciled are hereby directed to file the transfer forms, mutation, and green card details of the intestate estate as identified elsewhere in this ruling within the same period set out by the court.**
  - h. The costs of the surveyor shall be borne by the estate.*
- 48.Orders accordingly.”*

- 6.** From the record, it is not in dispute that this Court, through its ruling delivered on 29<sup>th</sup> July 2025, made a number of binding determinations and consequential orders. The Court found that the Amended Certificate of Confirmation of Grant dated 27<sup>th</sup> June 2011 was obtained through procedures not recognized under the Law of Succession Act and consequently revoked it. This Honourable Court further appointed Linda Chelimo Saina as the interim administrator of the estate in order to preserve the estate and to enable proper accounting and identification of all estate assets before any new grant could issue. This is clearly shown in paragraph 47 of the said ruling which I have quoted above in this ruling.
- 7.** I have read and considered the application herein and the replying affidavit in opposition of the same. The central issue for determination is whether the present Amended Petition has been properly brought before this Court in light of the subsisting orders and/or declarations issued by this Honourable Court on 29<sup>th</sup> July 2025. From the record and the affidavits on file, it is evident that the Court's earlier orders have not been complied with. The interim administratrix, Linda Chelimo Saina, has deponed that she made efforts to reach out to all beneficiaries through written communication dated 24<sup>th</sup> August 2025 to facilitate compliance with the court's directions on filing the probate account and conducting the survey of the estate lands. However, those efforts were met with silence and non-cooperation from the other beneficiaries, including the present Applicants.
- 8.** The Applicants herein have instead proceeded to file this Petition seeking appointment as administrators before the interim report required by this Court has been completed and filed. This action is therefore premature and offends both the spirit and the letter of this Honourable Court's orders and/declarations issued on 29<sup>th</sup> July 2025. Put it simply, the significance or the intention behind the court orders given in the ruling dated 29<sup>th</sup> July 2025 was preferred to have a two-pronged implication:

- a) To ensure transparency and accountability in the administration of the estate; and
  - b) To establish the true and net value of the estate through the filing of a comprehensive probate account.
9. This Honourable Court also takes cognizance that the appointment of Linda Chelimo Saina was not permanent but interim in nature, solely for the purpose of ensuring that the estate remains preserved and that a true account is rendered. Her role was administrative and transitional to prepare a comprehensive probate account and enable the Court to ascertain the net estate for purposes of an informed decision. In the present circumstances, there has been no evidence of compliance with the orders and/or declarations issued on 29<sup>th</sup> July 2025, either by the interim administrator or the other beneficiaries. Without compliance with these foundational steps, the Court cannot with certainty determine the status, scope and/or composition of the estate. The law is very clear that a party whom a court order is directed to by a competent court has no choice other than to first comply with the order even if to the party the order is irregular or before taking any step, if not sure of the import of the court order, the party is supposed to rush back to court and explain its difficulties in complying with the particular court order but not to disregard the order. In **Trusted Society of Human Rights Alliance Vs Cabinet Secretary for Devolution and Planning & 3 others [2017] eKLR** the court held as follows:

*“The Court does not, and ought not to be seen to make orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people. A Court order is binding on the party against whom it is addressed and until set aside remains valid and is to be complied with”*

- 10.** Section 83(e) and 83(g) of the Law of Succession Act are explicit that an administrator is under a statutory duty to provide a full and accurate inventory and account of the administration of the estate within six months, or within such time as the Court may direct. These provisions are mandatory and go to the root of the administrator's duty to render an account before any further steps including redistribution or appointment of new administrators can be taken. Similarly, under Rule 73 of the Probate and Administration Rules, this Court is empowered to make such orders as may be necessary for the ends of justice. It would therefore be contrary to justice and orderly administration to proceed with the new Petition when the estate remains unaccounted and the earlier directions unfulfilled.
- 11.** I take cognizance of the fact that this Court invoked provisions of section 76 of the Law of Succession Act to revoke the Certificate of Confirmation of Grant in the name of Linda Chelimo Saina purportedly who had been conferred with the authority as an administrator to manage the estate of the deceased. In the course of appreciating the record and the evidence, it dawned on the court that part of the estate has been devolved to the beneficiaries which was an admitted fact in the course of the trial. There was no evidence as to which of the two (2) Administrators being Ruth Jepchirchir Saina (deceased), the mother of the beneficiaries including the impugned administrator Linda Chelimo Saina. The primary concern of the court in issuing this declaration during the final decision on revocation was to exercise inherent jurisdiction of this court for Linda Chelimo Saina to demonstrate whether she signed any instruments conferring rights of ownership of any shares of the intestate estate. This order is interim and should not be confused with the final probate account which is a final formal record of the estate administration. This is going to be the responsibilities of the new administrators yet to be appointed. The court has part of its inherent powers to control proceedings and protect

the estate may order an accounting to be filed. This order could be directed to the revoked administrator, a new administrator or another appropriate party. For this case, that interim executive summary of what Linda Chelimo Saina may have done persuaded this court to issue and order for her to file an interim report which fell under her docket during the administration of the estate. The locus standi of Linda Chelimo Saina to file the account of her administration is purely temporary.

- 12.** I have since revisited my ruling dated 29<sup>th</sup> July 2025 and the declarations made thereto and pursuant to Sections 1(A), 1(B), 3, 3(A) and section 80 of the Civil Procedure Act as read with Rule 73 of the Probate and Administration Rules and further referenced with Order 45 rule 1 of the Civil Procedure Rules, the declaration on the County Surveyor's assignment to undertake topographical survey, mapping, correlation of the data in the intestate estate for the court to be informed of the net residual estate of the deceased should remain on the domain of the proposed new administrators to the estate. For given the nature of the ruling on revocation, Linda Chelimo Saina might not be the proper person with the locus standi to file the County Surveyor's report within the ambit of this succession cause.
- 13.** Before I embark in determining the so called premature summons filed by learned Counsel Mr. Kenei, it is prudent that the other beneficiaries do file a response on who should be their appointed administrators to the intestate estate of the deceased under section 66 of the Law of Succession Act. Thus, the Court is of the view that the law applicable in the Probate and Administration of the intestate estate ought to be invoked soon thereafter that the interim probate is filed to satisfy itself on the residual net estate capable of being administered by the new administrators.
- 14.** I am of the considered view that this Court cannot proceed to entertain or grant the orders sought in the Amended Petition until such compliance

is demonstrated. Moreover, the application before this court has not ripened because of non-compliance with the court orders and/or declarations issued in the ruling dated 29<sup>th</sup> July 2025. In view of the foregoing, the following orders shall abide: -

- a) *That it is therefore necessary for this Court to ask the parties to abide with the procedural orders so that on appointment of the new administrators, timeline is not lost on such issues as to the net intestate estate of the deceased.*
- b) *That with this aspect in mind, enlargement of time be and is hereby granted for a period of 14 days for compliance on the interim probate account by Linda Chelimo Saina.*
- c) *That in the event she has no interim probate account, she be at liberty to file NIL interim account to pave way for the next stage of this proceedings.*
- d) *Status Conference on **4<sup>th</sup> November 2025.***
- e) *There shall be no orders as to the costs. It is so ordered.*

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 6<sup>TH</sup> DAY  
OF OCTOBER 2025**

.....  
**R. NYAKUNDI**  
**JUDGE**