



REPUBLIC OF KENYA



**In re Estate of Kitur Chepsugulgei - (Deceased) (Probate & Administration
53 of 2020) [2025] KEHC 15346 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15346 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 53 OF 2020
RN NYAKUNDI, J
OCTOBER 30, 2025**

IN THE MATTER OF THE ESTATE OF KITUR CHEPSUNGULGEI – (DECEASED)

BETWEEN

BENJAMIN KIPRUTO TOO PETITIONER

AND

JONATHAN KIBIWOTT MUREI INTERESTED PARTY

RULING

1. What is pending before this court for determination is summons dated 13th August, 2025 expressed under the provisions of section 73 of the *Law of Succession Act* and Art. 159 of *the Constitution* of Kenya. The applicant seeks orders that:
 - a. This Honorable court be pleased to enjoin the applicant as an interested party in this cause.
 - b. This Honorable court be pleased to issue orders of stay of the distribution of the subject estate being Nandi/Cheptil/24 estate pending hearing and determination of this application inter-parties.
 - c. This Honorable court be pleased to issue orders of stay of the distribution of the subject estate being Nandi/Cheptil/24 estate pending the hearing and determination of Kapsabet Environment and Land Court case Number ELCC E014 of 2023.
 - d. This Honorable Court be pleased to remove the property number Nandi/Cheptil/24 from this estate since the same has already been distributed by this Honorable court in Kapsabet High Court P&A No. E001/2022: Estate of Malakwen Cheptalam Rotich (Deceased) vide certificate of confirmation dated 25th April, 2022.
 - e. Costs of this application be provided for.



2. The application is anchored on grounds that:
 - a. The petitioners have an ill intention of amalgamating the estate being Nandi/Cheptil/24 with Nandi/Cheptil/49 which is the subject to a different estate and an existing land case being: Kapsabet High Court P&A NO. E001/2022: Estate of Malakwen Cheptalam Rotich which is a succession of a different person and not Kitur Chepsungulgei the deceased herein.
 - b. The Grant of letters of administration in the said Kapsabet High Court P&A No. E001/2022: Estate of Malakwen Cheptalam Rotich was confirmed on 25th April, 2025 distributing the subject matter Nandi/Cheptil/49 hence the same property cannot be distributed twice.
 - c. There is also an ongoing land case in respect of the said Nandi/Cheptil/49 being Kapsabet Environment and Land Court Case Number ELCC E014/2023 between Gideon Bitok & 3 others suing as administrators of the estate of Kitur Chepsungulgei – (deceased) vs. Annah Jepsat Rotich, Jonathan Kibiwott Mure (sued as Administrators of the estate of Malakwen Cheptalam Rotich – deceased) The Land Registrar, The Attorney General And National Land Commission over the two land parcels being the subject matter in this cause and the subject matter in Kapsabet High Court P&A No. E001/2022: Estate of Malakwen Cheptalam Rotich.
 - d. The Applicant is awaiting the decision of the court in Kapsabet Environment and Land Court case number ELCC E014/2023: Gideon Bitok & 3 others vs. Annah Jepsat Rotich & 4 others in order to enforce the orders in the confirmed grant in Kapsabet High Court P&A No. E001/2022: Estate of Malakwen Cheptalam Rotich.
 - e. The Petitioner’s ill intention and misrepresentation of facts to this Honorable Court shall cause prejudice and injustice to the applicant since the ongoing land case in Kapsabet Environment and Land Court case number ELCC E014/2023 has not been heard to completion as it has a hearing date of 07/10/2025.
 - f. With ill intentions, the administrators tried to take advantage of the fact that the objector will not be represented and or has no notice of these proceedings, went ahead to try issues touching on ownership of the Nandi/Cheptil/49 in this succession cause yet they are the Plaintiffs in Kapsabet Environment and Land Court case number ELCC E014/2023 which is now scheduled for hearing on 7th October, 2025.
 - g. The applicant prays therefore that this honorable court issues stay of distribution of this estate and Nandi/Cheptil/49 pending hearing and determination of Kapsabet Environment and Land Court case number ELCC E014/2023 which is now scheduled for hearing on 7th October, 2025 and involves all the parties herein.
3. In response to the application, the administrators through Gidion Kibitok who deposed as follows:
 - a. That the contents of summons dated 13th August, 2025 have been read out and explained to me and my co-administrators by our counsel on record; and having understood its import and purport, I wish to respond thereto as follows:
 - b. That the applicants have no interest in the estate of our late father for the reason that the registration of the late Malakwen Cheptalan Rotich, over L.R No. Nandi/Cheptil/49 upon which the applicants claim was cancelled on the grounds of being an illegal entry.
 - c. That for the foregoing reason, the applicants’ claim in these proceedings is legally unsupported.



- d. That the above cancellation having been effected on the ground of fraud/illegality as stated above, any subsequent registrations emanating therefrom are a nullity ab initio including proceedings in Kapsabet High Court P&A E001/2022.
- e. That further to the above, L.R No. Nandi/Cheptil/49 is not a subject of these proceedings.
- f. That in the above premises, the summons before court have no legs to stand on hence should be struck out forthwith.

Determination

4. This application raises two main issues for determination. First, whether the applicant has demonstrated sufficient interest to warrant being joined as an interested party in these proceedings. Second, whether the orders sought for stay of distribution should be granted pending the determination of the related land case in ELCC E014/2023.
5. The law on joinder of interested parties is well settled. Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, as amended in 2020, provides for the addition of necessary parties. The rule states:

“The Court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any person who ought to have been joined—whether as a Plaintiff or Defendant—be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant or whose presence before the Court may be necessary for enabling the Court to effectively and completely adjudicate upon and settle all questions involved in the suit, be added.”
6. The test for joinder was considered in *Florence Nafula Ayodi & 5 others v John Tabalya Mukite & another and Benson Girenge Kidiavai & 67 others (applicants/intended interested parties)* [2021] eKLR, where the Court observed:

“The above notwithstanding, it is common sense to expect that for one to be enjoined in certain proceedings, those proceedings have to be pending before the court. In *Leonard Kimeu Mwanthi v Rukaria M’twerandu M’iringu; Nathaniel Kithinji Ikiugu & 4 others (Intended Interested Parties)* [2021] eKLR, Justice L. Mbugua stated that “A party claiming to be enjoined in proceedings must have an interest in the pending litigation...” In other words, the proceedings should still be alive in the court: they could be at the nascent or other stages but must be alive. In *Central Kenya Ltd. V. Trust Bank & 4 Others*, CA NO. 222 OF 1998 the Court, in discussing the issue of joinder of parties, held that “We would however agree with the respondent that Order 1 Rule (10)(2) contemplates an application for amendment or joinder of parties where proceedings are still pending before the Court.”
7. What then constitutes an ‘interested party’? This was clarified in *Judicial Service Commission -vs- Speaker of the National Assembly & Another* [2013] eKLR where the court held that:

“...an interested party is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the court to make a determination favorable to his stake in the proceedings.”
8. The applicant’s claim to being an interested party is founded on two grounds. First, that parcel number Nandi/Cheptil/49 was distributed in the estate of Malakwen Cheptalam Rotich through Kapsabet



High Court P&A E001/2022, with a certificate of confirmation dated 25th April, 2022. Second, that he is currently a party to ongoing litigation in ELCC E014/2023 concerning the ownership of the same parcel, where he is sued as an administrator of the estate of Malakwen Cheptalam Rotich.

9. A critical fact that must be addressed at the outset is that this court delivered a comprehensive ruling on 1st April 2025 ordering the distribution of the estate. In that ruling, this court specifically considered and determined the very issue the applicant now seeks to raise. At paragraph 13 of the said ruling, this court addressed the contention regarding the 12 acres allegedly forming part of Nandi/Cheptil/49 and found as follows:

“Turning to the contentious issue of the 12 acres allegedly forming part of L.R Nandi/Cheptil/49, which the 1st and 4th Administrators claim was illegally declared trust land and subsequently registered under the name of Malakwen Cheptalam Rotich, the court finds this allegation to be a separate matter that should not delay the present succession proceedings. The Environment and Land Court case No. E014/2023 cited by the 1st and 4th Administrators can proceed independently, and any future determination in that case regarding the disputed 12 acres can be addressed through appropriate legal remedies. The court finds favour with the 2nd Administrator's assertion that introducing this issue at this late stage appears calculated to delay the succession process, particularly given that beneficiaries continue to reside on the land in question.”

10. The court then proceeded to adopt a distribution model and directed the administrators to effect distribution within 90 days. The fundamental question is whether the applicant can now seek to be enjoined in proceedings that have effectively been concluded by a substantive ruling on distribution.
11. The applicant's claim to being an interested party is founded on the assertion that Nandi/Cheptil/49 was distributed in the estate of Malakwen Cheptalam Rotich through Kapsabet High Court P&A E001/2022, with a certificate of confirmation dated 25th April 2022. However, the administrators have produced evidence showing that the registration of Malakwen Cheptalam Rotich over Nandi/Cheptil/49 was cancelled on 6th January 2022 on grounds of being an illegal and fraudulent entry. This court has examined the green card and confirms that entry number two was cancelled on the said date.
12. This court is mindful that it already considered the very issue the applicant now raises. The distribution of the estate was ordered after full consideration of the competing claims, including the assertion about the disputed 12 acres. To now allow the applicant to be joined and to stay distribution would effectively permit a collateral attack on this court's ruling of 1st April 2025.
13. The Applicant is seeking stay of the transmission of the intestate estate must be able to eloquently demonstrate that he has substantial legal issues to canvass in the already decision made by this court in its final decree on distribution of the estate. The legal points to be raised must be recondite or serious enough as to display convincingly that the points of law for that matter may tilt the balance of justice in its favour. It is therefore sufficient for the Applicant to demonstrate sufficiently that the earlier decisions on the same asset have not settled the issue conclusively that there should be no re-litigation on the same. A consideration of some collateral circumstances and perhaps in some cases inherent matters which may be pursued by the Applicant likely to destroy the subject matter of the proceedings and limit the rights of inheritance to some of the heirs cannot be entertained by this probate court. The Applicant in this case has not show any peculiar features which will influence the court to grant the leave of say of execution of the certificate of confirmation.
14. I am being asked to exercise discretion in favour of the Applicant to freeze the transmission of the shares of the intestate estate to the beneficiaries. It is trite that discretion has been defined to mean a power



or right conferred upon public functionaries and the levels of courts in Kenya being creatures of *the constitution* are mandated by law to act officially and according to the dictates of their own judgment and conscience. The most important consideration is that the courts like the one I preside over must exercise their discretion Judicially and Judiciously. In doing so, the courts should not lose sight that in exercising its discretion on a case-to-case basis will also consider that the winning party in a litigation is entitled to the fruits of his or a judgement until further review or appeal sets aside the earlier decision.

15. In resolving this matter before this court I am reminded of the provisions of Section 7 of the *Civil Procedure Act* on the doctrine of re-judicata. This doctrine was more expounded in Halsbury's Laws of England. 4th edition Vol. 16, paragraph 1528. The passage reads, in part " In order for the defense of re judicate to succeed it is necessary to show not only that that the cause of action was the same but also that the plaintiff has had an opportunity of recovery and but for his own fault might have record in the first action that which he seeks to recover in the second action.....it is not enough that the matter alleged to be concluded might have been claimed. It is necessary to show that it was actually put in issue or claimed."
16. From my reading of the record, I am of the considered view that in this particular case the doctrine of estoppel also arises on the substance of the matter being raised by the Applicant with regard to Nandi/Cheptil/24. It is necessary to mention that this cause of action has been litigated and the report by the surveyor dated 22.11.2022 is very extensive on what the administrators to the estate ought to do to sort out the defect which indeed is not a fundamental cause of action before this probate court. For purposes of clarity, the survey brief is hereby reproduced for the benefit of the parties: We did reconnaissance and ground survey in November 19, 2022 as per the boundary details shown to us by the owners. From the documents provided to us and survey we carried out, we made the following observations.
 - a. The total area of the two parcels (24 and 49) as per the RIM and The Parcel (24) as per the Family Members Occupation, Official Land Search and the Title Deed (for parcel number 24) is approximately 102.
 - b. The official land search for Nandi/Cheptil/24-indicates that the total area of the land is approximately 102.99 Acres which corresponds to the Parcel (24) in the observation above. The distribution of the acreage as per the RIM is Nandi/Cheptil/24-90.85 Acres and Nandi/Cheptil/49-11.2 Acres.
 - c. The family members are spread out across the two parcels with some settlements established more than 30 years ago and others recent as per the google earth imagery overlay forwarded with this report.
 - d. As per the RIM there is no history of amendment resulting from subdivision of parcel number 24 into two or subdivision of an old number to give rise to parcel number 24 and 49. They are both as captured in the official search original number
 - e. The occupation however, have a title deed for parcel number 24 that reads Approximately 103.0 Acres which by coincidence or design perfectly describes our first and second observation
 - f. The Registry Index map has indicated of only the two parcels areas on it

Inferences

- a. The parcel number 49 and 24 are one parcel under number 24 and not two parcels as supported by area confirmation findings and the land search.



- b. Parcel number 24 and 49 are one parcel under parcel number 24 unless: There are records of subdivision of originally 24 into other two parcels that are not indicated either on the map or exist in the land register. There is evidence the owner surrendered part of his parcel (49) as trust land.
- c. Creation of number 49 is erroneous and should be corrected accordingly.
- d. The placement of acreages for the two parcels on the RIM and not any other parcels on the same sheet and adjoining ones' draws suspicion on the intentions of doing so.
- e. There is history of ownership, settlement and occupation by the family and to extent having their members laid to rest there as shown on the survey plan. Kindly see attached survey plan.

Recommendations

- a. Write to the Land registrar requesting amendment of the land registrar to reflect the information on the title deed
 - b. The county surveyor to amend the map accordingly to reflect the amended register and the settlement on the ground
 - c. The Land registrar and county surveyor advise on the acreage labelling on these specific parcels on the RIM which is unlike professionally.
17. This survey report is comprehensive and self-executing by the administrators during the pendency of the six months period stipulated in the law for them to distribute the estate and file a probate account. The county surveyor was very clear in his evidence before this court on the remedial action to be taken in so far as the superimposition of Nandi/Chepterit/24 and 49.
18. The facts of this application can be better resolved by a very illuminating explanation of the doctrine was given by Lord Diplock in *Thoday v Thoday* (1964)P. 181, 198 in the following terns. The second species, which I will call 'issue estoppel', is an extension of the same rule of public policy. There are many causes of action which can only be established by proving that two or more different conditions are fulfilled. Such causes of action involve as many separate issues between the parties as there are conditions to be fulfilled by the plaintiff in order to establish his cause of action; and there may be cases where the fulfilment of an identical condition is a requirement common to two or more different causes of action. If in litigation upon one such cause of action any of such separate issues as to whether a particular condition has been fulfilled is determined by a court of competent jurisdiction, either upon evidence or upon admission by a party to the litigation, neither party can, in subsequent litigation between one another upon any cause of action which depends upon the fulfilment of the identical condition, assert that the condition was fulfilled if the court has in the first litigation determined that it was not, or deny that it was fulfilled if the court in the first litigation determined that it was."
19. What is seen and appreciated from the evidence is that this two parcels of land there is obviously an error of the face of the record in so far as the survey map entries are concerned. The County Surveyor incidentally visited the twin parcels of land and in his expert opinion provided a road map on amalgamation on Nandi/Cheptiret/24 & 29 respectively. I do not even think that it is a matter which the County Land Registrar and surveyor cannot resolve within the provisions of the [Land Registration Act](#). The re litigation of it even in ELC Court at the moment might not be justified unless otherwise the court order is of necessity or as advised by the Land Registrar. I do not share the views that stay of execution is the fair and proportionate remedy at this stage. In seeking to ascertain wherein the merit



lies in the arguments advanced by the parties I am guided by the principles discussed in the above authorities and the evidence by the County Surveyor accompanied with his report admissible under Section 48 of the *Evidence Act*.

20. Having taken into account the various views expressed on the subject on the affidavits filed and peruse of the record stay of execution of certificate of confirmation of grant is denied. The administrators are empowered to follow through the recommendations made by the County Surveyor and working closely with the Land Registrar who also have the competent jurisdiction as a first forum to apply the expertise on the question implicit raised as a fundamental one by the Applicant. I dare say that in the event there is need for an order from ELC or Probate Court an appropriate application be made to ultimately resolve the conflicts of the intestate estate referenced as Nandi/Chepterit/24 & 49 respectively. So, I find that even if the validity of stay is a fundamental pre-requisite for an order for the transmission of the shares itemized in the certificate of confirmation of the grant there is no evidence of fundamental fact in the strict sense that a stay order is the best option in this litigation. I also find it imperative that the doctrines of res-judicata and estoppel are a bar to any re-litigation on this issue given the framework alluded to elsewhere in this ruling. The costs of this application be in the cause.

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

.....

R. NYAKUNDI

JUDGE

