



REPUBLIC OF KENYA



**In re Estate of Kipkobel Arap Misoi (Deceased) (Succession Cause E047 of 2023) [2025] KEHC 14753 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14753 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
SUCCESSION CAUSE E047 OF 2023  
JK NG'ARNG'AR, J  
OCTOBER 23, 2025**

**IN THE MATTER OF THE ESTATE OF KIPKOBEL ARAP MISOI (DECEASED)**

**BETWEEN**

**RHODA CHEBWOGEN MIBEI ..... 1<sup>ST</sup> PETITIONER**

**ESTHER CHELANGAT MIBEI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**PAULINE CHEPKORIR MIBEI ..... 1<sup>ST</sup> OBJECTOR**

**JOSEPH KIPLANGAT SANG ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. The Petitioners petitioned for Letters of Administration Intestate for the estate of Kipkobel Arap Misoi (deceased) on 27<sup>th</sup> December 2023. A Grant was issued in the joint names of the Petitioners on 5<sup>th</sup> August 2024.
2. The Petitioners filed a Chamber Summons Application dated 1<sup>st</sup> August 2024 where they sought the following orders: -
  - I. Spent.
  - II. Spent.
  - III. Spent.
  - IV. That the Certificate of Special Limited Grant issued to Rhoda Chebwogen Mibei and Esther Chelangat Mibei be revoked and a fresh Certificate be issued.
  - V. That this Honourable Court be pleased to appoint the 1<sup>st</sup> Objector/Applicant herein as a co-administrator of the deceased's estate.



- VI. That this court be pleased to make any other order as it deems fit in the circumstances.
3. The Application was brought under Order 40 Rules 1, 2 and 3 of the Civil Procedure Rules, sections 1, 1A, 3, 3A and 63 (e) of the Civil Procedure Act, sections 45, 47, 71, 76, 86 and 94 of the Law of Succession Act and Rules 44(1), 59 (6) of the Probate and Administration Rules. The Application was anchored on the grounds on the face of the Application together with the Supporting Affidavit sworn by Pauline Chepkorir Mibei on 1<sup>st</sup> August 2024.

### **The 1<sup>st</sup> Objector's case**

4. Through her Supporting Affidavit dated 1<sup>st</sup> August 2024, the 1<sup>st</sup> Objector stated that she was the deceased's third wife having been married to him in the year 1973 under Kipsigis customary marriage. That when she got married, she had 6 children and sired 4 more with the deceased. The 1<sup>st</sup> Objector further stated that their 4 children were not included in the list of beneficiaries and in the Grant.
5. It was the 1<sup>st</sup> Objector's case that a Special Limited Grant was issued on 5<sup>th</sup> March 2024 and was due for confirmation on 5<sup>th</sup> August 2024. That her children did not give any consent to the Petitioners to administer the deceased's estate. It was the 1<sup>st</sup> Objector's further case that the Petitioners were currently wasting the deceased's estate and disposing of the same to third parties.
6. The 1<sup>st</sup> Objector stated that the Petitioners and their children had been hostile to them and she had sought the court's intervention in attending the deceased's burial. The 1<sup>st</sup> Objector further stated that the Petitioners intended to deny them a share of the deceased's estate and if the Grant was not revoked, it would occasion them grave injustice.
7. The 1<sup>st</sup> Objector filed a Supplementary Affidavit dated 19<sup>th</sup> November 2024 and she stated that her third name Mibei was given to her by the deceased as his 3<sup>rd</sup> wife. That the Petitioners were her co-wives and had all been married under the Kipsigis customary law. The 1<sup>st</sup> Objector further stated that all her male children inherited the name Sang from the deceased after undergoing circumcision.

### **Response**

8. The 1<sup>st</sup> Petitioner filed a Replying Affidavit dated 9<sup>th</sup> October 2024 where she stated that the Objectors were not part of the deceased's estate and had not interacted with them before. The 1<sup>st</sup> Petitioner denied being hostile to the Objectors and their family.

### **Chamber Summons Application dated 20<sup>th</sup> November 2024**

9. The Objectors filed a Chamber Summons Application dated 20<sup>th</sup> November 2024 where they sought the following orders: -
- I. That the Honourable Court be pleased to order that the 2<sup>nd</sup> Objector/Applicant, David Kipngeno Sang, Paul Sang and Sarah Chebet the known children of the deceased do submit to a DNA test to determine paternity.
  - II. That the DNA test be ordered at the nearest Government Chemist Laboratories at a date agreed upon by the parties, in any event within 14 days of this order and the DNA report to be filed in court.
  - III. That in the alternative to prayers 1 and 2 above, the deceased's grave situate in Ndanai Sub-County, Bomet County be unsealed and opened to exhume his remains with a view of harvesting samples therefrom for purposes of Deoxyribonucleic Acid tests.



- IV. That officers of the nearest Government Chemist Laboratories do undertake/oversee the disinterment and do harvest the necessary samples for DNA testing.
  - V. That the Police Officer Commanding Ndanai police Station and/or proximate to the late Kipkobel Arap Misoi's burial site do oversee the implantation of the exhumation orders.
  - VI. That the 2<sup>nd</sup> Objector/Applicant to present himself to the Government Chemist Laboratory elected by the parties or by this Honourable Court within 7 days or earlier after exhumation and harvesting of the DNA sample of the deceased for sample testing and comparison. DNA examination results/findings be filed by the respective examining institute within 30 days after the DNA examination.
  - VII. The OCS Ndanai Police Station and/or his designated police officers do oversee the implementation of the subject order in offering security during the exhumation process.
  - VIII. That the costs of the DNA be provided for.
10. The Application was brought under Order 51 Rules 1 of the Civil Procedure Rules, sections 1, 1A, 3, 3A and 63 (e) of the *Civil Procedure Act*, sections 3, 26, 27, 29 and 47 of the *Law of Succession Act*. The Application was anchored on the grounds on the face of the Application together with the Supporting Affidavit sworn by Pauline Chepkorir Mibei on 20<sup>th</sup> November 2024.

### **The 1<sup>st</sup> Objector's case**

11. The 1<sup>st</sup> Objector stated that the deceased assumed parental responsibility over their children and he fully provided for them. That the deceased was the biological father to the 2<sup>nd</sup> Objector and his other siblings.
12. It was the 1<sup>st</sup> Objector's case that sometime in the year 2019, the deceased swore an Affidavit declaring that he was the 2<sup>nd</sup> Objector's biological father and the same position was supported through the Chief's letter. That despite this evidence, the Petitioners had denied that the deceased was the 2<sup>nd</sup> Objector's biological father and the only way this impasse could be resolved was through a DNA test. It was the 1<sup>st</sup> Objector's case that they were willing to cater for the costs of the DNA tests. That if the prayer of a DNA test was not granted, they would be prejudiced.

### **Response**

13. The 1<sup>st</sup> Petitioner filed a Replying Affidavit dated 16<sup>th</sup> December 2024 where she stated that the Application was incompetent and an abuse of the court process. The 1<sup>st</sup> Petitioner further stated that there was no nexus between the deceased and the Objectors that would warrant a DNA test.
14. It was the 1<sup>st</sup> Petitioner's case that the Objectors had not provided any proof to show that they had been maintained by the deceased in his lifetime.
15. The 1<sup>st</sup> Petitioner filed another Replying Affidavit dated 15<sup>th</sup> April 2025 where she stated that she was the deceased's wife and the Objectors were not part of their family. That at no time in their marriage did the deceased cohabit with the 1<sup>st</sup> Objector.
16. It was the 1<sup>st</sup> Petitioner's case that the 1<sup>st</sup> Objector was married to Mr. Talam and was not married to the deceased. That the 2<sup>nd</sup> Objector was the son of the said Mr. Talam. It was the 1<sup>st</sup> Petitioner's further case that the 1<sup>st</sup> Objector's claim of being the deceased's wife had long been dismissed by the Kipsigis elders in a meeting held on 29<sup>th</sup> January 2011. That it was agreed in the said meeting that the 1<sup>st</sup> Objector should never lay claim to being a member of the deceased's family.



17. The 1<sup>st</sup> Petitioner stated that the Kipsigis customs and traditions barred a married woman from marrying a different man before a divorce. That the 1<sup>st</sup> Objector had not indicated the alleged Kipsigis customary marriage ceremony she celebrated with the deceased and had neither demonstrated the bride price her family received.
18. It was the 1<sup>st</sup> Petitioner's case that the Application for a DNA test was misplaced and far-fetched and that the said deceased's children ought to have requested for a DNA test during the deceased's lifetime. That the deceased was dead and buried.

### **Chamber Summons Application dated 6<sup>th</sup> February 2025**

19. The Objectors' Advocates, M/S P. Sang & Co. Advocates filed a Chamber Summons dated 6<sup>th</sup> February 2025 where they sought the following orders: -
  - I. Spent.
  - II. Spent.
  - III. That the Application dated 20<sup>th</sup> November 2024 be determined on a priority basis to the determination of the Application dated 1<sup>st</sup> August 2024.
20. The Application was brought under Order 51 Rules 1 of the Civil Procedure Rules, sections 1, 1A, 3, 3A and 63 (e) of the *Civil Procedure Act*. The Application was anchored on the grounds on the face of the Application together with the Supporting Affidavit sworn by Purity C. Sang on 6<sup>th</sup> February 2025.
21. The Advocate stated that when this matter came up for directions on 5<sup>th</sup> February 2025, the court directed that the Application dated 1<sup>st</sup> August 2024 be canvassed by way of written submissions. That she instructed the Advocate who held her brief to make a proposal to the court that the Application dated 1<sup>st</sup> August 2024 be canvassed by way of viva voce evidence while the Application dated 20<sup>th</sup> November 2024 be canvassed by way of written submissions.
22. It was the Advocate's case that it was prudent that the Application dated 1<sup>st</sup> August 2024 be canvassed by way of viva voce evidence after hearing and determination of the Application dated 20<sup>th</sup> November 2024. That by first determining the Application dated 20<sup>th</sup> November 2024 (paternity test), this court would be better placed to determine whether the Objectors had the requisite capacity to seek revocation of the Grant.
23. The Advocate stated that they were apprehensive that the Application dated 1<sup>st</sup> August 2024 may be dismissed for lack of capacity.
24. On 15<sup>th</sup> May 2025, the court directed that all three Applications be canvassed by way of written submissions.

### **The Objectors' submissions**

25. Through their written submissions dated 5<sup>th</sup> June 2025, the Objectors submitted that the deceased was the 2<sup>nd</sup> Objector's biological father and was duly given the deceased's name as per the Kipsigis traditional customs. That the best way to determine the paternity was through a DNA test. They relied on in the matter of the estate of Peter Muray Chege alias Muraya Chege (2019) eKLR and re estate of MKT (Deceased) (Succession Cause 16 of 2018) [2022] KEHC 12969 (KLR).
26. It was the Objectors' case that the Petitioners would suffer no prejudice if the order for the DNA test was granted. They relied on M.W & 3 others vs D.N (2018) eKLR and D N M vs J K (2016)



eKLR. That the Petitioners had not suggested an alternative method of resolving the dispute. It was the Objectors' further submission that the DNA test was the best and most conclusive way of resolving their dispute.

27. The Objectors submitted that it was prudent that the question of the paternity of the 2<sup>nd</sup> Objector be determined to know if they were the deceased's dependants within the provisions of section 29 of the *Law of Succession Act*.
28. The 3<sup>rd</sup> Objector stated that he was apprehensive that the Petitioners would sell, transfer or waste the deceased's estate. That if the orders sought in the Application were not granted, they would suffer substantial loss as the deceased's estate would be wasted.

### **The Petitioners' submissions**

29. Through their written submissions dated 7<sup>th</sup> August 2025, the Petitioners submitted that any party seeking to benefit from the estate of a deceased person on the basis of an alleged customary marriage must satisfy the legal and evidentiary threshold prescribed by law. That the 1<sup>st</sup> Objector had not discharged her burden of proof and they relied on section 59 of the *Marriage Act* and JTO v AP (Appeal E128 of 2022) [2024] KEHC 10464 (KLR) (Family) (20 August 2024). The Petitioners further submitted that the 1<sup>st</sup> Objector had not demonstrated any elements of a customary marriage.
30. It was the Petitioners' submission that the 1<sup>st</sup> Objector concealed the fact that she was married to Mr. Talam and had not provided any proof of divorce, separation or annulment. That in Kipsigis customs, a marriage remained lawful until it was customarily dissolved. It was the Petitioners' further submission that the deceased had two known surviving wives and the deceased never introduced the 1<sup>st</sup> Objector as a wife to the family.
31. The Petitioners submitted that the Objectors have not provided evidence to show that they were recognised by the deceased as part of his family. That the alleged sharing of surnames was legal unfounded and was not sufficient to establish dependency or familial connection. The Petitioners further submitted that the Objectors failed to provide corroborative evidence such as financial support to buttress their claim.
32. It was the Petitioners' submission that the Objectors had not provided sufficient and credible evidence to justify a DNA test. That a party seeking such an order had to demonstrate prima facie evidence to warrant such an order. They relied on re Estate of MKK (Deceased) (Succession Cause 387 of 2012) [2024] KEHC 13494 (KLR) (6 November 2024). It was the Petitioners' further submission that the 1<sup>st</sup> Objector had not provided any nexus between herself and the deceased.
33. The Petitioners submitted that the Objectors had all the time during the deceased's lifetime to assert their claims and pursue paternity but chose not to. That the Objectors' claims smacked of opportunism rather than legitimacy. The Petitioners further submitted that DNA tests were intrusive in nature and ought not to be granted when it was anchored on speculation. They relied on S.W.W vs G.M.K (2012) eKLR.
34. It was the Petitioners' submission that an exhumation order should not be granted lightly by the courts as it disturbed the dignity of the deceased and the peace of his surviving family. That the prayer for exhumation was an afterthought and they relied on HCK v EJK (Succession Cause 1129 of 2006) [2008] KEHC 3895 (KLR) (Family) (17 November 2008) (Ruling). It was the Petitioners' further submission that the Objectors had failed to exhaust less intrusive means of presenting evidence such as producing admissible documents, calling credible witnesses or demonstrating a consistent life pattern that aligned with the deceased.



35. I have considered the Chamber Summons Application dated 1<sup>st</sup> August 2024, the Replying Affidavit dated 9<sup>th</sup> October 2024, the Supplementary Affidavit dated 19<sup>th</sup> November 2024, the Chamber Summons Application dated 20<sup>th</sup> November 2024, the Replying Affidavit dated 16<sup>th</sup> December 2024, the Replying Affidavit dated 15<sup>th</sup> April 2025, the Objectors’ written submissions dated 5<sup>th</sup> June 2025 and the Petitioners’ written submissions dated 7<sup>th</sup> August 2025. I have sieved two issues for my determination: -

- I. Whether there were sufficient grounds to revoke the Grant issued on 5<sup>th</sup> March 2024
- II. Whether the prayer for a DNA test is merited.

**i. Whether there were sufficient grounds to revoke the Grant issued on 5<sup>th</sup> March 2024.**

36. Before I address the issue of the grounds for revocation, it is important to deal with the Chamber Summons Application n dated 6<sup>th</sup> February 2025. The Objectors’ Advocate M/S P. Sang & Co. Advocates wanted this court to dispense the DNA Application (Chamber Summons Application dated 20<sup>th</sup> November 2024) before the Application for Revocation of Grant (Chamber Summons Application dated 1<sup>st</sup> August 2024).

37. With respect to the Applicant, I disagree with this position. It is the position of this court that for one to merit an order for a DNA test, one must prove or demonstrate a nexus or link between himself/herself and the subject matter. In this case, the Objectors bore the brunt of establishing a link between themselves and the deceased before this court could consider their prayer for a DNA test. I concur with Anuro J. in re Estate of MKK (Deceased) [2024] KEHC 13494 (KLR) where he held: -

“.....an Applicant for an order for a DNA test bears the burden of demonstrating the nexus linking him, or the matters in issue, to the subject person.....”

38. Similarly, Ogola J. in re Estate of John Samwel Gachuma Mbugua (Deceased) [2023] KEHC 25409 (KLR) held: -

“.....for an order for a DNA test to be made, a basis must be laid; a nexus or link between the applicant and the person the order is being sought against must be established....”

39. In regards to the prayer to revoke the Grant, Section 76 of the *Law of Succession Act* provides: -

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
  - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or



- (ii) to proceed diligently with the administration of the estate; or
- (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.

40. In the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015] KEHC 7143 (KLR), Achode J. (as she then was) observed: -

“The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

41. The 1<sup>st</sup> Objector stated that she was the deceased’s third wife having been married under Kipsigis customs in the year 1973. She further stated that she came into the marriage with six children and bore four more with the deceased. It was the Objector’s case that the Grant ought to be revoked because the Petitioners concealed the fact that the deceased had another family and they failed to include her and her children while making the Grant. On the other hand, the Petitioners denied that the 1<sup>st</sup> Objector was the deceased’s wife. The 1<sup>st</sup> Petitioner stated that she was the deceased’s wife and the deceased had not introduced the 1<sup>st</sup> Objector as a wife during his lifetime. The 1<sup>st</sup> Petitioner further stated that the 1<sup>st</sup> Objector was married to a Mr. Talam and had no capacity to enter into another marriage under Kipsigis customs during the pendency and existence of her marriage to Mr. Talam.

42. The 1<sup>st</sup> Objector bore the burden of proving her customary marriage to the deceased. In *ASA v NA & another* [2020] KEHC 345 (KLR), Wendoh J. quoted the Court of Appeal case of *Kimani v Gikanga* [1965] EA 735 thus: -

“To summarise the position; this is a case between Africans and African customary law forms a part of the law of the land applicable to this case. As a matter of necessity, the customary law must be accurately and definitely established. The Court has a wide discretion as to how this should be done but the onus to do so must be on the party who puts forward customary law. This might be done by reference to a book or document reference and would include a judicial decision but in view, especially of the present apparent lack in Kenya of authoritative text books on the subject, or any relevant case law, this would in practice usually mean that the party propounding customary law would have to call evidence to prove that customary law, as would prove the relevant facts of his case.”

43. Similarly, in *Rebecca Muthoni Kamau v Tabitha Muthoni Kamau* [2021] KEHC 3927 (KLR), Onyiego J. held: -

“Indeed, proof of the existence of a customary marriage is a matter of fact which must be substantiated by adduction of evidence. See *Gituanja vs Gituanja* (Supra) where the court



stated that existence of a customary marriage is a matter of fact which must be proved by evidence and that the evidence adduced had proven a valid marriage under Kikuyu customary law as was expressed by the slaughter of the “Ngurario”.

Similar position was held in the case of Hortensia Wanjiku Yawe Vs the Public Trustee (Supra) in which Justice Kneller identified three important principles regarding proof of customary marriage as;

- (1) The onus of proving customary marriage is generally on the party who claims it
- (2) The standard of proof is the usual one for a civil action namely, one on the balance of probabilities
- (3) Evidence as to the formalities required for customary law marriages must be proved to the evidential standard.”

44. I have looked at the pleadings and the 1<sup>st</sup> Objector has not presented any evidence to show that she had a customary marriage with the deceased.

45. It is important to state that as per the provisions of section 29 of the Law of Succession Act, a dependant need not be a biological son or daughter to the deceased, one can be a dependant if they are able to demonstrate that the deceased provided and cared for them during his lifetime. Section 29 of the Law of Succession Act provides: -

For the purposes of this Part, "dependant" means—

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death. (Emphasis mine)

46. The 1<sup>st</sup> Objector did not prove that the deceased provided for and maintained her and the 2<sup>nd</sup> Objector during his lifetime. Equally, in their Supplementary Affidavit dated 19<sup>th</sup> November 2024, the Objectors attempted to create a nexus between themselves and the deceased by attaching an Affidavit dated 18<sup>th</sup> July 2019 signed by the deceased stating that he (deceased) was the 2<sup>nd</sup> Objector's biological father. The said Affidavit was sworn in support of the 2<sup>nd</sup> Objector's efforts to get an Identity Card. In my view, this is insufficient evidence to establish paternity even on a prima facie level. It is my finding therefore that the 1<sup>st</sup> Objector did not meet the threshold for revoking the Grant dated 5<sup>th</sup> March 2024.

47. Flowing from the above, the Objectors are strangers to the deceased's estate. They had failed to establish a nexus between themselves and the deceased and in the circumstances, the prayer for a DNA test cannot issue.

48. In the end, the Chamber Summons dated 1<sup>st</sup> August 2024, Chamber Summons dated 20<sup>th</sup> November 2024 and Chamber Summons dated 6<sup>th</sup> February 2025 have no merit and are dismissed.

Each party to bear their own costs.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 23<sup>RD</sup> DAY OF OCTOBER, 2025.**



.....

**HON. JULIUS K. NG'ARNG'AR**

**JUDGE**

Ruling Delivered in the presence of;

Susan/Siele Court Assistant

Bosek for 1<sup>st</sup> and 2<sup>nd</sup> petitioner

M/s Rotich for 1<sup>st</sup> and 2<sup>nd</sup> Objector

