



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of the Late Kipsilgich Koech (Probate & Administration
E83 of 2021) [2025] KEHC 14789 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14789 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION E83 OF 2021
JRA WANANDA, J
OCTOBER 22, 2025**

BETWEEN

**CHRISTINE J KIPTUI 1ST OBJECTOR
SUSAN GATWIRI NDUGUI (SUING AS A MOTHER AND NEXT FRIEND OF
MAXWELL GITONGA KIPKURGOI KOECH - MINOR) 2ND OBJECTOR
MERCY JELAGAT SILGICH 3RD OBJECTOR**

AND

**JUNE JEROBON SILGICH 1ST ADMINISTRATOR
VICTOR K KOECH 2ND ADMINISTRATOR**

RULING

1. On 1/08/2025, I rendered a Ruling in this matter allowing the 3rd Objector's Application dated 11/11/2024 whereof she sought orders that, among others, the Administrators be restrained from interfering with her occupation of 15 acres portion of the parcel of land known as Title Number Soy Kipsomba Block 11/274. In the Ruling, at paragraph 16 thereof, I recited the contents of the Supporting Affidavit sworn by the 3rd Objector in support of the Application as follows:

“The Application is supported by the Affidavit sworn by the said Susan Gatwiri Ndugui, in which she reiterated that she is the mother of the said minor, who is a biological son of the deceased, and thus one of the beneficiaries of his estate. She deponed that on 9/11/2024 at around 7.30 am, the Administrators trespassed onto a portion of the said parcel of land, where she resides with her said son (the minor), with a view to constructively disinheriting the minor of the land that the family had granted him through previous family meetings. She deponed that with the help of 3rd parties, the Administrators deliberately and without lawful justification, constructed a semi-permanent house on a portion of the land. She



deponed further that she reported the matter at the Kipsomba Police Station, and that it was through the intervention of the police that she was able to access the land, that however, the Administrators continued with the construction on the next day and continued to plough the land. She urged that the actions are in direct contravention of her and her son's rights under Articles 3, 27 and 40 of *the Constitution* of Kenya, and also Section 82 of the *Law of Succession Act*.”

2. I then made findings, inter alia, as follows:

“39. Applying the above principles to the facts of this case, it is clear that the Applicant and her son, a minor, have been in occupation of the said 15 acres portion of the parcel of land in issue herein, which in aggregate measures 80 acres or thereabouts. That is clear from the pleadings. The Administrators are not denying that the Applicant was lawfully and peaceably allowed to take the possession, with full authority and knowledge of the members of the family of the deceased. The Applicant did not just drop on the said portion of land from heaven, and neither did she forcefully invade it. My understanding is that she took possession as a consequence of resolutions reached in family meetings. To this extent, her forceful removal from the land without a Court order, amounts to “rule of the jungle” and is clearly anarchist and without justification. To make it even worse, there is indication that the Administrators and their agents even went ahead and started constructing structures thereon. It is quite preposterous for the Administrators to turn around and argue that the orders sought are overtaken by events because the Applicant and her son are already out of the land and are no longer in possession, when they know very well that her being out of the land is because it is they (Administrators) who have extra-judicially forced her out in the first place,

40. It is not clear what prompted the Administrators to forcefully remove the Applicant in the course of this litigation but the history of this matter is that the Applicant claims have got a child (the minor herein) with the deceased during the latter's lifetime, and that the child was allegedly being maintained by the deceased. It appears that this claim was accepted by the family, including the family matriarch, the widow of the deceased and mother to the Administrators, the late Zipporah Jepkemoi Koech. I say so because in the Petition which the late widow filed together with the current 2nd Petitioner, they expressly included and listed the said minor as one the sons of the deceased. It is also clear that in the family meetings, the minor was allocated some properties, one of which was the subject 15 acres portion of the land in issue herein. The parties were also referred to Court Annexed Mediation and returned with a Mediation Settlement Agreement which also recognized the minor. Although from the record, it appears that the said Agreement has been disregarded as it did not include all presumed beneficiaries, there is equally no indication that it has been set aside, or that its contents should not be considered.”

3. I made further findings as follows:

“45. It is also important to note that although the widow changed her mind about recognizing the minor, there is no indication that she, at any time, herself



moved to evict the Applicant from the said portion of land during her lifetime. Why then would the Administrators wait until their mother was dead to suddenly employ extra-judicial acts to force the Applicant out of the land? I do not see how any Court of law can tolerate such extra-judicial conduct in a civilized world such as the one we claim to live in.

46. Further, during the time that the Administrators are said to have been forcing the Applicant out of the land, the Applicant rushed to Court for relief. As a consequence, my brother Hon. R. Nyakundi J, did issue a temporary order of injunction restraining the Administrators from interfering with the Applicant's occupation of the land, pending the hearing of this Application. That order, this Court cannot ignore, as it had not been set aside. Doing otherwise would undermine this Court's authority since Court orders are not issued for cosmetic purposes. Until a Court order is vacated or set aside, it must be obeyed by all.

47. Having carefully studied the matter, I am satisfied that the Applicant has demonstrated the existence of a prima facie case, which is genuine and arguable. I find her claim to be one that meets the threshold that on the material presented, a tribunal properly directing itself will conclude that there exists a right which may have been apparently infringed by the opposite party as to call for an explanation or rebuttal from the later.

4. In the end, I issued orders, inter alia, as follows:

“A temporary injunction is hereby issued restraining the Administrators and/or Petitioners, either by themselves, their agents, servants and/or employees, from howsoever trespassing onto the said 15 acres portion of the parcel of land known as Title Number Soy Kipsomba Block 11/274 measuring approximately 80 acres in aggregate, or conveying or alienating, or destroying any property or any developments thereon, or in any other way interfering with the Applicant's and/or her son's (the minor named hereinabove) occupation and/or use thereof, or their return or restoration thereto, pending determination of this Succession Cause.”

5. The Administrators have now returned to Court with the Application the subject of this instant Ruling, namely, the Chamber Summons dated 9/09/2025, filed through Messrs R.M. Wafula & Co. The same seeks orders as follows:

- i. [.....] spent
- ii. THAT this Honourable Court be pleased to review, vary its orders/Ruling of 1st day of August, 2025, and grant leave/permission to the Petitioners/Administrators either by themselves and/or their servants and/or employees to enter onto that parcel of land measuring approximately 15 acres contained in that parcel of land known as Title No. Soy Kipsomba Block 11/274 for purposes of harvesting millet beans and maize only, the beans, millet and maize planted by the Petitioners/Applicants in the said 15 acres of land, the estate of the deceased herein, pending the hearing and determination of this case.
- iii. THAT the harvested millet, beans and maize (the crops) be utilized by the Petitioners/Administrators for the benefit of Silgich Hill Academy, the school that the deceased established.



- iv. THAT in the alternative, the said crops be harvested and preserved by the Petitioners/Applicants pending further directions of this Honourable Court.
 - v. THAT upon harvesting the said crops, the Petitioners/Applicants do not re-enter onto the said parcel of land measuring 15 acres, save only for the purposes of harvesting, collecting and securing the said crops pending the hearing and determination of this Cause.
 - vi. That the Costs of this Application be in the Cause.
6. The Application is supported by the Affidavit sworn jointly by the 1st and 2nd Administrators, on 9/09/2025. The Administrators deponed that prior to issuance of the orders of 1/08/2025, they had cultivated sunflowers on the said 15 acres portion in late 2024, maize and millet in April, and beans in July 2025, that the millet is now ready, and the beans and maize will be ready for harvest in November 2025, although the maize is ready for boiling and roasting. They urged that upon learning of the Court order, they immediately and completely ceased carrying out any activity on the said portion or occupying it, and also advised their workers to vacate the portion. They therefore contended that they have fully complied with the order but that since vacating the land, the crops have been left unattended, are being stolen, and that the beans crop, which is ready for harvest, is almost decaying due to the ongoing rains. They then urged that they cultivated the crops solely for the benefit of Silgich Hill Academy, a school established by the deceased herein, and they have spent a lot of resources in the exercise which will go down the drain.
 7. The 3rd Objector, in opposition to the Application, swore a Replying Affidavit on 17/09/2025, filed through her Advocates, Messrs Tum & Associates. She deponed that there is the pending Summons for Contempt of Court dated 18/02/2025 against the Administrators arising from their disobedience of earlier Court orders since they unlawfully entered the said portion, cultivated and evicted the 3rd Objector and her son, and that the Administrators have, in their current Application, admitted that they cultivated sunflower thereon in late 2024, in April 2025, and in July 2025, all of which were carried out when the temporary injunction orders were still effective. She averred that contrary to the Administrators' assertion that the beans crop was planted in July 2025, the truth is that the Administrators first cultivated maize, which they later cut down for purposes of silage, and thereafter planted beans on the same part, and that the beans crop is still fresh, and not yet mature for harvest.
 8. She contended that the Administrators have continuously undermined judicial pronouncements and underestimated the Court's powers, that they are now seeking the Court's indulgence to harvest the fruits of their contemptuous actions is misuse of the Court process and they should not even be granted audience, and that they cannot be heard to claim any rights to harvest the crops planted in direct violation of Court orders, and while there are pending contempt proceedings for the very same conduct. She restated that "he who comes to equity must come with clean hands", and the Administrators should not be allowed to benefit from their own illegality. She also wondered why, although the total acreage of the parcel of land is 80 acres, the Administrators deliberately chose to cultivate on the specific 15 acres that the 3rd Objector and her minor son have been in continuous possession and occupation of. She further wondered why the Administrators could not have cultivated the remaining 65 acres for such purposes as cultivating for the benefit of the said Silgich Hill Academy. She also pointed out that the said school is situated on a separate parcel of land measuring approximately 22 acres which however it does not fully occupy, and wondered why the Administrators could not have utilized such available space.
 9. She contended that the selective targeting of the subject 15 acres portion shows malice on the part of the Administrators, who had forcefully evicted her and her son and vandalized their property, that as a result, she and her son have been unable to utilize and cultivate the land for their sustenance



- and livelihood. She further contended that despite the Administrators' claims of compliance with the Court orders of 1/08/2025, their servants/agents are still on the land interfering with her occupation.
10. She further stated she went to her house situated in the said portion on 13/09/2025 to make plans for her occupation thereof and on the next day, while in church, her said house was burnt down, which incident she reported to the police. She exhibited photographs depicting the partly burnt house and also a copy of the police report Occurrence Book. She asserted that the Administrators are not entitled to any legal remedy as per the doctrine of "ex turpi causa".
 11. With leave of the Court, the Administrators filed the joint Further Supporting Affidavit sworn on 16/09/2025. They insisted that they have complied with the Court order of 1/08/2025, and averred that on 13/09/2025, the 3rd Objector caused her workers to cut 8 trees from the said 15 acres portion, and also some maize crops which the Administrators had planted thereon and which matter they have reported to the police. They, too, exhibited photographs depicting the alleged cut down trees and maize, and also a copy of the police Occurrence Book. They, too, then contended that on 13/09/2025, they discovered that their temporary house, also situated on the same 15 acres portion, had been burnt down, and that it is the same house that their workers had moved out from, in compliance with the Ruling of 1/08/2015.
 12. The parties then filed written Submissions on the Application. The Administrators' Submissions is dated 19/09/2025, while the 3rd Objector's is dated 24/09/2025. I will not recount the Submissions as they basically echo the matters already contained in the respective Affidavits already recited above.

Determination

13. The one issue that I am called upon to determine in this matter is "whether this Court should allow the Administrators to enter into the portion comprising 15 acres of the parcel of land the subject hereof for purposes of harvesting crops, and thus review its orders issued on 1/08/2025 restraining the Administrators, on interim basis, from interfering with the Applicant's occupation and/or use of the said portion of land."
14. Review of orders in Succession matters is, just like in civil litigation, governed by Order 45 of the Civil Procedure Rules, which by Rule 63(1) of the Probate and Administration Rules, is one of the provisions of the Civil Procedure Rules imported into the *Law of Succession Act* (see John Mundia Njoroge & 9 Others vs. Cecilia Muthoni Njoroge & Another [2016] eKLR).
15. Order 45 provides for three circumstances under which an order for review can be made. The first one is where there has been "discovery of new and important matter or evidence". The second is where there has been "a mistake or error apparent on the face of the record". The third ground is "for any other sufficient reason". Clearly, the Administrators have come under the ground of "for any other sufficient reason".
16. Rules 49 and 73 of the Probate and Administration Rules, read together, also permit the Court to invoke its inherent jurisdiction to issue appropriate orders to meet the ends of justice, and to prevent abuse of process. The said provisions, read with Section 47 of the *Law of Succession Act*, are wide enough to cover the prayers sought by the Administrators.
17. As already recited above, in the Ruling delivered 1/08/2025, this Court, in granting the interim order of injunction restraining the Administrators from interfering with the 3rd Objector's occupation of the subject portion of land, made some adverse findings in respect to the Administrators' conduct. Among others, this Court found that the Administrators had employed extra-judicial acts to force the 3rd Objector out of the land. The Court also found that during the time that the Administrators are said



to have been forcing the 3rd Objector out of the land, the 3rd Objector rushed to Court for relief, upon which my brother, R. Nyakundi J, on 12/11/2024, issued a temporary order of injunction restraining the Administrators from committing the said acts. That order has not been set aside and I held that disregarding that fact would undermine the Court's authority since Court orders are not issued for cosmetic purposes, and until a Court order is vacated or set aside, it must be obeyed.

18. The 3rd Objector, in contending that the Administrators are, as a consequence of their conduct and disobedience of Court orders, unfit to be granted the reliefs they have sought, referred the Court to the doctrine of "ex turpi causa non oritur action".
19. "Ex turpi causa non oritur action" is a Latin legal principle meaning that "from a dishonourable cause, an action does not arise". It thus operates to prohibit a person from initiating a legal claim or benefiting from the Court when his cause of action arises from his own unlawful or illegal conduct or violation of the same law that he seeks to benefit from. The doctrine is based on public policy and serves to maintain the integrity of the legal system by preventing benefiting or profiting from one's own misconduct.
20. In respect to the doctrine, the Court of Appeal, in the case of Kenya Airways Limited v Satwant Singh Flora [2013] KECA 545 (KLR), observed as follows:

"In the case of MISTRY AMAR SINGH V SERWANO WOFUNIRA KULUBYA, 1963 EA 408 the Privy Council, on appeal from a judgment and order of the East African Court of Appeal, at page 414, Lord Morris of Borth-y-Guest, in his speech, quoted with approval the following passage from the judgment in SCOTT V BROWN, DOERING, McNAB & CO, (3), [1892] 2 QB 724 Lindley LJ at p. 728:

"Ex turpi causa non oritur actio. This old and well known legal maxim is founded in good sense, and expresses a clear and well recognized legal principle, which is not confined to indictable offences. No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is duly brought to the notice of the court, and if the person invoking the aid of the court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence adduced by the plaintiff proves the illegality the court ought not to assist him." See also the case of MAPIS INVESTMENT [K] LTD V KENYA RAILWAYS CORPORATION, [2006] eKLR.

21. In this case, the 3rd Objector's Application the subject of the Ruling delivered on 1/08/2025 was filed on 11/11/2024 and as aforesaid, the temporary orders of injunction by Nyakundi J were issued on 12/11/2024. I also note that by their Summons dated 13/11/2024, the very next day, the Administrators swiftly applied for discharge and/or setting aside of the said orders of Nyakundi J. It is therefore clear that the orders issued by Nyakundi J on 12/11/2024 became known to the Administrators almost immediately. The Administrators then fully participated in the substantive hearing of the 3rd Objector's said Application dated 11/11/2024, which this Court eventually determined on 1/08/2025 as aforesaid.
22. In their Affidavit sworn in support of their instant Application dated 9/09/2025, the Administrators have revealed that they had cultivated sunflower on the said 15 acres portion in late 2024, maize and millet in April 2025, and beans in July 2025. It follows therefore that the Administrators, by their own admission, at the time that they were cultivating the said crops on the subject portion of land, were fully aware that they were breaching the orders issued by Nyakundi J on 12/11/2024.
23. I also note that in their responses to the Application dated 11/11/2024, upon which I delivered the Ruling dated 1/08/2025, nowhere did the Administrators even allege that the crops they planted in



the subject portion, though in breach of Court orders, were planted for the benefit of the students of Silgich Hill Academy. This fact is admitted in the Administrators' written Submissions herein. That claim being introduced at this stage, thus sounds like a clear afterthought and red-herring calculated to invoke the Court's sympathy. In fact, in their responses to the Application dated 11/11/2025, the Administrators never even acknowledged that they had indeed planted any crops on the subject portion as had been alleged by the 3rd Objector, and instead strenuously fought the Application, both on the law and on factual matters. Why the now belated admission of cultivating the land yet they kept conspicuously silent about it when the issue arose in the Application dated 11/11/2024 and when they had the opportunity to do so? There is also nothing presented to demonstrate that the crops were indeed planted for the benefit of the school, nothing at all.

24. In any event, the Administrators being the proprietors of the school, and thus the same people having control over it, how does the Court ensure that indeed the harvest shall be used for the benefit of the students and shall not be immediately diverted for other use?
25. I also consider that the Administrators having extra-judicially forced the 3rd Objector out of the land, it means that the 3rd Objector has been kept out of the land for almost a year contrary to the orders of Nyakundi J issued on 12/11/2024, and she has therefore not been able to utilize the land over all that period. How shall she be compensated for this apparent loss? The Administrators have not even proposed or offered any kind of indemnification to the 3rd Objector.
26. In the circumstances, I find myself unable to grant the Application. Doing so will be rewarding the Administrators for their own breaches and employment of extra-judicial means to defeat operation of the law and justice. Clearly, the Administrators, by their conduct, are the authors of their own misfortune. The price they have to pay may sound harsh and punitive but if that is the price payable for disregarding the law, so be it.
27. Considering the serious allegations and counter-allegations made herein by the parties against each other, including use of violence and now, even allegations of burning of houses, allowing the Administrators to re-enter the said portion even for purposes of harvesting, without the Administrators having proposed any offer for compensation for the 3rd Objector, will, in my view, only escalate the hostility and tensions on the ground and might turn counter-productive.
28. As it has also been brought to my attention that there is a pending Application seeking a finding of contempt of Court against the Administrators, allowing the instant Application may end up prejudicing that pending Application.
29. This is not about the Court being insensitive and allowing planted crops to go to waste, but about litigants observing the law and obeying Court orders. It is still not too late for the Administrators to approach the 3rd Objector and propose an offer for an amicable settlement in respect to harvesting of the crops. If this advice is taken, and so done in good faith, there would be no need for wastage or decaying or rotting of the harvest as contended by the Administrators.
30. As aforesaid, as it has been brought to my attention that there is a pending Application seeking a finding of contempt of Court against the Administrators, I will say no more about the issue of obedience of Court orders lest my innocent comments thereon are wrongly interpreted to mean prejudging that pending Application.

Final Orders

31. In the end therefore, the Administrators' Application dated 9/09/2025 fails, and is dismissed. Costs shall be in the Cause.



DELIVERED, DATED AND SIGNED AT ELDORET THIS 22ND DAY OF OCTOBER 2025

.....

WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Mr. Bett for the 2nd Administrator
Mr. Bett also h/b for R. M. Wafula for the 1st Administrator
Mr. Chemweno for the 1st Objector
Mr. Odhiambo for the 2nd Objector
Ms. Sielei for the 3rd Objector
Court Assistant: Brian Kimathi

Eldoret High Court Probate & Administration Cause No. E083 of 2021

