

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BOMET**

**SUCCESSION CAUSE NUMBER 62A OF 2022**

**IN THE MATTER OF THE ESTATE OF TABUTANY TESOL**

**(DECEASED)**

**ALICE CHEPKEMOI KIMALEL ..... 1<sup>ST</sup>**

**PETITIONER**

**ANNAH CHEBET BUNEI ..... 2<sup>ND</sup>**

**PETITIONER**

**LUCY CHEPNGENO KOECH ..... 3<sup>RD</sup>**

**PETITIONER**

**KIBET NGETICH ..... 4<sup>TH</sup> PETITIONER**

**VS**

**REGINA CHEPCHIRCHIR SANG ..... 1<sup>ST</sup>**

**OBJECTOR**

**COSMAS KIPKIRUI LANGAT ..... 2<sup>ND</sup>  
OBJECTOR**

**JULIUS KIPKURUI RONO ..... 3<sup>RD</sup>  
OBJECTOR**

**JOEL KALYA ..... 4<sup>TH</sup> OBJECTOR**

**WESLEY KIPRONO LANGAT ..... 5<sup>TH</sup>  
OBJECTOR**

**REUBEN KIPNGENO LANGAT ..... 6<sup>TH</sup> OBJECTOR**

**LINNER CHELANGAT BII ..... 7<sup>TH</sup> OBJECTOR**

**CECILY CHEBET TANGUS ..... 8<sup>TH</sup> OBJECTOR**

**EDWIN MAKICHE ..... 9<sup>TH</sup> OBJECTOR**

**PAUL K. KOSKEI ..... 10<sup>TH</sup>  
OBJECTOR**

**GEOFFREY CHEPKWONY..... 11<sup>TH</sup>  
OBJECTOR**

**JULIUS CHERUIYOT ..... 12<sup>TH</sup> OBJECTOR**

**PATRICK CHERUIYOT ..... 13<sup>TH</sup> OBJECTOR**

<b>STANLEY KORIR BORE .....</b>	<b>14<sup>TH</sup></b>
<b>OBJECTOR</b>	
<b>STEPHEN NGENY .....</b>	<b>15<sup>TH</sup> OBJECTOR</b>
<b>BENSON K.RONO .....</b>	<b>16<sup>TH</sup> OBJECTOR</b>
<b>CHERUIYOT SOI .....</b>	<b>17<sup>TH</sup> OBJECTOR</b>
<b>ALFRED K. KOSKE .....</b>	<b>18<sup>TH</sup> OBJECTOR</b>
<b>GEOFFREY KOSKEY .....</b>	<b>19<sup>TH</sup> OBJECTOR</b>
<b>KIPLANGAT KOECH .....</b>	<b>20<sup>TH</sup> OBJECTOR</b>
<b>PETER KOECH .....</b>	<b>21<sup>ST</sup> OBJECTOR</b>
<b>DANIEL KIPKORIR NGETICH .....</b>	<b>22<sup>ND</sup> OBJECTOR</b>
<b>RICHARD KIPNGENO LANGAT .....</b>	<b>23<sup>RD</sup> OBJECTOR</b>
<b>ROSE JESANAI KWAMBAL .....</b>	<b>24<sup>TH</sup> OBJECTOR</b>

**RULING**

1. The deceased, Tabutany Tesol died on 22<sup>nd</sup> April 1991. Petition for Letters of Administration Intestate was done twice by her son Joshua Kipngetich Arap Langat (deceased)

on 10<sup>th</sup> August 2009 and 3<sup>rd</sup> February 2023. The original Petitioner in this case, Joshua Kipngetich Arap Langat died on 31<sup>st</sup> October 2016 and was substituted by the Petitioners herein. The deceased's estate was KERICHO/SILIBWET/779.

### **1st Objection**

2. The 1<sup>st</sup> and 2<sup>nd</sup> Objector filed their Objection dated 31<sup>st</sup> October 2023. They stated that they objected to the making of the Grant because they were not included in the list of beneficiaries. That the 1<sup>st</sup> Objector purchased 1acre of the deceased' estate from Joshua Kipngetich Arap Langat (deceased) on 29<sup>th</sup> April 2011 and 28<sup>th</sup> April 2011 and the 2<sup>nd</sup> Objector purchased 1.9 acres from Joshua Kipngetich Arap Langat (deceased) on 11<sup>th</sup> February 2011. They further stated that the Petitioners and their siblings had since relocated to other areas where they purchased other pieces of land from the proceeds of sale of their respective parcels in the deceased's estate.

3. The Petitioners filed a Replying Affidavit dated 9<sup>th</sup> July 2024 in response to the Objection and stated that Joshua Kipngetich Arap Langat (deceased) was incapable of transacting any business at the alleged time due to illness.

### **1st Preliminary Objection**

4. In response to the above Application, the Petitioners filed a Preliminary Objection on 9<sup>th</sup> January 2024 stating that the Objectors lacked locus standi under **section 76 of the Law of Succession Act** and further that this court lacked jurisdiction to determine issues relating to ownership of land.

### **2<sup>nd</sup> Objection**

5. The 3<sup>rd</sup> Objector filed his Objection dated 19<sup>th</sup> November 2023 and stated that he objected to the making of the Grant because they were not included in the list of beneficiaries. That he purchased 0.3 acres and 0.09 acres of the deceased' estate from Joshua Kipngetich Arap Langat (deceased) on 29<sup>th</sup> May 2011 and 20<sup>th</sup> August 2011 respectively. The 3<sup>rd</sup>

Objector further stated that he purchased 0.3 acres from Nelson Ngetich and Kenneth Nhetich on 21<sup>st</sup> April 2011.

### **2<sup>nd</sup> Preliminary Objection**

6. In response to the above Application, the Petitioners filed a Preliminary Objection dated 1<sup>st</sup> July 2024 stating that this court lacked jurisdiction to deal with the issue of purported creditors and that **Article 159 of the Constitution of Kenya, section 47 of the Law of Succession Act and Rule 41(3) of the Probate and Administration Rules** could not cure the defect.

### **3<sup>rd</sup> Objection**

7. Joel Kalya (4<sup>th</sup> Objector), Wesley Kiprono Langat (5<sup>th</sup> Objector), Reuben Kipngeno Langat (6<sup>th</sup> Objector), Linner Chelangat Bii (7<sup>th</sup> Objector) and Cecily Chebet Tangus (8<sup>th</sup> Objector) filed an Objection dated 12<sup>th</sup> November 2024 stating that they purchased various shares of the deceased's

estate from Joshua Langat (deceased) between the years 2011 to 2020 and had duly signed Agreements.

8. In response, the 1<sup>st</sup> Petitioner filed a Replying Affidavit dated 7<sup>th</sup> May 2025 and denied the sale of the deceased's estate to the Objectors. The 1<sup>st</sup> Petitioner referred to the Objectors as intermeddlers.

### **3<sup>rd</sup> Preliminary Objection**

9. The Petitioners filed a Preliminary Objection dated 7<sup>th</sup> May 2025 stating that this court lacked jurisdiction to deal with the issue of purported creditors and that **Article 159 of the Constitution of Kenya, section 47 of the Law of Succession Act and Rule 41(3) of the Probate and Administration Rules** could not cure the defect.

### **4<sup>th</sup> Objection**

10. The 9<sup>th</sup> to 23<sup>rd</sup> Objectors filed their Objection dated 9<sup>th</sup> May 2025 stating that they had purchased portions of the deceased estate from Joshua Langat (deceased) and had duly signed Agreements. That they had been in occupation of their parcels and had developed them.

#### **5<sup>th</sup> Objection**

11. The 24<sup>th</sup> Objector filed her Objection dated 29<sup>th</sup> May 2025 and stated that she purchased 0.5 acres of the deceased's estate from Joshua Langat (deceased) and was thus a liability to the deceased's estate.

#### **6<sup>th</sup> Objection.**

12. The 14<sup>th</sup> Objector filed an Objection dated 9<sup>th</sup> June 2025 and stated that the succession proceedings were filed in secret. He further stated that he had been in occupation of a part of the deceased's estate for over 12 years and had paid his purchase price.

#### **4<sup>th</sup> Preliminary Objection**

13. The Petitioners filed a Preliminary Objection dated 30<sup>th</sup> September 2025 stating that the Objectors lacked locus standi under **section 76 of the Law of Succession Act** and further that this court lacked jurisdiction to determine issues relating to ownership of land.

14. I have keenly gone through the record, its pleadings and written submissions and I have noted that this was a matter replete with several pending Applications as demonstrated above. As stated earlier in this Ruling, Tabutany Tesol (deceased) died on 22<sup>nd</sup> April 1991. Petition for Letters for her estate was done by her son, Joshua Langat on 10<sup>th</sup> August 2009 and after he passed away, the Petition was redone and filed on 3<sup>rd</sup> February 2023 where he was replaced by the four Petitioners herein. It is important to state that no Grant was issued by this court in relation to the deceased's estate. The only Grant on record was a Grant *ad litem* issued by the Magistrate's Court in Sotik on 4<sup>th</sup> July 2023 and it was specifically limited to filing and prosecution of a suit.

15. It is clear from the record that the 24 Objectors alleged to have purchased portions of the deceased's estate from Joshua Langat (deceased). They attached their respective Sale Agreements. These sales were vehemently denied by the Petitioners. It is my finding that on a *prima facie* level, there was evidence of intermeddling of the deceased's estate. From the above, it was clear that the deceased's land had been sold before the completion of the succession process which was contrary to **Section 45 of the Law of Succession Act** which provides: -

**(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.**

**(2) Any person who contravenes the provisions of this section shall-**

**(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and**

**(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.**

**16. Section 51(1) of the Law of Succession Act provides: -**

**No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until the grant has been confirmed as provided by section 71.**

17. I agree with Musyoka J. in **the matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] KEHC 1930 (KLR)** where he held: -

***“The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation, and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”***

18. The prior distribution amounted to intermeddling which makes such prior distribution of the deceased’s estate illegal *ab initio*. I have noted from the record that the deceased estate (KERICHO/SILIBWET/779) had been subdivided into KERICHO/SILIBWET/4481, 4490, 4472, 4491, 4466, 4462,

4465 and 4474. In **Santuzzabilioti alias Mei Santuzza (deceased) vs Giancarlo Felasconi (2014) eKLR**, the court held: -

***“.....the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancelation of the title deed. Further, a succession court can order a cancelation of title deed if a deceased’s property is being fraudulently taken away by non-beneficiaries such as where the property is being sold before a grant is confirmed.”***

19. Similarly, in **re Estate of Leah Wanguii Nding'uri (Deceased) [2020] KEHC 5505 (KLR)**, Wendoh J. held: -

***“In this case, the respondents filed this cause and brought themselves under the provisions of the Law of Succession Act. The grant that was issued to the respondents was revoked. It means***

***that, all actions taken by the respondents including the registration of the deceased's property in their names was rendered a nullity..... this court has jurisdiction to order cancelation of the said titles so that the land can revert back to the deceased's names....."***

20. I also find concurrence in the case of **re Estate of Muturi Katumuta [2022] KEHC 2396 (KLR)**, where Gitari J. held: -

***"In succession matter, the High Court has jurisdiction to issue any orders including cancellation of title deeds where the grant is revoked."***

21. Flowing from the above, it is my finding that any Titles that were procured from KERICHO/SILIBWET/779 as the mother Title are invalid, null and void.

22. That said, the Objectors are at liberty to approach this court for consideration as beneficiaries of the deceased's estate under **section 66 of the Succession Act**. They can only do so after they have determined or regularized their respective ownership status of their respective parcels and they can only do so in the proper forum being the Environmental and Land Court. This court is not clothed with such jurisdiction. The primary duty of this court is to distribute the free estate of a deceased. In the case of **re Estate of Julius Ndubi Javan (Deceased) [2018] KEHC 8523 (KLR)** Gikonyo J. held: -

***“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And***

***that is the very reason why rule 41(3) of the Probate and Administration Rules was enacted so that claims which are prima facie valid should be determined before confirmation.”***

23. I am in total alignment with re **Estate of Stone Kathuli Muinde (Deceased) [2016] KEHC 3725 (KLR)** where the court held that: -

***“With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate court to determine***

**ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.**

**Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the Civil Procedure Act and the Civil Procedure Rules. This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that that court can give effect to it".** (Emphasis mine)

24. In the end and in the interests of justice, I make the following orders: -

- I. For a just determination of this matter, all the Objections are dismissed.
- II. For a just determination of this matter, all the Preliminary Objections are dismissed.
- III. All titles that emanated from KERICHO/SILIBWET/779 are hereby cancelled.
- IV. The Objectors are at liberty to move this court after regularizing their ownership status.
- V. There will be no orders as to costs.

**Ruling delivered, dated and signed at Bomet this 12<sup>th</sup>  
day of November, 2025.**

.....  
**Hon. JULIUS K. NG'ARNG'AR**  
**JUDGE**

**Ruling delivered in the presence of:**

**Siele/Susan (Court Assistants).**

**Nyaata for the Petitioners**

**Kipngetich, E.Korir and Nyangiri for the Objectors**

ORIGINAL