



REPUBLIC OF KENYA



**In re Estate of Kiplangat Arap Maina (Deceased) (Succession Cause
11 of 2019) [2025] KEHC 16171 (KLR) (11 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16171 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 11 OF 2019
JK NG'ARNG'AR, J
NOVEMBER 11, 2025**

BETWEEN

TAPUTANY CHEPKOSKEI KOROS 1ST PETITIONER

PAUL KIPRONO LANGAT 2ND PETITIONER

AND

ROBERT KIPKORIR SIGEI 1ST PROTESTOR

NELSON SANG 2ND PROTESTOR

VICOTY CHELANGAT 3RD PROTESTOR

JOAN CHEPKEMOI 4TH PROTESTOR

RULING

1. The Petitioners as the deceased's widow and son respectively petitioned for Letters of Administration Intestate in relation to the deceased's estate on 26th April 2019. A Grant in their joint names was issued by this court on 5th March 2020.
2. The Petitioners filed an Application for confirmation of the Grant dated 18th January 2021. The Objectors protested against the confirmation of the Grant and it is this Objection that is to be determined by this court.

The Objection.

3. Through their Affidavit of Protest dated 29th May 2025, the Protestors stated that the Petitioners intentionally left out the name of their deceased mother (Alice Chepkorir Birir) in the list of beneficiaries. That the Chief's letters recognized their deceased mother as a daughter of the second house.



4. It was the Protestors' case that Alice Chepkorir Birir was survived by the Protestors and the Petitioners omitted them from the succession proceedings and failed to substitute them in place of their mother. That they had been residing on the deceased's estate with their mother since 1992 and they did not know any other home as they continued staying on the deceased's estate even after her demise on 11th January 2005. It was the Protestors' further case that their mother was entitled to a share of the deceased's estate and they were entitled to her share as her children.
5. The Protestors stated that the 1st Petitioner wanted to distribute the deceased's estate amongst herself and her sons and this would expose them to eviction. That they were not consulted on the mode of distribution and they did not consent to it. The Protestors proposed that their mother's share out of the 2nd household be given to Nelson Sang to hold in trust for all the Objectors.
6. It was the Protestors' case that the name of their late mother be substituted with the 2nd Objector.
7. Through their written submissions dated 26th September 2025, the Protestors submitted that the Applications dated 16th June 2020 and the present Application were different as provided for by the Law of Succession Act and Probate and Administration Rules. That it is the responsibility of the Petitioners, before confirmation of the Grant, that they have identified the identification of the beneficiaries and gathered the deceased's estate.
8. It was the Protestors' submission that they had not been included in the list of beneficiaries and had not consented to the Petitioners' proposed mode of distribution.

The Response.

9. Through her Replying Affidavit dated 18th July 2025, the 1st Petitioner stated that the 2nd Protestor had previously filed a similar Application and this court heard and delivered a Ruling on 2nd April 2025. That the other Protestors were the 2nd Protestors biological siblings and they gave him express consent to file the previous Application.
10. It was the 1st Petitioner's case that the present Application was an attempt to relitigate matters which had already been determined by this court and it amounted to an abuse of the court process. That the matters were repetitive and res judicata. It was the Petitioners further case that the Application was meant to delay the confirmation and distribution of the deceased's estate.
11. Through their written submissions dated 22nd September 2025, the Petitioners submitted that the present Application was res judicata and they relied on section 7 of the Civil Procedure Act, Henderson v Henderson (1843) 67 ER 313 et.al.
12. It was the Petitioners' submission that the Objectors were not the deceased's beneficiaries as per the provisions of section 29 of the Law of Succession Act and did not have locus to challenge the distribution of the deceased's estate. They relied on re estate of Veronica Njoki Wakagoto (Deceased) (2013) eKLR et.al. It was the Petitioners' further submission that the Protestors failed to disclose their previous failed Application and were guilty of material non-disclosure.
13. I have gone through the court record, the Affidavit of Protest dated 29th May 2025, the Replying Affidavit dated 18th July 2025, the Protestors' written submissions dated 26th September 2025. The only issue for my determination was whether the Protest dated 29th May 2025 was res judicata.
14. Section 7 of the Civil Procedure Act provides that: -

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between



parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

15. The Court of Appeal in *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* [2017] KECA 477 (KLR) held that: -

“The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common sensical (sic!) protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute or calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.”

16. In the Application dated 16th June 2020, the 2nd Protestor sought substitution of his late mother’s name (Alice Chepkorir Birir) with his. His grounds were that Alice Chepkorir Birir was a beneficiary of the deceased’s estate and as her son, the substitution was necessary. In the said Application, the 2nd Protestor attached Minutes of a family meeting held at his house on 1st April 2020 where the 1st, 3rd and 4th Protestors were in attendance. The Minutes stated that they (1st, 3rd and 4th Protestors) had agreed to nominate the 2nd Protestor to represent their mother, Alice Chepkorir Birir in the succession proceedings.
17. In its Ruling dated 2nd April 2025, this court found that the 2nd Protestor had failed to prove that he was a direct beneficiary of the deceased’s estate under section 76 of the *Law of Succession Act*. This court further held that the 2nd Protestor did not raise any objection during the stipulated period and the Objection was an afterthought and a quest to deprive the 1st Petitioner her rightful authority to administer the deceased’s estate. The 2nd Petitioner’s Application dated 16th June 2020 was dismissed.
18. In the present Protest, the children of Alice Chepkorir Birir (deceased) have approached this court with the similar prayer of substitution of their mother’s name with that of the 2nd Protestor.
19. As discussed above, the 2nd Protestor had failed in his previous Application to have his mother’s name substituted with his. A look at the two Applications dated 16th June 2020 and 29th May 2025 reveals similar issues and similar parties all litigating under the same title. Crucially, this court had already determined this issue of substitution in its Ruling dated 2nd April 2025. The Protest was neither a review nor an Appeal but was an attempt to relitigate a matter that this court had already determined. It is my finding therefore that the Protest dated 29th May 2025 was res judicata.
20. In the end, I make the following orders: -
- I. The Protest dated 29th May 2025 has no merit and is dismissed.
 - II. A Certificate of Confirmation of Grant be and is hereby issued and the deceased’s estate to be distributed according to the Petitioner’s proposed mode of distribution contained in the Summons for Confirmation dated 18th January 2021.
 - III. This being a family matter, each party will bear their own costs.



RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 11TH DAY OF NOVEMBER, 2025.

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HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling delivered in the presence of:

Siele/Susan (Court Assistants).

N/A for the Petitioners

Bocheberi for Protestors

