

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**SUCCESSION CAUSE NO. 467 OF 2015**  
**IN THE MATTER OF THE ESTATE OF THE LATE ALOIS ROTICH**  
**CHEPKONGA (DECEASED)**

**SALINA**

**CHEPKONGA.....ADMINISTRATOR**

**Coram: Before Justice R. Nyakundi**  
**Wambua Kigamwa & Co. Advocates**  
**Kipkosgei & Co. Advocates**

**RULING**

1. Before me for determination is an application dated 30<sup>th</sup> September, 2025 expressed under the provision of Art. 48, 50(1) and 159(2) of the Constitution, Section 1A, 1B, 3 and 3A of the Civil Procedure, Order 51 Rule 1 of the Civil Procedure Rules seeking orders as follows:
  - a. *Spent*
  - b. *That this Honorable Court be pleased to arrest the delivery of the Ruling which was slated for 22<sup>nd</sup> September, 2025 pending the hearing and determination of this application.*
  - c. *That this court be pleased to give the applicants sixty (60) days to comply with the orders of court issued in its ruling dated 1/7/2025.*
  - d. *That this Honorable Court be pleased to Grant such other or further orders as it may deem just and expedient based on the special circumstances of this matter.*
  - e. *That the costs of and incidental to this application shall abide in the outcome of the main suit.*
2. The application is based on grounds that:

- a. That this honorable court delivered its Ruling on 1/7/2025.
- b. That in its Ruling the court ordered the administrators to comply with the orders in the ruling within fourteen days.
- c. That the applicants are apprehensive that they might be locked out from complying if the impending ruling is delivered.
- d. That the compliance of the orders of the court will assist the court in reaching a fair ruling on merit.
- e. That non-compliance has not been intentional but due to the sickness of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants, two of them being in a wheelchair and have not had a chance to participate in any of this process, including executions of documents in as far as the administering of the estate is concerned.
- f. That the applicants have every reason to believe that the 1<sup>st</sup> Respondent, who happens to be their biological mother and grandmother has never participated in any activity in as far as the administering of the estate is concerned for the last three years due to her old age, sickness and incapacity.
- g. That the applicants have gathered new evidence which shows that the 1<sup>st</sup> Respondent/Petitioner forged signatures of some of the beneficiaries thus this court should consider the same before delivery of its Ruling.
- h. That one of the beneficiaries, namely Charles Cheruiyot Chepkonga who has been in these proceedings is now deceased and there is need to incorporate his estate into these proceedings.
- i. That at no any time has there been any meeting amongst the beneficiaries in as far as the execution of the estate is concerned.

- j. That the former advocate on record did not disclose existence of new material facts/evidence before this court, despite the same being at his disposal, which was a mistake on his part and not the applicants.
  - k. That the applicant's right to a fair hearing and access to justice, as enshrined under Art. 48 and 50 of the Constitution of Kenya, 2010 will be infringed if the prayers herein are denied.
  - l. That the Respondent will not suffer any prejudice if the orders sought are granted.
  - m. That this Honorable Court has the discretion to issue the orders sought in the interest of justice to ensure a fair and equitable resolution of the dispute.
- 3.** In response to the application, the Respondents through Christine Chebaibai Chepkonga swore a replying affidavit stating as follows:
- a. That I am an administratrix to the estate of the late Alois Rotich Chepkonga - deceased.
  - b. That I have read the motion dated the 30<sup>th</sup> September, 2025 and wish to reply.
  - c. That the application has been brought by a notice of motion in breach of Rule 49 of the Probate and Administration Rules. 1980.
  - d. That the advocate for the applicants is not validly on record as no notice of appointment of advocates or change has been filed court.
  - e. That the mistake of an advocate is not a ground for extension of time.
  - f. That a recommendation of a prosecution by the Director of Public Prosecutions does not oust the presumption of innocence and the right to a fair trial as provided by the law.

- g. That no ground to justify extension of time has been made out by the applicant.
- h. That this matter has been in court for a longtime and it is only fair that it is concluded.
- i. That I pray that the motion be dismissed with costs.

## **Determination**

4. I have considered the application and the affidavit in response. The main issue that needs to be addressed is whether this court should exercise its discretion to arrest the delivery of the Ruling scheduled for 22<sup>nd</sup> September, 2025 and grant the applications additional time to comply with the orders issued in the Ruling dated 1<sup>st</sup> July, 2025.
5. It is well established that the grant of an extension of time is not an automatic right of any party but rather an equitable remedy that is only available to a deserving party at the discretion of the court. The Supreme Court in the landmark case of *Nicholas Kiptoo Korir Arap Salat v Independent Electoral and Boundaries Commission and 7 Others* Supreme Court Application No. 16 of 2014 laid down the fundamental principles that guide the exercise of judicial discretion in applications for extension of time. The court held that extension of time is not a right of a party but an equitable remedy available to a deserving party at the discretion of the court.
6. A party seeking extension of time bears the burden of laying a basis to the satisfaction of the court. The delay must be explained to the satisfaction of the court, and the court must consider whether there will be any prejudice suffered by the respondent if the extension is granted, whether the application has been brought without undue delay.
7. In the present case, the applicants have attributed their non-compliance with the court orders dated 1<sup>st</sup> July 2025 to several factors. First, they have averred that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants have been unwell, with two of them being wheelchair-bound and unable to participate effectively

in the administration of the estate. Second, they contend that the 1<sup>st</sup> respondent herself, being their biological mother and grandmother, has not participated in any activity relating to the administration of the estate for the last three years due to old age, sickness and incapacity. Third, they state that their former advocate on record failed to disclose the existence of new material facts and evidence to the court, which was a mistake on his part and not the fault of the applicants. Fourth, they have drawn the court's attention to the fact that one of the beneficiaries, Charles Cheruiyot Chepkonga, has since passed away and his estate needs to be incorporated into these proceedings. Fifth, they have alleged that they have gathered new evidence showing that the 1<sup>st</sup> respondent forged signatures of some of the beneficiaries, which evidence they wish the court to consider before delivering its ruling.

8. I have considered the said reasons and the Respondent's submission that the matter has been in court for a lengthy period and there is need to have it dealt with expeditiously. The constitutional imperatives enshrined in Articles 48 and 50 of the Constitution guarantee every person the right to access justice and the right to a fair hearing. These rights are not mere procedural safeguards but are substantive constitutional guarantees that must be jealously protected by the courts. Article 159(2)(d) of the Constitution further mandates that justice shall be administered without undue regard to procedural technicalities. In exercising my discretion in this matter, I am guided by these constitutional provisions and by the overriding objective of facilitating the just, expeditious, proportionate and affordable resolution of disputes as contemplated by the law.
9. This court has both the statutory and inherent jurisdiction to grant the orders sought in this application where it is satisfied that such orders are necessary to prevent injustice and to ensure that all parties have a fair opportunity to present their case. Having carefully considered all the circumstances of this case, I am satisfied that the interests of justice favour granting the application to arrest the delivery of the ruling and

allowing the applicants additional time to comply with the court's previous orders.

**10.** The recognition of the reality and value of Article 10 of the constitution is an important underpinning of the law of succession Act. This is especially so if we peg the value of participation and inclusivity in the process of distribution of the intestate estate so that one does not run the risk of gaps and omissions in decision making. In a broader move, more fundamental sense the term constitution comprehends virtually the whole what is sometimes called the form of right of a human community, describing what the life should be like and ordering the institutional design for achieving that that life in a given society. In a word the constitution is a plan for a way of life. (See *Professor Simeon McIntosh, Caribbean Constitutional Reform Rethinking the West Indian Polity (Iam Randle Publishers 2002) 38*)

**11.** In the end, I hereby exercise my discretion to allow the application. The delivery of the ruling that was scheduled for 22<sup>nd</sup> September 2025 is hereby arrested, and the applicants are granted forty-five days from the date of this ruling to comply with the orders issued by this court in its ruling dated 1<sup>st</sup> July 2025. The applicants are urged to use this period diligently and to take all necessary steps to ensure compliance with the court's orders so that this matter can be brought to a conclusion without further delay.

**12.** The final Status Conference on 15.12.2025.

**13.** Each party shall bear its own costs.

**14.** It is so ordered.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2025.**

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**R. NYAKUNDI  
JUDGE**