



In re Estate of Elizabeth Tabuitany Chebomui (Deceased) (Succession Cause 221 of 2004) [2025] KEHC 16044 (KLR) (Family) (6 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16044 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 221 OF 2004
HK CHEMITEI, J
NOVEMBER 6, 2025**

BETWEEN

ERNEST KIPRONO KERICH PETITIONER

AND

AGATHA CHEBOMUI GEMMA APPLICANT

RULING

1. In her application dated 24th September 2024 the Applicant seeks the following orders:-
 - (a) The court be pleased to order the Petitioner/Respondent herein to provide an account for the estate of the late Elizabeth Tabuitany Chebomui.
 - (b) The court be pleased to order that the certificate of confirmation of grant issued to Ernest Kiprono Kerich be revoked and a fresh certificate be issued.
 - (c) The court be pleased to order Agatha Chebomui Gemma who is a daughter to Elizabeth Tabuitany Chebomui be considered as a beneficiary to the estate of the late Elizabeth Tabuitany Chebomui.
 - (d) The court be pleased to appoint the Applicant as a co-administrator of the deceased estate.
 - (e) Any other order by the court.
2. The application is based on the grounds thereof as well as the sworn affidavit of the Applicant dated the same date.
3. The substance of the application is that the Applicant is the deceased daughter and therefore a beneficiary to the estate.



4. That the Respondent who is her brother and an administrator to the estate filed this cause and concealed material information and specifically has never rendered accounts to the estate. She deponed also that the Respondent has concealed material information from her and therefore causing her frustrations and grave injustice.
5. The Respondent vide a replying affidavit sworn on 19th December 2024 has opposed the same vehemently and gave chronology of what he has undertaken in the estate.
6. He does admit that the Applicant is one of his sisters and a daughter to the deceased herein. He avers further that she had been away in USA for over 23 years and recently came home.
7. That it was agreed by the entire family including the Applicant that he was to hold her portion while away in the States for she was unmarried but had two children who are now grown-ups. One of her sons is over forty years old.
8. The Respondent also exhibited some conveyancing documents indicating the subdivision of land parcel number Kericho/Kipsonoi S.S/890 in which it was transmitted to his name and out of it the Applicant was entitled to get three acres.
9. He further exhibited the mutation forms and land control board consents as well as communication between the Applicant and the surveyor who carried out the exercise as well as some housing structures built by the Applicant on the said parcel.
10. It was his case therefore that the Applicant fully endorsed the confirmed grant and has taken over her share of the estate as well as all the other beneficiaries.
11. The genesis of the problem was a miscommunication between her and the surveyor as per the SMS messages attached to his affidavit.
12. The court directed the parties to file submissions which they have complied. The court has read the same extensively together with the cited authorities and does not intend to reproduce them here.
13. It would appear there is a preliminary objection on a point of law by the Respondent but I have been unable to trace from the record.
14. Nevertheless, the same has to do with the procedure taken by the Applicant in filing a Notice of motion instead of a chamber summons.
15. I think to save on courts time I should indicate that the application must fail from the beginning. I state so because contrary to the Applicant's assertion the Respondent has clearly in his lengthy replying affidavit given step by step the undertaking he has done on the estate.
16. I note that the Applicant has not counteracted the same. She has not denied for instance that she was already in occupation of her three acres parcel of land which the Respondent held in trust for her while in America.
17. She has not denied that all the rest of the beneficiaries have each settled in their respective portions as per the family agreement and that the Respondent had been in constant communication with her including receiving and banking Kshs. 5 million for her which she later used to purchase an apartment in Kilimani Nairobi.
18. I think to be fair to the Respondent he did what any other administrator could have done. There is no evidence of any material concealment or at all. It is noteworthy as well that the rest of the beneficiaries



have not raised any issues for over 20 years and one wonders why the Applicant who is already enjoying the usage of her entitlement is rubble rousing the estate.

19. In as much as the Succession Act may not have a limitation period, I think it is high time the courts put some sanity in some of these overly and inordinate late objections. They not only disrupt the already existing status quo by the beneficiaries but takes them back several years and begin afresh all that they had foreclosed.
20. Additionally, it is my view that only in very clear and exceptional cases should the courts consider such old reawakening of settled estates. The Applicant herein for instance cannot feign ignorance of the entire proceedings. If in her cause of staying in America she had been sending some money to the Respondent what was so difficult in inquiring about their mothers' estate. I do not find her sincere at all.
21. I have also seen the proceedings leading towards the confirmation of grant and I think the court must have satisfied itself with the consents on record and other paper trail in allowing the application.
22. In conclusion I think the Applicant ought to be satisfied with whatever she had been given and sort out her issues with her surveyor and not the Respondent.
23. The application is otherwise dismissed with no order as to costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 6TH DAY OF NOVEMBER 2025.

H K CHEMITEI

JUDGE.

