

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

MISC FAMILY APPLICATION NO. E007 OF 2025

BARNABA KIPKOECH YEGON 1ST
APPLICANT

RICHARD KIPROTICH YEGON 2ND
APPLICANT

VERSUS

ANNA CHERONO MITEI RESPONDENT

RULING

1. The Applicant filed a Chamber Summons Application dated 30th April 2025 which sought the following orders: -

I. Spent.

II. Spent.

III. THAT this Honourable Court be pleased to call for and order the remittance to this court for consolidation of Sotik Succession Cause Number E082 of 2022 and Sotik

Succession Cause Number E049 of 2023 filed in the Senior Principal Magistrate's Court, Sotik Law Court for directions and further orders on its disposal.

2. The Application was brought under the provisions of **sections 2, 47, 48 & 49 of the Law of Succession Act, Rule 73 of the Probate and Administration Rules, section 17 & 18 of the Civil Procedure Act and Articles 165 (6) (7) and 159 (2) (d) of the Constitution of Kenya** and it was based on the grounds on the face of the Application and further by the Supporting Affidavit sworn by Richard Kiprotich Yegon on 30th April 2025.

The Applicants' case.

3. The Applicants stated that the Respondent was their sister and that Ansalim Kibiegion Mitei (deceased) died intestate on 23rd October 2010. That there exists two separate Grants issued to the Applicants and the Objector. The Applicants further stated that the Respondent was married and lived in her matrimonial home.

4. It was the Applicants' case that they learnt of the existence of the other succession cause being Sotik Succession Cause Number E049 of 2023 on 26th February 2025 and that it had been filed by the Respondent. That the Respondent filed it with the knowledge that they had filed Sotik Succession Cause Number E082 of 2022. It was the Applicant's further case that the proceedings to obtain the Grant in Sotik Succession Cause Number E049 of 2023 were defective and it was done without notice to all the beneficiaries.
5. The Applicants stated that they were ready and willing to abide by any directions and conditions granted by this court.
6. At the time of writing this Ruling, the Applicants had not filed their written submissions.

Response

7. Through her Replying Affidavit dated 12th June 2025, the Respondent stated that the issue of consolidation was determined in Sotik Succession Cause Number E049 of 2023

through a Ruling dated 24th March 2025. That there had been no appeal against the said Ruling and it was still valid and in force.

8. It was the Respondent's case that she was issued with a Grant on 8th January 2024 in Sotik Succession Cause Number E049 of 2023 and the same was confirmed on 5th November 2024. That she thereafter obtained a court order for the provision of security to facilitate the survey process. It was the Respondent's further case that plans of implementing the Grant were at an advanced stage. That the other succession cause remained incomplete as the Grant had not been confirmed.

9. The Respondent stated that the attempt to consolidate the two causes was calculated to stall the distribution of the deceased's estate and deny the daughters of the deceased their rightful share of the inheritance. The Respondent further stated that all the beneficiaries including the Applicants were included in Sotik Succession Cause Number

E049 of 2023 and were each accorded a fair hearing. That none of the beneficiaries objected to the mode of distribution.

10. Through her submissions dated 20th July 2025, the Respondent submitted that the consolidation of Sotik Succession Cause Number E049 of 2023 with Sotik Succession Cause Number E082 of 2022 offended the purpose of consolidation as Sotik Succession Cause Number E049 of 2023 was heard, determined and the Grant confirmed whereas Sotik Succession Cause Number E082 of 2022 was incomplete. She relied on **Fabian Esemai & another vs Priscilla Jeserek Teleiny (2021) eKLR**. The Respondent further submitted that the consolidation of the two suits would cause undue delay and injustice to the Respondent.

11. It was the Respondent's submission that the issue of consolidation had been raised in a prior Application and the trial court ruled against consolidation. That the Ruling had

neither been appealed or varied. It was the Respondent's further submission that relitigating the issue of consolidation was *res judicata*.

12. I have gone through the Chamber Summons Application dated 30th April 2025, the Replying Affidavit dated 12th June 2025 and the Respondent's written submissions dated 20th July 2025, and the Replying Affidavit dated 2nd October 2025. The only issue for my determination was whether the Application had merit.

13. **Article 165 (6) and (7) of the Constitution of Kenya** provides: -

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order

or give any direction it considers appropriate to ensure the fair administration of justice.

14. The Applicants asked this court to call for Sotik Succession Cause Number E049 of 2023 and Sotik Succession Cause Number E082 of 2022 for the purpose of consolidation. The Supreme Court of Kenya in **Law Society of Kenya v Centre for Human Rights and Democracy & 12 others [2014] KESC 29 (KLR)** held: -

“The essence of consolidation was to facilitate the efficient and expeditious disposal of disputes, and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was therefore never meant to confer any undue advantage upon the party that sought it, nor to occasion any disadvantage towards the party that opposed it.”

15. Similarly, in **re Estate of Catherine Nyambura Karunditu (Deceased) [2019] KEHC 11017 (KLR)**, the court held: -

“In Benson G. Mutahi -v- Raphael Gichovi Munene Kabutu & 4 Others [2014] eKLR Justice B.N. Olao cited the Indian case of Brij Kishore -v- Bir Singh and Others -v- Bir Singh and Others at the High Court of Punjab and Harana LR 5922 of 2013 in which Justice Paramjeat Singh quoted from the Supreme Court case of Prem Lala Nahata & Another -v- Chandi Prasad Sikaria (2007) 2, Supreme Court cases 551 at paragraph 18 as follows -

“It cannot be disputed that the Court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of

several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the Court and it appears to the Court that some common questions of law or fact arise in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits.”

In Stumbeg and Another -v- Potgeiter [1970]EA 323 it was observed that:-

“Where there are common questions of law or facts in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the

same time, consolidation should be ordered”.

16. I have gone through the record and I have noted the existence of Sotik Succession Cause Number E049 of 2023 where the Respondent was the Petitioner and Sotik Succession Cause Number E082 of 2022 where the Applicants were the Petitioners. The Respondent opposed the consolidation of the two suits citing prejudice. She stated that she had concluded her succession proceedings and attached a Certificate of Confirmed Grant as “ACM 2”. The said Certificate of Confirmation of Grant signified the completion of Sotik Succession Cause Number E049 of 2023.

17. The Respondent averred that the prayer for consolidation was *res judicata*. She stated that the issue of consolidation had been determined through a Ruling dated 24th March 2024. I have looked at the Ruling and the Ruling referenced to a prayer for consolidation of Sotik Succession Cause Number E049 of 2023 with Sotik Succession Cause Number 32 of 2022. The trial court noted that there were two

succession causes relating to the estate of the deceased and declined to consolidate the two suits as Sotik Succession Cause Number E049 of 2023 was way ahead of Sotik Succession Cause Number 32 of 2022.

18. From the above, it was clear that Sotik Succession Cause Number 32 of 2022 was an additional suit to Sotik Succession Cause Number E049 of 2023 and Sotik Succession Cause Number E082 of 2022 and they all involved the estate of Ansalim Kibiegon Mitei (deceased). This is my view was an abuse of the court process.

19. The power of consolidation is a discretionary one, one which the court should apply judiciously while considering the peculiar circumstances of each case. In the present matter, there was evidence of conclusion of Sotik Succession Cause Number E049 of 2023. It is my finding that it would be unjust to consolidate Sotik Succession Cause Number E049 of 2023 with Sotik Succession Cause Number E082 of 2022 as it would drag the court back. I concur with the Respondent that litigation has to come to an end.

20. For good measure, I have also noted that there was equal distribution of the deceased's estate among the beneficiaries, including the Applicants. On the other hand, the Applicants contended that the Respondent and their sisters were happily married and lived on their respective matrimonial homes. The insinuation I got from the Applicants was that the Respondent and her sisters should not inherit a share of the deceased's estate. This was contrary to the doctrine of equality as captured in **Article 27 of the Constitution of Kenya**. I digress.

21. In the end, the Chamber Summons Application dated 30th April 2025 has no merit and is dismissed with costs to the Respondent.

Ruling delivered, dated and signed at Bomet this 19th day of November, 2025.

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HON. J.K. NG'ARNG'AR
JUDGE

Ruling delivered in the presence of;

**Siele and Susan (Court Assistants).
No appearance for the Applicant
Chepkorir for the Respondent**

ORIGINAL