



In re Estate of Sika ole Parkesui (Deceased) (Succession Cause 83 of 2010) [2025] KEHC 17215 (KLR) (25 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17215 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 83 OF 2010
SM MOHOCHI, J
NOVEMBER 25, 2025**

**IN THE MATTER OF THE ESTATE OF SIKA OLE PARKESUI
(DECEASED)**

LUCY WANJIRU MWANGI.....APPLICANT

-VERSUS-

MWAURA OLE PARKESUI1ST RESPONDENT

ERIC SEKA OLE PARKESUI2ND RESPONDENT

RULING

1. AS THIS COURT ALWAYS MAINTAINS THAT UNDER THE LAW OF SUCCESSION ACT AND THE PROBATE AND ADMINISTRATION RULES, A PARTY CAN ONLY MOVE COURT BY WAY OF SUMMONS AND NOT ANY OTHER, ANY MOTION TO THE CONTRARY IS SUBJECT TO DISMISSAL ON FORM ALONE.

2. HOWEVER, WE CONTINUE WITNESSING THE UNLAWFUL DEPLOYMENT OF NOTICE OF MOTIONS IN SUCCESSION COURT SUCH AS IN THIS INSTANCE, BEFORE ME IS A NOTICE OF MOTION DATED 29TH APRIL 2025 BY AN INTERESTED PARTY FILED PURSUANT TO SECTIONS 1A, 18, 3A, 27(1) AND 80 OF THE CIVIL PROCEDURE

BETWEEN

LUCY WANJIRU MWANGI APPLICANT

AND

MWAURA OLE PARKESUI 1ST RESPONDENT

ERIC SEKA OLE PARKESUI 2ND RESPONDENT



RULING

1. As this Court always maintains that under the *akn ke act 1972 14 Law of Succession Act* and the Probate and Administration Rules, a party can only move Court by way of summons and not any other, any motion to the contrary is subject to dismissal on form alone.
2. However, we continue witnessing the unlawful deployment of Notice of Motions in Succession Court such as in this instance, before me is a Notice of Motion dated 29th April 2025 by an interested party filed pursuant to Sections 1A, 18, 3A, 27(1) and 80 of the *akn ke act 1924 3 Civil Procedure Act*, Order 1 Rule 10(2), Order 40 Rules 1, 2, 3, Order 45 Rule 1, and Order 51 Rule 3 of the Civil Procedure Rules, Article 40, 47, 50 and 159(2)(d) of *akn ke act 2010 constitution the Constitution*, Rule 7(1) of *akn ke act 2010 constitution the Constitution of Kenya* (protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 Mutunga Rules), Sections 45, 46, 47, 76, and 82(b)(1) of the *akn ke act 1972 14 Law of Succession Act*, Rule of the Probate and Administration Rules, Sections 34 and 68(1) of the Land Registration. Section 13(7) of the *akn ke act 2011 19 Environment and Land Court Act* and all other enabling provisions of the law
3. The Applicant Lucy wanjiru Mwangi seeks the following orders:
 1. Spent
 2. Spent
 3. Spent.
 4. Spent
 5. That, the Order made on 31st October 2022 be set-aside to the extent that, the Orders directed that the subdivisions from LR Narok CIS Ilmarashariani Morijo 15 measuring 1.2 Hectares be cancelled and registration status be restored to the status prior to 31st October 2022.
 6. That, an Order do Issue that the Applicant's sub-divisional parcel LR CIS Mara-Iimarashariani Morijo 2781 measuring 0.047 Hectares, in the name Lucy wanjiru Mwangi, as curved out of original parcel LR Narok CIS Ilmarashariani MORJO 27 be reinstated to its status prior to 31st October 2022
 7. That, a finding be made that the registration of Messrs Mwaura Ole Parkesul and Eric Seka Perkesui on parcel LR CIS Mara-Iimarashariani Morijo 15 is contrary to the Court's order of 31st October 2022 requiring that the land's registration do revert as it was at the time of filing this Petition [being to the name of Sika Ole Parkerkesui and should be cancelled, and Respondents together with the District County Land Registrar be reproached by this Court for metastasizing the Court order.
 8. That, in the alternative and without prejudice to any other Orders, an Order do Issue against the Respondents and the District County Land Registrar, Narok County to stay any further dealings including any other or further transfers, charging, mortgaging, pledging, encumbering, and or in any other way further alienating and or restricting the status of the land parcel LR CIS Mara-Iimarashariani Morijo 15 measuring 1.2 Hectares and its mutation sub-divisional title LR CIS Mara-Iimarashariani MORUO 2781 measuring 0.047 Hectares pending hearing and conclusion of the dispute over the parcel LR CIS Mara-HIMaraSHARIANI Morijo 15 measuring 1.2 Hectares In The Chief Magistrate Court At



Narok ELC Case No.54 Of 2019, Naanyu Ole Parkesui VS Lucy wanjiru Mwangi and Nganga Ole Parkesui.

9. That, Orders do Issue to stay any succession distribution of any part of parcel LR CIS Mara-Iimarashariani Morijo 27 pending the hearing and conclusion of Chief Magistrate Court at Narok ELC Case No.54 Of 2019, Naanyu Ole Parkesui VS Lucy wanjiru Mwangi and Nganga Ole Parkesui.
 10. That, pending Court's further Orders a prohibition be placed on the parcels LR CIS Mara-Iimarashariani Morijo 15 and Its mutation LR CIS Mara-Iimarashariani Morijo 2781 to restrain any other or further dealings in the parcels pending the hearing and determination Narok ELC Case No.54 Of 2019, Naanyu Ole Parkesui VS Lucy wanjiru Mwangi and Nganga Ole Parkesui and this Succession Cause, Nakuru 83 Of 2010, In The Estate Of Sika Ole Parkesui-deceased.
 11. That, the Court do consider transferring the succession cause herein to Narok Chief Magistrate's Court, or Narok High Court, as the Court may deem fit and Just.
 12. That, the Court be pleased to issue any other or further orders it may deem fit and Just. In the Interest of justice.
 13. That, the 1st Respondent and the Interested Party do pay costs for the application.
4. The Application is Premised on the following grounds;
- i. A substantive order has been issued in these proceedings, the effect of which has been to unlawfully dispossess the Applicant of her legally acquired title to land. The said land has been owned, possessed, developed, used, and continuously occupied by the Applicant since 16th September 2021, with the full knowledge and acquiescence of the Respondents.
 - ii. The Applicant, now of advanced age, has over the years developed the said parcel of Land into a matrimonial and family home using her lifetime savings. Since purchasing the land in 2011, she has invested over Kenya Shillings Twelve Million (Kshs. 12,000,000.00) in developing the property, including residential structures and essential amenities. The prospect of being evicted or losing her home and life's Investment is not only prejudicial but would render her and her family destitute.
 - iii. That the Applicant was never, and has never been served nor been notified on anything in this succession cause affecting her title. She learnt of the orders and proceedings when she did a search around 25th April 2025. She is entitled to be heard before an adverse decision can be made affecting her.
 - iv. To date, the Applicant has not been aware of the proceedings herein touching on her title as held in Court on 31st October 2022 and or on 22nd November 2022, or on any other dates.
 - v. The Respondents and beneficiaries of the Impugned orders most likely failed to disclose material facts to this Honourable Court. Including the fact that there is ongoing litigation before the Chief Magistrate's Environment and Land Court at Narok, namely Narok CM ELC Case No. 54 of 2019: Naanyu Ole Parkesui v. Lucy wanjiru Mwangi & M'gang'o Ole Parkesui, which squarely addresses the same question of ownership, title, and entitlement to the suit parcel.
 - vi. That the Applicant's rights and any orders thereof, touching on the Applicant's title should have, and ought to be determined in an Environment and Land Court [ELC Narok Chief



Magistrate ELC No.54 of 2019. Naanyu Ole Parkesui -vs- Lucy Wanjiru, Defendant, and Migang'o Ole Parkesui, in the situation, the orders made herein ought to have been deferred to an ELC Court.

- vii. The substantive, drastic, extreme, and prejudicial orders of cancelling subdivisions, Designating the subdivisions as "Illegal" and for planned eviction were made on a mention date, on 30th October 2022, whilst the law recommends that drastic and Substantive orders should not Issue on a mention.
- viii. It is noted that in the Court's ruling made on 19th September 2023, the Court noted at paragraph 2 that "Prayers (1) and (2) above were allowed and granted by Lady Justice T. Matheka on the 31 of November 2022, and the only prayer (3) remained for a substantive response by the response by the Respondent which has not materialized."
- ix. That it would seem the Court's reference to the order having been made on 31 November 2022 was in error because, the Order, as extracted, shows October 2022, not 31st November 2022. by the Court's portal shows there was no session on 31st November 2022.
- x. That the transfers, as already done, before confirmation of grant, are unlawful as:-
 - a. It has been done before the confirmation of grant,
 - b. Contrary to the Court's orders, which stated that "the status of the land do revert as it was at the time of filling this petition Reverting would be to the name of Sika Ole Perkesui, Not Mwaura Ole Parkesui and Erick Seka Ole Parkesui.

Respondents Case

5. The 1st Respondent filed a brief replying Affidavit which in a nutshell denies the allegations by the Applicant, casts blame squarely on his brother Nganga who for strange reason has not entered appearance of filed response.
6. The 1st Respondent contends and depones that, considering the foregoing, it is quite clear that the Interested Party Applicants application has no merit whatsoever.
7. That in paragraph 4 (4) of the supporting affidavit, the Interested Party Applicant avers that, she was sold a part of the deceased's estate by the deceased's son (Nganga Ole Parkesui) when he (Nganga Ole Parkesui) held a grant of representation, which is denied.
8. The said Nganga Parkesui was just an administrator and the temporary grant that he held was never confirmed for distribution to be done, to enable the said Nganga Ole Parkesui deal with his inheritance as he wished, hence the averment that the said Nganga Ole Parkesui had a grant capable of being used to.
9. That looking at the Application by the Interested Party Applicant, the main prayer is that, all the orders issued by the Court be cancelled for the estate to revert back as it was, as at the time of our application, i.e the illegal subdivisions not to be interfered with, but this would be illegal and an injustice to the estate since.
10. That Court has pronounced itself and the true beneficiaries of the deceased's estate, hence, if the Interested Party Applicant Party purchased land from an individual (Nganga Ole Parkesui) who was not entitled to the deceased's estate, then her recourse lies elsewhere and not in making applications to interfere with the distribution of the deceased's estate.



11. That these being succession proceedings where the Applicant Interested Party has not demonstrated to the Court that she has a claim emanating directly from the deceased's estate, then her application in frivolous and vexatious and should be dismissed, and in fact, the Applicant Interested Party lacks the necessary locus to bring the application.
12. That in cancelling titles emanating from the illegal distribution of a deceased estate, this Honourable Court has undertaken its primary duty of preserving an estate of a deceased's person.
13. That the Applicant Interested Party allegation that she been expended so much in developing the land, the bottom line is that, the land was illegally acquired, and the Court has pronounced itself on who the beneficiaries of the estate are, and she is now sitting on other people's land. This is the bitter truth.
14. This Ruling brings to the fore the perverse abuse in probate and administration where administrators either fail to conclude leaving wide open possibilities of disputes, where administrators sell lawfully or otherwise deceased properties and where administrators deliberately withhold crucial information from the Court.
15. Of equal significance is the issuance of ex-parte substantive orders not having heard any party, this Court is of the view that the High Court issued the said substantive order in error.
16. The 1st and 2nd Respondents obtained ex-parte orders on the 31st September 2022 from their Summons Dated the 21st September 2022 which was ultimately dismissed by this very Court on the 19th September 2023.
5. On dismissing the Respondents application, I directed that they file a fresh petition for grant of letters of administration intestate.
17. In compliance with the directive a grant was made 12th August 2024 and ultimately confirmed on the 25th March 2025.
18. The Administrator Respondents have all along maintained that they came in to conclude the succession as the estate had remained unconcluded by the previous administrator Nganga Ole Parkesui. There was no disclosure of any land dispute, or existing active cases before the Environment and Land Court.
19. The 1st Respondent ultimately changed tune in his replying affidavit dated 14th May 2025 admitting to there being a dispute and that Nganga Ole Parkesui had sold portions of the deceased land illegally.
20. It is remarkable that the Respondents allege that when Nganga Ole Parkesui purported to sell he never had a confirmed grant.
21. A property is deemed free property for distribution where the same is with exists, is available and is without controversy or dispute anything to the contrary shall fall into the unavailable class. In this instance by virtue of the pendency of Chief Magistrate Court at Narok ELC Case No.54 of 2019, Naanyu Ole Parkesui Vs Lucy wanjiru Mwangi and Nganga Ole Parkesui
22. It thus follows that the sOle assetLR Narok CIS Ilmashariani Morijo 15 in estate of the deceased is and has been mired in controversy that the Applicants and Nganga Ole Parkesui are all aware of, it is this apparent that this asset was unavailable for distribution by dint of the pre-existing dispute.

Conclusion

23. While the Applicant has sought declaratory rights on ownership, while the 1st Respondent has mounted arguments on the illegality of the actions by his brother in the purported sale of land to the



Applicant this Court shall only pronounce itself with regard to the succession and not on the question of sale or with regards ownership and use of land.

24. This Court is of the view that the Respondent deliberately withheld crucial information from the Court when they filed the petition. The Respondents were of the view that;
- i. The orders of 31st October 2022 were affected (no proof is evidenced)
 - ii. That the interested party alleged sale was illegal and unlawful (this is the very first admission of knowledge of the existence of the interested party.
25. This Court is of the view that when the Court issued the Orders dated 31st October 2022, the Applicants withheld information relating to an existing land dispute case touching on the estate.
26. When the Respondent ultimately filed the Petition dated 20th February 2025 they once more withheld material information which would have triggered directions and orders of the Court that would have been at variance with what ultimately was granted.
27. This Court is of the view that there being no free asset of the deceased ready for transmission then the Chief Magistrate Court at Narok ELC Case No.54 Of 2019, Naanyu Ole Parkesui Vs Lucy wanjiru Mwangi and Nganga Ole Parkesui shall have to be concluded before the succession proceeds to conclusion.
28. It will be prudent that the succession cause with an estimated value of kshs 3,000,000 - be transferred to the Chief Magistrate's Court at Narok within close proximity where the land and the parties are.
29. In the upshot, the application dated 21st September 2020, is found to be of merit and is allowed on the following terms;
- a. The Orders made on 31st October 2022 is hereby set-aside to the extent that, the Orders directed that the subdivisions from LR Narok CIS Ilmashariani Morijo 15 measuring 1.2 Hectares be cancelled and registration status is hereby restored to the status prior to 31st October 2022.
 - b. The Certificate of Confirmed Grant dated 25th March 2025 is hereby suspended and stayed pending the hearing and disposal of Chief Magistrate Court at Narok ELC Case No.54 Of 2019, Naanyu Ole Parkesui Vs Lucy wanjiru Mwangi and Nganga Ole Parkesui.
 - c. An Order of Transfer of Probate file is hereby made forthwith transferring this file to the Chief magistrate's Court at Narok for hearing and disposal.
 - d. I do grant costs of the Application to the Applicant Interested Party.
- It is So Ordered.

SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM

ON THIS 25TH NOVEMBER 2025

MOHOCHI S.M

JUDGE

In the presence of: -

Ms. Waweru Advocate Holding brief for Mr. Katwa for the Intrested Party Applicant

Ms. Chepkemoi Advocate Holding brief for J. Maritim - for Respondent julietmaritim@yahoo.com

