

1. For determination are two Chamber Summons Applications dated 22nd November, 2024 and 10th February, 2025 brought by rival Beneficiaries of the deceased's Estate. On the 7th May, 2025 the court directed that the two Applications would be heard together. I shall begin with the Summons dated 22nd November, 2024 brought by **Betty Chepchichir Seguton** for orders as hereunder:

- a) Spent.
- b) That pending the hearing and determination of the application interpartes, the honourable court do issue a temporary injunction restraining Clara C. Kiprotich, Elvis Bii, Geoffrey Rotich, Phillip Rotich and members of the 2nd house of the late JOHANA KIPROCH LEL from entering, tilling, cutting trees or in any way interfering with the parcel of land 9721/36 Boito. (*sic*)
- c) That the honourable court do make provision for the applicant Betty Chepchirchir Seguton, Joyce Cheron, children of the late Sarah Chepwogen represented by the son Franklin Kipkurui, children of the late Rebbly Chepkorir represented by Sharon Langat who were left out in the deceased's will.

d) That the applicant be granted provision form parcel 9721/36 Boito which the 1st family has always been in occupation.

e) Costs be provided for.

2. By affidavit in support of the Application, the Applicant avers *inter alia* that she is the daughter of the deceased herein who died testate. The Executor of the deceased's Will (**Joseph Arap Chumo**) applied for Probate of the Written Will and the same was issued on 15th February, 2011. An Application for revocation of the Probate lodged by the Applicant's sister (**Dinah Chelagat**) is said to have been dismissed by Ruling delivered on 20th March, 2024.
3. The Applicant faults the deceased's Will dated 15th April, 2007 for failure to make provision for her, her sister named **Joyce Cherono** and their two other deceased sisters (**Sarah Chepwogen and Rebby Chepkorir**) who left children behind. The Applicant proposes that they be given provision on part of the deceased's Estate known as parcel number **9721/36 Boito** which she complains to have been invaded by the Respondents who are members of the deceased's 2nd

House, yet they as members of the 1st House always occupied and enjoyed the property. The 2nd family is said to have been occupying parcel No.**9544/136 Burgei**.

4. The Applicant wants the Respondents to be restrained from their acts of trespass pending hearing and determination of the Application.
5. The Respondents oppose the Application through their joint affidavit purportedly sworn on 10th February, 2025. They first attack the Applicant's affidavit for purporting to indicate that it was sworn with the authority of the Applicant's sister called **Joyce Cheron** yet her written authority in that behalf is not exhibited, contrary to the requirement of the law.
6. The Respondents affirm validity of the deceased's Will as found by the court and hold the position that this court has no jurisdiction to revisit the decision. The court is told the Estate has been distributed as per the Will and what remains is only the winding up process which requires appointment of a new Executor since the one appointed by the deceased has since died.

7. The Respondents therefore impugn this Application as an abuse of the court process.
8. The Parties filed written submissions .The Applicants submit that **Section 26 Law of Succession Act** provides for reasonable provision for a dependant left out by a Will or gift in contemplation of death or otherwise unfairly excluded .The Will allegedly discriminates against Applicant and her siblings contrary to **Article 27 of the Constitution** which prohibits all forms of discrimination include sex or marital status.
9. Counsel therefore hold the opinion that distribution of property by Will is not absolute but subject to **Section 26** of the Act (see case law **Elizabeth Kamene Ndolo vs George Matata Ndolo, Nairobi CACA No.128/1993 and Ngetich RE Estate (2003 KLR 84** cited in reliance by the Applicant's Advocates.
10. In their submissions the Respondents reiterate averments in the affidavit in reply. It is contended that the Applicant has not discharged the burden of proof. According to Counsel, temporary or prohibitory injunction cannot issue as the Respondents have already taken possession of property in

issue. A prima facies case has not therefore been established in the circumstances as required in the often quoted case of **Giella -Vs- Cassman Brown & Co.**

11. It is the Respondents' position as well that the matter in issue is *Res Judicata* in light of the court's pronouncement on validity of the Will. It is impressed upon the court that Parties to litigation are bound by their pleadings, it being pointed out the Applicant testified in earlier objector's proceedings challenging the Will.
12. **Section 5 of the Law of succession Act** embodies the doctrine of testament freedom which allows a person to bequeath his property to any person he wishes to in contemplation of death. This right is, however, limited by **Section 26** of the Act *supra*.
13. There no dispute that the Applicant and her siblings are children of the deceased and were not catered for in the Will. I agree that it was unreasonable to leave them out. It is trite that Validity of a Will does not bar provision for dependants unreasonably left out.

14. There is no written authority showing that the other siblings of the Applicant and/or their children gave her authority to bring the Application on their behalf as well. It is therefore deemed that she is fighting for her own interest.
15. **Parcel No.9721/36 (Boito)** of which the Applicant claims a share is shown to be 44 acres as per the Will. The Applicant is hereby also given 5 acres out of this parcel like her other siblings given similar shares as per the Will . Consequently, Probate of the Will herein is confirmed in accordance with the Will and this Order.
16. The Respondents are further restrained by injunction from disposing of any part of **Parcel No.972/36 Boito** until the Applicant gets her shares as directed.
17. No order is made as to costs.

APPLICATION DATED 10TH FEBRUARY, 2025

18. Turning to the Chamber Summons Application dated 10th February, 2025, the Applicants who are Respondents in the earlier Application seek reliefs as here under: -

1. THAT the current *status quo* at the moment on the occupation and use of the Estate be and is hereby

- preserved pending further directions of the Honourable Court (*sic*).
2. THAT the Executor/Administrator JOSEPH ARAP CHUMO who is now deceased be and is hereby replaced by CLARA KIPROTICH and a fresh grant be and is hereby issued in her favour.
 3. THAT the Honourable Court do issue Certificate of Confirmation in line with the Will dated 15th April, 2007 (*sic*).
19. In their joint affidavit, the Applicants reiterate their position on validity of the deceased's Will and maintain that the Estate has been distributed among Beneficiaries. They want the deceased's widow (Clara C. Kiprotich) to be appointed as Executix in place of the deceased Executor.
20. The Respondent to the Application who is the Applicant in the second Application before the court opposes the Summons through an affidavit she ostensibly swore on 18th March, 2025. The affidavit underscores her position on this dispute as averred in her Application dated 22nd November, 2024 *supra*.

21. Having considered the application, the response thereto and submissions filed, the same is allowed subject to the Order given in respect of the Application dated 22nd November, 2024. The Appointed Executrix is given up to 13th April, 2026 when the matter comes up for mention to finalize distribution of the Estate and render Accounts as per the provisions of **Section 83** of the Law of Succession Act.

22. No order as to the costs of this Application as well.

J. M. NANG'EA, JUDGE

Judgement dated, signed and delivered virtually at Nakuru this 3rd day of December, 2025.

In the presence of:

Mr. Maina Advocate for Ms. Njoroge Advocate for Betty Chepchirchir Seguton - Beneficiary.

Mr. Kiboi Advocate for Clara C. Kiprotich, Elvis Bii, Geoffrey Rotich, Philip Rotich - Beneficiaries

Court Assistant - Justine

J. M. NANG'EA, JUDGE

ORIGINAL