

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE NO. 50 OF 2014

**IN THE MATTER OF THE ESTATE OF KIBOR ARAP TALAI
(DECEASED)**

**NANCY JEPKURUI TALAI 1ST
PETITIONER**

JOSHUA TALAI KIBOR 2ND PETITIONER

VERSUS

**IRENE TALAI 1ST
OBJECTOR**

**COLLINS KIPKOECH TALAI 2ND
OBJECTOR**

EUNICE JEBET TALAI 3RD OBJECTOR

**MOSES KIPTANUI MUGE 4TH
OBJECTOR**

MILKA CHEMELI MULEI 5TH OBJECTOR

**SAMMY KIPRONO TALAI 6TH
OBJECTOR**

**ISAIAH KIPKEMEI RONO 7TH
OBJECTOR**

Coram: Before Justice R. Nyakundi

M/s MAC Law Advocates

M/s Tengekyon & Koske Advocates

M/s Nchoe, Jaoko & Co. Advocates

M/s Morgan Omusundi & Co. Advocates

M/s Chepseba Lagat & Associates

RULING

1. What is pending for determination before this court is a chamber summons dated 16th October, 2025 expressed under the provisions of

Rules 49 and 73 of the Probate and Administration Rules. The applicants/petitioners sought orders as follows:

- a. *This Honourable Court be pleased to issue an order compelling **IRENE JEPTANUI** and **COLLINS KIPKOECH TALAI** to deposit income accrued from the below listed Commercial properties forming the Estate of Kibor Arap Talai in Court or in a joint interest earning account to be opened in the names of the law firms representing the petitioners/administrators from the 1st house and objectors from the 2nd house until the distribution of the Estate is concluded.*
- b. *That the petitioners/administrators (from the 1st House) (**NANCY JEPKURUI TALAI** and **JOSHUA TALAI KIBOR**) urgently seeks for orders of this Honourable Court compelling **IRENE JEPTANUI** and **COLLINS KIPKOECH TALAI** to deposit income accrued from the below listed Commercial properties forming the Estate of Kibor Arap Talai in Court or in a joint interest earning account to be opened in the names of the law firms representing the petitioners/administrators from the 1st house and objectors from the 2nd house until any further orders of the Court.*
- c. *Costs be in the cause.*

2. The application is based on grounds that:

- a. That the petitioners/administrators (from the 1st House) (**NANCY JEPKURUI TALAI** and **JOSHUA TALAI KIBOR**) urgently seeks for orders of this Honourable Court compelling **IRENE JEPTANUI** and **COLLINS KIPKOECH TALAI** to deposit income accrued from the below listed Commercial properties forming the Estate of Kibor Arap Talai in Court or in a joint interest earning account to be opened in the names of the law firms representing the petitioners/administrators from the 1st house and objectors from the 2nd house until the distribution of the Estate is concluded.

- b. That judgment was delivered in this matter on 17th September, 2025 pending the distribution of the Estate. A day to the Mention scheduled for 2nd October, 2025, the objectors from the 2nd house (1st and 2nd respondents) indicated to the applicants (petitioners/administrators (from the 1st House) that they wish to sit down as a family and mutually agree on the mode of distribution, a move which was fully welcomed by the petitioners/administrators (from the 1st House) herein.
- c. The meeting took place but the objectors from the 2nd house (1st and 2nd respondents) just insisted on the hardline position they took in the year 2013 which resulted in this Court case, insisted on the provision of the purported will dated 13th February, 2006 which the Court had declared null and void. Subsequently, the petitioners/administrators (from the 1st House) herein have since learned that the objectors from the 2nd house (1st and 2nd respondents) duped them into the so called mutual agreement for distribution of the Estate to buy time so as to get stay pending appeal at the Court of appeal, staying the judgement delivered on 17th September, 2025.
- d. That the petitioners/administrators (from the 1st House) (**NANCY JEPKURUI TALAI** and **JOSHUA TALAI KIBOR**) urgently seeks for orders of this Honourable Court compelling **IRENE JEPTANUI** and **COLLINS KIPKOECH TALAI** to deposit income accrued from the below listed Commercial properties forming the Estate of Kibor Arap Talai in Court or in a joint interest earning account to be opened in the names of the law firms representing the petitioners/administrators from the 1st house and objectors from the 2nd house until any further orders of the Court.
- e. If the **IRENE JEPTANUI** and **COLLINS KIPKOECH TALAI** continues to collect rents and income from the listed properties to the prejudice of the applicants (petitioners/administrators from the 1st house) herein and

any other beneficiary of the Estate, this case will not be concluded in the next 10 years since **IRENE JEPTANUI and COLLINS KIPKOECH TALAI** use the same income to fund litigation.

f. That the Succession Cause has been pending in Court from 2014 to date at the behest of the 1st and 2nd respondents until several beneficiaries have died in between and needs to be Concluded.

3. In response to the application, the 1st and 2nd Respondents through Irene Jeptanui filed a replying affidavit stating as follows:

a. That I swear this Replying Affidavit in my capacity as the 2nd wife to the late KIBOR ARAP TALAI and on behalf of the 2nd Respondent who has mandated me to depone this Replying Affidavit on his behalf. Accordingly, I am competent to swear this Affidavit and to make the averments herein in opposition to the notice of motion dated 16th October, 2025.

b. That on the allegations of failed mediation and in response to paragraphs 3 & 4 of the Applicant's supporting Affidavit, I wish to respond as follows;

i. That I am aware that the petitioners' allegation that mediation failed due to our conduct is entirely untrue and malicious.

ii. That the mediation sessions collapsed due to hostility and violent conduct on the part of the 1st petitioner, Nancy, who unleashed fierce dogs during one of the meetings, forcing the parties to disperse for their own safety.

iii. That therefore, it is misleading and unjust for the petitioners to attribute the failure of mediation to our clients. They have approached this Honourable Court with unclean hands and with the intention of maligning us.

- iv. That in response to paragraphs 2, 5 & 6 of the Applicant's Supporting affidavit, I am aware that the averments made are ill-motivated, premature, and oppressive, and are meant to unfairly target the 2nd house while absolving the petitioners of any accountability over the properties and income they are themselves managing from the estate.
 - v. That both sides of the family have been in joint administration of the estate since the court so directed. All administrators are expected to act jointly and in good faith. That the petitioners have themselves been managing and collecting rents from several other properties forming part of the estate but have never rendered any account to this Honourable Court or to the co-administrators for the rental income and profits they have been collecting from several other estate properties under their exclusive control, and it is therefore unjust and inequitable to single out the 2nd house.
 - vi. That I am aware that several properties listed in this Application as being under our control are, in fact under direct control of the 1st and 2nd Petitioners/Respondents i.e. several shops and rental premises situated on **Plot No. 64** on the Talai Centre Building and adjacent buildings
- c. That it is also within my knowledge and believe that several other properties listed in this Application as being under our control are, in fact under the management of third parties having been sold to them by the late Kibor Arap Talai i.e developments on **Plot No. 65 indicated as Tuiyoi House Building, Next Building and Hind Side** are owned by Kaptich, Chepkwony and Joshua Rono.

- d. That it is within my knowledge that the Petitioners/Respondents herein do in fact control/manage more properties than us and several properties listed in this Application as being under our control are, in fact under direct control of the 1st and 2nd Petitioners/Respondents from which they generate income.
- e. That it is also within my knowledge that the Petitioners/Respondents herein control/manage at least **250 stalls** that generate monthly income ranging between **Kshs. 1,000/=** and **Kshs. 2,500 per stall** equivalent to an average of **Kshs. 440,000/=** per month in addition to other commercial buildings and rental units within the Talai Centre which takes their earning capacity very well close to **Kshs. 1,000,000/=** per month.
- f. That It would therefore be inequitable and discriminatory for the court to compel only the second house to deposit income from the said plots in a joint account, while the petitioners continue to freely enjoy and utilize proceeds from other estate properties.
- g. That I wish to categorically state that the late Kibor Arap Talai allocated all his dependents some plots within Talai Centre and some of the dependents sold their plots while others developed the plots at their own expense.
- h. That I know for a fact that the 1st Petitioner herein Nancy Jepkurui Talai was allocated the **Plot No. 19, 49, 100 and 105** by the deceased and she proceeded to sale Plot No. 100 and used the proceeds to build her current residential home while the rest have been developed.
- i. That I also know for a fact that the 2nd Petitioner herein Joshua Talai and his family was allocated the **Plots No. 53, 91, 96, 98, 99 122, 123, 57 and 58** which is a vast land and host several buildings, shops and even a petrol station which are

entirely owned, managed/controlled by the said family and which generate substantial rental incomes.

- j. That furthermore, the 3rd Respondent herein Eunice Talai was allocated the **Plots No. 14, 79, 118 and 119** of which she has sold some while other plots are host to several buildings and shops which she entirely owns, manages/controls and which generate substantial rental incomes.
- k. That I am aware the late Walter Talai was allotted **Plots No. 25, 75, 93, 94 and 95** of which **Plot No. 93** contains 14 rental units which generate approximately **Kshs. 150,000/=**.
- l. That the allegations by the Petitioners herein asserting that my son and I control/manage the properties of the estate which generate income are baseless, falsehood, frivolous and made in bad faith for the reason that all beneficiaries have been receiving equal entitlement from the estate's assets, which include rental units, commercial stalls/shops and land parcels.
- m. That the honourable court should take notice that all beneficiaries were allotted plots by the late Kibor Talai to utilize as they deem fit and my children and I deliberately chose to develop our share of plots with our own hard-earned money and any financial gain derived from the said plots have been through our own blood, sweat and tears and should not be arbitrarily snatched/stolen from us without any consideration of material facts.
- n. That furthermore, it is not only the centre plots that generate income but also the remainder of the arable farm land within the larger parcel known as **L.R NO. 7991, LELAN/KABIEGO/62** and **LELAN KABIEGO/112** which the Petitioners herein are in control of a large portion approximately **1,200 Acres** while I control approximately **430 Acres** of which only **250 Acres** is arable, we all cultivate

cash crops and rear livestock thus generate income from said farmland.

- o. That the application by the petitioners is calculated to embarrass and punish our clients and to deprive them of income from developments which they solely funded and maintained. That the application does not advance the interests of justice or the beneficiaries but rather seeks to entrench animosity and mistrust between the houses of the deceased.
- p. That we remain open to further mediation or any other amicable process that the court may direct, provided that such process is conducted in good faith and in a safe environment.
- q. That I am aware that in as much as matters ought to come to an end in court, the law and hallowed principles of *audi alteram partem* and *nemo iudex in causa sua* dictate that courts should at all times strive to dispense justice for all in an equitable, fair and impartial manner to prevent arbitrary or unfair decisions.

Determination

- 4. On 17th September, 2025, this Court delivered judgment in this matter declaring the purported will dated 13th February, 2006 null and void, and the alleged gifts inter vivos invalid and ineffective. The Court found that the deceased, Kibor Arap Talai, died intestate, leaving behind a substantial estate comprising agricultural lands, commercial properties, motor vehicles, farm equipment, and financial assets. The parties were directed to file comprehensive proposed modes of distribution detailing exact acreages, identification of current occupants and users of each property, including the basis and duration of such occupation.
- 5. The present application seeks orders compelling the 1st and 2nd Respondents to deposit income accrued from certain commercial

properties forming part of the estate into Court or a joint interest-earning account until distribution is concluded. While the concerns raised by the Applicants regarding accountability and preservation of estate assets are legitimate, the Court finds that principles of equity and fairness demand a more balanced approach.

6. Section 47 of the *Law of Succession Act* clothes the High Court with jurisdiction thus:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decree and make such orders therein as may be expedient.

*“Rule 73 of the Probate and Administration rules provides: -
“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”*

7. Section 83 of the *Law of Succession* provides for the roles and duties of administrators as follows: -

“a. “To provide and pay out of Estate of the Deceased, the expenses of a reasonable funeral for him,

b. To get in all free property of the Deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death.

c. To pay out of the Estate of the Deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including duty if any),

d. To ascertain and pay out of the Estate of the Deceased,, all his debts.

e. Within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the Deceased and a full and accurate account of all dealings therewith up to the date of the account.

f. Subject to Section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this Section

and the income therefrom according to the respective beneficial interests therein under the will or on the intestacy, as the case may be.

g. Within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the Estate in respect of all matters other than the continuing trusts and to produce to the court, a full and accurate account of the completed administration.

h. To produce to the court, if required by the court, either of its own motion or on the application of any interested party in the Estate, a full and accurate inventory of the assets and liabilities of the Deceased and a full and accurate account of all dealings therewith upto the date of the account.

i. To complete the administration of the Estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the Estate to produce to the court a full and accurate account of the completed administration”

- 8.** The fundamental principle governing administration of estates is that all administrators must act jointly, in good faith, and with full accountability to all beneficiaries. The evidence before this Court reveals that various beneficiaries from both houses currently manage different portions of the estate and collect income therefrom. It would be inequitable and discriminatory to compel only one house to account for rental income and deposits while exempting the other from similar obligations.
- 9.** The 1st Respondent's replying affidavit demonstrates that both sides of the family have been managing estate properties since the Court directed joint administration. The Petitioners themselves manage several properties including stalls, commercial buildings, and rental units within Talai Centre, from which they generate substantial monthly income. The Respondents similarly manage certain properties and collect rental income. Neither side has rendered comprehensive accounts to this Court or to the co-administrators.

- 10.** In the interest of transparency, accountability, and equitable administration of the estate, all parties managing any portion of the deceased's estate must provide full disclosure of properties under their control and income generated therefrom. This disclosure is essential to enable the Court to make informed decisions regarding final distribution and to ensure that all beneficiaries' interests are protected.
- 11.** Additionally, to facilitate accurate distribution of the estate, particularly the landed property, it is necessary to ascertain the precise acreage and boundaries of the estate lands through a professional survey. The County Surveyor shall be engaged to conduct a comprehensive topographical survey of all land parcels forming part of the estate and provide a detailed report on the actual acreage. The costs of this survey shall be borne by the estate, with both houses sharing the expenses equally.
- 12.** Accordingly, the Court makes the following orders:
- a. ALL parties currently managing, controlling, or collecting income from any properties forming part of the estate of the late Kibor Arap Talai, including but not limited to the Petitioners/Administrators and the Objectors/Respondents, shall within **thirty (30) days** file comprehensive accounts detailing:
 - i. *All properties under their respective management or control;*
 - ii. *The rental income and any other cash receivables collected from such properties from the date of the deceased's death to date;*
 - iii. *Current cash balances held from estate income.*
 - b. *The County Surveyor, Uasin Gishu County, is hereby directed to conduct a comprehensive topographical survey of all land parcels forming part of the estate of the late Kibor Arap Talai and file a detailed report indicating the actual acreage of each parcel.*
 - c. *The costs of this survey shall be borne by the estate, with the Petitioners and Respondents sharing the expenses equally.*

d. *The matter is listed for status conference on **19th December, 2025** to confirm compliance and for further directions.*

13.Orders accordingly.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 2ND DAY
OF DECEMBER, 2025**

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**R. NYAKUNDI
JUDGE**