



In re Estate of Edward Talam Limo (Deceased) (Succession Cause E040 of 2018) [2025] KEHC 18616 (KLR) (18 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18616 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E040 OF 2018
RN NYAKUNDI, J
DECEMBER 18, 2025**

**IN THE MATTER OF THE ESTATE OF EDWARD TALAM LIMO
(DECEASED)**

BETWEEN

**RUTH JERUTO LIMO 1ST PETITIONER
BENJAMIN KIBUNGEI LIMO 2ND PETITIONER
MARY TALLAM 3RD PETITIONER
JOY JEROTICH LIMO 4TH PETITIONER**

AND

JOHN MACHARIA MULABI RESPONDENT

AND

**RUTH CHEPKOSGEI LIMO BENEFICIARY
RUTH CHEBET BENEFICIARY
RAYMOND KIPKEMEI LIMO BENEFICIARY
JEFFREY KIPKEMBOI MUSA BENEFICIARY
CHRISTINE CHELAGAT BENEFICIARY
RIZIKI MICHELLE KAWIRA BENEFICIARY
FAITH CHEMUTAI BENEFICIARY**



RULING

1. There are two pending applications before this court for determination. The first is a Preliminary objection dated 22nd September, 2025 by Faith Chemutai Limo on the interested party's John Macharia Mulabi's claim as urged in the affidavit of Protest dated 19th December, 2019 and subsequent affidavits. The grounds of objection are that:
 - a. This Honourable court sitting as a probate court is divested of the requisite jurisdiction to adjudication on a claim founded on a commercial/contractual dispute.
2. She prayed that the interested party's claim be struck out in limine with costs to her.
3. The second application for determination is summons 22nd October, 2025 in which the 4th petitioners seeks orders that:
 - a. Spent
 - b. This honourable court be pleased to order and direct that a valuation of the building and/or structures, facilities of the school known as E&T Concord Boys High School, situated on that parcel of land known as title number Sergoit/elgeyo Border Block 1 (beliomo)/249, which forms part of the estate of the deceased herein, be undertaken and or conducted.
 - c. That the said valuation exercise be undertaken and or conducted by an independent, registered and certified valuer appointed by this honourable court or mutually agreed upon by the parties herein within a period of fourteen (14) days from the date of this Honourable Court issuing such an order.
 - d. That the valuer shall compile and file the said valuation report in this honourable court within thirty (30) days of undertaking or conducting the valuation exercise.
 - e. That the reasonable cost of the valuation exercise and its preparation be borne by the estate of the deceased herein or as this honourable court may order.
 - f. The costs of this application be provided for.
4. The summons is anchored on grounds that:
 - a. The school known as E&T Concord Boys High School, situated on land reference Number Sergoit/elgeyo Border Block 1 (beliomo)/249, Forms Part Of The Estate Of Edward Talam Limo (deceased).
 - b. The said school has bene facing numerous operational structural challenged.
 - c. The school has suffered major damages as a result of fire outbreaks, the latest having occurred on 22nd September, 2025. The previous ones occurred in 2019 and on 28th January, 2024.
 - d. The extent of damage caused by the fire coupled with mismanagement remain unascertained.
 - e. The said school's building and structures are dilapidated.
 - f. The current state of the school requires urgent valuation so as to ascertain its worth, taking into account damages, operational status, and potential value.



- g. The valuation will go a long way in assisting the court in arriving at a just and fair determination of this cause, especially in light of the contentious issues in this cause.
 - h. It is imperative and in the interest of justice that a valuation of the school's building/structures and facilities be undertaken/conducted.
5. In response to the summons, Ruth Chepkosgei Limo, the 1st beneficiary swore a replying affidavit on 11th November, 2025 in which she deposed as follows:
- a. That I am the duly appointed Executors together with Richard Kipchirchir Limo in the Estate of Joseph Kipkemoi Limo (Dcd) and hence competent to make and swear this affidavit.
 - b. That in response to the Petitioners' allegation that on or about 24th June 2025, I tendered my resignation as Chairperson of the Board of E & T Concord Boys High School without the knowledge of the administrators, I wish to state that my decision was lawful, prudent, and taken in good faith. The resignation was made after this Honourable Court directed that the administrators themselves be co-opted into the school board to safeguard the estate's interest. Once the administrators assumed that statutory and fiduciary role, it was neither necessary nor appropriate for me, as a beneficiary, to remain on the same board performing overlapping functions. My withdrawal therefore avoided conflict, duplication of responsibility, and confusion in governance.
 - c. That the *Law of Succession Act* does not compel a beneficiary to hold a parallel administrative or managerial office once the estate's duly appointed administrators have taken charge. On the contrary, beneficiaries retain the inherent right to resign or decline any non-statutory position where continued participation is no longer tenable or necessary. My resignation was thus a voluntary and lawful act of deference to the administrators' statutory authority—not an act of defiance or concealment. It demonstrated respect for the Court's directions and preserved the integrity of estate management by allowing the administrators to discharge their duties without parallel oversight.
 - d. That any suggestion that the said resignation was improper is therefore misconceived and misleading. It reflects a misunderstanding of the distinction between an administrator's fiduciary office under Sections 79, 82, and 83 of the *Law of Succession Act* and a beneficiary's optional service in a management structure. My resignation neither diminished the estate's interest in the school nor breached any legal obligation but merely ensured that the estate's affairs would henceforth be managed exclusively through the properly appointed administrators as the law requires.
 - e. That I am aware that the Petitioners, acting as administrators, entered into an out-of-court settlement in Eldoret ELC No. 267 of 2017 – Vladimir Chtchoukin v. Edward Talam Limo & Others, which was marked as settled on 29th September 2025, without notifying, consulting, or seeking the concurrence of the other beneficiaries. The administrators have not disclosed the terms, consideration, or effect of that settlement, nor filed any report before this Honourable Court as required under Section 83(e) and (g) of the *Law of Succession Act* over Sergoit/Elgeyo Border Block 1 (Beliomo)/180 measuring 1.619 Ha. Such concealment and unilateral conduct violate the administrators' fiduciary obligation of transparency, impartiality, and collective accountability, and constitute a serious breach of trust.
 - f. That I am further aware that in Eldoret HCC No. 8B of 2017 –Edward Talam Limo v. Dr. Vladimir Chtchoukin, a Notice of Dismissal was issued on 18th November 2021, and the



matter listed for dismissal on 1st December 2021, yet the administrators have taken no steps to reinstate the suit, substitute the deceased plaintiff, or safeguard the estate's interests comprising a valuable hospital constructed on Sergoit/Elgeyo Border Block 1 (Beliomo)/178 measuring 1.619 Ha currently managed by my children and I with the blessings and instructions of the deceased.

- g. That upon issuance of the Notice of Dismissal in Eldoret HCC No. 8B of 2017 – The Estate of Edward Talam Limo v. Dr. Vladimir Chukin, on 18th November 2021, the said notice was officially transmitted by email to Ms. Betty Koech, Advocate for the Petitioners. Despite having clear and prompt notice, the Petitioners took no tangible or protective action to arrest the dismissal, substitute the deceased plaintiff, or safeguard the estate's proprietary interests. Their silence and inaction in the face of imminent loss betray a reckless disregard of fiduciary duty and a gross dereliction of the obligation to protect estate property. Such indifference to the survival of the estate's legal claims lays bare a pattern of neglect that disqualifies them from continuing in office as administrators.
- h. That the Administrators failures in dealing with the Court matter over Sergoit/Elgeyo Border Block 1 (Beliomo)/180 measuring 1.619 Ha and Sergoit/Elgeyo Border Block 1 (Beliomo)/178 measuring 1.619 Ha demonstrates lack of diligence, contrary to the mandatory obligations imposed on them by Sections 79 and 83(b), (c), and (d) of the *Law of Succession Act*.
- i. That the administrators' pattern of non-disclosure, inaction, and disregard of collective responsibility shows a clear breach of fiduciary duty owed to the beneficiaries. Their lack of transparency has undermined confidence in their stewardship and rendered the current administration untenable. It is therefore just and necessary that this Honourable Court intervenes to reconstitute the grant so as to preserve the estate, restore accountability, and uphold the principles of lawful and transparent administration.
- j. That in further demonstration of this dereliction of duty I verily believe that the 4th Petitioner's present application, which seeks orders for valuation of E&T Concord Boys High School—an estate property forming part of Sergoit/Elgeyo Border Block 1 (Beliomo)/249—is wholly misconceived and unnecessary. Under the *Law of Succession Act* (Cap 160), the powers and duties to conduct such a valuation are expressly vested in the administrators themselves. Section 79 vests all property of the deceased in the administrators upon the grant; Section 82 empowers them to "sell, lease, manage, or otherwise turn to account any assets of the estate"; while Section 83 obligates them to ascertain the full value of the estate and render accurate accounts. Collectively, these provisions clothe the administrators with full statutory authority to appoint valuers, surveyors, or auditors to ascertain the worth and condition of any estate asset as part of their ordinary administrative mandate.
- k. That it is therefore indefensible that one administrator should now seek judicial sanction to perform what is already a clear statutory duty. Such conduct not only betrays a misapprehension of the law but also lays bare the profound dysfunction and mistrust within the current administration. It is evident that even the most basic acts of estate management have become contentious, forcing the estate into needless litigation and delaying the beneficiaries' right to a fair and expeditious distribution. The Court's time should not be consumed by matters that fall squarely within the administrators' statutory authority.
- l. That the 4th Petitioner's conduct, viewed alongside the repeated disagreements among the administrators, confirms that the current administration has lost its coherence, competence, and unity of purpose. The constant recourse to this Honourable Court for ordinary



administrative decisions is symptomatic of a failed administration and underscores the need for judicial intervention. It is therefore just and proper that this Honourable Court reconstitute the administration by removing the 2 errant administrators and appointing the 1st Beneficiary, Ruth Chepkosgei Limo, together with the 3rd Beneficiary, Ruth Korir, as joint administrators — individuals of integrity and capability who can restore order, transparency, and progress in the administration of this estate.

- m. That this Honourable Court possesses broad supervisory and inherent jurisdiction under Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules to make such orders as may be necessary for the ends of justice and to prevent abuse of the court process. These provisions empower the Court to intervene where estate administration has been frustrated by misconduct, mistrust, or persistent wrangles, and to remove, suspend, or substitute administrators in order to protect the integrity of the process. In the present case, where it is manifest that the administrators are unable to act jointly or discharge their duties in accordance with the law, the Court's intervention to reconstitute the administration is not only warranted but indispensable to ensure efficient and just determination of the estate.
- n. That I verily believe the Petitioners have turned this succession cause into a theatre of perpetual interlocutory skirmishes instead of working collectively to complete administration. Each fresh application concerns peripheral or procedural matters that could and ought to be resolved internally by the administrators themselves, yet this pattern has paralysed progress toward confirmation and distribution.
- o. That the persistent resort to Court on trivial administrative questions violates the intent of Sections 83(f) and 47 of the *Law of Succession Act* (Cap 160). This Honourable Court's jurisdiction is supervisory, not managerial; it is not meant to be invoked for every routine decision. The Court's solemn function in a succession cause is to identify beneficiaries and dependants, ascertain the estate's assets and liabilities, and oversee equitable distribution of capital assets. Maintenance, valuation, and day-to-day management are administrative tasks entrusted by statute to the administrators themselves. The Petitioners' incessant litigation on such matters therefore amounts to abuse of process and has delayed justice for all beneficiaries.
- p. That the Petitioners' attempt to justify their latest application by citing alleged fire incidents at E & T Concord Boys High School is wholly unsubstantiated. They have failed to present even a single official document — no incident report from the County Fire Department, no police abstract or forensic report from the Directorate of Criminal Investigations, and no indication of any charges preferred. Their allegations therefore remain speculative and unverified.
- q. That I am advised, and verily believe, that the proper and lawful agencies mandated to investigate such incidents are the County Fire and Disaster Management Department, the Directorate of Criminal Investigations, and the Office of the Director of Public Prosecutions, culminating before the Chief Magistrate's Court where appropriate. This Honourable Court, sitting as a Probate Court, cannot be converted into a fact-finding tribunal on criminal or quasi-criminal matters. Its jurisdiction is confined to the administration of the estate. The Petitioners' insistence on litigating investigatory matters here only distracts from the true purpose of these proceedings and underscores the need for reconstitution of the administration to restore order, discipline, and fidelity to the law.
- r. That the Petitioners' misuse of this Honourable Court through incessant and ill-conceived applications, coupled with their failure to exercise basic administrative judgment, constitutes clear evidence of failure to proceed diligently with the administration of the estate within the



meaning of Section 76(d) of the *Law of Succession Act*. The administration has been paralysed by persistent conflict, absence of accountability, and diversion of the Court's time to peripheral disputes.

- s. That the continued filing of speculative and unsubstantiated claims—such as the alleged fire incidents—further demonstrates that the current administrators have become incapable of fulfilling their fiduciary obligations. Accordingly, the grant has become "useless and inoperative through subsequent circumstances" within the meaning of Section 76(e), thereby justifying judicial intervention to revoke the existing grant and reconstitute the administration to protect the estate and the rights of the beneficiaries.
- t. That the current administration of the estate has irretrievably broken down due to persistent disputes, lack of consensus, mismanagement, and collective failure by the administrators to discharge their statutory and fiduciary duties as required under the *Law of Succession Act* (Cap 160).
- u. That repeated attempts to convene meetings and resolve estate matters have failed, and the estate has consequently suffered loss, stagnation, and deterioration, to the grave prejudice of all beneficiaries.
- v. That the continued conflict among administrators has rendered orderly and efficient administration impossible. Efforts to ensure fair distribution, preservation, and accountability of estate assets have consistently failed, with prolonged disputes paralyzing progress and frustrating beneficiaries' rights.
- w. That in light of the persistent deadlock, risks of asset wastage, and manifest inability of the current administrators to perform their duties, it has become necessary and just for this Honourable Court to intervene to protect the estate and the interests of all beneficiaries.
- x. That without prejudice to the foregoing averments and the proposal for reconstitution of administration by inclusion of the 1st and 3rd Beneficiaries, I am advised by my advocates on record, which advice I verily believe to be true, that this Honourable Court is also empowered under Sections 66 and 76 of the *Law of Succession Act* (Cap 160) to revoke an existing grant and appoint any fit and proper person as administrator where mismanagement, controversy, or deadlock has rendered continued administration untenable.
- y. That further, the *Public Trustee Act* (Cap 168) expressly provides for the establishment, powers, and appointment of the Public Trustee as a fit and proper person to administer estates and trusts where private administration has failed or become impracticable. In particular—
 - i. Section 4 empowers the Court to appoint the Public Trustee to administer an estate where administration by private individuals has become ineffective or is not in the interests of justice;
 - ii. Section 5 establishes the Public Trustee as a statutory body corporate with full legal capacity, neutrality, and institutional competence to act as administrator or trustee; and
 - iii. Section 19 authorises the Court to appoint the Public Trustee directly as administrator or trustee when no suitable private individual is willing or capable of acting, or where disputes and mismanagement among existing administrators make such appointment necessary.



- z. That these statutory provisions reinforce the Court's inherent and supervisory jurisdiction under Sections 47, 66 and 76 of the Law of Succession Act to revoke a grant and appoint the Public Trustee whenever such intervention is required to safeguard the estate, uphold justice, and protect the beneficiaries' interests.
- aa. That without prejudice to my earlier prayer for reconstitution by the appointment of the 1st and 3rd Beneficiaries as administrators, I verily believe that, should the Court find that private administration has become wholly unworkable, the appointment of the Public Trustee would be an appropriate and lawful alternative. The Public Trustee, being a neutral and institutional administrator, possesses the capability, impartiality, and accountability necessary to restore confidence and ensure proper stewardship of the estate.
- ab. That it bears reminding the Petitioners that the office of administrator is neither an elective post nor a lifetime entitlement. It is an appointive fiduciary office created by law and bounded by strict statutory timelines. Under the Law of Succession Act, administrators are expected to complete distribution of the estate within a reasonable period, transfer titles to the beneficiaries, and thereafter render full accounts to the Court, including accounts of income-generating properties such as Concord Boys and Concord Girls Schools. Regrettably, the Petitioners have long exhausted the time for which they were appointed, yet continue to cling to office without executing any meaningful administrative or distributive function.
- ac. That it is very clear by their inactions of the Administrators their 5 years' tenure has degenerated into a posture of positional entitlement rather than service, marked by inertia and needless litigation. While one may charitably acknowledge that retirement often.
6. The parties filed their respective submissions which I have read and considered.

Analysis and determination

7. I have carefully considered the two applications before this court, the replying affidavits, and the written submissions filed by the parties. I shall address each application in turn, beginning with the Preliminary Objection dated 22nd September, 2025.
8. Faith Chemutai Limo, raises a preliminary objection to the claim by the Interested Party, John Macharia Mulabi, on the ground that this Honourable Court, sitting as a probate court, lacks jurisdiction to adjudicate upon a claim founded on a commercial or contractual dispute. The central question is whether a probate court has jurisdiction to entertain and determine a claim by an Interested Party who alleges entitlement arising from commercial or contractual dealings with the deceased.
9. The legal threshold for a preliminary objection to lie is well settled. Gikonyo J in Catherine Kawira v Muriungi Kirigia [2016] eKLR put it succinctly thus;
- “(5) I do not want to reinvent the wheel on the legal threshold for Preliminary Objection. It is now well-settled principle that a preliminary objection should be a point of law that is straight-forward and not obscured in factual details for it to be proved. Again, it must be potent enough to decimate the entire suit or application. On this I am content to cite the case of Mukisa Biscuit



Manufacturing Company Limited V West End Distributors Limited (1969)
EA 696 where it was stated as follows:

“So far as I’m aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

10. The Supreme Court in *Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others* cited the leading decision on Preliminary Objections, *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd*. (1969) EA 696, where the Court held as follows:

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

11. Article 165 of *the Constitution* of Kenya 2010 establishes the High Court. Its jurisdiction is very wide. However, Sub-article (5) thereof categorically states the limitations to that jurisdiction. It provides –
- (a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or
 - (b) falling within the jurisdiction of the courts contemplated in Article 162 (2).
12. The jurisdiction of this court in succession matters is derived from the *Law of Succession Act*, Cap 160, which confers upon the High Court broad powers to administer estates of deceased persons. Section 47 of the Act provides that the High Court shall have jurisdiction to make grants of representation and to exercise general supervision over the administration of estates.
13. The right of access to courts must be practical and effective. For the right to be effective, an individual must have a clear practical opportunity to challenge an act that is an interference with his rights. The right may be impaired by the multiplicity of interlocutory applications which do not address the primary cause of action capable of defining or vindicating the rights of the parties. The right to a fair hearing also includes the principle of equality of arms. The requirement of equity of arms applies in principle to Civil, Criminal, and or Succession matters. The equality of arms implies that each party must be afforded a reasonable opportunity to present his case including his or her evidence under conditions that do not place him or her at a substantial disadvantage vis-a vis the other party
14. This litigation of this estate started in earnest and the protestor Mr Macharia objected to the summons for confirmation of grant. His evidence was taken which underwent cross -examination raising various grievances which were to be determined at the end of the trial upon hearing the re-joinder from the administrators or any such evidence to controvert his claim. The parties who were to answer the claim by Mr. Macharia have been instead assembling legal arsenals of seeking leave of this court to determine his objection without necessarily addressing the entire spectrum of the summons for confirmation. Access to courts must be affordable, individual should not be required to sacrifice time, expenditure,



and judicial resources in order to gain access to a court. This estate should have been completed and a final judgement made by the trial court on the justiciable issues on identification of the net estate of the deceased and the legitimate beneficiaries under Section 29 of the *Law of Succession Act*. It is not in the province of the parties to usurp the jurisdiction of the court and provide guidance on the structure of the decision to be made arising out of the dispute. Judicial resources are scarce. It is fundamentally rational to require that those resources be deployed in a way that will see Judges spending a large portion of their time trawling through mounts of interlocutory applications when a proper road map had been set on how to conduct the business of the court within the import of Order 11 of the Civil Procedure Rules. If judicial resources have to be deployed in an irrational fashion this would be inimical to Judicial independence which requires that Judges and Magistrates must have control over the administration of the courts to ensure efficiency.

15. Specifically, under Section 83 of the *Law of Succession Act*, administrators are required, inter alia, to:

- “(a) to provide and pay, out of the 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 estate 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 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 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 up to 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.”

16. It follows therefore under procedural law that where a person asserts a claim as a creditor, objector, protestor, or a business partner with the deceased or claimant against the estate, such a claim must



be evaluated and determined within the succession proceedings more so if it is challenging the summons for confirmation of grant. Such claimants may be termed as strangers to the estate but that determination is the duty of the Probate court to distil the issues and rule accordingly. The severance application on jurisdiction in this matter is a non-starter.

17. In the present case, John Macharia Mulabi has lodged his claim within the succession proceedings by way of an affidavit of protest. Whatever the nature of his claim, whether it arises from a contract, partnership, loan, or any other commercial dealing with the deceased, it is now a claim against the estate that must be verified, evaluated, and either admitted or rejected based on the material evidence before this court together with the views expressed by the administrators under the supervision of this court.
18. To hold otherwise would be to require every creditor who transacted with the deceased to first obtain judgment in a separate civil suit before presenting their claim in the succession cause. Such an interpretation would be neither practical nor consistent with the comprehensive nature of probate jurisdiction.
19. The 1st Beneficiary in her submissions correctly observes that the court's supervisory jurisdiction under Section 47 and Rule 73 of the Probate and Administration Rules is broad and intended to facilitate just determination of all matters arising in the administration of an estate. However, this supervisory role necessarily includes the jurisdiction to determine disputed claims, whether contractual or otherwise, that are lodged against the estate. The Court's jurisdiction is vested by *the constitution* and the *Law of Succession Act*. If it were that this court has no jurisdiction over the protest by Mr. Macharia nothing could have been easier than to down the tools.
20. I am of the strong view that jurisdiction has raised by the Applicants is not a justiciable issue save that it continues to delay the resolution of this long standing Succession Matter. The fact that the claim may have its roots in a commercial or contractual relationship with the deceased does not divest this court of jurisdiction. What is determinative is that the claim is now being pursued as a claim against the estate within the succession proceedings.
21. For the foregoing reasons, I find that the Preliminary Objection dated 22nd September, 2025 lacks merit and is hereby dismissed. The Interested Party's claim shall be heard and determined on its merits in accordance with the law.
22. I now turn to the second application before this court, being the summons dated 22nd October, 2025, in which the 4th Petitioner seeks orders for the valuation of the building, structures, and facilities of E&T Concord Boys High School situated on land parcel number Sergoit/Elgeyo Border Block 1 (Beliomo)/249.
23. The 1st Beneficiary, Ruth Chepkosgei Limo, has filed comprehensive submissions in opposition to this application. The thrust of her opposition is threefold:

First, she contends that the administrators already possess statutory authority under Sections 79, 82, and 83 of the *Law of Succession Act* to conduct valuations of estate assets, and therefore the court should not usurp administrative functions that properly belong to the administrators themselves.

Second, she argues that the application is symptomatic of a dysfunctional administration characterised by persistent disagreements, inaction, and failure to discharge fiduciary duties, thereby justifying removal of the current administrators and reconstitution of the grant.

Third, she submits that the allegations of fire damage are unsubstantiated and that this court should not be converted into a fact-finding tribunal on matters that ought to be investigated



by the relevant statutory agencies such as the County Fire Department or the Directorate of Criminal Investigations.

24. Under ordinary circumstances, the administrators would indeed be expected to exercise these powers and duties without judicial intervention. The court's supervisory jurisdiction is not intended to supplant or micromanage the day-to-day administrative functions of personal representatives. As the 1st Beneficiary correctly submits, administrators cannot abdicate their statutory duties by shifting them to the court.
25. However, the present circumstances are far from ordinary. The record before this court reveals a deeply fractured administration. The 1st Beneficiary's own affidavit, spanning some thirty-five paragraphs, paints a picture of persistent conflict, allegations of mismanagement, failure to disclose material information, inaction on critical litigation affecting estate property, and a complete breakdown of cooperation among the administrators.
26. The 1st Beneficiary herself has called for the removal of two administrators and the reconstitution of the grant. She characterises the current administration as irretrievably broken down and accuses the administrators of turning this succession cause into a theatre of perpetual interlocutory skirmishes. She further asserts that the administration has been paralysed by persistent conflict, absence of accountability, and diversion of the Court's time to peripheral disputes.
27. The application is grounded on serious allegations including fire outbreaks at the school property, the most recent allegedly occurring on 22nd September, 2025, coupled with claims of mismanagement and dilapidation of the structures. While the 1st Beneficiary challenges these allegations as unsubstantiated, the proper way to resolve such factual disputes is through objective, independent assessment, not through competing affidavits.
28. Section 47 of the [Law of Succession Act](#) and Rule 73 of the Probate and Administration Rules confer upon this court broad supervisory and inherent jurisdiction to make such orders as may be necessary for the ends of justice and to prevent abuse of the court process. This jurisdiction includes the power to intervene where estate administration has been frustrated by misconduct, mistrust, or persistent wrangles among administrators.
29. Where, as here, the administrators are deadlocked or unable to cooperate in the performance of essential administrative duties, the court may properly intervene to ensure that the estate is protected and that the interests of beneficiaries are safeguarded. Such intervention does not amount to judicial usurpation of fiduciary functions; rather, it is a necessary exercise of supervisory jurisdiction to overcome administrative paralysis and enable progress toward the ultimate goal of confirmation and distribution.
30. The subject property, E&T Concord Boys High School is an income-generating property that requires proper management, maintenance, and accounting. The allegations of fire damage, structural deterioration, and operational challenges, whether fully substantiated or not, are sufficiently serious to warrant independent professional assessment.
31. One other thing in this application is that it violates the provisions of Section 7 of the [Civil Procedure Act](#) on the doctrine of re-judicata and it is twin concept estoppel. The persuasive case in *Aro vs Fabolude* (1983) 1SCNLR on the same subject addressed itself as follows: "There must be an end to litigation. Parties are not permitted to bring fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the Court of the legal result either of the construction of the documents or the weight of certain circumstances. If those were permitted, litigation would have no end except when legal ingenuity is



exhausted.” Blacks Law Dictionary Eighth Edition defines res judicata as: “A thing adjudicated. In other words, the phrase means an issue that has been definitely settled by judicial decision. It is an affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions that could have been, but was not, raised in the first suit. Generally, estoppel means a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true. A bar that prevents the re-litigation of issues .Therefore, estoppel per rem judicate is a doctrine barring a party from litigating an issue determined against that party in an earlier action.”

32. In the present application it is not in dispute that such issues had been raised and appropriately ruled upon by this very same court. Again there is no doubt that the court is possessed with the requisite jurisdiction to adjudicate upon this Succession Cause. Whether Mr. Macharia is before this court as a creditor, a partner, a commercial Agent or an employee of the deceased those ancillary issues needs to be addressed so long as they seem to be having some interlocking connection with the deceased. If the court had been given a chance by the parties by adducing their evidence with completeness, the issue which must be resolved is whether Mr. Macharia is a creditor, an employee of Concord Boys, or an investor in the deceased estate or is a busy body intermeddling with the Estate of the deceased. This court has not been able to do so for reasons best known to the beneficiaries and respective legal counsels in not complying with the earlier pre-trial conference protocols. The issue of jurisdiction therefore does not arise.
33. I therefore find that, in the particular circumstances of this case, a court-ordered valuation is both necessary and appropriate. This determination does not constitute a general endorsement of judicial intervention in routine administrative matters. Rather, it is a measured response to a specific situation of administrative dysfunction where court intervention is required to protect the estate and advance the interests of justice.
34. In light of the foregoing analysis, I make the following orders:
 - a. The Preliminary Objection dated 22nd September, 2025 is dismissed.
 - b. The Summons dated 22nd October, 2025 is allowed.
 - c. A valuation of the buildings, structures, and facilities of E&T Concord Boys High School situated on land parcel number Sergoit/Elgeyo Border Block 1 (Beliomo)/249 shall be undertaken by the County valuer.
 - d. The valuer shall conduct the valuation exercise and compile a comprehensive report detailing:
 - i. The current market value of the land.
 - ii. The current value of all buildings, structures, and facilities on the property.
 - iii. An assessment of the physical condition of the buildings and structures, including any damage, depreciation, or required repairs.
 - iv. The operational status of the school.
 - v. Any other matters relevant to the value and condition of the property.
 - e. That a declaration is hereby made under Section 1(A), 1(B) 3, 3(A) of the *Civil Procedure Act* and Rule 73(1) of the Probate and Administration Rules that no further interlocutory application shall be entertained challenging the fidelity of this proceedings from any other



party unless it is aimed at expediting the identification of the net estate geared towards distribution of the Estate to the beneficiaries.

- f. That a Status Conference be held on 19.1.2026 for the parties to covenant to expedite the conclusion of this matter without any further delay.
- g. The cost of the valuation exercise shall be borne by the estate of the late Edward Talam Limo.
- h. I make no orders as to costs to both applications given the nature of the matter herein.
- i. It is so ordered.

DATED AND SIGNED PUBLISHED VIA CTS AND E-MAILS AT ELDORET ON THIS 18TH DECEMBER ,2025

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R. NYAKUNDI

JUDGE

