

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**SUCCESSION CAUSE NO. 352 OF 2015**

**IN THE MATTER OF THE ESTATE OF KIPSEREM ARAP ROTUK**

**TITUS KIPKOECH NGETICH.....CAVEATOR/APPLICANT**

**VERSUS**

**DANIEL KIPRONO SEREM.....1<sup>ST</sup> RESPONDENT**

**TITUS KIPKOECH NGETICH.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. By way of Chamber Summons dated 27<sup>th</sup> January 2025 the Applicant seeks the following orders;

**1) Spent**

**2) Spent**

**3) This Honourable court be pleased to issue an order of status quo over Land Parcel NAND1/KAPTEL/987 pending the hearing and determination of these Summons and thereafter the main suit.**

**4) The Objector, Daniel Kiprono Serem, be temporarily restrained whether by himself, his servants, agents, employees and/or anyone acting on his authority from tilling, leasing, or otherwise intermeddling with part of Land Parcel NANDI/KAPTEL/987 currently in occupation by the Applicant pending the hearing and**

**determination of this application and thereafter pending the hearing and determination of the mode of distribution of the estate.**

**5) Costs of this application be provided for.**

2. The Application is expressed to be brought under the Provisions of Sections 48,49 and 47 of the Law of Succession Act, Rules 63 and 73 of the Probate & Administration Rules, Section 18(i) (b) (ii) of the Civil Procedure Act and 'all other enabling provisions of the Law'.
3. The application is premised on the grounds on the face of it and the deponements in the affidavit sworn in support of the application by the applicant. He deponed that he is currently in occupation and usage of part of Land Parcel NAND1/KAPTLL/987 since the year 2014. That he has planted tea on the piece of land which have attained maturity. However, the Objector and his kin have lately been intimidating the applicant with an intention of forcefully driving him out of the land parcel. Further, that the Objector has destroyed part of his tea plantation as evidenced in the photographs attached.
4. The deponent averred that the Objector and his kin have also been forcefully harvesting the tea plantation at the expense of the Applicant. He attached and marked as TKN-X a, b, c. d. e, f, g, h & i photographs showing destruction, harvesting and entry into the land parcel. That the Objector has also, on several occasions, threatened the Applicant who has reported the matter at the Kipsomoite Police Station, which complaints are currently under the police investigations. He attached and marked as TKN-2 a & b records of the Occurrence Book and breakdown of reported cases at the Police Station.

5. The deponent averred that it is in the interest of justice and fairness that an order of quo be issued preserving the estate at least as this cause pends in court.

### **Applicants Submissions**

6. Learned counsel for the applicant submitted that this court sitting as a probate court under the Law of Succession Act, has wide powers under Section 47 and Rule 73 of the Probate and administration Rules to make orders necessary for the ends of justice and to prevent abuse of the process of the court.
7. He cited Section 47 of the Law of Succession Act and submitted that Rule 73 of the Probate and Administration Rules empowers 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. Further, that the court can adopt civil law procedures under Rule 63 which incorporates Order 40 of the Civil Procedure Rules, thus entitling parties to seek interlocutory injunctions or status quo orders in probate proceedings.
8. Counsel urged that the principles for grant of injunctive orders were established in the case of *Giella v Cassman Brown & Co. Ltd*. He urged that in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, the Court of Appeal held that a prima facie case is established when the material presented shows that the applicant's right has been infringed or is about to be infringed. That the applicant's continued loss of crops, threats to his security and lack of alternate recourse clearly satisfy this threshold.
9. Counsel submitted that the essence of a status quo order is to preserve the subject matter of litigation pending resolution. That the Court of Appeal in

Virginia Edith Wambui Otieno v Joash Ochieng Ougo & Another (1987) eKLR emphasized that courts are enjoined to preserve the property pending final determination, especially where there is risk of wastage and destruction. He additionally cited the ease of in Re estate of M' Ngaruthi Miriti (Deceased) (2017) eKLR. Counsel urged that unless this court intervenes a substratum of the Objectors conduct will result in further loss and ultimately the dispute, rendering the distribution exercise moot.

**10.**Counsel submitted that the actions of the Objector in destroying the plantation and harvesting tea from the suit land without authority constitute intermeddling, which is criminalized under Section 45 of the Law of Succession Act. He urged that in Re Estate of M'Mbijiwe M'Mithika (Deceased) [2018] eKLR, the court censured parties who took unilateral steps in dealing with estate property pending confirmation of grant.

**11.**Further, that the Applicant is not seeking exclusive occupation of the entire land parcel but rather preservation of the portion under his cultivation. The Objector has not shown any justification or superior title to dispossess the Applicant at this stage of proceedings. The balance of convenience, therefore, lies in maintaining the current possession and restraining further acts of violence and destruction.

**12.**Counsel urged that the Applicant has satisfied all the legal parameters necessary for the grant of the orders sought.

### **Analysis & Determination**

**13.**The following issues arise for determination;

- i) Whether the orders for status quo should issue**
- ii) Whether the temporary restraining orders should issue**

14. Section 47 of the Law of Succession Act, states as follows:-

**“The High Court shall have jurisdiction to entertain any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient, provided that the High Court may for the purpose of this Section be represented by the Resident Magistrate appointed by the Chief Justice.”**

15. Rule 73 of the Probate and Administration Rules provides as follows;

**“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.”**

16. In **Re Estate of Simon Kimendero (deceased) [2020] eKLR**, the Court noted that of specific significance to preservative order in respect of estate property is that: -

- a. The Applicant has an arguable case;**
- b. The property is estate property; and**
- c. The property is likely to be dissipated or wasted away.**

17. In **Re Estate of Jeremiah Ngiri Kibati (Deceased) [2019] eKLR** and **Re Estate of Elijah Ngari (Deceased) [2019] eKLR**, the Court in dealing with the issue of issuance of conservatory orders in succession matters cited with approval the decision of the Court in **Japhet Kaimenyi M’ndatho v M’ndatho M’mbwiria [2012] eKLR** noting that an Applicant

in an application for preservatory orders has to satisfy the following conditions:

- a. That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the Applicant unless preservatory orders of inhibition are issued.**
- b. That the refusal to grant orders of inhibition would render the Applicant's suit nugatory.**
- c. That the Applicant has arguable case.**

**18. In Re Estate of John Gakunga Njoroge [2015] eKLR Murithi J held: -**

**“A person can only deal with the estate of a deceased person pursuant to a Grant of Representation made to him under the Law of Succession Act. In this regard, the jurisdiction of the court to protect the estate of a deceased person is set out in Section 45 of the Law of Succession Act”**

**19. Having considered the application, the depositions made in support of the same, the submissions as well as the Statutory and case law herein cited, I am satisfied that the Applicant's Application has merit. The same in this regard is allowed as follows;**

- a) The Objector, Daniel Kiprono Serem, is now hereby temporarily restrained whether by himself, his servants, agents, employees and/or anyone acting on his authority from tilling, leasing, or otherwise intermeddling with part of Land Parcel NANDI/KAPTEL/987 currently in the occupation of the Applicant pending the hearing and**

**determination of this application and thereafter pending the hearing and determination of the mode of distribution of the estate.**

- b) An order of status quo over Land Parcel NAND1/KAPTEL/987 being that the said land parcel is under the use and occupation of the Applicant Titus Kipkoech Ngetich is to be maintained pending the hearing and determination of these Summons and thereafter the main suit.**

**Read Dated and Signed at ELDORET on 19<sup>th</sup> December 2025**

**E. OMINDE**

**JUDGE**