

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
SUCCESSION CAUSE NO 116 OF 2000
IN THE MATTER OF THE ESTATE OF THE LATE CHEMASE EGO
(DECEASED)

AND

MARY MOKICHO KIPKEMOI.....APPLICANT

RULING

1. Before this court is a Notice of Motion brought under Article 159 of the Constitution of Kenya 2010, Section 47 of the Law of Succession Act, Rule 73 of Probate and Administration Rule)
 - a) That the Application be certified as urgent and be heard and dispensed off expeditiously.
 - b) That this Honourable Court be pleased to issue an order directing the County Land Surveyor Elgeyo Marakwet County to carry out subdivision of the Land parcel number IRONGO/ITEN/165 pursuant to the Amended Certificate of Confirmation for Grant issued by the Court 1st August 2022.
 - c) That this Honourable court be pleased to issue an order directing the office commanding station (OCS) Iten Police Station to provide adequate security during the subdivision exercise
 - d) That costs be in the cause

WHICH APPLCIAITON is grounded on the annexed supporting affidavit of MARY MOKICHO KIPKEMOI and such other grounds to be adduced at the hearing and

- a) That on the 19th April 2021 the court issued an order in which it confirmed the Grant of Letters of Administration in respect of the Estate of the deceased issued on the 14th August 2000

- b) That subsequently a certificate of confirmation of Grant was issued on the 26th May 2021 and later amended on the 1st August 2022
 - c) That there is need to undertake subdivision of the Land parcel Number IRONGO/ITEN/165 for distribution among the beneficiaries of the Estate of the deceased pursuant to the confirmation Orders of the Court on 19th April 2021
 - d) That there has been a history of hostility from some beneficiaries towards the subdivision exercise for the land in blatant disobedience to the confirmation order of the court of 19th April 2021.
 - e) That it is therefore necessary that the court do issue an order directing the county land surgery Elgeyo Marakwet County to carry out subdivision of the Land Parcel number IRONGO/ITEN/165 pursuant to the amended certificate of confirmation of Grant issued to the Court on the 1st August 2022
 - f) That it is also necessary that the court to issue an order directing the officer commanding station (OCS) Iten Police Station to provide adequate security during the subdivision exercise
 - g) That no prejudice shall be suffered
2. It is supported by an affidavit sworn by Mary Mokicho Kipkemoi which states as follows:-
- a) That I am the administrator of the Estate of CHEMASE EGO (Deceased) the deceased herein and the Applicant and hence I am competent and duly authorized to swear this affidavit
 - b) That on the 19th April 2021, the Court issued an order in which it confirmed the Grant of letters of Administration in respect of the Estate of the deceased issued on the 14th August 2000
 - c) That subsequently a certificate of confirmation of Grant was issued on the 26th May 2021 and later amended on the 1st August 2022.

- d) That there is need to undertake subdivision of the Land Parcel number IRONGO/ITEN/165 for distribution among the beneficiaries of the Estate of the deceased pursuant to the confirmation order of the court of 19th April 2021.
- e) That there has been a history of hostility from some beneficiaries towards
- f) the subdivision exercise for the land in blatant disobedient to the confirmation order of the court of 19th April 2021
- g) That there has been a history of hostility form some beneficiaries towards the subdivision exercise for the land in blatant disobedience to the confirmation order of the court of 19th April 2021

DECISION

1. The surveyors Act of Kenya provides the framework of their role being of a quasi-judicial capacity when determining boundaries but their final reports and actions are subject to court scrutiny and challenge. The reports provided by a qualified and silenced surveyor are admissible under Section 48 of the Evidence Act.
2. The Core Roles and responsibilities undertaken by licensed surveyors include the following:
 - i. Boundary Determination: Licensed surveyors are primarily responsible for precisely determining and demarcating property boundaries based on legal descriptions and existing survey plans. This work, when authenticated by the Director of surveys becomes the official record*
 - ii. Expert Evidence: In case of boundary disputes, courts often rely on surveyors as expert witnesses. Their reports, prepared with professional equipment are considered valuable evidence.*
 - iii. Facilitating Transactions: Surveyors are integral to land registration process, preparing detailed survey plans mutation*

forms and other vital data necessary for land transactions (e.g subnivism, amalgamation) to be legal and accurate.

3. This is what caselaw states in placing significance on the role played by surveyors in the administration of justice

- ***In the case of Kenda v Njapit & 5 others (2025):*** The Environment & Land Court (ELC) held that an "expert report by a surveyor complied with the aid of survey equipment would certainly be more useful" than a judge visiting the site without expertise. The court ordered the District Land Registrar and District Surveyor to visit the ground, ascertain the size and boundaries of the disputed parcels, and prepare a report for the court.
- ***Further the court in Nzau v Kemei & 2 others (2025):*** This case highlighted the consequences of a county surveyor's failure to serve a final report and place beacons promptly, which caused psychological trauma and delayed the plaintiff from enjoying their property. The court acknowledged the surveyor's crucial role in resolving such disputes.
- ***Similarly in Sanghani & 4 others v Kenya National Highways Authority & 3 others (2025):*** The court declared a boundary wall and gate constructed by the plaintiffs as falling within their parcel's boundaries as delineated on a deed plan issued by the Director of Surveys, thus restraining the defendants from demolition. This affirms the legal standing of authenticated survey plans in defining legitimate boundaries.
- ***In addition the court in Kiarie v Pelia (2024):*** The court considered conflicting survey reports. The surveyor in this case confirmed that while the Land Registrar is mandated to determine boundary disputes, their decision can be challenged in court based on the integrity and accuracy of the underlying survey report and measurements.
- ***Finally the Court also Republic v Land Surveyors' Board (2025):*** This case dealt with the administrative role of the [Land Surveyors' Board](#), confirming its duty to regulate the profession and

the right of applicants to fair administrative action (such as being gazetted after approval).

4. The application before this court is necessitated by the grounds set out in the body of the motion and supported by the affidavit of one Mary Mokicho Kipkemoi. It also follows that the court has delved into the issues of this succession cause in the ruling dated 27.1.2025.

5. It is necessary that the deceased net estate of the immovable assets be ascertained by a licensed land surveyor. For those reasons the following orders shall abide:

(a) That an order be and is hereby issued directing the county surveyor Elgeyo Marakwet County to carry out subdivision of the Land Parcel No. IRONGO/ITEN/165 pursuant to the amended certificate of confirmation of grant issued by the court on the 1.8.2022.

(b) That the costs and the surveyors fees shall be met on account of the estate or in the alternative as resolved by the administrators duly appointed by this court under Section 66 of the Law of Succession Act.

(c) That in so far as an order directing the Officer Commanding Iten Police Station to provide adequate security during the subdivision exercise there is need for the administrators to make a formal request with the following conditions precedent in place

Thus:

(i) The compelling and substantial circumstances requiring security of Police Officers during the sub-division of their own parcel of land

(ii) The Officer Commanding Iten Police Station share with the administrators the Number of Police Officers who would do the coverage during the survey period

(iii) The costs and other incidentals payable by the administrators in advance before the commencement of the surveyors undertaking of co-relating data, carrying out the necessary sub division and preparation of the report on the scheme of transmission of the shares to

the beneficiaries in accordance with the certificate of confirmation of grant issued by this court.

- (iv) That it is time the Kenyan people appreciate and understand that under our constitutional imperative, the Civil justice process incorporating police officers is a decision of last resort.
- (v) That notwithstanding the above declarations the administrators shall abide with the conditions set out by the Officer Commanding Iten Police Station in securing the Locus in quo subject matter of the survey's duties and obligations.

6. In essence the application succeeds to that extent. It is so ordered

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 18TH
DAY OF DECEMBER, 2025**

.....

**R. NYAKUNDI
JUDGE**