

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**SUCCESSION CAUSE NO E010 OF 2024**  
**IN THE MATTER OF THE ESTAE OF KIPKEMEI SANGA KIPKESION ALIAS**  
**KIPKEMEI SANGA (DECEASED)**

**BETWEEN**

**DOUGLAS KIPKERING CHEPTABOK.....1<sup>ST</sup>**  
**PETTIONER/APPLICANT**

**LENA CHEROTICH CHEPKWONY.....2<sup>ND</sup> PETITIONER/APPLICANT**

**=VERSUS=**

**PAUL KIPKERING TUWEI & 3 OTHER.....**  
**OBJECTORS/RESPONDENT**

Coram:     **Before Justice R Nyakundi**  
              **Mr. Henry Kenei Advocate for the Applicant**  
              **Mr. Bett Advocate for the Respondent**

**RULING**

1. Before this court is a certificate of urgency brought to this court seeking the following orders:-
  - a) This Honourable Court issued a Certificate of Confirmation of Grant in the matter on 15th September, 2025.
  - b) The Petitioners/Applicants wrote to the Objectors/Respondents on 26<sup>th</sup> September, 2025 requesting them to confirm their co-operation with respect to the subdivisions of the subject parcel of land.
  - c) The Objectors/Respondents have refused to co-operate with the Petitioners to pursue subdivision but have now resorted to threats of violence.

- d) There is an imminent risk that the Objectors/Respondents will frustrate the implementation of the Certificate of Confirmation and in particular the subdivision process.
- e) The Objectors /Respondents are holding the original Title Deed with respect to the subject parcel of land hence the need for them to be compelled to surrender it or in the alternative the County Land Surveyor and County Land Registrar do carry out the process regardless of submission of the necessary documentation.
- f) The Objectors/Respondents have locked out the Petitioners/Applicants and other bona fide beneficiaries from the subject parcel of land.
- g) The Petitioners/Applicants and other bona fide beneficiaries of the estate are being deprived of the use of their duly ascertained and confirmed inheritance.
- h) The Petitioner/Applicant and other bona fide beneficiaries have no source of income hence the need to access their portion of the suit land for their subsistence.
- i) The Petitioner's /Applicant's rights of inheritance is being denied without any justifiable cause.
- j) The affected beneficiaries are aged more than 70 years hence any further delay in the realization of their inheritance will occasion them an irreparable harm.
- k) There is an imminent risk that the Petitioners/Applicants and their children will suffer irreparably unless the instant Application is heard urgently and orders sought herein granted. A Certificate of Confirmation of Grant is a Decree of this Honourable Court hence its implementation should not be frustrated unless there is a stay of execution.

- l) The failure or delay in execution of the Certificate of Confirmation will adversely affect the dignity and integrity of Judicial Process and erode the confidence in our justice system.
2. It is further annexed by summons which states as follows:
- a) This Application is certified urgent, its service dispensed with and the same heard at the first instance on priority basis.
  - b) The Uasin Gishu County Land Registrar and Uasin Gishu County Land Surveyor to subdivide land title number Kapsaret/Simat Block 1(Mutwot) 53 and register the resultant portions in the names of the respective beneficiaries as envisaged under the Certificate of Confirmation dated 15th September, 2025.
  - c) The Objectors/Respondents to surrender the original title deed with respect land title number Kapsaret /Simat Block 1(Mutwot) 53 to the Uasin Gishu County Land Registrar within 7 days for purposes of implementation of the Certificate of Confirmation dated 15th September, 2025.
  - d) In the alternative 3 above, the Uasin Gishu County Land Surveyor and the Uasin Gishu County Land Registrar are hereby authorized to proceed with implementation of the Certificate of Confirmation regardless of submission of the original title deed. The OCS-Simat Police Station and the Area Chief - Simat Location to provide
  - e) security during the above-mentioned subdivision process and to facilitate all affected bona fide beneficiaries to take possession of their resultant portion of the suit land.
  - f) Costs of the Application to be awarded to the Petitioner/Applicant.

**WHICH APPLICATION** is based on the grounds set out hereunder and supported by the annexed sworn affidavit of LENA CHEROTICH

CHEPKWONY and such other grounds to be adduced at the hearing thereof.

### **GROUND OF THE APPLICATION**

- i. This Honourable Court issued a Certificate of Confirmation of Grant in the matter on 15th September, 2025.
- ii. The Petitioners/Applicants wrote to the Objectors/Respondents on 26th September, 2025 requesting them to confirm their co-operation with respect to the subdivision
- iii. The Objectors/Respondents have refused to co-operate with the Petitioners to pursue subdivision but have now resorted to threats of violence.
- iv. There is an imminent risk that the Objectors/Respondents will frustrate the implementation of the Certificate of Confirmation and in particular the subdivision process.
- v. The Objectors /Respondents are holding the original Title Deed with respect to the subject parcel of land hence the need for them to be compelled to surrender it or in the alternative the County Land Surveyor and County Land Registrar do carry out the process regardless of submission of the necessary documentation.
- vi. The Objectors/Respondents have locked out the Petitioners/Applicants and other bona fide beneficiaries from the subject parcel of land.
- vii. The Petitioners /Applicants and other bona fide beneficiaries of the estate are being deprived of the use of their duly ascertained and confirmed inheritance.
- viii. The Petitioners/Applicants and other bona fide beneficiaries have no source of income hence the need to access their portion of the suit land for their subsistence.

- ix. The Petitioner's /Applicant's rights of inheritance is being denied without any justifiable cause.
  - x. The affected beneficiaries are aged more than 70 years hence any further delay in the realization of their inheritance will occasion them an irreparable harm.
  - xi. There is an imminent risk that the Petitioners/Applicants and their children will suffer irreparably unless the instant Application is heard urgently and orders sought herein granted.
  - xii. A Certificate of Confirmation of Grant is a Decree of this Honourable Court hence its implementation should not be frustrated unless there is a stay of execution.
  - xiii. The failure or delay in execution of the Certificate of Confirmation will adversely affect the dignity and integrity of Judicial Process and erode the confidence in our justice system.
3. In response to the application, the Respondent filed a Preliminary Objection dated 15.1.2026 stating as follows:-
- a) THAT Article 162(2) (b) of the Constitution of Kenya 2010, and Section 13(2) of the Environment and Land Court Act, No. 19 of 2011 gives jurisdiction to the Environment and Land Court. As such the succession Court lacks the jurisdiction to grant the orders sought.
  - b) THAT Section 47 and 71 of the Succession Court limits the Succession Court to identification of beneficiaries, determining the respective share and confirming the grant and having done this, the Court has been rendered Functus Officio.
  - c) THAT Section 18, 19, 73 and 80 of the Land Registration Act, 2012 and Section 150 of the Land Act 2012 gives exclusive powers to the Environment and Land Court to deal with registration, subdivision Survey among others

d) THAT since jurisdiction is everything; the Court cannot exercise discretion as provided under Section 45 where statutes have explicitly given power to other Court.

**REASONS WHEREFORE**, the objectors herein prays that ruling be entered in their favor against the petitioners as follows;

- a) That the application dated the 18/11/2025 be dismissed for want of jurisdiction.
- b) That costs be awarded to the objectors in the matter.

### **DECISION**

- 1.** From the above background, essentially there are two applications laid down before this court for determination. First and foremost, this court has to tackle the issue of jurisdiction. The doctrine of jurisdiction of courts refers to the legal authority, power and competence conferred upon a court by a constitution or statute to hear, adjudicate and determine a case. It determines which court has the right to exercise judicial power over a particular legal matter, person, or territory. A paramount feature of jurisdictional procedure is the unique and virtually unqualified obligation courts possess to identify and decide issues of subject matter jurisdiction in inquiring into jurisdiction of a matter, courts often require parties to have developed the facts related to jurisdiction which is both personal and subject matter jurisdiction.
- 2.** This court is being asked to disqualify itself on the statutory foundations of jurisdictional procedure under the Succession Act and coined the concept of *functus-officio*. Kenya's jurisdiction of courts at all levels is both constitutional and as defined in the various statutes.
- 3.** This court has been asked to dismiss the application by the Applicant as premised in the preliminary objection. First it is important re-state the fundamental legal characteristics of a proper preliminary objection

as stated by the Supreme Court in the case of Hassan **Ali Joho & Another v Suleiman Said Shahbal & 2 Others (2014) eKLR** where the court held as follows: *To restate the relevant principle from the precedent-setting case, Mukisa Biscuit Manufacturing Co Ltd -vs. - West End Distributors (1969) EA 696: "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"* Similarly the Court in **Kyule v Gitaari (2024) KEHC 5819** stated inter alia as follows adopting the approach of the Land Mark case of **Mukisa Biscuits Manufacturing Ltd v West End Distributors (1969) EA 696** is notorious on the issue of what constitutes a preliminary objection. The court observed as follows: *.....a preliminary object 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. Sir Charles Newbold P. Stated* 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 juridical discretion. The improper raising of preliminary objects does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop,

4. Based on Kenyan Law, as now distilled in the various court decisions the probate court may it be the High Court or Magistrate’s Court exercising Succession Jurisdiction has a mandate strictly limited to the identification of the beneficiaries, the free estate of the deceased person, and have it distributed to the beneficiaries. The mandate of the probate courts are now well established as stated in re-Estate of Alice Mumbua Mutua (Deceased) 2017 KEHC 8289 (KLR) the court stated as follows: “ *Disputes of course do arise in the process. The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules. Such have to be resolved through the structures created by the Civil Procedure Act and Rules, which have elaborate rules on suits by and against executors and administrators.*
5. In the instant succession cause, on 15<sup>th</sup> day of September, 2025 a certificate of confirmation of grant which is a final decree of judgment in succession disputes was issued by this court and soon thereafter an application for rectification was also considered and granted accordingly containing the following distribution matrix

<b>S/NO</b>	<b>NAME</b>	<b>DESCRIPTION OF PROPERTY</b>	<b>SHARES</b>
1	LENA CHEROTICH CHEPKWONY	KAPSARET/SIMAT BLOCK 1 (MUTWOT) 53	2.50 Acres
2	HELLEN JERONO SAMOEI	KAPSARET /SIMAT BLOCK 1 (MUTWOT) 53	2.50 Acres

3	PAUL KIPKERING TUWEI	KAPSERET/SIMAT BLOCK 1 (MUTWOT)53	2.50 Acres
4	SIMEON KIMUTAI LELEI	KAPSARET /SIMAT BLOCK 1 (MUTWOT) 53	2.50 Acres
5	SELLY JEPNGETICH MALAKWEN	KAPSAERE/SIMAT BLCO 1(MUTWOT) 53	2.50 Acres
6	ESTTE OF DAVID NGETICH	KAPSARET/SIMAT BLCO 1 (MUTWOT) 53	2.50 Acres
7	ESTATE OF SALINA NGOSOSEI	KAPSERET/SIMAT BLOCK 1 (MUTWOT) 53	2.50 Acres

6. Based on the Kenyan case law on the law of succession the probate court provides oversight of estate administration from the issuance of the grant until the filing of accounts and liquidation of the estate by enforcing the fiduciary duties that is monitoring assets and requiring mandatory reporting. The probate court ensures that personal representatives or executors / administrators maintain accurate records of the estate’s assets and liabilities. The law of succession Act requires administrators to get in all free property and produce a full, accurate inventory and account of all dealings with the estate within 6 months of the grant of confirmation. The court is expected by law to actively monitor assets distribution before final liquidation as stated in *re -Estate of Samuel Karime Kimani (deceased) (2025) KEHC 681* where an administrator was ordered to provide a detailed account, including bank statements, from the date of appointment.
7. There is also the duty of the Probate court to ensure that there is no intermeddling of the estate by the administrators including undertaking an authorized sales outside the certificate of confirmation of grant. What does the court do? It intervenes to stop the an authorized disposal of estate assets, sales of property conducted before or during confirmation of grant not within the decree of the

court. Therefore, any such action is considered illegal for the administrators are mandated by law to protect the estate and only vary the orders in the certificate of confirmation of grant with court approval.

- 8.** It should also not be forgotten that under Section 83 of the Law of Succession Act, the court oversees the final liquidation, ensuring debts are paid before assets are distributed. This includes supervising the division of property by the surveyor working closely with the land registrar and requiring proof that assets have been allocated to the beneficiaries. That is the very reason why Section 76 of the Law of Succession Act donates powers to the court to revoke a grant if administration is not proceeding efficiently. This can occur if a grant becomes useless and inoperative or on appointment they do not proceed with due diligence and in good faith.
- 9.** Generally, in the administration of justice, the court properly constituted under Article 50 (1) of the constitution once it has rendered its final decision it ceases to have jurisdiction over the matter. Unfortunately for those who believe in this the application of this doctrine, of *functus-officio* as it applies in the administration and adjudication of cases at all levels of courts alas to them. The law of succession dictates that it is only at the stage of submission of the probate account and liquidation of the estate does a probate court can be declared to be *functus-officio*. This is a unique legal DNA in terms of jurisdiction which is donated with the probate courts in view of the codification of the law of succession Act on the administration of the distribution of the estates to the beneficiaries which in certain cases is complex and convoluted involving various clusters of assets acquired by the deceased during his lifetime.
- 10.** For those reasons, the preliminary objection sits on quick sand and it has been swept away by the waves of the legal ocean founded on the

jurisprudential dicta of various decisions persuasive and binding on this court. In so far as the application by the Applicant is concerned, the same is clothed with merit based on the support of the provisions of the law of succession Act, and the decisions on the same subject matter developed over time. It therefore succeeds with the following orders insitu herein-under

- a) *That the Uasin Gishu County Land Registrar and Uasin Gishu Land Surveyor to provide leadership armed with the applicable legal tools and instruments to move to the locus in quo to subdivide land title No. **KAPSERE/SIMAT BLOCK 1/MUTWOT ) 53** and register the resultant portions in the names of the respective beneficiaries as envisaged under certificate of confirmation dated 15.12.2025*
- b) *That the objectors/Respondents whose custody is therefore the said title deed in its original context are hereby commanded to submit and surrender the instruments to the Uasin Gishu County Land Registrar within 7 days for purposes of implementation and transmission of the certificate of confirmation of grant dated 15.9.2025.*
- c) *That in default or disobedience or delay, in complying with clause b above, the County Land Registrar invoke a statutory powers donated by the Land Act 2012 to counsel LR **KAPSERE/SIMAT BLOCK 1/MUTWOT ) 53** as a missing title or as one in which a beneficiary has continually disobeyed a court order to have it surrendered so as to limit the acquisition of inheritance rights of other beneficiaries so that transmission and conveyance of the shares can proceed in earnest in compliance with the law.*
- d) *That the administrators to the estate if need be of security from the National Police Service particularly OCS Simati Police station*

*shall cause a letter to be written to the officer in charge for purposes of detailing the number of police officers required, the period the exercise shall be undertaken, and the person responsible for meeting the expenses as provided for in the police manual for security secured by implementation of a Civil Process.*

*e) That this court shall remain vigilant in monitoring the execution and implementations of the certificate of confirmation of grant dated 15.9.2025 until the liquidation and filing of the probate account within 180 days from the decision of this court. Each party to be at liberty to apply. The costs of this application shall be shared equally by the litigants to this courts*

*f) To monitor compliance the matter be mention on 30.3.2026*

**GIVEN UNDER THE HAND AND THE SEAL OF THIS COURT THIS 20<sup>TH</sup>  
DAY OF JANUARY 2026**

.....  
**R. NYAKUNDI**  
**JUDGE**