

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE NO. 12 OF 2001

IN THE MATTER OF THE ESTATE OF THE LATE WILLIAM MOROGO

LINDA CHELIMO SAINA.....1ST

APPLICANT

CALVIN KIPTOO SAINA.....2ND

APPLICANT

VERSUS

STELLA CHEPCHUMBA SAINA.....1ST

RESPONDENT

MICHELLE CHEBET SAINA.....2ND

RESPONDENT

JOANNE CHEROTICH SAINA.....3RD

RESPONDENT

Coram: Before Justice R. Nyakundi
M/s Mayende & Busiega Company Advocates
M/s Kenei & Associates LLP
M/s Munyaga Githaiga Advocates LLP

RULING

1. Vide ruling dated 29th July 2025, this Court revoked the Amended Certificate of Confirmation of Grant dated 27th June 2011 on grounds that it was obtained through procedures not recognized under the Law of Succession Act. In that ruling, this Court found, and the law admits of no ambiguity on this point that the procedure employed to appoint Linda Chelimo Saina as administrator was fatally defective. The Law of Succession Act does not provide for the substitution of deceased administrators. When Ruth Jepchirchir Saina died on 15th June 2009, the grant issued to her became useless and inoperative.

2. This matter comes before the Court for determination of the critical question of who should be appointed as administrators to conclude the succession of the late William Morogo Saina, whose estate has been the subject of these proceedings for over two decades. Having revoked that defective grant, the Court directed Linda Chelimo Saina, as the outgoing administrator, to file within forty-five days a comprehensive probate account detailing the administration of the estate from 27th June 2011 to date. The Court required this account to include all distributions made to beneficiaries, the current status and location of all estate properties, any outstanding liabilities or obligations, a complete inventory of undistributed assets, and critically, the nature and character of any administration undertaken by Ruth Saina before her demise.
3. The probate account has now been filed. It reveals a picture that is simultaneously straightforward in its essential facts yet complex in its legal implications. The account confirms what Linda had deposed in her replying affidavit during the revocation proceedings, that the estate was in fact distributed among all six beneficiaries. Each of the five daughters: Linda Chelimo Saina, Patricia Chepkemboi Saina, Joan Cherotich Saina, Stella Chepchumba Saina, and Michelle Chebet Saina, received 137 acres of land, 20 heads of cattle, and 15 sheep. Calvin Kiptoo Saina, the only son, received 82 acres at Ngenyilel Farm, a 10-acre homestead at Kibuswa, 20 heads of cattle, and 15 sheep. This distribution, whatever its procedural defects in execution, was substantively equitable and in accordance with the principles of intestate succession under Section 38 of the Law of Succession Act.
4. But the probate account reveals more than just the fact of distribution. It reveals what has become of those distributions in the years since they were made. The current status of the beneficiaries' holdings tells a tale of divergent paths. Linda Chelimo Saina has retained her entire 137-acre allocation and has significantly improved it. Patricia Chepkemboi Saina retains only 17 acres of her original 137-acre allocation, having disposed of approximately 120 acres. Joan Cherotich

Saina has disposed of her entire allocation and she retains no land, no cattle, no sheep. Stella Chepchumba Saina retains 95 acres of her original 137 acres, having sold 42 acres. Michelle Chebet Saina, like her sister Joan, has disposed of her entire allocation and retains nothing. Calvin Kiptoo Saina retains 52 acres comprising the 10-acre Kibuswa homestead and 42 acres of the Ngenyilel Farm.

5. This brings us to the threshold question that must be answered before we can meaningfully address the appointment of administrators: Is there a net estate remaining that requires administration and distribution? The answer, when one examines the facts, is clear. There is no significant net estate remaining for distribution. The estate was distributed over a decade ago. The beneficiaries took possession. Many exercised their rights of ownership by selling to third parties. The original estate, which comprised approximately 777 acres of agricultural land plus livestock, has been substantially dissipated through these third-party transfers. The distributions themselves, the Court found, may be protected as completed transactions undertaken in good faith, even though this protection does not extend to validating the defective administrative framework.
6. What then remains to be administered? The answer lies not in further distribution of assets but in bringing legal closure to a succession that has sprawled across nearly a quarter century. The administrators to be appointed will not be re-distributing the estate. Their role will be to formalize and document what has occurred, to address remaining inter-beneficiary disputes, to file final accounts with the Court, to seek confirmation of the grant, and ultimately to close this succession.
7. With this understanding of what administration actually remains, let me turn to the question of who should be appointed to undertake it. The respondents Michelle Chebet Saina, Stella Chepchumba Saina, and Joanne Cherotich Saina sought in their application for revocation that they be appointed as joint administrators. The Court must evaluate this request against the backdrop of established legal principles and the particular facts of this case.

8. In our legal system on adjudication of Succession disputes administrators are appointed under **Section 66** of the *Law of Succession Act*. Once they accept the appointment the law is restrictive in various ways to give them room to administer the estate faithfully and diligently the hierarchy as follows:

- *Surviving spouse (s)*
- *Surviving child or children*
- *Father or mother*
- *Brothers and sisters, and any lineal descendants of deceased brothers and sisters*
- *Other blood relatives up to the sixth degree of consanguinity*
- *The public Trustee*
- *Creditors of the deceased.*

9. There are several key-principles applicable in the appointment of administrators in the intestate estate. Thus

- **Priority of Beneficiaries:** *Courts generally follow the order laid out in Section 66. The closest living relative, usually the spouse and children (if over 18), have the primary entitlement to apply for administration.*
- **Representation of all Interests:** *A core principle is that the appointed administrator(s) should represent the interests of all beneficiaries and not just a section of the family. Disputes often arise when one party attempts to exclude others.*
- **Suitability and Impartiality:** *The court has the power to reject a proposed administrator if they are found unsuitable, for instance, if they have an adverse interest to the estate or other beneficiaries, or cannot fairly and competently manage the estate.*
- **Revocation of Grants:** *Grants of administration can be revoked (annulled) if they were obtained fraudulently by concealing material facts (such as the existence of other beneficiaries) or if the administrator has mismanaged the estate.*
- **Substitution of Deceased Administrators:** *When a sole administrator dies, the existing grant becomes inoperative. The*

court has held in cases such as In re Estate of Korir arap Malakwen (Deceased) that the correct procedure is not "substitution," but rather for the beneficiaries to apply for the revocation/annulment of the old grant and the appointment of new administrators under Section 66 of the Act

10. In a different incarnation I have stated that the administrators appointed under Section 66 of the Law of Succession Act is not a form of employment by the court but a solemn duty to be taken up on behalf of the deceased by always consulting the spirit of the owner of the estate to unlock and answer many questions which may arise during the adjudication on the distribution of the estate. The administrators are therefore first among equals who essentially are to ensure that there is real and meaningful equality, fairness, and non-discrimination in the distribution of the intestate estate of the deceased.

11. Before making a final decision as to the appointment of legitimate administrators, by and large a recital of the applicable principles of law is fundamental:

3. Rule 73 of the Probate and Administration Rules provides for the inherent power of the court 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."

4. In re Estate of Elijah Mbondo Ntheketha (Deceased) [2017] eKLR it was held:-

"The removal of an administrator amounts to revoking his appointment. Revocation of grants is provided for under section 76 of the Law of Succession Act. An applicant seeking to obtain such revocation must build a case founded on section 76."

5. Section 76 (d) of the Law of Succession Act gives the Court the powers to annul or revoke a grant on an application of a party or *suo moto* on the grounds stipulated therein. The **Section** provides that:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion that the person to whom the grant was made has failed, after due notice and without reasonable cause either-

(i) To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii) To proceed diligently with the administration of the estate; or

(iii) To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular.”

6. *In re Estate of William Nzioka Mutisya (Deceased)*

[2018] eKLR Hon. Justice GV Odunga aptly observed:-

“It is however my view that the administrators may be removed from their duties where, due to wrangles and disagreements amongst themselves, it is impossible for them to proceed diligently with the administration of the estate... In my view if the Court finds that the administrators are unable to properly administer the estate due to their disagreements, nothing steps the Court from removing them from the administration and appointing new administrators notwithstanding the issue of priority or preference. This must be so because section 66 of the Law of Succession Act provides that:

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made.”

7. Personal Representatives of an estate are subject to supervision of the court and the court has the power to remove them from administration of the estate where necessary. ***In re estate of Njue Kamunde (Deceased) [2018] eKLR*** it was held:-

“The applicant contends that the respondent has acted contrary to the law in carrying out her duties as the administratrix and feels that on account of that, she should be suspended and leave her as the sole administratrix of the estate of the deceased who is her late son...I agree with the applicant that Section 47 Law of Succession Act and Rule 73 Probate and Administration Rules can be invoked to remove or suspend him/her...I also agree that personal representatives are subject to supervision of this court and this court will not shy away from making any orders that may be expedient and necessary for the ends of justice and to prevent abuse of powers conferred to them under Sections 53 and 79 of the Law of Succession Act.”

8. In Re Estate of Wilson Ndumbi Kathesye (Deceased) [2016] eKLR Hon. Justice W. Musyoka held:-

“The application for determination is a summons dated 17th August 2015. It seeks rectification of the grant so as to remove the name of one of the administrators on the grounds that she has refused to cooperate with the applicant to complete administration of the estate...Consequently, I do hereby grant it in the terms proposed.”(Emphasis mine)

9. An application for removal of an administrators is supposed to be supported by consent of all other beneficiaries. **In re Estate of Stephen Chege Kimari (Deceased) [2016] eKLR** Hon. Justice W. Musyoka held as follows:-

“The application seeks removal of an administrator. The process of removal is akin to that of appointment. The consents of all concerned must be obtained, particularly if they rank equal or higher to the applicant in terms of entitlement to appointment. From the certificate of confirmation of grant, I have counted ten (10) survivors. None of them has filed any papers in support of the application.”

10. Where the court acts on its own motion (*suo motu*) in the removal of the administrator such consent of the beneficiariaries may

be overlooked. These are instances where there is no likelihood that the estate shall be administered to conclusion based on the conduct of the impugned administrator.

- 6.** The Court retains discretion in determining who among those with equal statutory priority should be appointed, and that discretion must be exercised with regard to the interests of the estate and the beneficiaries.
- 7.** Michelle Chebet Saina and Joanne Cherotich Saina present a straightforward case. Both have disposed of 100% of their inheritance from their father's estate. Neither retains a single acre of land, a single head of cattle, or a single sheep from what they received. Both sold their allocations to third parties and have completely divested themselves of any property interest in the estate. They challenge the grant under which they received and disposed of these assets only after they had completely depleted their allocations, and fully ten years after the amended certificate was issued. The Court is constrained to observe that beneficiaries who have entirely divested themselves of all interest in estate property lack the requisite stake to justify appointment as administrators of that estate. To administer an estate requires a continuing interest in ensuring its proper management and distribution. One who has already received and disposed of everything they were entitled to receive has no such continuing interest. Michelle and Joanne may participate as beneficiaries in any disputes that require resolution, but they cannot be appointed administrators.
- 8.** Stella Chepchumba Saina on the other hand has retained 95 acres of her original 137-acre allocation. She maintains a substantial stake in the estate. However, other factors counsel against her appointment. The evidence on record indicates that Stella has claimed asylum in the United States of America and resides there. Her asylum status,

according to the evidence presented by Linda, requires her to have denounced her original country of birth. Whether or not that characterization is entirely accurate, what is undeniable is that Stella faces practical difficulties in administering a Kenyan estate from abroad.

- 9.** This brings us to Calvin Kiptoo Saina and Linda Chelimo Saina. Calvin Kiptoo Saina is eminently suitable for appointment. He is the only son of the deceased. He has retained a substantial portion of his inheritance, comprising 52 acres. He was a minor when the issues that have plagued this succession first arose and bears no responsibility for the procedural defects that have necessitated this Court's intervention. He is resident in Kenya and available to oversee estate matters. He has demonstrated commitment to the estate by retaining his property rather than disposing of it to third parties.
- 10.** Linda on the other hand has demonstrated diligence in preserving and improving her inheritance rather than liquidating it. She has built infrastructure. She has developed the land. She has created value. She has not sold a single acre to third parties. From the probate account, it is evident that she possesses detailed knowledge of the estate, its properties, its boundaries, its history, and its administration over the past decade. This knowledge is valuable if the succession is to be brought to proper closure. The Court cannot ignore these facts merely because the procedure by which she was appointed was defective.
- 11.** In the final analysis, this court is of the view that joint administration would be beneficial to this estate and bring closure to a longstanding battle amongst the beneficiaries. Calvin Kiptoo Saina and Linda Chelimo Saina are therefore appointed as administrators to the estate. They shall not interfere with distributions already made to beneficiaries, transfers already effected to third parties, improvements made by beneficiaries on their allocated portions, or current possession and enjoyment by holders of estate assets. The inheritance rights already conveyed, as this Court ruled in July, shall remain protected.

- 12.** In this respect, the appointed administrators shall file the procedural affidavits within the spectrum of the law of succession Act giving sufficient details to identify the assets pending distribution and to regularise the other portion of the assets sold to third parties by the siblings in which the court has taken judicial notice elsewhere in these proceedings. To that extent the administrators also shall provide an inventory on liabilities of the deceased together with particulars which require to be settled towards compliance with Section 83(G) of the Act on probate account. Given that the proceedings commence *denovo* the petition on an appointment of the new administrators shall be published in the Kenya Gazetteer as a notice to the members of the public who may have an interest in the intestate estate of the deceased. The beneficiaries therefore to this estate ought to have rendered their cooperation for just administration of the estate as a spirit of cherishing the principle that litigation must come to an end instead of keeping the court busy with litigations that increasingly delay the beneficiaries' right of enjoyment of their shares in the estate. I wish to comment by saying that this is an estate with lean heirs and they should advance the transmission of the estate to its final conclusion without necessarily creating a conflict where none exist. From the historical perspective of the case during the revocation proceedings, an error of counsel should not necessarily be visited upon his or her client which was the case here between Linda and the Advocate retained to provide professional advice during the filing of a petition for grant of representation following the death of her mother.
- 13.** Accordingly, the following orders do issue in terms of Section 66 of the Law of Succession Act as read with Rule 73 (1) of the Probate and Administration Rules.

a. Calvin Kiptoo Saina and Linda Chelimo Saina are hereby appointed as joint administrators of the estate of the late William Morogo Saina (Deceased) who died intestate on 29th July 2000.

- b. *Grant of letters of administration intestate shall be issued to Calvin Kiptoo Saina and Linda Chelimo Saina jointly.*
- c. *The scope of administration shall be strictly limited to:*
 - i. *Finalizing all documentation for distributions already made;*
 - ii. *Completing all legal procedures necessary for transmission of title to beneficiaries;*
 - iii. *Addressing any remaining inter-beneficiary disputes through mediation or appropriate legal processes;*
 - iv. *Protecting the interests of third parties who have acquired portions of the estate in good faith;*
- d. *Michelle Chebet Saina and Joanne Cherotich Saina, having disposed of their entire allocations, shall have the right to be informed of all administrative actions but shall not be entitled to obstruct the administration or make claims beyond the distributions they have already received, saved for their right to participate in resolution of inter-beneficiary disputes.*
- e. *Stella Chepchumba Saina Kinsman may participate in the succession process as a beneficiary and may raise any concerns or objections she may have regarding the administration at the confirmation hearing.*
- f. *All beneficiaries shall cooperate with the administrators by providing any information, documents, or assistance reasonably required for the completion of the succession, including details of any sales or transfers they have made to third parties.*
- g. *Costs of this application, costs of the survey, and all reasonable costs of administration shall be borne by the estate.*

14. It is so ordered.

**DELIVERED, DATED AND SIGNED AT ELDORET ON 13TH JANUARY
2026**

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**R. NYAKUNDI
JUDGE**