



REPUBLIC OF KENYA



**In re Estate of the Late Kiopchemis Chepngok alias Kipchenus Chepngor (Deceased)
(Succession Cause 401 of 2014) [2026] KEHC 621 (KLR) (30 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 621 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 401 OF 2014
RN NYAKUNDI, J
JANUARY 30, 2026**

BETWEEN

HELLEN JEPKOSGEI PETITIONER

AND

GIDEON KIPRONO CHEMIS OBJECTOR

JUDGMENT

1. This Succession Cause relates to the estate of Kipchemis Chepngok also known as Kipchemis Chepngor who died on the 8th August 2014 at Moi Teaching and Referral Hospital and was domiciled in Kenya.
2. The litigation of this estate began way in 31st October 2014 when Hellen Jepkosgei the Petitioner herein petitioned for Probate of Written Will. In the Affidavit in support of Petition of Written Will, the Petitioner deponed that the deceased died leaving a Written Will dated the 7th January 2014, that she is the Executor named in the said Will, that she is seeking a Grant of representation as the Executor named in the last Will of the deceased and also a beneficiary and that annexed was the full inventory of all assets and liabilities of the deceased at the date of his death. A clear look at the said alleged Will provided the following list of assets of the deceased: -
 - a. Chepkatet farm measuring One Hundred and Eleven (111) Acres
 - b. Kipkomo Farm measuring One Hundred and Sixty (160) Acres
 - c. Kosirai Farm measuring Eight nine decimal seven (89.7) Acres
 - d. Tractor registration number KWR 241 MF
 - e. Plough MF
 - f. Trailer



- g. Motor Vehicle registration number KAJ 666U Toyota Saloon.

Objection to the Making of Grant

3. The Objector herein entered appearance on 26th January 2015 and made an Objection to making of Grant of Probate. The Objector stated that his interest and other beneficiaries in the estate is that there are people beneficially entitled alongside others as the sons of the deceased and the grounds of the Objection are that: -
- a. That the alleged Will is forgery and unjust.
 - b. That the alleged Will is not properly executed and it is not properly attested and there is nothing to show that the deceased (testator) executed the same.
 - c. That it is objector's averment that the alleged Will is not valid, illegal, bad in law and Void and that the estate of the deceased ought to be determined as an intestate estate.
 - d. That the alleged Will and bequests therein is contrary to Nandi Customary Laws.
 - e. That the alleged Will is invalid, Void and ought to be rejected as it does not show that the deceased left a widow.

Petition by way of Cross-Application

4. The Objector also filed a Petition by way of Cross –Application for a Grant dated 17th March 2015 for Grant of Letters of Administration Intestate of the estate of the deceased herein and stated as follows: -
- a. That the deceased died domiciled in Uasin Gishu County.
 - b. That I present this petition as a beneficiary to share with my 3 brothers.
 - c. That there is an alleged Will allegedly made by the deceased which is not acceptable as under the property alleged.
 - d. That the deceased had extremely amicable relationship with other dependants and this casts aspersion on the validity of the purported Will and the same is a forgery.
 - e. That the purported Will is not acceptable as it disinherits us being the beneficiaries of the estate of the deceased.
 - f. That the estate of the deceased should be administered as if the deceased died intestate.
 - g. That if the grant of representation is made to me I shall faithfully administer according to law all the estate which by law devolves upon and vests in the personal representation of the deceased and I Will administer and render just and true account of such estate.
5. The cross Application was supported by an affidavit dated 17th March 2015 sworn by the Objector herein who averred as follows: -
- a. That I am an Objector in this Cause hence competent to swear this Supporting Affidavit on my behalf of my three brothers who are also the beneficiaries of the estate of our late Father Kipchemis Chepngok alias Kipchemis Chepngor.
 - b. That the petition for grant of probate of the alleged Last Will of Kipchemis Chepngok Alias Kipchumus Chepngor (Deceased) by Petitioner herein is objected on the following grounds among others: -



- a. That alleged Will is not authentic as it is not properly attested.
 - b. That the alleged Will is unfair to other beneficiaries as the daughters of the deceased had been catered for during the lifetime of deceased.
 - c. That the daughters of the deceased are happily married yet the purported Will grants them huge chunks of land at the expense of the interests of the sons of the deceased.
 - d. That according to Nandi Customary Law, I as the eldest son should be appointed as the Administrator of the estate of deceased and our family should not be put under the family of Hellen Jepkosgei where she has been married for the last 30 years.
 - e. That the deceased had amicable relationships with other dependants and hence the contents of the alleged Will casts aspersions on his validity.
 - f. That in the acquisition of the farms enumerated in the application we as the sons of the deceased participated in their acquisition and have our share contribution be subtracted therefrom before any distribution is done.
- c. That I swear this Affidavit in opposition to the grant of the probate on the strength of the purported Will.

Affidavit in reply to the Cross Application

6. The Cross Objector's petition by way of a Cross Application was opposed by the Petitioner herein Hellen Jepkosgei vide her Replying Affidavit in which she deponed as follows: -
- a. That in response to the allegations contained in paragraph 2 (i) of the Objector's supporting affidavit, I reiterate that the Will before the Honourable Court is valid as it was properly attested to and prepared by Kalya & Co. Advocates who I call as witness during the hearing of the objection proceedings.
 - b. That in reply to paragraph 2(ii) of the Objector's supporting Affidavit, it is not true that the daughters of the deceased were catered for during the lifetime of the deceased, no evidence has been placed before this Honourable Court by the Objector to prove his allegations.
 - c. That the objector proceedings before this court have been filed in bad faith and with sole aim/ purpose of trying /attempting to disinherit the daughters.
 - d. That in reply to paragraph 2 (v) of the Objector's Supporting Affidavit, I have been informed by my advocate on record which information I verily believe to be true that in the Kenyan Constitution and the Succession Act the daughters have equal right with sons on the issue of inheritance and it is against the law to discriminate them.
 - e. That contrary to paragraph 2 (vi) of the Supporting Affidavit, misconceptions and apprehensions of the Objector are not yardstick of the validity of a Will and therefore no aspersions should be cast on the Will as it meets all the legal requirements.
 - f. That contrary to paragraph 2 (vii) of the Supporting Affidavit, no iota of evidence was placed before this Honourable Court to prove that the sons of the deceased contributed in the acquisition of the farms enumerated in the application. If there was the case, they could have been registered as joint owners thereto.



- g. That since the filling of this objection proceedings, the Objector herein and the other brothers have continued to waste the Estate by selling the wheat, selling the tractors and cattle without involving other family members and therefore not fit to administer the Estate of the Deceased.
 - h. That the Objector chased away all the daughters and has restrained them from cultivating any parcels of land left by the deceased.
 - i. That I swear this Affidavit in Opposition to the Objector's application dated 17th March 2015 and I pray that the same be dismissed with costs.
7. The Petition by way of a Cross Application was also opposed by Wilson Kiplagat Kalya vide his Replying Affidavit dated 1st April 2015 in which he deponed as follows: -
- a. That I am an Advocate of the High Court of Kenya and a witness to the last Will of Kipchemis Chepngor of ID No. xxxx.
 - b. That on the 7th day of January 2014 the deceased Kipchemis Chepngor approached our firm Kalya & Co. Advocates with the intention of making his last Will.
 - c. That the said Will was duly prepared as per the deceased's instruction, the deceased signed the same in my presence as a witness.
 - d. That I duly apprehended my signature to the said Will after and my colleague Elias Kipketer Maritim did the same and the Will was sealed.
 - e. That I reiterate that the Will filed before the court is valid since it meets all the requirements of the law.
8. The Petition by way of a Cross Application was also opposed by Elias Kipketer Maritim vide his Replying Affidavit dated 1st April 2015 in which he deponed as follows: -
- a. That I am an Advocate of the High Court of Kenya and a witness to the last Will of Kipchemis Chepngor of ID No. xxxx.
 - b. That I have read and understood the contents of the affidavit sworn by my colleague Wilson Kiplagat Kalya from Kalya & Co Advocates and confirmed the same to be true.
9. I take note that on 27th February 2017, the session Judge therein Kimondo J made the orders that in the meantime the estate of the deceased shall be preserved; that the objection over the Will shall be heard by viva voce evidence and that the objection shall be heard on a date to be taken at the registry. Moreover, the learned Counsel for the Objector herein made an oral application where by the session Judge therein Githinji J made the following orders on 11th July 2018 that: -
- a. The last Will allegedly made by the deceased presented to the D.C.I.O and the signature be investigated and a report made.
 - b. The Will be submitted to court for the said investigation.
 - c. Report by D.C.I.O be filed in court.
 - d. Parties to file written statements and exchange them.
 - e. Matter be mentioned on 17th September 2018.



10. Subsequently, both the Petitioner and her witnesses and the Objector and his witnesses testified and produced the necessary exhibits in compliance with the order of the Court that this matter be heard by way of viva voce evidence.

Petitioner's Case Summary

11. The first witness to be summoned on behalf of the Petitioner's case is one PW1 Elias Maritim, an Advocate of the High Court who on 26th August 2011 was practicing as an Associate with Kalya & Co Advocates. In his reflection, he recalled the existence of a Will or testamentary of the deceased dated 7th January 2014. In that very Will in which he was one of the witnesses, the Executor of the Estate remained to be one Hellen Jepkosgei. According to PW1, the testamentary drafter was one Learned Counsel Wilson Kalya but during the drafting of the Will as an Associate, he acknowledged working alongside with the learned Counsel Mr. Wilson Kalya. Further, according to PW1, the deceased signed the Will in his presence which has been filed in this court as an Exhibit 1. His evidence was tested in cross examination in which he told the Court that he recollected clearly the chronology of events of their client, the deceased, giving instructions to the making of the Last Testamentary to provide a framework of distributing his estate to the beneficiaries. It was also PW1's evidence that the primary instructions were given to Mr. Kalya who later invited him to join in the witnessing of the signature of the deceased.
12. The next witness was PW2, Mr. Wilson Kalya who identified himself as an Advocate of the High Court based in Nairobi and Eldoret since 2nd October 1989. In PW2's evidence on oath, he admitted that the deceased was his longtime client and during the year 2014, precisely on 7th January 2014, he went to his chambers to give instructions for him to prepare last testamentary which he did so and caused it to be signed in his office and one of the witnesses being an Associate in his chambers namely, Elias Maritim. It was further the testimony of PW2 that during the taking of the instructions from the deceased, he was alert, healthy and his cognitive function happened to be that of a person of clear mental faculties and lucid. With those preliminary issues found to be responsive in the making of the Will by the testator, PW2 told the Court that he proceeded to implement the instructions in full. According to PW2, the instructions which were initially in raw handwritten notes were appropriately typed, read through to the testator who approved the contents appending his signature appropriately at the bottom of each page. This was followed by endorsement of witness signature of one Elias Maritim an Advocate of the High Court practicing in his chambers. In closing his evidence, PW2 identified the original Will before Court as authentic representing the wishes of the testator.
13. PW3, Hellen Jepkosgei testified that she is a resident of Kapsaret Location near Eldoret International Airport and that she is the daughter to the late Kipchemis Chepngok alias Kipchemis Chepngor who died testate on 8th August, 2014. He also testified that after the demise of her father, they prepared for his burial and he was put in his final resting place in Kosirai farm on 14th August, 2014 and later on in the month of September, 2014 they were summoned by Mr. Kalya an Advocate in Eldoret to his offices located within Sakong House, 2nd Floor. She added that he sent individual letters to all the children of late Kipchemis Chepngok alias Kipchemis Chepngor and On the material day, her brother John Kipleting Chemis, her sisters Odiah Jemeli Rotich, Ludia Chepkemboi and her showed up at M/s Kalya & Co. Advocates offices. She further averred that the other brothers namely Gideon Kiprono Chemis, Nathan Kipkoech Chemis and Elijah Kipchirchir Chemis were adamant and they did not honour the invitation. PW1 moreover averred that after Mr. Kalya satisfying himself that they were more than a half of the deceased's children, he proceeded to open their father's Will which encapsulated his wishes (on how his estate should be to be dealt with after his demise). She stated that in the said Will she was appointed as the executor thereof and that her father also bequeathed upon her some parcels of



land located within his vast estate as per the Will. According to the Will, they were to share the livestock equally (which were 35 cows after removing two that were slaughtered during her father's burial). It was further her testimony that to her utter shock and consternation, his brothers shared the livestock among themselves in total disregard of her father's wishes, they had also denied access to the parcels of land that were bequeathed to them in their father's Will by using threats and intimidation. It was her concluding testimony and prayer for this Honourable court is to have her father's last wishes as encapsulated in his Will carried out to fruition.

14. PW4 Ludia Jepkemboi Rotich stated that she is a resident of Ngeria and a daughter to the late Kipchemis Chepngok alias Kipchemis Chepngor who died testate on 8th August, 2014. She testified that after the demise of their father, they prepared for his burial and was put in his final resting place in Kosirai farm on 14th August, 2014. She added that after the demise and burial of her father, she received a letter from the firm of M/s Kalya & Co. Advocates which was also directed to her siblings indicating that they had to go to their offices so that they could read the Will of her late father in their presence and on the material day only four of them showed up being her two sisters and John Kipleting and the three other brothers namely Gideon, Nathan and Elijah were adamant. She also averred that once Mr. Kalya was satisfied that they had the quorum, he opened the Will in which Hellen, the Petitioner herein was appointed as the executor.
15. It was PW4's testimony that her father bequeathed upon her some parcels of land located within his vast estate as per the Will and according to the Will, they were to share the livestock equally. She stated that in addition, her father bequeathed upon her tractor registration No. KWR 241 MF, plough and trailer of the said tractor and that in total disregard of her father's wishes, Gideon took the tractor and the plough while John took the trailer. They also shared livestock among themselves (brothers) and have denied her and the sisters access to their share of parcels of land by using threats and intimidation. It was her prayer to this Honourable court to have her father's last wishes as encapsulated in his Will carried out to fruition.
16. PW5 Odiah Jemeli Rotich testified that she is a resident of Leseru within Uasin Gishu County and a daughter of the late Kipchemis Chepngok alias Kipchemis Chepngor, who died testate on 8th August 2014. She stated that following her father's demise, burial arrangements were made and he was laid to rest at Kosirai Farm on 14th August 2014. She further testified that after the burial, she received a letter from the firm of M/s Kalya & Co. Advocates which was also addressed to her siblings, inviting them to attend the reading of their late father's Will. She stated that on the material day only four beneficiaries attended, namely her two sisters, John Kipleting and herself, while her other brothers did not attend. According to her testimony, once Mr. Kalya was satisfied that a quorum was present the Will was opened and read and it was revealed that Hellen the Petitioner herein had been appointed as the executor of the estate. PW3 testified that under the Will, her father bequeathed to her certain parcels of land within his estate and directed that the livestock be shared equally among all the beneficiaries. She further stated that despite these clear wishes, her brothers disregarded the Will by sharing the livestock among themselves and denying her and her sisters access to the land bequeathed to them. She testified that threats and intimidation were used against them and that she was chased away from Chepkatet Farm, where she had been farming prior to her father's demise. She concluded by praying that this Honourable Court enforces and gives effect to her late father's last wishes as expressed in his Will.
17. PW6, Elnathan K. Chuma testified that she is currently a resident of Chepkatet Farm of Uasin Gishu County and a business Farmer and he serve as the Chairman of Chepkatet Farm LR. NO 748. He also testified and confirmed that Kipchemis Chepngok of ID No. xxxx was a member of Chepkatet Farm LR NO. 748 having a portion of land measuring 123.8 Acres in the above mentioned parcel of land. It was further testimony that the land is still intact and the title deeds are yet to be processed.



18. The next witness was PW7 identified herself as Elizabeth working at Uasin Gishu Lands Registry. According to PW7, in obedience of the Summons issued by this Court, she prepared the case summary of the various parcels of land which touch on this Succession Cause. The aspects of documentary evidence held in the custody of the Land's Office included Kosirai Farm LR NO. 693/1-UG 4267 was issued with a new LR NO. 10795-UG/4900. The details of the land in question held at Uasin Gishu Lands Registry was produced as an Exhibit in support of the facts in contestation between the Objectors and the Petitioners. PW7 went further to take the Court through the Green Card details which was opened on 23rd January 2001 in respect of Pioneer/Ngeria Block 1 Parcel No 2515. According to PW7, initially the land was registered in the name of the Government of Kenya and later transferred on the same date to Lonrgho Agribusiness East Africa Limited. Thereafter on 26th August 2002, it was transferred to James Kipkurgat Korir and title deed issued. It was also the testimony of PW7 with regard to LR Pioneer/Ngeria Block/EATEC Parcel No 2520. According to PW7, the registration details are that on 23rd January 2001, Lonrgho Agribusiness East Africa Limited was the registered owner of the parcel of land which on 27th November 2015 was wholly transferred to Nathan Chemis Kipkoech and title issued. The witness evidence did not stop there as she told the Court that on 23rd January 2001, Parcel No 2529 was registered in the name of Lonrgho Agribusiness East Africa Limited and on 27th June 2018, it was transferred to Elijah Kipchirchir Chemis. Similarly, the same Land Registrar on oath told the Court that on 23rd January 2001, Land Parcel No. 2576 PIONEER/NGERIA/BLOCK 1 EATEC was registered in the name of Lonrgho Agribusiness East Africa Limited and later on 10th May 2018, it was fully transferred to Elijah Kipchirchir Chemis. In addition, the witness further told this Court that on the same date 23rd January 2001, Pioneer/Ngeria Block 1 EATEC LR No. 2577 which was initially registered in the name of Lonrgho Agribusiness East Africa Limited was transferred to Elijah Kipchirchir Chemis on 10th May 2018. The witness further brought to the attention of this court that the subject suit land Pioneer/Ngeria Block 1 EATEC being Parcel No 2578 was also transferred to Elijah Kipchirchir Chemis by Lonrgho Agribusiness East Africa Limited on 10th May 2018. In the evidence before this Court by PW7, she acknowledged that Pioneer/Ngeria Block 1 EATEC Parcel No 2579 which was initially registered in the name of Lonrgho Agribusiness East Africa Limited was also transferred to Elijah Kipchirchir Chemis on 10th May 2018. It was also the evidence of PW7 that LR NO 2594 Pioneer/Ngeria Block 1 EATEC was also transferred on 27th November 2015 to John Kiplenting Chemis and title issued having been endorsed by Lonrgho Agribusiness East Africa Limited. That remains to the chronology of the registration details of this various parcels of land as domiciled in the Uasin Gishu Land Registry. That marked the end of the Petitioner's case and thereafter it was followed by the evidence given by the Objectors.

Objector's Case Summary

19. The first witness to testify for the Objector was DW1, Gideon Kiprono Chemis, who identified himself as a farmer in Kapsaret. He testified that the deceased was his father and that he is the firstborn. He objected to the Will, stating that his father did not write any Will. He further stated that the signatures on the Will were not those of his father, noting that he was familiar with his father's signature since the deceased had worked with a bank and used to sign cheques. He testified that the signatures appearing on the Will were inconsistent with his father's known signature. DW1 further stated that the Will document contained directions on burial rights, yet it was allegedly read to them a month after the burial had already taken place. He testified that the Will was dated 27/01/2014 and that when the matter was scheduled for hearing, he instructed the firm of Birech Advocates to file an application challenging the Will. Orders were granted on 11/7/2018, but the same were not complied with because the DCIO could not obtain a copy of the original Will. He stated that, as a result, the signatures were never investigated as directed by the court. Regarding the validity of the Will, DW1 reiterated that it



purported to give burial instructions after the deceased had already been buried. He further testified that from 2013, the deceased developed heart problems and was frequently in and out of hospital, and that in December 2013 the deceased was staying in the Petitioner's house. DW1 added that he had no conflict with his brothers and contended that the appointment of the executor violated Nandi customary law, as a married daughter could not be appointed as an executor. He testified that the executor named in the Will was Hellen Chepkosgei Murrey, and that their father would ordinarily have chosen one of his four sons as executor. DW1 further stated that the Will directed that cows be given to the executor, which he said was contrary to cultural practices because her dowry had already been paid. He testified that under clause 3(a) of the Will, their father did not own any parcel of land on the said farm; under clause 3(b), there was no land known as Kipkomo Farm and the deceased did not own 160 acres of land at EATEC Lorgnho; under clause 3(c), relating to Kosirai Farm, the deceased did not own any land; and under clause 3(d), the tractor belonged to him, and he had used the deceased's name to avoid a conflict of interest with the bank. He added that he did not know the whereabouts of the plough and trailer. He further testified that the motor vehicle was in the possession of their lastborn sibling and that there was no livestock. DW1 added that both he and his siblings owned property and were working, and that their father did not own a single acre of land or a cow. He stated that in 1962, he and his father bought their first cow from a neighbour and concluded that, in essence, there was no property in their family. DW1 testified that he was also giving evidence on behalf of his three brothers, namely John Chemis, Nathan Chemis, and Elijah Chemis. During cross examination by Mr. Kimani DW1 stated the following: that the Petitioner in this cause is his sister and they are 7 in their family, their father was a Christian and that the name of the Executor is the same as the name appearing in her ID and Mr Kalya is the one who prepared the Will. He further added that the deceased did not have anything as at the time of his death he had already surrendered the property orally and that he is objecting to the Will because it is fake.

20. DW1 further testified that the deceased did not own any property and that he was buried on the land belonging to John, the deceased's second-born son. He stated that he came to court only because his name had been mentioned and emphasized that he had nothing to do with the alleged Will. DW1 added that he has his own farm and does not require anything from the estate, maintaining that the deceased never owned any property. He further stated that he did not know when John Chemis purchased his land. Regarding the alleged 123 acres at Chepkatet Farm, DW1 testified that he had no knowledge of the said property. Similarly, in respect of the 160 acres in Kipkomo, he stated that he knew nothing about the land. As for Kosirai Farm, where the deceased was buried and which is approximately 40 acres, DW1 testified that he witnessed two of his brothers sharing the land in 2006 and acknowledged that the farm originally belonged to the deceased. He further stated that the Land Registrar testified that, according to the records at the Lands Registry, the land was still registered in the name of the deceased. Despite this, DW1 maintained that he did not want anything to do with the said farm. DW1 also testified that, according to Nandi customary law, it was improper for his sister to be appointed as the executor of the estate, stating that she was married into another family. However, he clarified that he would have no objection if one of his brothers were appointed as the executor. He added that with regard to family property ownership, he and his brothers used the land jointly, that they purchased their respective properties, and that they hold their own title deeds. He further stated that there was nothing due from his father's estate and noted that his mother died before his father. In conclusion, DW1 prayed that the Court dismisses and sets aside the alleged Will. That marked the close of the Objector's case.
21. Before then, it was established that the contested Will had been sent to the Documentary Forensic Expert at CID Headquarters. The Summons to that were issued to DW2 Chief Inspector James Mutuma who had assigned the role of examining the authenticity of the alleged Will of Kipchemis



Chepngor dated 7th January 2014. In his introductory remark, the Forensic Document Examiner told the Court that he is a holder of BSC Science from Mt. Kenya University, trained on Cyber Crime at C4D LAB, University of Nairobi, trained as a Forensic Document Examiner at DCI Headquarters Laboratory and Regional Centre of Excellence for Forensic Evidence at Khartoum, Sudan. With regards to the subject matter of this case, he acknowledged that he received the questionable document in its original form, clear and capable of being examinable. He took the Court through on what it takes to undertake the Forensic Examination of a document. This in his expertise involves authorship, freedom of pen movement, pen lifts, loops, movement of the pen from the start to the end of the signatures, pen pressure patterns, structural design and sizes of the signatures, smoothness of the curves, hesitations, initial and terminal strokes. In the report of the expert, he formed the following opinion: -

In my examination, I subjected the sets of signatures to image enhancement and magnification procedures using Video Spectral Comparator (vC 6000/HS) machine for better visibility of the identifying peculiarities and for absolute identification.

I also considered all the possibilities of natural variations resulting from the time span the signatures were made, speed, writing surface, natural pen failures and the writing position. The results were also verified by a team of experts from the laboratory. The exhibits were also verified by a team of experts from the laboratory. The exhibits and report are hereby returned.

In his opinion, the Document Examiner arrived at a conclusion that the signatures were made by different authors. That marked the end of the Objector's case.

Petitioner's Written Submissions

22. The Petitioner filed her written submissions dated 3rd November 2025 in which the learned counsel on record Mr. Kimani submitted on the following issues for determination: -
 - a. Whether the Will dated 7th January, 2014 is properly executed and attested?
 - b. Whether the aforesaid Will is a forgery?
 - c. Whether the dispositions made by the testator were the property of the deceased?
23. Counsel submitted that the deceased died testate having executed a valid Will dated 7th January 2014, in which he appointed Hellen Jepkosgei as the executor. Reliance was placed on Section 11 of the *Law of Succession Act*, which sets out the formal requirements of a valid Will. It was argued that these statutory requirements were fully complied with. Counsel contended that the deceased signed the Will in the presence of Advocate Wilson Kalya and Advocate Elias Kipketer Maritim both of whom testified before the court and confirmed that they witnessed the deceased execute the Will and thereafter attested to it as competent witnesses. It was further submitted that the placement of the deceased's signature on the Will clearly demonstrated his intention to give effect to the document as his last Will and testament.
24. On the allegation of forgery, Mr. Kimani submitted that the document examiner's report produced in court was inconclusive and unreliable. Counsel pointed out that during cross-examination, the document examiner admitted that the signatures used for comparison were made using different pens and appeared on different documents, thereby casting doubt on the accuracy and reliability of the forensic conclusions. On that basis, the court was urged to disregard the document examiner's report and find that the Will was not a forgery.



25. Regarding the testamentary gifts and dispositions, counsel submitted that the properties bequeathed in the Will belonged to the deceased at the time of his death. It was argued that evidence was adduced to demonstrate the existence and ownership of the properties, including Chepkatet Farm (L.R. 748, Uasin Gishu) where evidence was led showing that the deceased was a shareholder entitled to 123.8 acres, supported by documentary evidence; Kipkomu Farm (EATEC), whose existence and pending subdivision were evidenced through filed documents; and Kosirai Farm, which was confirmed by the Land Registrar to be registered in the name of the deceased and where the deceased was buried.
26. In conclusion, Mr. Kimani urged the Court to find that the Will dated 7th January 2014 was validly executed, duly attested and not a forgery and that the dispositions therein related to the deceased's property. Counsel therefore prayed that the objection proceedings be dismissed with costs and that the Petitioner be allowed to execute the Will in accordance with the intentions of the deceased.

Objector's Written Submissions

27. The Objector filed his Written Submissions dated 21st October 2025 in which the Learned Counsel on record Mrs. Tum submitted on two (2) issues for determination as follows: -
- a. That the purported Will dated 7th January 2014 was not executed by the Deceased, not properly attested and is a forgery.
 - b. That the testamentary gifts and dispositions made by the testator in the alleged Will dated 7th January 2014 were not free property of the deceased.
28. On the validity of the Will, counsel submitted that the document was not executed by the deceased, was not properly attested and is a forgery contrary to the requirements of Section 11 of the [Law of Succession Act](#). It was argued that the deceased neither signed nor affixed his mark on the Will and that the Objector, who was familiar with his late father's signature, consistently testified that the signature appearing on the Will was not his father's. Counsel further relied on a forensic document examination report dated 28th February 2025 prepared by C.I. James Mutuma, which concluded that the signatures appearing on the purported Will were not authored by the deceased. Reliance was placed on *In re Estate of Kibor Arap Talai [2025] KEHC 12747 (KLR)* in support of the probative value of uncontroverted expert evidence on forged signatures. Counsel further submitted that the Will failed the statutory requirement of attestation by two competent witnesses, as the evidence of the two advocates who allegedly witnessed the Will was contradictory. It was contended that the testimonies of Counsel Kalya and Counsel Maritim demonstrated that they were not present together at the time the Will was executed, thereby rendering the attestation fatally defective.
29. On the issue of testamentary capacity and free property, Mrs. Tum submitted that the properties allegedly bequeathed in the Will did not belong to the deceased at the time of his death and therefore could not form the subject of testamentary disposition. It was argued that no documentary proof of ownership such as certificates of official search, titles, agreements or share certificates was attached to the petition or produced during trial. Counsel relied on the evidence of PW1 and PW2, who admitted that they neither sought nor verified proof of ownership, as well as the testimony of PW3 and PW4 who similarly lacked such proof. Reference was also made to the evidence of PW5 and PW6, which failed to establish ownership of the alleged properties by the deceased and to the Objector's testimony that the deceased did not own any land at the time of his death.
30. Counsel anchored these submissions on Sections 3 and 5(1) of the [Law of Succession Act](#), arguing that only free property may be disposed of by Will and that a person lacking such property lacks capacity to make a valid Will in respect thereof. Reliance was placed on Nyeri High Court Succession Cause



No. 250 of 2007, In the Matter of the Estate of Maaka Muhuri Mugweru (Deceased) to support the position that a Will disposing of property not owned by the testator is Void.

31. In conclusion, the learned Counsel submitted that the purported Will dated 7th January 2014 is Void ab initio on account of forgery, lack of execution, improper attestation and disposition of non-free property. She therefore urged the Court to declare the Will invalid, to determine the estate as intestate and to allow the Objector's cross-application for issuance of Letters of Administration Intestate in favour of Gideon Kiprono chemis.

Analysis and Determination

32. This Honourable Court has carefully considered the pleadings, viva voce evidence, expert testimony, documentary exhibits and the respective submissions by the respective counsels. The solemn duty of this Court is to make a determination on the validity or otherwise of the alleged Will. I take note that the following issues arise for determination: -
- a. Whether the alleged Will dated 7th January 2014 was validly executed and attested in accordance with the *Law of Succession Act*.
 - b. Whether the Will is authentic, particularly in light of the forensic evidence on the signatures.

Whether the alleged Will dated 7th January 2014 was validly executed and attested in accordance with the *Law of Succession Act*.

33. There is a rebuttable presumption under Section 5 (3) of the *Law of Succession Act* Cap 160, Laws of Kenya that a person making a Will is of sound mind and that the Will has been duly executed. In *Harwood v Baker* {1840} 3 Moo P. C. 282 it was held that: -

“It Will be noted that in order to constitute a social mind, a testator must not only be able to understand that he or she is by his or her Will giving his or her property to one object of his or her regard, but that he or she must also have capacity to comprehend. The extent of his or her property and the nature of the claims of others, whom by his or her Will, he or she is excluding from all participation in that property; - whether, he or she was capable of recollecting who (his) or her relations were, of understanding, their respective claims upon his or her regard and bounty, and of deliberately following an intelligent purpose of excluding them from any share of his or her property.”

34. The threshold of the essentials of testamentary capacity were laid out in the case of *Banks v Good fellow* {1870} LR 5 QB 549 as cited with approval in the case of *Vaghella v Vaghella* where the Court stated as follows: -

“A testator shall understand the nature of the act and its effects, shall understand the extent of property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties that no insane delusion shall influence his Will in disposing property and bring about a disposal of it which if the mind had been sound, would not have been made.”

35. A Will is the instrument through which a person expresses testamentary autonomy by determining how their estate is to be distributed upon death, independently of the rules governing intestate succession. This underscores the fact that certain essential legal requirements must be satisfied in the making of a Will; in particular, the testator must have attained the requisite age and possess sound



mental capacity, failing which the validity and legality of the Will cannot be sustained. This passage from Banks (supra) must also answer the following questions: -

- a. That he or she is making a Will and the effect of his or her testamentary disposition.
 - b. The extent of his or her estate and therefore the property that can be disposed of in his or her Will.
 - c. Those who have claims on the estate and
 - d. This understanding must not be impaired by any disorder of the mind and or delusions.
 - e. Capable of evaluating the claims of those who might be expected to benefit from his estate and able to demonstrate an appreciation of the nature of any significant conflict and or complexity in the context of the testators life situation
 - f. Capable of communicating a clear consistent rationale for the distribution of their property, especially if there has been a significant departure from previously expressed wishes or prior Will and
 - g. Free of a mental disorder, including delusions, that influences the distribution of the estate.
36. There is a presumption of capacity to make the Will unless and until the contrary is shown, presumably by the claimant to the estate of the deceased. Thus the heavy burden of proof case on the claimant as to the approach on the question of capacity test has been laid down in Parker v Felgate {1883} 8DD 171 and which was reaffirmed in Perrins v Holland {2010} EWCA JCIV 1398 where the Court held that: -
- “ one must then ask of the testator;
- (i). Whether at the time he or she gave the instructions he had the ability to understand and give proper consideration to the various matters which are called for. That is whether he or she had testamentary capacity.
 - (ii). Whether, the document gives effect to his or her instructions.
 - (iii). Whether those instructions continued to reflect his or her intentions and
 - (iv). Whether at the time he or she executed the Will he or she know what he or she was doing and thus had sufficient mental capacity to carry out the justice act which that involves, if all those questions can be considered.”
37. From the affidavit evidence, the court may be satisfied that the Will represented the deceased’s true intentions, made at a time when he or she was capable of making informed and rational decisions. In the first instance, the burden rests upon the party alleging lack of testamentary capacity to prove such incapacity. However, once the court is persuaded that the testator was indeed not of sound mind, the burden then shifts to the person seeking to uphold the Will to demonstrate that the testator possessed the requisite mental capacity at the time of its execution. Consequently,
38. The courts have had some appreciation for the importance of memory in the test for capacity.³⁸ Memory—particularly working memory, which involves holding information while the mind evaluates it, and long-term autobiographical memory regarding beneficiaries and the testator’s relationships with those beneficiaries—is crucial to Will-making. However, it is important not to overstate the role of memory per se. Memory alone does not provide us with all the materials necessary to arrive at a conclusion about testamentary capacity. Rather, in modern Will-making, judgment and reasoning are “the grand criterion.”³⁹ As stated previously, the testator should be able to recall



the content and direction of a prior Will(s) or expressed wishes and then provide a clear, consistent rationale for any significant changes. In short, the testator should be able to link their beliefs and values and the nature of their personal relationships to the proposed disposition.

39. I direct my mind to the holding of the Court in the case of *Re Estate of Gatuthu Njuguna (Deceased)* {1998} eKLR where it quoted an excerpt from Halsbury's Laws of England, 4th Edition Vol 17 at page 903-904:

“Where any dispute or doubt or sanity exists, the person propounding a Will must establish and prove affirmatively the testator's capacity and that where the objector has proved incapacity before the date of the Will, the burden is shifted to the person propounding the Will to show that it was made after recovery or during a lucid interval. The same treatise further shows that the issue of a testator's capacity is one of fact to be proved by medical evidence, oral evidence of the witnesses who knew the testator well or by circumstantial evidence and that the question of capacity of is one of degree, the testator's mind does not have to be perfectly balanced and the question of capacity does not solely depend on scientific or legal definition. It seems that if the objector produces evidence which raises suspicion of the testator's capacity at the time of the execution of the Will which generally disturbs the conscience of the Court as to whether or not the testator had necessary capacity, he had discharged his burden of proof, and the burden shifts to the person setting up the Will to satisfy the Court that the testator had necessary capacity.”

40. The law relating for the forms of Wills is provided for in section 8 of the [Law of Succession Act](#) which states that, “A Will may be made either orally or in writing.” On the validity of a written Will, section 11 of the [Law of Succession Act](#) provides as follows: -

- “ 11. No written Will shall be valid unless-
- a. The testator has signed or affixed his mark to the Will, or it has been signed by some other person in the presence and by the direction of the testator;
 - b. The signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a Will;
 - c. The Will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the Will, or have seen some other person sign the Will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

41. On the evidence supporting the Will, the Petitioner relied heavily on the testimony of PW1 and PW2, both Advocates of the High Court, who asserted that the deceased executed the Will in their presence while of sound mind. They testified that the Will met all formal requirements and reflected the deceased's instructions. The daughters of the deceased being PW3, PW4 and PW5 testified consistently that the Will was read after burial and that their brothers disregarded it by appropriating estate assets.



42. The Objector DW1 categorically denied that the deceased ever made a Will. He challenged the authenticity of the signatures, the contents of the Will and the propriety of appointing a married daughter as executor. He further disputed the existence and ownership of the listed assets. I take note that most critically, the Court directed that the Will be subjected to forensic examination.
43. On the issue of Forensic Evidence, the testimony of DW2, Chief Inspector James Mutuma, a qualified Forensic Document Examiner, is central to this determination. After a detailed scientific examination using accepted forensic methodologies and equipment, the expert concluded that: “The questioned signatures and the known signatures were made by different authors.” This was in the report dated 28th February 2025 which was in the court’s record. I take note that the document examiner’s report which was produced in this Court was challenged by the Petitioner because she submitted that the same was not conclusive for the reason that during the cross examination by the Petitioner’s Advocate, the document examiner admitted that the signature affixed on the Will and the document provided by the Objectors were different and further the pen used was different and therefore raising doubt on the examiner’s report and therefore they submitted that the Will dated 7th January 2014 was not a forgery and requested this court not to rely on the document examiner’s report.
44. In re Estate of Samuel Ngugi Mbugua (Deceased) [2017] eKLR, the court was of the view that: -
- “The allegation that the said signature was not that of the deceased amounts to a claim that the signature was forged or that fraud was exercised in the procurement of the alleged Will. That is to say that someone other than the deceased had affixed that mark on the Will with the intent of passing the same as the signature of the deceased. Forgery is a criminal offence. The applicant is in fact imputing criminal conduct on either the person propounding the Will or those who were involved in the operation that is purported to have been its execution. The burden of proving forgery lies with the person alleging it. In Elizabeth Kamene Ndolo v George Matata Ndolo Nairobi Court of Appeal civil appeal number 128 of 1995 it was stated that the charge of forgery or fraud is a serious one, and the standard of proof required of the allegor is higher than that required in ordinary civil cases.”
45. In the present case, although the attesting witnesses asserted due execution, the independent forensic evidence done one Chief Inspector James Mutuma, which this Court finds credible and objective, establishes that the signatures were not authored by the deceased. This fundamentally undermines the Will’s authenticity. Once the signature of the testator is found not to be genuine, the Will collapses in its entirety, regardless of the intentions alleged to be contained therein.

Whether the Will is authentic, particularly in light of the forensic evidence on the signatures

46. When forgery is alleged against a Will that appears regular on its face with an attestation clause and witnesses’ signatures, the courts have consistently held that there exists a rebuttable presumption of due execution under the principle of omnia esse riteatta. This principle was articulated in Karanja and another v Karanja [2002] 2KLR 22, where the court held that: -
- “When the Will is regular on the face of it with an attestation clause and signatures of attesting witnesses and the signature of the testator, there is a rebuttable presumption of due execution.”
47. The burden of proving forgery lies squarely on the person making the allegation. As this involves an accusation of criminal conduct, the standard of proof required is higher than the ordinary civil standard of balance of probabilities, though not as high as the criminal standard of proof beyond



reasonable doubt. This principle was established in *Elizabeth Kamene Ndolo v George Matata Ndolo* [1996] eKLR, where the Court of Appeal held: -

“We start by saying that it was the respondent who was alleging that the Will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases.”

48. In examining allegations of forgery in testamentary documents, courts have emphasized that the mere assertion of forgery, without cogent supporting evidence, is insufficient to invalidate a Will. In *Fuller v Strum* [2000] ALL ER 2392, the court articulated this principle clearly, stating: “While I recognize, that the standard of proof is in the civil standard on a balance of probabilities, it is well recognized that where a serious allegation like forgery is made, the inherent improbability of the event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event has occurred.”

49. The courts have established that evidence of forgery must be approached systematically and with appropriate expertise. Mere visual comparison by laypersons is insufficient. As held in *Asira v Republic* [1986] KLR 227,

“The most an expert on handwriting can properly say is not that somebody definitely wrote a particular thing but that he does not believe a particular writing was by particular person or that the writings are so similar as to be undistinguishable. It is the duty of a court to make an examination and satisfy itself whether the handwriting expert’s opinion can be accepted and the court cannot blindly accept such an opinion...The decision on handwriting, whether it is genuine or not, always rests with the Court...The art of comparing handwriting is no doubt one in which time and thought are given to the formation of letters and words, and therefore expert status may be accorded to a person versed in such comparisons. But as has been accepted in *Wainaina’s case* (*Namaina v Republic* [1978] KLR 11) such an expert is not able to say definitely that anybody wrote a particular thing. The reasoning is based upon the knowledge that handwritings can very easily be forged. Moreover a person may not write in the same style all the time. The expert is therefore faced with trying to analyze forged writing as well as disguised writing. In cases where there is a problem about the writing it is the duty of the court to satisfy itself after examination whether the expert’s opinion can be accepted and cannot blindly accept such opinion. In these areas of conflict, it is prudent to look for other evidence so that forgery can be excluded on the one hand, and mistaken identification excluded on the other.”

50. I take note that the alleged Will was presented to the D.C.I.O vide a Court Order dated 11th June 2018 by the session Judge therein Githinji J. In the Forensic Document Examiner’s Report REF: DCI/ORG/8/3/1/135/2025 of the Forensic Document Examiner expert, he stated as follow: -

In my examination, I subjected the sets of signatures to image enhancement and magnification procedures using Video Spectral Comparator (vC 6000/HS) machine for better visibility of the identifying peculiarities and for absolute identification.

I also considered all the possibilities of natural variations resulting from the time span the signatures were made, speed, writing surface, natural pen failures and the writing position. The results were also verified by a team of experts from the laboratory. The exhibits were



also verified by a team of experts from the laboratory. The exhibits and report are hereby returned.

51. In his opinion, the Document Examiner arrived at a conclusion that the signatures were made by different authors. Moreover, on the issue of whether signature of the testator in the alleged Will is a forgery, this Court notes that even without placing undue reliance on the report of the Forensic Document Examiner, a plain and careful visual examination of the alleged Will dated 7th January 2014 raises serious and irreconcilable doubts as to its authenticity. The signature purported to belong to the deceased Kipchemis Chepngor varies markedly on the face of the alleged Will in terms of form, structure, stroke flow and overall consistency. The variations are not minor or capable of being explained as natural fluctuations arising from age, health or writing conditions, but are substantial and striking, such as to suggest execution by different hands. Equally troubling is the fact that the signatures of the two purported attesting witnesses, Counsel Wilson Kalya and Counsel Elias Kipketer Maritim, also display noticeable inconsistencies when compared within the same alleged Will. Given that attesting witnesses are expected to sign contemporaneously and under similar conditions, such visible divergence further undermines the credibility of the execution process. These apparent inconsistencies, discernible even to the naked eye, lend substantial weight to the Objector's challenge and reinforce the conclusion that the alleged Will does not meet the threshold of due execution and authenticity required under section 11 of the *Law of Succession Act*, thereby rendering the document Void to uphold as the valid last testament of the deceased herein Kipchemis Chepngor.
52. From the totality of the evidence on record, it is evident that the alleged Will dated 7th January 2014 is riddled with material inconsistencies and credibility gaps that go to the root of its validity. The testimony of the objector and other witnesses raises serious doubt as to the authenticity of the signatures of the deceased and the attesting witnesses, the circumstances under which the alleged Will was executed. In the absence of a valid Will, the court cannot uphold a document whose authenticity and legality remain fundamentally questionable. In view of the foregoing, the following orders shall abide: -
- a. That a declaration be and is hereby issued that the purported Will dated 7th January 2014 is Null and Void.
 - b. That a declaration be and is hereby issued that the estate of the deceased herein Kipchemis Chepngok alias Kipchemus Chepngor shall be administered as an Intestate Estate in accordance with the provisions of the *Law of Succession Act*.
 - c. That an order is issued that any Grant issued on the basis of the alleged Will be and is hereby revoked.
 - d. That an order be and is hereby issued that the parties shall take necessary steps to apply for a fresh Grant of Letters of Administration Intestate in accordance with the applicable law.
 - e. That the appointment of the Administrators shall conform with section 66 of the *Law of Succession Act*.
 - f. That the matter shall be mentioned on 19th February 2026 to confirm compliance with the aforesaid orders.
 - g. There shall be no orders as to the costs.
53. Orders accordingly.



DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 30TH DAY OF JANUARY 2026.

.....

R. NYAKUNDI

JUDGE

