

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

SUCCESSION CAUSE NO.53 OF 2015

**IN THE MATTER OF THE ESTATE OF CHEPYEGO KIPKORKOR
SIGOR (DECEASED)**

ROSEMARY **JEPKOSGEI**
CHERONO.....PETITIONER

VERSUS

JENIFER JEMUATI CHEBIEGO1ST
APPLICANT

SIBILINA JEBET CHEBIEGO2ND
APPLICANT

JANE JEPKEMBOI3RD
APPLICANT

AND

ROBERT KIPLIMO CHUMBA1ST
OBJECTOR

STEPHEN KANDIE KIPCHUMBA.....2ND OBJECTOR

JONATHAN KIPRONO KIPCHUMBA3RD
OBJECTOR

PETER KIPKOECH KIPCHUMBA.....4TH
OBJECTOR

WILSON KIMELI KIPCHUMBA.....5TH OBJECTOR

ELIZABETH SOTE KIPCHUMBA.....6TH OBJECTOR

RULING

1. Before the court for determination are Summons dated 7th November 2024, seeking the following orders:

1) That Jenifer Jemutai Chebiego, Sibilina Jebet Chebiego and Jane Jepkemboi be appointed co-administrators of the estate of the late Chepyego Kipkorkor Sigor.

2) That pursuant to the granting of prayer/order 1 hereinabove, the Grant of Letters of Administration be issued showing Jenifer Jemutai Chebiego, Sibilina Jebet Chebiego and Jane Jepkemboi as co-Administrators of the estate of the late Chepyego Kipkorkor Sigor.

3) Costs of this application be in the cause.

2. The application is further supported the joint Affidavit sworn on 7/11/2024, by **Jenifer Jemutai Chebiego** and **Sibilina Jebet Chebiego**.

3. The 1st and 2nd Applicants deposed that they are the biological daughters of Chepyego Kipkorkor Sigor (Deceased) who died on 24th November 2011. That their late father was a polygamist who had two (2) wives namely Catherine Sote Chebiego, who predeceased him, and Magarina Saniako Misoi, the first Petitioner herein. That the said Magarina Saniako Misoi died on 3rd February 2020.

4. The Applicants further deposed that their late father was survived by the following as per the two (2) households:

1st House

- i. Tapsimei Kimoi (daughter deceased)
- ii. Margaret Kimoi Kipkoech (daughter)
- iii. Rosemary Jepkosgei Cherono (daughter)

2nd House

- i. Magarina Saniako Misoi (widow)(deceased)
- ii. Joseph Kipchumba (son) (deceased)
- iii. Flomena Kisang Jebet (daughter)
- iv. Veronica Kimutai Cherotich(daughter)
- v. Brigid Jeptanui Chebiego (daughter)(deceased)
- vi. Jenifer Jemutai Chebiego (daughter) (the 1st Applicant herein)
- vii. Sisilia Jepkoech Chebiego(daughter)
- viii. Sibilina Jebet Chebiego(daughter) (the 2nd Applicant herein)
- ix. Roseline Jemeli Kibiego(daughter)

5. The Applicants stated that Robert Limo Kipchumba, Stephen Kandie Kipchumba, Jonathan Kiprono Kipchumba, Peter Kipkoech Kipchumba and Wilson Kimeli Kipchumba are grandsons of the deceased herein, and are their nephews, that their father is Joseph Kipchumba (deceased), and of the 2nd house and that Elizabeth Sote Kipchumba is their mother, while Timothy Kipchumba Kosgei is not related with them in anyway or manner, neither is he a creditor to the estate of the deceased.

6. The Applicants deposed that he circumstances that led to their late mother Magarina Saniako Misoi and their step sister Rosemary Jepkosgei Cherono going for a full grant instead of a limited grant for purposes of suing and

recovering the estate of the deceased herein are provided in the further affidavit in support of petition for letters of administration intestate sworn by Magarina Saniako Misoi on 17th August 2015 and filed in Court on 19/08/2015.

7. A perusal of the said Affidavit which forms part of the record of the court in a nutshell shows that the said grant was obtained was for purposes of preserving the estate from intermeddling by the Objectors herein who are the children of her son the deceased Joseph Kipchumba and who had refused to release the death certificate of their late father to the said Margarina Sanaiko Misoi to enable her obtain the grant of her deceased husband estate and distribute the same to all the beneficiaries as appropriate.
8. The Applicants further deposed that the Grant of Letters of Administration Intestate in respect of the deceased's estate was issued to Magarina Saniako Misoi and Rosemary Jepkosgei Cherono in this cause on 23rd September 2015 and that having obtained the said grant, their said mother and step-sister instituted ELDORET ELC.CASE NO.445 OF 2015 and after the hearing the said land matter on its merits, the court found that the Objectors had indeed intermeddled with the estate of the deceased herein.
9. That in particular, the court declared that the process and or the transactions leading up to, and including the transfer of land parcel number IRONG/SERGOIT/1155 on or about 27/02/2014, from the name of the deceased herein to the name of Robert Limo Kipchumba was fraudulent and illegal, and further declared *inter alia* that Robert Limo Kipchumba's actions were fraudulent and illegal, and also declared that Robert Limo Kipchumba and 6 others had illegally and fraudulently acquired the parcels of land that they had hived from the said larger parcel of land.

- 10.**The Applicants deposed that it was decreed that the title deed in respect of Title Nos. IRONG/SERGOIT/1577 to 1582 be cancelled and Title No. IRONG/SERGOIT/1155 be reverted into the name of the late Chepyego Kipkorkor Sigor pending the distribution and transmission of the same to its rightful beneficiaries/heirs (the deceased herein) accordance with the Law of Succession Act. A copy of the judgement was annexed to their Supplementary Affidavit as JSJ-(a) and JSJ-(b)
- 11.**The Applicants further deposed that the said persons cited were dissatisfied with the findings of the Land Court and filed a notice of intention to appeal and sought a stay of execution pending the hearing and determination of the said intended appeal but the application was dismissed by the Court of Appeal and which stated *inter alia* that apart from the 7th Applicant, all the other applicants are likely to be beneficiaries of the estate of the deceased herein.
- 12.**The Applicants contend that despite the clear judgement/Decree of the Land Environment Court, their said nephews continue to sell portions of their late father's estate and to intermeddle with the same generally and that is an act of impunity that need to be nipped in the bud.
- 13.**That with the demise of their mother, Magrina Sanieko Misoi, the Applicants would like to be appointed as administrators so as to safeguard the interest of the 2nd House and its beneficiaries and the estate in general. The Applicants contended that when their mother died, their nephew Robert Kiplimo Kipchumba acting in cahoots with his siblings took her burial permit and warned the Applicants not to ask for it.

14. That they even buried their grandmother against her wish in so far as the site of burial was concerned and that they had no say at all in making arrangements for the burial of their mother and or the place of burial itself and that their nephews treated them with a lot of contempt and that has been going on for many years now.

15. The Applicants deposed that for quite a while now, their late mother's co-administrator Rosemary Jepkosgei Cheronno has been sick and is incapacitated and is no longer mobile. The Applicants maintained that owing to her ill health, there is a need for the appointment of other administrators in this cause and that they are cut out for that task. The Applicants added that Jane Jepkemboi, the daughter of the 2nd administrator herein, and she too is cut out for that task.

16. The Application is also supported by the Affidavit sworn by the 3rd Applicant, **Jane Jepkemboi** sworn on 7th November 2024. She deposed that Rosemary Jepkosgeii Cheronno, the 2nd Administrator herein and who is the daughter of the late Chepyego Kipkotkor Sigor is her biological mother and she is therefore a granddaughter to the deceased herein. She further deposed that for a while now her mother has been sick, she is incapacitated in many ways, she is unable to walk and she suffers from memory loss.

17. The 3rd Applicant also associated herself with the contents of the joint Affidavit sworn by the 1st and 2nd Applicants in support of the Application

Replying Affidavit

18. The Application is opposed by **Robert Limo**, the 1st Objector vide his Replying Affidavit dated 3rd March 2025. He deposed that he is opposed to the application for reasons that the Petitioners have excluded their brothers from being appointed as administrators. He maintained that the late Joseph

Kipchumba was their father and the only son of their grandfather, Chebeigo Kipkorkor Sigor.

19. He further deposed that the deceased had two wives namely; Soto Chebiego and Magarina Chebiego and a son, Joseph Kipchumba who should be represented in these proceedings. He added that 3 daughters of the deceased, Rosemary, Margaret and Tapsimei sued their father, the deceased herein and obtained an award in their favour for 2 acres each and that the deceased was aggrieved by the conduct of his daughters for filing a land case for inheritance against him in his lifetime

20. He maintained that land parcel IRONG/SEGOIT/362 was subdivided in accordance with the finding of the Tribunal and resulted to parcel numbers IRONG/SERGOIT 1155, 1156, 1157 and 1158 and that the deceased transferred part of parcel 362 to him to hold in trust for his siblings but the Petitioners were not happy and instituted Civil proceedings against him and his brothers and that the judgment in favour of the Petitioner has been appealed against and the same remains pending in the Court of Appeal.

21. In conclusion, the 1st Objector urged the Court to appoint the following persons as administrators; Robert Limo Kipchumba, Peter Kipchumba, Jenifer Chebiego and Jane Jepkemboi.

Supplementary Affidavit

22. The 1st, 2nd and 3rd Applicants also filed a Supplementary Affidavit dated 24th March 2025. They reiterated their relationships to the deceased and deposed that the 1st and 2nd applicants are the deceased's biological daughters from the 2nd house, while the 3rd applicant seeks to substitute her mother who is also the deceased's daughter from the 1st house, therefore, both the 1st house and

the 2nd house will be well represented by the proposed administrators and that the Objectors herein are misleading this Honourable Court by saying that they have been ignored.

23. The Applicants maintained that the deceased is survived by his children that is, the petitioner as well as the 1st and 2nd Applicants herein, therefore, the Objectors, being grandchildren to the deceased, are not better placed to be appointed as administrators to the deceased's estate as compared to them, the Applicants added that as per the **Law of Succession Act**, a grandchild to a deceased person can only represent their deceased parent(s) in respect to their grandparent's estate upon obtaining grant of letters of administration in respect to their own deceased parent's estate and that in this case, the Objectors have not done that.

24. The Applicants contend that the Objectors have been unlawfully intermeddling with and dissipating the deceased's estate and that it is in the best interest of justice that this Honourable Court declines to grant their prayers.

25. The Applicants denied the Objector's allegation that Rosemary, Margaret, and Tapsimei sued the deceased for inheritance and termed the same as deliberate falsehoods. They maintained that the truth of the matter is that it is the Objectors who were cited by the land court as having intermeddled with the estate of the deceased as deposed in their Affidavit in support of the Application.

26. The Applicants added that despite the judgment by the Eldoret Environment and Land Court, the Objectors have continued to unlawfully sell portions of the deceased's estate and have persistently intermeddled with the estate to the detriment of its rightful beneficiaries. The Applicants maintained that the

deceased did not, during his lifetime, transfer any portion of parcel No. 362 to the Objectors, and their assertions to the contrary are baseless and unsubstantiated and that annexures “JSJ-1 (a) and JSJ 1-(b) being the judgement of the court speak for themselves.

27. The Applicants contend that the Objectors have solely focused on their father's homestead while deliberately disregarding the existence and rightful entitlement of their aunts who are also children of the deceased.

28. The Applicants further deposed that they have known the Objectors for too long and too well to be very cunning, mischievous and serial law breakers hence it will not be for the interest of the estate to make them co-administrators and further that they have also known the Objectors for too long and too well to be extremely misogynistic and generally discriminative towards women and this can be discerned when they mention their father as being the only son of the deceased despite the deceased having also had daughters. The Applicants contend that Robert Kiplimo Kipchumba and his brothers have on several occasions told them to their faces that as women they do not deserve to inherit their late father's property.

29. According to the Applicants, the Objectors are extremely disagreeable people hence it will be a misfortune for any of them to be appointed as an administrator and that it is unfathomable and it defeats logic for them to be named administrators based on their continuous acts of intermeddling with the deceased's estate. The Applicants maintain that they are clearly not intent on safeguarding the interests of the estate and other beneficiaries and that it will be impossible working with them as administrators.

Submissions

30. The application was canvassed by way of written submissions. The Applicants filed their submissions dated 24th March 2025 while the Objectors filed their submissions dated 2nd April 2025.

Applicants' submissions

31. On whether the Applicants should be appointed as Administrators, Counsel for the Applicant cited **Section 66 of the Law of Succession Act** and urged that it is clear that the Succession Act intended for persons appointed as administrators to be the closest persons to deceased prior to his death. Counsel submitted that the deceased herein does not have a surviving spouse, however, he has surviving daughters that is the 1st and 2nd Applicant as well as the 3rd Applicant's mother who are willing to be administrators of his estate. Counsel added that the 3rd applicant does not seek to be appointed as administrator as a representative of her mother's interest but rather in order to help her perform her duties as administrator since she's old and sickly. Counsel therefore urged this Honourable Court to exercise its discretion in appointing the applicants as administrators to the estate of the deceased herein. He cited the case of **Estate George Ragui Karanja (Deceased) [2016] KEHC 6519 (KLR)**, where it was held that:

"Going by the principle stated by Waki J., in In the Matter of the Estate of Aggrey Makanga Wamira Mombasa HCSC No. 89 of 1996, to the effect that surviving spouses and children have priority in administration, and other relatives as set out in section 39 of the Act should only come in where no spouse or children survived the deceased, or the surviving spouse or children are unsuitable..." (Our emphasis)

32.In relying on the above authority, Counsel submitted that the 1st and 2nd Applicants as well as the 3rd Applicant's mother, being biological daughters to the deceased, are not only empowered by the Act to be given first priority for appointment as administrators in the absence of surviving spouses, but that they are also the most suitable to perform such duties since they are honest and fair unlike the Objectors. Counsel added that they have never intermeddled with the estate of the deceased and they even participated as witnesses when the Objectors were sued for their illegal acts of intermeddling and they ensured that the deceased's estate was recovered from the Objectors.

33.Regarding the Objectors' opposition to the appointment of the Applicants as Administrators, Counsel submitted that the Objectors allege that the family of the late Joseph Kipchumba (it includes the Objectors) who is a brother to the 1st and 2nd Applicant's has not been considered in the names fronted for appointment as administrators despite him being the only son to the deceased. However, they have wilfully ignored the fact that the proposed administrators cover both the 1st and the 2nd houses since the 1st and 2nd Applicants are members of the 2nd house while the 3rd Applicant seeks to substitute her mother who is the deceased's daughter from the 1st house. Counsel maintained that both houses are properly represented among the proposed administrators and that the Objectors therefore ought not to complain.

34.Counsel further submitted that it is imperative for this Honourable Court to note that in the herein mentioned ELDORET ELC CASE NO.445 OF 2015 the Plaintiffs who are the Applicants herein were trying to save the deceased's estate from being wasted by the Objectors who had made illegal dealings over it. Counsel contended that the Objectors had already acquired a fraudulent title to the deceased's estate had even illegally subdivided the deceased's estate and acquired titles to the illegal subdivisions and even

transferred the same to their names to the exclusion of all daughters of the deceased aside from their only surviving mother and that this amounted to intermeddling of the said estate as provided for under **Section 45 of the Law of Succession Act**.

35. Counsel added that the Objectors are all members of the same nuclear family and the head of that family was Joseph Kipchumba (deceased), the only son to the deceased herein as vehemently and insistently put by the Objectors in their Replying affidavit. Counsel submitted that even as the Objectors claim that the interest of their father is not represented by the applicants, it is apparent that the said family has never been interested in being represented in proper and legal succession proceedings since they were already comfortable with their fraudulently acquired titles and that they were also comfortably enjoying the deceased's estate to the exclusion of the women in the family.

36. Counsel submitted further that they are now hell-bent to block the Applicants from being appointed as administrators since the proposed administrators are women and they would wish to continue wasting the deceased's estate while enjoying and benefiting from their illegal actions to the detriment of other beneficiaries. He stated that when the time will come for the distribution of the estate herein, the same shall be distributed fairly.

37. Counsel relied on **Section 38 of the Law of Succession Act** which provides for the equal distribution of a deceased's' estates amongst the children and observed that the language of **Section 38** is gender neutral as it does not classify children into male and female, nor sons and daughters, nor men and women and it also provides for equal distribution of the estate among the children. Counsel cited the case of **Daniel Mwongera M' Iringo v Lucy**

Karambu M' Ikiao [2017] KEHC 6019 (KLR) in support of this submission.

38.Further, he urged that besides that, a grandchild in succession proceedings cannot represent their deceased's parent's interests in their grandparent's estate without first obtaining grant of letters of administration with respect to their deceased's parent's estate. Counsel submitted that the Objectors have not done that. He relied on the case of **Cleopa Amutala Namayi vs. Judith Were Succession Cause 457 of 2005(2015] eKLR** where the court observed as follows:

"Be that as it may, under Part V of the Act grandchildren have no automatic right to inherit their grandparents (sic) who died intestate after 01/07/1981 when the Act came into operation. The argument behind this position is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents (sic) indirectly through their own parents, the children of their grandparents. The children to the grandparents inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren can inherit directly from their grandparents is when the grandchildren's own parents are dead. Those grandchildren can now step into the shoes of their parents and take directly the share that ought to have gone to the said parents. Needless to say, such grandchildren must hold appropriate representation on behalf of their parents."(Our emphasis) said parents.

39. Counsel urged that that the Applicants are the deceased's biological daughters and they are first in line and they therefore ought to inherit first from the estate of the deceased who is their father, before the grandchildren (the Objectors) can come in as regards their father's estate. Counsel observed that the Objectors' father also ought to inherit from his father's estate, however, since he is deceased, his children ought to obtain grant of letters of administration for their father's estate in order for them to be granted personal audience in this case as compared to the Applicants who are the deceased's children. Besides,

40. Counsel further observed that **Section 83 of the Law of Succession Act** provides for the duties of administrators and maintained that the fulfilment of these duties requires persons with integrity and goodwill and that the Objectors, having been declared to have committed fraudulent and illegal dealings with respect to the estate of the deceased herein do not possess such good qualities. Counsel urged that they in fact have qualities and values which are the complete opposite of what **Section 83 of the Act** envisioned that an administrator ought to have.

41. Counsel contended that the Objectors wish this Court to exercise its discretion in their favour despite them serially intermeddling with the deceased's estate to the exclusion of their aunts. Counsel cited the Court in the case of **MN v TAN & Another (2015) eKLR** where the Court held that

“The appellant has applied to the court for a discretionary relief, yet he is not ready to obey the orders that he is seeking relief against it. He has therefore come to court with unclean hands. The court cannot exercise discretion in favour of such a litigant who has no respect for the rule of law”

42. In conclusion, Counsel submitted that the Objectors have not implemented the Court orders given by the ELC in ELDORET ELCCASE NO. 445 OF 2015 which orders relate to them relinquishing their illegally and fraudulently acquired titles so that the impugned parcels revert back to the estate of the deceased for distribution by Court as per the **Law of Succession Act**.

43. Counsel added that they have filed an appeal against the said judgement, which Counsel submitted is unmerited and yet, they still insist on being appointed as administrators to the estate of the deceased, the estate they wasted. According to Counsel the fact that they still want to defend their fraudulent and illegal activities in the Court of Appeal while at the same time asserting that they wish to be appointed as administrators herein is quite oxymoronic and self-defeating.

Objectors' Submissions

44. With regard to whether the Applicant are entitled to the orders sought, Counsel for the Objectors observed that it is not in doubt that the 1st and 2nd Applicants rank above the Objectors and the other beneficiaries of the estate. Counsel cited **Section 66 of the Law of Succession Act** in regard to whom the grant of representation ought to be made. Counsel maintained that it is however clear from the said provision that the ultimate discretion as to whom the grant of representation ought to be made rests with the Court and that in arriving at that determination the Court is to be guided by the provisions of **Section 66 of the Act**.

45. Counsel submitted that the Objectors herein are grand children to the deceased the same as the 3rd Applicant herein. Counsel added that the Objectors do not oppose the appointment of the said 3rd Applicant as the representative of the 1st house and the 1st Applicant as a child of the deceased

representing the 2nd house with the 1st and 4th Objectors standing in to represent the 2nd House on behalf of their deceased father.

46. Counsel urged that it is in the Objectors' interest that at least members from the family of the deceased son be represented and in light of the litigation that is ongoing to be represented in the administration of the estate so as to ensure none of the beneficiaries are left out. Further, Counsel urged that the Objectors herein being the person's currently in occupation of the estate and have been since managing and preserving the same since 2014 to date should be included as administrators of the estate.

47. Counsel contended that the Applicants are not at the estate that they would wish to administer and the exclusion of the beneficiaries who are currently occupying and managing the estate would be unjust. According to Counsel, the Objectors are only interested in ensuring that all the beneficiaries would be represented in the administration.

48. Counsel further submitted that by dint of the provisions of **Section 29 of the Law of succession Act**, the Objectors acquire an interest in their grandfather's estate by virtue of their deceased father's share and should therefore be included in the administration of the same. Counsel cited the Court in re **Estate of the Late Mwaura Makuro (Deceased) [2021] eKLR**, where Justice Ogola, in his ruling thus stated: -

"A grandchild only becomes a direct heir to the estate of the grandparent where the parent pre-deceased the grandparent. The grandchildren step into the shoes of their deceased parents and take the parent's share in the estate of the grandparents as was enunciated in RE Estate of Wahome Njoki Wakagoto (2013) eKLR where it was held:-

Under Part V' “grandchildren have no right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.

49.In regard to allegations of intermeddling with the estate by the Objectors, Counsel submitted that the same is not true since as per the courts decree in **ELDOR ET ELC NO.445 OF 2015** which is pending appeal the parcels of land reverted to the estate which they are also beneficiaries. Counsel urged that the Objectors have always been in occupation of the estate since the lifetime of the deceased and should not be denied occupancy just because there are pending succession proceedings and appeal.

50.Regarding costs, Counsel submitted that the Supreme Court has clearly elaborated the law and the principles guiding the courts in awarding costs in the case of **Jasbir Singh Rai & 3others Vs. Tarlochan Singh Rai & 4 others [2014] eKLR** where it stated the same are awarded at the courts discretion and that the costs usually follow the event.

Determination

51. After careful analysis, the only issue for determination is

Which persons should be appointed the administrators of the estate of the deceased.

52. The undisputed facts herein are that the 1st and 2nd Applicant are daughters of the deceased whereas the Objectors and the 3rd Applicant are grandchildren of the deceased. Both parties seek to be appointed as administrators of the estate of the deceased.

53. Under **Section 29 of the Law of Succession Act**, a dependant is defined as;

- a) **The wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to death;**
- b) **Such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and**
- c) **Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.**

54. From the above, it is clear that the children of the deceased rank higher in priority as dependants than grandchildren. However, the circumstances under which grandchildren can step into the shoes of their parents is provided for under **Section 41 of the Law of Succession Act**. This section makes

grandchildren heirs in intestacy, where their own parents, who are biological children of the deceased, are dead. It provides as follows

Property devolving upon child to be held in trust

Where reference is made in this Act to the "net intestate estate", or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.

55. In **re Estate of Veronica Njoki Wakagoto (Deceased) [2013] eKLR** (Musyoka J), held that; a grandchild of the deceased was not entitled directly to the estate of their late grandfather in intestacy, so long as their own parents, being children of the deceased, were alive and were taking their rightful share. The argument was that such a grandchild would take indirectly through her own parents. The Court went on to state that a grandchild would be entitled to inherit directly from the intestate estate of their grandparent where his or her own parent, the child of the deceased, was dead, and, therefore, not available to take their share directly. In such case, the grandchild would be entitled to take directly by virtue of **Section 41 of the Law of Succession Act, Cap 160, Laws of Kenya**. This was also the holding in **Re Estate of Wahome Njoki Wakagoto (2013) eKLR**, where the Court held that;

“Under Part V, grandchildren have not right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

56. This indeed is the case here. From the evidence tendered, it is an undisputed fact that the father of the Objectors one Joseph Kipchumba, was a son of the deceased. The Objectors are therefore grandchildren of the deceased from his 2nd house. It is also an undisputed fact that the father of the Objectors has since died. From the foregoing statute and case law, these grandchildren do in fact qualify to directly step into their father’s shoes and inherit from their grandparents

57. I have considered the evidence tendered by the Petitioners as against the Objectors with regard to the conduct of the Objectors over the years as appertains to the estate of their deceased grandfather as chronicled in the myriad applications filed by the administrators of the estate being the grandmother of the Objectors who has since died, jointly with her co-administrator who is the their aunt and who is now ill and infirm, in seeking to preserve the estate from being wasted in the hands of the Objectors who it is averred, an averment not rebutted and or denied, have no legal standing to deal with matters pertaining to the estate in any manner whatsoever by dint of

the fact that they have never applied for and/or been granted any letters to administer the subject estate.

58.In addressing my mind to the same, it is my finding that the material particulars of the said evidence have not been sufficiently rebutted, contradicted, challenged, controverted and or denied by the Objectors. The court also notes that this evidence includes a valid judgement of the Environment and land Court in **Eldoret ELC Case No. 445 of 2015** in over the same said subject estate and that as already herein summarised, and further that the court found in favour of the Petitioners and against Objectors in the said judgement,

59.The court can therefore not close its eyes to and ignore the conduct of the Objectors herein. The fact is that they have intermeddled with the estate of the deceased to the point of being sued by the Petitioners and the court finding against them. Under **Section 45 of the Law of Succession Act**, intermeddling with a deceased's person estate is a grave offence that the Court cannot just turn a blind eye to. It is indeed a criminal offence for which a person found guilty in a criminal trial is liable to pay a fine or serve a term of imprisonment or be sentenced to both fine and imprisonment.

60.The matter of appointment of administrators is one in which the final discretion lies with the Court. **Section 66 of the Law of Succession Act** is explicit on this and on the order of priority. It 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, but shall,

without prejudice to that discretion, accept as a general guide the following order of preference-

- a) surviving spouse or spouses, with or without association of other beneficiaries;**
- b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;**
- c) the Public Trustee; and**
- d) creditors”**

61. The court being is very mindful of, and alive to the fact, that every discretion accorded to it must be exercised judicially. With this in mind, it is worth mentioning at this stage that under **Section 83 of the Law Succession Act**, the administration of an estate calls for a very high level of integrity, diligence, trustworthiness, fairness and care. As much as the Objectors are entitled to inherit from the estate herein directly, I am of the very well-considered opinion, that in view of the conduct of their as herein summarised, they have demonstrated that they cannot make good, honest, trustworthy dependable and fair administrators of the estate of their deceased grandfather.

62. Their prayer that they be made co-administrators of their grandfather's estate together with the Petitioners therefore lacks merit and the same is accordingly denied. That said, I find merit in the Application by the Petitioner and the same is now hereby allowed as follows;

- (i) That Jenifer Jemutai Chebiego, Sibilina Jebet Chebiego and Jane Jepkemboi be and are now hereby appointed as co-administrators of the estate of the late Chepyego Kipkorkor Sigor and a Grant of Letters of Administration be issued forthwith indicating the said herein mentioned persons as co-Administrators of the estate of the late Chepyego Kipkorkor Sigor.
- (ii) Costs shall be in the cause.

Read Dated and Signed at ELDORET on 20th February 2026

E. OMINDE
JUDGE