

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
PROBATE AND ADMINISTRATION CAUE NO E105 OF 2010
IN THE MATTER OF THE ESTATE OF THE LATE KIBET SANG...
(DECEASED)

THROUGH

PAULINE JEPKEMBOI KIBET.....1ST PETITIONER
ELIZABETH JEPCHIRCHIR SANG.....2ND PETITIONER
JULIUS KIPKEMBOI KIBET.....3RD PETITIONER

=VERSUS=

MARY CHEPYATOR KOSSOM.....1ST OBJECTOR
GRACE KIBET.....2ND OBJECTOR
RAEL KIBET.....3RD OBJECTOR
ROSE SANG.....4TH OBJECTOR
SYLVESTER KIPLGAT KIBET.....5TH OBJECTOR

Coram: **Before Justice R. Nyakundi**
 Songok & Co. Advocates
 Mathai Maina & Company Advocates

RULING

1. Before this court is chamber summons brought to this court pursuant to Section 1A 1B 3A 80 and 100 of the Civil Procedure Act, cap 21 Laws of Kenya Order 45 Rule 1 of the Civil Procedure Rules Section 83(f) of the Law of Succession Act and rules 49, 63 and 73 of the Probate and Administration seeking the following orders:-

a) The application be certified urgent and service thereof be dispensed with in the first instance

- b) That pending hearing and determination of the application, the distribution pursuant to the amended certificate of confirmation of Grant dated 15th November, 2024 be halted*
 - c) That the Honourable court be pleased to review the orders made upon the application for confirmation of Grant given on 15th November 2024.*
 - d) That the Honourable court be pleased to direct the Administrators to allocate the Beneficiary/Applicant an alternative portion measuring 2.5 acres within land Title number KAPTAGAT/KAPTAGAT BLOCK 1 (LOSIRWA)/116*
 - e) Costs of the application be in the Cause.*
2. Which application is grounded on the following:
- a) The Honourable court delivered this ruling on 11th March 2025 directing that the amended certificate of confirmation of Grant dated 15th November 2024 shall remain in force and be implemented in its entirety*
 - b) That in the said amended certificate of confirmation of Grant, the applicant is a beneficiary entitled to 2.5 acres of land title Number Kaptagat/Kaptagat Block 1 (Losirwa 116 as a purchaser*
 - c) That the Administrators have commenced distribution by way of survey and allocation of portion of the parcel to the beneficiaries according to their entitlements in the Grant*
 - d) That the Applicant has been allocated a portion measuring approximately 2.5. acres touching Eldoret-Nyaru tarmac road but the same has been claimed by the Kenya National Highway Authority (KEHNA) as a quarry and therefore Government Land.*
 - e) That the same therefore does not form part of land title number KAPTAGAT/ KAPTAGAT BLOCK 1 (Sirwa)116 nor is it part of the estate and is therefore unavailable for distribution*

- f) *That unless this application is heard urgently and an alternative portion within the same parcel allocated to the Applicant, the Applicant stands to suffer great prejudice*
- g) *That it is in the interest of justice that this application be heard and the orders sought issued*
3. The same is supported by an affidavit which states as follows:
- a) *That I am a male adult of sound mind and therefore competent to swear this affidavit*
- b) *That I am the beneficiary/Applicant herein thus authorized to swear this affidavit*
- c) *That I swear this Affidavit in support of the summons*
- d) *The Honourable Court delivered its ruling on 11th March 2025 directing that the amended certificate of confirmation of Grant dated 15th November 2024 shall remain in force and be implemented in its entirety.*
- e) *That the said certificate of confirmation of grant, I am a beneficiary as a purchaser entitled to 2.5 acres of land title number KAPTAGAT/KAPTAGAT BLOCK 1 (LOSIRWA) 116 registered to the deceased and which was a subdivision of LR NO 4125.*
- f) *That the Administrator have commenced distribution by way of survey and allocation of portion of the parcel to the beneficiaries.*

DECISION

4. This matter, the court issued a certificate of confirmation of grant which forms the basic structure on conveyance, transmission, and distribution of the estate of beneficiaries. Thereafter post certificate of confirmation of grant applications were filed with evidential material submitted with an affidavit touching on non-disclosure by the administrators with regard to some portion referred to this court as the KENHA property therefore not subject to distribution. In the similar vein, the court was also moved on limited access to some properties

which are yet to be transferred to the deceased who purchased them during his life time but the transfer and registration was yet to be perfected. In the application filed to this effect it was expressed that those immovable assets should either be delineated as not free estate capable of being distributed or the same be pursued by the administrators so as to perfect the sale and registration within the ambit of the law. Whilst it may be accepted that permitting that portion of the estate to be recognized as a true net estate it might create uncertainty for reason of incomplete record on titling the name of the deceased.

5. As far as this court is concerned, the administrators possess the necessary documents to give effect to the purchasers interest of the deceased under Section 93 of the Law of Succession Act. The recommendation I endorse on these shares of immovable property which are still in the name of the sellers is to either isolate them as a non-ripe net estate of the deceased until the titles have been processed according to the provisions of the Land Act 2012 or on the other hand, the administrators given their strong sentiments during the status conference, continue taking vacant position pending the finalization and transfer of the Land Rights direct to the allocated beneficiaries.
6. In the 2nd place a portion of land referenced as KENHA within the intestate estate is a matter purely for the administrators to approach the Director of Survey and the County Land Registrar to lodge an application for the amendment of the map if indeed the portion is captured by the Director of Survey and interest registered by the Land Registrar in favor of KENHA to have the same revoked to revert to the intestate estate. In addition, in my view, the administrators are stuck in the same position for the last two years and some of the issues if need be can be addressed vide Section 80 of the CPA and Order 45

Rule 1 of the CPR. All of this would result in probate finality albeit partially and the prospect of endless litigation process which will delay distribution of the estate would be rendered moot.

7. In the result in my view, for reasons set out above there is a legitimate and compelling legal social purpose that the continued appearance in court will not devolve any share to the beneficiaries. There are obligations vested with the administrators under Section 82, 83, & 84 of the Law of Succession Act and does not include procrastination on matters which deeds them to address under the Applicants right to access to a court. Although I dare say opinion is divided between the beneficiaries as to the issue on KENHA property and the portion of the estate pending perfection under Section 93 of the Law of Succession Act. What that means the administrators to take the bull by the horns and invite the court to address the issues of review or otherwise with finality. The many Status Conferences would not answer the question of KENHA or non-perfected purchased parcels of Land by the deceased during his life's time.
8. The realist account of this probate dispute is for the parties to take cognizance that there is an intrinsic connection between the legal realism of answering the question who are the beneficiaries to the estate and what portion of it can be determined precisely as the net estate capable of being devolved to the beneficiaries. I mean that it is a matter of fact in this Succession Cause some parcels of land remain and are still in the registration index of the vendors as the deceased passed on before the entire conveyance on titling was completed. Those who complain of any judicial delay should first apportion liability on the contribution made to facilitate the transmission of the estate of the beneficiaries. There is already a certificate of confirmation of grant though for reasons best known to the administrators it included portions of immovable assets yet to be registered in the name of the

deceased. However, all is not lost by dint of the certificate of confirmation of grant the so referenced administrators with legal advise on knowledge about registration of titles a process should have been initiated for convertible of those titles by the Land Registrar working in tandem with the County Surveyor. The Land Registrar and County Surveyor's knowledge would be based on the historical records of the parcels of land in question and to identify the patterns in such cases as well as the different factors to inform the decision making in the Registration docket as provided for in the statute. This again is not the work or jurisdiction of a Probate Court. If in the event the parcels of land with no proper registration documentation found their way to the certificate of grant of confirmation there is recourse under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules to deal with any ambiguity in law giving rise to that formulation as manifested in the confirmed grant itself. That is a decision which this court has not been invited to make with completeness. This has occasioned the double- indeterminacy version of this Succession Cause. This version seems to claim that the certificate of grant of confirmation is ambiguous and vague. However, ambiguity and vagueness are to be found in different stages within which the Administrators and beneficiaries have elected to process the issues in this adjudication. Therefore, it is time that the certificate of confirmation be interpreted in *abstracto* and or be given interpretation in *concreto* . This *interpretation* models can eliminate the duality of a core of certainty and penumbra of doubt when one engages with the issues of delay bedeviling the distribution scheme of this intestate estate of the deceased. The import of the legal principle of the administrators sitting in the armchair of the deceased is also much more relevant even in the litigation of this cause considering the

knowledge of the beneficiaries and the administrators alike about their assets and legitimate heirs.

9. I have often said that the beneficiaries owe a duty to themselves to inherit the heritage the lands of their fathers and mothers who have preceded them undoubtedly by an Act of God. By the same token and with respect I find it regrettable that more than two years down the line as the session Judge working with the legal team, the administrators and the beneficiaries no fruits of the judgment of this Court have been enjoyed or applied in the broader view of the concept of distribution.

10. For those reasons, the only interlocutory application of a substantive nature is one focusing on whether there has been due diligence in the administration of the estate to deliver the mandate as covenanted during the appointment by this Court under Section 66 as read with Section 82, 83 and 84 of the Law of Succession Act. As a consequence, under Article 50 of the Constitution submissions shall be made within the interim period touching on the application for a ruling to be delivered on 3rd of March 2026. It is so ordered.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 17TH
DAY OF FEBRUARY, 2026**

.....

R. NYAKUNDI

JUDGE