



REPUBLIC OF KENYA



**In re Estate of Alfred Kiplanai Bor (Deceased) (Probate & Administration  
17 of 2018) [2026] KEHC 1059 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1059 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
PROBATE & ADMINISTRATION 17 OF 2018  
RN NYAKUNDI, J  
FEBRUARY 5, 2026**

**BETWEEN**

**NAUMY JEROB BOR ..... 1<sup>ST</sup> PETITIONER  
EMMANUEL KIPTOO LAMAI ..... 2<sup>ND</sup> PETITIONER  
BENJAMIN KIPTANUI LAMAI ..... 3<sup>RD</sup> PETITIONER**

**AND**

**IRENE ZIPPY C. KALAMI ..... 1<sup>ST</sup> BENEFICIARY  
LYNETTE NGAULO RONO ..... 2<sup>ND</sup> BENEFICIARY**

**RULING**

1. The following consent is adopted in the following terms:-
  - a. That a Certificate of Confirmation of Grant was duly issued by this Honourable Court on 7th September 2024, confirming the mode of distribution of the estate.
  - b. That pursuant to section 83 of the *Law of Succession Act*, the Administrators are under a statutory obligation to complete the administration of the estate and to effect transmission and distribution of the estate assets in accordance with the confirmed Grant.
  - c. That notwithstanding the confirmed Grant, the Administrators have failed, refused, and/or neglected to execute the requisite transfer and transmission documents necessary to effect distribution of the estate property known as LR No. 7946/4 (IR No. 10041/42), currently reflected in the land registry as Ngeria/Kabongo Block 1 (Bor) Block 1–15.
  - d. That in order to give full effect to the confirmed Grant, and in exercise of the inherent powers of this Honourable Court under Rule 73 of the Probate and Administration Rules, the Deputy Registrar of this Honourable Court be and is hereby authorized to execute all necessary



transfer, transmission, conveyance, consent, and registration documents relating to the said property.

- e. That the execution by the Deputy Registrar shall be in place of and on behalf of both the Administrators and the Beneficiaries, for purposes of fully implementing the confirmed Grant dated 7th September 2024 and any consequential court orders.
- f. That all documents executed by the Deputy Registrar pursuant to this Consent shall be valid, effective, and binding for all intents and purposes, including presentation, registration, and implementation by the Uasin Gishu Lands Registry and any other public authorities.
- g. That the Land Registrar and/or any other relevant authority be and is hereby directed to dispense with the personal execution, consent, and/or attendance of the Administrators and the Beneficiaries and to act upon the documents executed pursuant to this consent

## Decision

### Background:

1. From the record it is clear that this Succession Cause can be described as one of those which follow under the class of protracted litigation which involves legal proceedings that are excessively prolonged due to factors like complexity, repetitive applications and strategic delays. Within the framework of *the constitution* and statute law Probate Courts are empowered to address such cases to prevent them from becoming an abuse of process or causing injustice through undue delays so that to have a balance for the need for finality giving effect to the right to a fair trial under Article 50 of *the constitution*. This succession cause was initiated before the probate registry at Eldoret Law Courts way back in 2018 and that long running legal dispute between the beneficiaries is yet to be resolved as provided for under the *Law of Succession Act*. The effect of this is that the timetable set for the distribution of the assets to the beneficiaries under the *Law of Succession Act*, has long since expired rendering any interlocutory applications being filed and litigated outside the litigation period outlined in the Act itself. Which period do I have in mind? The law contemplates that a petition for grant of letters of administration be lodged with the probate registry in any of the courts in Kenya and the same be processed for gazette by the government printer. It is from this protocol that a notice of 30 days is provided for to admit and consider any objection that may exist likely to impair the process. If there is no objection raised the initial grant of letters of administration shall forthwith be issued by the probate court. This legal instruments acts as a vehicle to drive the process of inheritance by the appointed administrators under Section 66 of the *Law of Succession Act*. Thereafter, the administrators working with each of the beneficiaries have been accorded a timeframe of six months to search, trace, collect, assemble, and confirm the inventory of both movable and immovable assets survived of the deceased capable of being distributed to the beneficiaries. If this process is undertaken with due diligence summons can be filed before the expiry of 6 months or within that stipulated period to seek leave of the court which shall in turn issue a form of a decree on distribution, commonly referred to in the law of Succession as the certificate of confirmation of grant. The administrators so appointed under the law do exercise personam jurisdiction on behalf of the deceased to administer the estate with due diligence as expressly provided in Section 83 of the Act.
2. Without reciting the entire background of this litigation, it is clear that the intestate estate has run out of time to deliver the metrics of distribution. It is beholden before this court under the ambit of the doctrine of justice, equity, and good conscience to invoke the provisions of Article 10 of *the constitution* to exercise judicial discretion to prevent injustice caused by inflexibility of the administrators to live up to their oath of office to sign the necessary scheme of distribution as contemplated in the certificate of



confirmation of grant. There is no dispute that there has been laches in concluding the administration of this estate which delay as worked to the disadvantage of the beneficiaries. Hence the basis upon which the consent herein below has been filed so as to unlock the impasse in the administration of the estate and the principles of justice have been rendered moot.

3. However more particularly is the legal question being raised with regard to the adoption of this consent for the court to donate such extensive powers to an office of the Deputy Registrar of the High Court by dint of the import of Order 49 of the Civil Procedure Rules as read with Rule 73 (1) of the Probate and Administration Rules:

a. Registrar to be ministerial officer (Order 49 Rule 1)

Where in these rules it is provided that any ministerial act or thing may be done by the court that act or thing may be done by the registrar or by an executive officer generally or specially thereunto empowered by the Chief Justice by writing under his hand.

b. Signing summons (Order 40 Rule 1A)

The registrar has power to sign summons to enter appearance.

c. When judgement may be entered by Registrar (Order 49 rule 2)

Judgement may on application in writing be entered by the registrar or in a subordinate court by an executive officer generally or specially thereunto empowered by the Chief Justice by writing under his hand in the following cases

Under Order 10 (consequence of non =appearance, default of defence and failure to serve)In all other cases in which the parties consent to judgment being entered in agreed terms or Under order 25 rule 3 (costs where suit withdrawn or discontinued

(d) Consent orders (Order 49 Rule 3)

Any order may, by consent of the parties evidenced in writing, be entered by the registrar or, in a subordinate court, by an executive officer so authorized in writing by the Chief Justice.

(e) No judgment against Government in default of pleading without leave of court [Order 49, rule 4.

Notwithstanding anything contained in rule 2, in any proceedings against the Government no judgment for the plaintiff shall be entered in default of appearance or pleading without the leave of the court, and any application for such leave shall be served by notice of motion served not less than seven days before the return day.

(f) Execution may be ordered by Registrar [Order 49, rule 5.

Formal orders for attachment and sale of property and for the issue of notices to show cause on applications for arrest and imprisonment in execution of a decree of the High Court or may specially be made by the registrar or, in a subordinate court, by an executive officer generally event of any thereunto objection empowered by the Chief Justice by writing under his hand, but in the shall be before a judge.

(g) Registrar a Civil Court [Order 49, rule 6.]

For the purposes of rules 2, 3 and 4 a registrar or, in a subordinate court, an executive officer empowered as aforesaid, shall be deemed to be a Civil Court.



- (h) Hearing of applications [Order 49, rule 7.] (1) The Registrar may- (a) give directions (b) under Order 42 rule 12 and Order 51 rule 8; hear and determine an application made under the following Orders and rules
- (i) Order 1, rules 2, 8, 10, 17 and 22; (
  - ii) Order 2, rules 1 and 10;
  - (iii) Order 3, 5 and 9; (iv) Order 6; (v) Order 7, rules 16 and 17(2); (vi) Order 8;
  - (vii) Order 10, rules 1 and 8;
  - (viii) Order 20;
  - (ix) Order 21, rule 12;
  - (x) Order 22 other than under rules 28, and 75;
  - (xi) Order 23, 24, 25, 26, 27, 28, 30, 31 and 33; and
  - (xii) Order 42, rule 14.

An appeal from a decision of the registrar under the Orders referred to in subrule (1) shall be to a judge in chambers. (

The memorandum of the appeal, setting out the grounds of the appeal shall be filed within seven days of the decision of the registrar.

Rule 73 of the Probate and Administration Rules (Kenya) empowers the court to grant relief in urgent or exceptional situations regarding the administration for an estate. It acts as a procedural tool for addressing special circumstances that arise during succession proceedings, allowing for tailored orders. Key Aspects of Rule 73 (Probate & Administration Rules). Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

The key aspects of the Rule 73(1) of the Probate and Administration Rules:

**Purpose:** It allows the court to make special limited or urgent orders when standard procedures are inadequate. **Context:** It is often applied to address contentious issues between beneficiaries such as the management or property development or valuation dispute. **Application:** It is frequently cited in conjunction with other provisions to ensure the proper, fair and speedy administration of an estate. **Inherent Powers:** Rule 73 allows the court to act outside the strict, technical provisions of the Rules to ensure a fair outcome. **Preventing Abuse:** It is often invoked to prevent the abuse of the court process, such as when an administrator is not acting diligently, is fraudulent, or when a grant has become inoperative. **Removal of Administrators:** The court may use this rule to remove or revoke the appointment of an administrator/executor. **Issuing Orders:** It empowers the court to issue necessary orders, such as forcing the execution of transfer documents by a stubborn administrator. **Relationship with *Law of Succession Act*:** It works in conjunction with Section 76 of the *Law of Succession Act*, which governs the revocation of grants.

4. This consent I am being asked to adopt as an order of this court must first and foremost comply with the codification of the *Law of Succession Act*. In Kenya the duties of an Administrator are primarily derived from Section 82, 83 and 84 of the *Law of Succession Act* which focuses on the collection, preservation and distribution of the deceased's estate as well as payment of debts and expenses. The key principles regarding these duties are hinged on accountability, timeliness and the consequences of breaching of the fiduciary duty. In the case of *Re Estate of Susan Wakonyo Kahi* [2024] KEHC 4574 the Court



observed that under Section 83(g) of the Act, administrators must complete the administration of the estate within six months of the confirmation of the grant, or within such longer period as the court may allow. Similarly, in *Re Estate of Nom Okaro Muluka (Deceased)* [2024] KEHC 3021 the Court held that administrators should not “sit on” the property but must distribute the estate to beneficiaries promptly. Further and administrator’s authority is derived from the grant. Any dealing with property prior to confirmation or outside the scope of the grant constitutes intermeddling and is a criminal offence under Section 45. The Court has emphasized again and again that the appointment of administrators is a solemn duty which requires them to sit in the armchair of the deceased as if he was alive and in compliance with the law deliver the inheritance to the beneficiaries fairly, equitably and proportionately bearing in mind the tenets of the conceptual framework of justice. The law under Section 66 of the Act way back in 1981 provided for multiple administrators to a maximum of four (4) giving the surviving spouses priority as ranking members of that nuclear family. Therefore where multiple administrators are appointed, as it happened in this case they must act jointly, the responsibilities which accrue from the administration of the estate must be shared and they must agree on the management of the assets and settlement of debts.

5. The case in point as mirrored in the clauses textualized in the consent shows that the administrators have failed to cooperate, work jointly and agree on the management of the assets, more fundamentally transmission of the shares to the respective administrators in accordance with the certificate of confirmation of grant. Unfortunately the administrators forget that their appointment originates from the Statute Law which also governs revocation of the appointment in the event they neglect and breach the duties so defined in the same law under Section 82, 83 and 84 of the Act. This alternative prayer in the consent instrument that the Deputy Registrar be appointed to sign the instrument is not in consonant with the *Law of Succession Act*. My interpretation of the Act is very purposive and comprehensive on what step should be taken in the event the administrators fail in their fiduciary duty to administer the estate faithfully and diligently and in accordance with the law of succession. The Court in the case of *Jebungei & 4 Others v Serem & 2 Others* [2024] KEHC 1303 faced with the same circumstances decreed that the Deputy Registrar do sign instruments of administration of the estate.
6. In my considered view the primary duties of an administrator includes preparation of an inventory of assets and liabilities within six months of the grant, pay all funeral expenses, debts and taxes before distributing the estate, distribute the assets to the rightful beneficiaries within six months of confirming the grant and last but not least, provide a full account of the administration to the Court and beneficiaries. What this means essentially is that the office of the Deputy Registrar a creation of the *Civil Procedure Act* and Rules under Order 49 is ill-equipped to carry out the prescribed duties of an administrator(s) under Section 82, 83 and 84 of the *Law of Succession Act*. These duties should be contrasted with those performed by the Deputy Registrars as donated by Order 49 of the Civil Procedure Rules. If indeed Parliament in 1981 in its wisdom during the legislative scheme thought that under the doctrine of necessity Order 49 of the Civil Procedure Rules should apply mutatis mutandis to the administration of the intestate estate as a substitution of the administrators nothing could have been easier than to expressly provide for that alternative powers of the Deputy Registrar of the High Court. The operative Act on inheritance rights sets out a detailed statutory framework on the administration of the estate spanning a period of one year culminating in the submissions of a probate account to the court to facilitate discharge of the administrators and liquidation of the estate. Is this a function or a duty which can be performed by a Deputy Registrar of the High Court? In my considered view the answer is in the negative. I have always asked myself from the averments of the parties when they seek leave of the court to exercise jurisdiction on appointment of the Deputy Registrar to sign the documents on the scheme of distribution of an estate, what kind of jurisdiction can be conferred within the purview of the inherent jurisdiction as defined in Rule 73(1) of the Probate



and Administration Rules? In context and text of the law as outlined in Section 82, 83 and 84 of the Act those duties and responsibilities of the administrator as highlighted cannot be vested in the office of the Deputy Registrar.

7. It goes without elaboration that the interpretation of statutes by Courts should not be an overreach to meet the exigencies of human disobedience to Court orders which have been properly processed particularly in the case of administrators on appointment through the Kenya Gazette each one of them covenants to administer the estate of the deceased with due diligence and faithfully. It is therefore the duties of the Court to determine the meaning of the Law of Succession, focusing on the intention of the Legislature, the literal meaning of words and the context of the law. The key rules on interpretation include the literal rule, golden rule, mischief rule and purposive approach. The anxious question which I ponder always, which of these four rules of statutory interpretation of the *Law of Succession Act* is applied for the Deputy Registrar to be appointed so that he or she can perform the spectrum of duties and responsibilities as underpinned in Section 82, 83 and 84 of the principal Act. To me those conferred duties of the Deputy Registrar by Probate Courts run foul to the letter, spirit and ghost of the *Law of Succession Act*.
8. I associate myself to the comparative jurisprudence on this subject matter under discussion in the case of *Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389, 396-7 the Court made the following observations on the principles necessary to the accurate reading of legislation: That where the applicable law is expressed in legislation the correct starting point for analysis is the text of the legislation and not judicial statements of the common law or even judicial elaborations of the statute; that the overall objective of statutory construction is to give effect to the purpose of parliament as expressed in the text of the statutory provisions; and That in deriving meaning from the text, so as to fulfil the purpose of parliament, it is a mistake to consider statutory words in isolation. The proper approach demands the derivation of the meaning of words from the legislative context in which those words appear. Specifically, it requires the interpreter to examine at the very least the sentence, often the paragraph, and preferably the immediately surrounding provisions (if not a wider review of the entire statutory context) to identify the meaning of the words in the context in which they are used.
9. Reflecting on this issues of statutory interpretation and such differences and disagreements by Judges as seen in the various jurisprudential decisions it is my view that as of necessity each must dig into their conscious minds on this issue of appointing Deputy Registrars as an alternate governance structure in the administration of the intestate estate, to endeavor to reach a concurrence as what exactly is the duty of signing of the instruments of transmission of an estate, if they can, and if this proves impossible to explain why they cannot invoke the statutory provisions under Section 76 of the Act to revoke the appointment of those in breach of the terms of the appointment and have fresh administrators duly appointed to perform the tasks as expressly stated in the Act. Today there is only principle or approach which is the predominant perspective on interpretation of statutes, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the act and the intention of Parliament. The starting point therefore is for the probate courts to ask the question in which circumstances should a Deputy Registrar of the High Court be appointed to exercise jurisdiction of an administrator which falls within the rubric of Personam in so far as administration of the intestate estate is concerned. Therefore, looking at the words in the *Law of Succession Act* their context and the purpose of their legislation then applying that to produce a result that is both fair and workable in the particular fact situation a court has before it there is no mention of a Deputy Registrar being a substitute of administrators duly appointed under Section 66 of the Act and finding their way to the official Kenya Gazette.



10. In so far as Sections 82, 83, & 84 of the Law of the Succession Act are concerned, their interpretation must be read and given effect in a way which is compatible with the intention of parliament. From this it follows that the interpretative obligation decreed by these sections is of an unusual and far-reaching character that Rule 73 (1) of the Probate and Administration Rules cannot be the dictate upon which may require a court to depart from the legislative scheme to introduce the role of the Deputy Registrar under Order 49 of the Civil Procedure Rules to be an alternate office to administer the intestate estate of the deceased. Therefore, the answer to this legal mind boggling question on substituting the functions of the administrators or legal representatives appointed to administer the estate wholly depends upon the intention reasonably to be attributed to parliament in enacting section 66, 82, 83, & 84 of the *Law of Succession Act*.
11. My impression is that two factors are contributing to a misunderstanding of the remedial scheme of the 1981 Act. First there is the constant refrain that a judicial reading down or reading in on substitution of the administrators who have failed in the fiduciary duty to administer the estate is to invoke Rule 73 (1) of the Probate and Administration Rule as construed with Order 49 of the Civil Procedure Rules to have those functions vested with the Deputy Registrar to me would flout the WILL of parliament as expressed in the statute under examination. The second factor would be an excessive concentration on linguistic features of this particular statute on inheritance rights.
12. Essentially, the facts of this case are straight forward. There is already a certificate of confirmation of grant detailing the distribution of the estate in consonant with Section 38 and 40 of the *Law of Succession Act*. The legal litigation did not stop there. In the earlier decisions under Section 66 of the Act administrators were duly appointed to administer the estate amongst other duties as grounded in the law. Surprisingly in the face of the evidence submitted before this court there has been no endorsement of the scheme of distribution to complete inheritance rights to the beneficiaries. From the precision of the facts stated in the consent one can discern that the administration of the estate is in limbo hence the need for the Probate Court to intervene.
13. For those reasons however when I applied my mind to the legislative text and the considerations earlier mentioned elsewhere in this ruling, I arrive at a conclusion that the appointment of the Deputy Registrar of the High Court as an alternate administrator would be in violation of the text, context and the apparent policy or purpose of the legislation on succession matters.
14. To answer this question raised in the consent I put the duly appointed administrators by this Court under Section 66 of the Act on notice that there is an imminent invocation of Section 76 of the *Law of Succession Act* as read with Rule 73 (1) of the Probate and Administration Rules to revoke the appointment so as to meet the ends of justice of the matter. The disobedience of court orders on the face of the record is regarded as contempt of that very court and such disobedience constitutes a sui generis (unique) offence that threatens the rule of law. The courts in Kenya have maintained that orders must be obeyed regardless of whether they were wrongly obtained until set aside. For our purposes there is already a certificate of confirmation of grant dated 7.9.2024 detailing the following administrators NAUM JEROB BOR, EMMANUEL KIPTOO LAMAI, BENJAMIN KIPTANUI LAMAI and FELIX LAMAI vested with powers to sign the distribution instruments so that the shares of the estate can devolve appropriately, fairly, and proportionately to the beneficiaries. These duties have not been performed since the decreed certificate of confirmation of grant was issued. Therefore, on the face of the record it is a disobedience of a court order.
15. As a consequence of which a declaration do hereby issue to the Administrators that an olive branch has been extended by this Court that the disobedience of the orders of this Court on transmission be



purged by signing the instruments of transmission of the estate to the beneficiaries within fourteen (14) days from the delivery of this ruling.

16. That in default of compliance to undertake their legal duties as defined under Section 82, 83 and 84 of the Law of Succession Act the appointment stands revoked by effluxion of the law and in their place the department of Public Trustee vested in the Office of the Attorney General do familiarize themselves with the certificate of confirmation of grant, the mutation and deed instruments prepared by the County Surveyor and working closely with the County Land Registrar sign and endorse the scheme of distribution as per the law established.
17. That a further declaration be and is hereby made that the Deputy Registrar of the High Court provide ministerial oversight to monitor compliance with this order on a monthly basis to remove any barriers or bring to the attention of this court on matters of transmission and/or conveyance of the estate to the beneficiaries.
18. That the fees and incidental costs incurred by the Department of Public Trustee in the administration of the estate shall be charged on account of the intestate estate.
19. That in the statutory framework of the law of succession Act the timelines set to complete transmission of the estate pursuant to the certificate of confirmation of grant has already been expired and in this regard, enlargement of time be and is hereby granted that within 90 days the estate shall be fully distributed and a probate account be submitted to the court to liquidate the estate and dismiss the role of the administrators or in any event the Public Trustee. It is so ordered

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 5<sup>TH</sup> DAY FEBRUARY, 2026**

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**R. NYAKUNDI**

**JUDGE**

