



REPUBLIC OF KENYA



KENYA LAW

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**In re Estate of William Kipsiren Serem - Deceased (Probate & Administration
9 of 2017) [2026] KEHC 1099 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1099 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 9 OF 2017
RN NYAKUNDI, J
FEBRUARY 5, 2026**

IN THE ESTATE OF WILLIAM KIPSEREN SEREM - DECEASED

BETWEEN

**ELKANA KIPKORIR SEREM 1ST PETITIONER
JOHN KIBET SEREM 2ND PETITIONER
HOSEA KIPKEMOI SEREM 3RD PETITIONER**

AND

**GLADYS JEBUNGEI 1ST RESPONDENT
LENA JEROTICH SEREM 2ND RESPONDENT
EMMA JEPCHUMBA SEREM 3RD RESPONDENT
ROSE JEPLETING 4TH RESPONDENT
JANE JELAGAT SEREM 5TH RESPONDENT**

RULING

1. Before this court for determination is the Objectors' application dated 7th November, 2025 expressed under the provisions of Rules 49 and 73 of the Probate and Administration Rules. The applicants seek the following reliefs:
 - a. Spent
 - b. That the order to visit the estate property to ascertain the doctrine of legitimate expectation as indicated in the application dated 5th May, 2025 by the Respondents be dispensed with.
 - c. That the orders for staying the transmission of the estate of the Late William Kiberen Serem issued on 27th February, 2025 be vacated and/or set aside.



- d. That this Honourable Court subsequently issued an order.
 - e. That costs of this application be provided for.
2. The applicant is anchored on the following grounds:
- a. That vide a Ruling 19/5/2023, the court confirmed the Grant of Letters of Administration with respect to the Estate herein as follows; John Kibet Serem's share in the property known as Nandi/Kipkaren Salient/178 be transmitted to West Kenya Sugar Company Limited, John Kibet Serem and Jane Jelagat Serem to Get 4.387 Ha and 6.5767 Ha respectively in Nandi / Kipkaren Salient/179, Lena Jerotich Serem to get 6.567 Ha in Nandi /Kipkaren Salient/179, Hosea Kipkemboi Serem, Gladys Jebungei Rop, and The Estate of Japheth Kimeli Serem to get 6.5767 Ha each in Nandi /Kipkaren Salient/182 and Nandi Kipkaren Salient/183 be shared between Elkana Kipkorir Serem, Rose Jepleting Serem and Emmah Chepchumba Serem in the ratio of 6.5767 Ha each.
 - b. That the Respondents further filed an Application dated 5th May 2025 seeking the prayer for this honourable court to visit the estate property to ascertain the doctrine of legitimate expectation.
 - c. That the scene visit was to take place on 27th June 2025 however the same did not take place and thus differed to 16th July 2025.
 - d. That on 16th July 2025 the scene visit did not take place which was yet again differed to 15th August 2025. Unfortunately, on this date the Deputy Registrar was away on leave thus the exercise was postponed to 3rd October 2025.
 - e. That on the 2nd October 2025, the Respondents wrote a letter saying that they were bereaved and thus could not attend the site visit slated for 3rd October 2025. The exercise was thus postponed to 24th October 2025.
 - f. That on 24th October 2025, the said site visit did not take place since the Land registrar Nandi County was not available despite all parties being informed of the said exercise through the court process server.
 - g. That the Respondents are not keen to have the site visit take place and therefore the same should be dispensed with.
 - h. That since the issuance of the rectified Certificate of Confirmation of Grant issued which was amended on 12/7/2023, the female beneficiaries herein have never occupied their respective portions of land due to resistance from the male dependants.
 - i. That despite numerous attempts to have the transmission process concluded, the Respondents have time and again refused, neglected and/or ignored to cooperate with the Applicants and they have vowed that none of the Objectors will ever take possession of the Estate.
 - j. That the Respondents are not willing to perform their duties as Administrators pursuant to the Rectified Certificate of Confirmation of Grant issued on 12/7/2023.
 - k. That it is now trite law that litigation must come to end. The Respondents have not made an effort to prosecute and conclude their Application dated 5th May 2025 and therefore this honourable court should allow the transmission process to commence.



3. In response to the application, John Kibet Serem being one of the administrators filed a replying affidavit dated 28th November, 2025 in which he deposed as follows:
 - a. That I am one of the administrators and beneficiary of the estate herein.
 - b. That the failure by the court to visit the estate property to ascertain the doctrine of legitimate expectation cannot be attributed to the Respondents.
 - c. That initially, it is the honourable Judge who was to carry out the visit by himself which arrangement was hindered because of logistical and security issues.
 - d. That on two occasions the Hon. Judge could not visit the estate property due to the issues of security, the two dated were the 13th June 2025 and the 16th July 2025
 - e. That when it became impossible for the honourable Judge to visit the estate property, the court directed that the Deputy Registrar High Court do the visit.
 - f. That on the 1st date when the honourable court had directed for the Deputy Registrar to visit, the Deputy Registrar happened to be on leave and that could not be done.
 - g. That the 4th time when the Deputy Registrar herself had directed the visit, the same fell on a period when one of the Petitioners had lost a wife which was an issue known by the objectors/ applicants and it was a period of mourning in the family.
 - h. That the Deputy Registrar fixed the visit on the 3rd October when Advocates for the Respondent went to the site but neither the applicants nor the Deputy Registrar attended and no explanation or reason was given as to their failure.
 - i. That the last visit was fixed for 8th November 2025, before then the applicants had filed the current application halting that visit.
 - j. That therefore the applicants have been the dishonest party as they failed to attend one of the visits without explanation and then halted the last visit through this application.
 - k. That there is no one occasion the respondents have failed to attend the site visit without explanation or genuine reason.
 - l. That the respondents are very desirous to have the court visit the site to acquaint itself with the doctrine of legitimate expectation.
 - m. That it is the applicants site visit who have on occasions failed to attend and are using to advance the current application.
4. In further response, the applicants through Gladys Jebungei desposed as follows:
 - a. That I am one of the beneficiaries in the Estate Of William Kiberen Serem (Deceased) hence competent to swear this affidavit.
 - b. That I have read and understood the contents of the Application dated 7th November, 2025 and the 2nd Respondent's Replying Affidavit and I wish to respond as follows:
 - c. That the Respondent's Replying Affidavit is misleading to the Court and omits material facts of this matter.



- d. That in response to paragraph 3 of the Replying Affidavit, I wish to clarify that the Respondents have time and again delayed the court from visiting the site with the numerous excuses of non-attendance.
 - e. That in response to paragraph 4, 5 and 6 of the Replying Affidavit, I wish to reiterate that it is true that the Honourable Judge was to attend to the site visit however because of the security issues he could not attend thus directing the Deputy Registrar to attend the site visit.
 - f. That in response to paragraph 8 of the Replying Affidavit, I wish to state that our advocate received a letter dated 2/10/2025 indicating that we had lost a relative. I wish to point to the court that the relative in question passed on 18/8/2025 and was laid to rest on 29/08/2025 and thus the family was not in a mourning period because the site visit was slated for 3rd October 2025 a month after the burial.
 - g. That in response to paragraph 10 of the Replying Affidavit, I wish to clarify that there was no site visit slated for 8th November 2025 as stated by the Respondents.
5. I have perused through the application, the response and submissions filed by the applicant dated 9th January, 2026.

Analysis and determination

6. The estate of the Late William Kiberen Serem has been the subject of litigation in this court for a considerable period. On 19th May, 2023, this court issued a Ruling confirming the Grant of Letters of Administration and providing for specific distribution of the estate properties among the beneficiaries. The distribution allocated specific portions of land measuring 6.5767 hectares each to various beneficiaries in different parcels including Nandi/Kipkaren Salient/179, 182 and 183.
7. Subsequently, the Respondents filed an Application dated 5th May, 2025 seeking orders for this court to visit the estate property to ascertain the doctrine of legitimate expectation. This application was necessitated by apparent disputes regarding the physical demarcation and allocation of the distributed portions. The Applicants, being predominantly female beneficiaries, have deposed that despite the confirmation of grant issued on 12th July, 2023, they have never occupied their respective portions of land due to resistance from the male dependants.
8. The central issue for determination is whether the proposed site visit should be dispensed with to allow the transmission process to proceed, or whether the site visit remains a necessary step in the proper administration of this estate.
9. The need for a site visit to be an occasion for receiving evidence in the nature of a hearing has been reiterated by the Court of Appeal in *Cyrus Nyaga kabute v Kirinyaga County Council* [1987] eKLR where the court stated as follows:

“...it is established law that when magistrate or judge visits land and makes notes, the parties should be given chance to agree or deny or contradict the notes on oath, if those notes were to be relied upon in judgment. In *Fernandes v Noronha* [1969] EA 506 at page 508, Duffus V P as he then was stated.

“..... the judge although reluctantly, did the Locus in quo, but unfortunately there is no report of his visit, on the record although this is mentioned in his judgment.



The judge does not in this case appear to have relied on any of his own observations, but in cases where the court finds it expedient to visit a Locus in quo, the court should make a note of what took place during the visit in its record and this note should be either agreed to by the advocates or at least read out to them, and if a witness points out any place or demonstrates any movement to the court then this witness should be recalled by the court and give evidence of what occurred.”

10. The court notes that there have indeed been several postponements of the scheduled site visit. The chronology shows attempts scheduled for 27th June, 2025, 16th July, 2025, 15th August, 2025, 3rd October, 2025, and 24th October, 2025. Each postponement has been attributed to various reasons as highlighted by the parties herein.
11. While these delays are regrettable and have undoubtedly prolonged the finalization of this matter, the court must carefully examine whether they justify dispensing with the site visit altogether. The Applicants contend that the Respondents are not keen on having the site visit take place and are deliberately frustrating the process. The Respondents, on the other hand, maintain that they have attended all scheduled visits and that the delays have been due to circumstances beyond their control.
12. From the affidavit evidence before this court, it is apparent that the delays cannot be solely attributed to either party. The initial postponements were due to logistical and security issues affecting the Judge's attendance, followed by the Deputy Registrar's leave, and subsequently a genuine bereavement in the family.
13. The court is cognizant of the Applicants' frustration with the delays and their desire to finally take possession of their portions of the estate. However, the proper course of action is not to abandon the site visit but to ensure that it is conducted expeditiously and without further delay. Once the site visit is completed and the court has properly acquainted itself with the physical realities of the estate, the transmission process can proceed on a more informed and solid foundation, hopefully minimizing future disputes.
14. In light of the foregoing analysis, this court finds that while there have been regrettable delays in conducting the site visit, these delays do not justify dispensing with the site visit altogether. The site visit remains a necessary and important step in ensuring fair and practical distribution of the estate. However, I am of the view that given the challenges which has been caused by my personal visit from the security committee I vary the decision to the extent that the Deputy Registrar of the High Court work out a concurrence schedule to visit the locus in quo with proper correlation of data which would enhance full disclosures towards bringing this litigation to a closure. With the passage of time as I have mentioned elsewhere in this ruling, the inheritance rights to be transmitted to the beneficiaries have been delayed. This matter therefore from now henceforth will receive priority listing for purposes of redeeming the lost time.
15. For those reasons the following orders shall take effect:
 - a. That the application on review on the site visit be and is hereby reviewed to have the Deputy Registrar of the High Court to work with the legal counsels to visit the site without limiting any pending litigation before this court tailored towards issuance of the final orders within the basic structure commonly known as the certificate of confirmation of grant.



- b. That as a matter of urgency a Status Conference be held on 10.2.2026 for purposes of core-relating the status of the pending issues in this Succession Cause and thereafter sequence such applications to resolve the cause with finality.
- c. That the orders staying transmission of the estate issued on 27th February, 2025 shall remain in force until the completion of the site visit and the issuance of appropriate orders thereafter.
- d. Each party shall bear their own costs of this application.

16. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 5TH DAY OF FEBRUARY 2026

.....

R. NYAKUNDI

JUDGE

