

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

SUCCESSION CAUSE NUMBER E056 OF 2022

IN THE MATTER OF THE ESTATE OF RICHARD RUTTO ALIAS

KENDUIWO ARAP RUTO (DECEASED)

FATIMA CHERONO ALI PROTESTOR

VS

PETER BYEGON LANGAT 1ST

PETITIONER

KENNETH KIBET LANGAT 2ND

PETITIONER

R U L I N G

1. In this matter, a Grant was issued in the joint names of the Petitioners on 2nd May 2023.

The Protest

2. Through her Affidavit of Protest dated 13th May 2025, the Protestor stated that together with her siblings namely Winny Chepngetich and Betty Chepngetich, they were the children of John Keter (deceased). That John Keter (deceased) had purchased the entire KERICHO/NDARAWETA/2124 from Richard Rutto (deceased) who was the father of the Petitioners. The Protestor further stated that her father John Keter (deceased) died before effecting the transfer of the subject land to his name.

3. It was the Protestor's case that they were brought up in the subject land, KERICHO/NDARAWETA/2124 until their parents separated and their mother went back home and was given a piece of land to settle on, leaving them homeless. That their late father sold off the land to many buyers and that some buyers had not fully paid up their purchase price at the time of their father's death. It was the Protestor's further case that at the time of his death, their father operated a

shop in KERICHO/NDARAWETA/2124 and the same could not be accessed due to the closure of the access road.

4. The Protestor stated that the Grant was defective as the Petitioners concealed from the court that they were the children of John Keter (deceased). The Protestor further stated that the Petitioners had admitted that their father had sold off KERICHO/NDARAWETA/2124 to their father and this gave this court jurisdiction to handle the matter as provided for under section 47 of the Law of Succession Act.

Preliminary Objection

5. The Preliminary Objection was dated 5th June 2025 and it was filed by Salina Jerop Kipkorir and Paul Cheruiyot Sigei as creditors to the estate of the deceased. The creditors stated that this court lacked the requisite jurisdiction to determine the Protest. The creditors further stated that the Protestors lacked *locus standi* to file the Protest as they had not taken out Letters of Administration *ad litem* in respect of the estate of John Keter (deceased).

6. Through their written submissions dated 30th September 2025, the Creditors submitted that the Protestor's claim was founded on the allegation that her father, John Keter (deceased) purchased the subject land from Richard Ruto (deceased). That the Protestor was neither a beneficiary nor a purchaser in the subject land. The Creditors further submitted that the Protestor had failed to show evidence that her father had any proprietary interest in the subject land.

7. It was the Creditors' submission that section 66 of the Law of Succession Act did not confer locus standi on the Protestor and that she had to obtain a grant of representation before. They relied on **re Estate of m/Ngarithi M/Miriti (Deceased) (2017) eKLR.**

Response

8. The Protestor filed Grounds of Opposition dated 30th July 2025 and stated that the Preliminary Objection did not meet the threshold as it did not raise a pure point of law. That it was a proper contest to facts. The Protestor further stated that the Protestor was the daughter of John Keter (deceased), the former owner of KERICHO/NDARAWETA/2124 and was currently a beneficiary of the subject land.

9. It was the Protestor's case that the Protestor had the *locus* to file the Protest as she was a beneficiary to the estate and proposed owner of Plot No. 32 on the Survey Plan. That there was no dispute in terms of the ownership of KERICHO/NDARAWETA/2124. It was the Protestor's further case that her Protest raised issues of intestacy

10. I have keenly gone through the record and the following issues arise for my determination: -

- i) In regards to the Protest dated 13th May 2025, whether the Preliminary Objection dated 5th June 2025 has merit.

ii) Whether the Grant dated 2nd May 2023 should be revoked.

i) In regards to the Protest dated 13th May 2025, whether the Preliminary Objection dated 5th June 2025 has merit.

11. What constitutes a Preliminary Objection was set out in the oft cited case of **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696**, where it was held that: -

“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the

dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”

12. In **Daqare Transporters Limited v Zainab Hashi [2021] KEHC 2600 (KLR)**, Mogeni J. held: -

“In the case of Ahmed Noorani & another v Rajendra Ratilal Sanghani [2020] eKLR the Court of Appeal held that: “For a preliminary objection to succeed the following tests ought to be satisfied: Firstly, it should raise a pure point of law; secondly, it is argued on the assumption that all the facts pleaded by the other side are correct; and finally, it cannot be raised if any fact has to be ascertained or if what is sought is the

exercise of judicial discretion. A valid preliminary objection should, if successful, dispose of the suit.”

13. It was the Creditors' (Salina Jerop Kipkorir and Paul Cheruiyot Sang) contention that the Protestor lacked *locus standi* to file the Protest. That she had failed to take out Letters of Administration as litem in regard to the estate of her father, John Keter (deceased). On the other hand, the Protestor maintained that she had locus as was the daughter of John Keter (deceased) and by virtue of her father being the purchaser of KERICHO/NDARAWETA/2124 was a beneficiary of the estate.

14. The Supreme Court in **Matemu v Trusted Society of Human Rights Alliance & 5 others [2014] KESC 6 (KLR)** held: -

“.....The issue of locus standi raises a point of law that touches on the jurisdiction of the Court, and it should be resolved at the earliest opportunity.....”

15. Similarly, in **Njau & 5 others v City Council of Nairobi [1983] KECA 56 (KLR)**, the Court of Appeal held: -

“The term locus standi means a right to appear in Court and, conversely, as is stated in Jowitt’s Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding.....”

16. I have gone through the record and I have noted that the 1st Petitioner swore a Replying Affidavit on 28th January 2025 where he stated that the Objector’s father, John Keter (deceased) had purchased the whole of the subject land, KERICHO/NDARAWETA/2124 from his father Richard Ruto (deceased). The 1st Petitioner further stated that John Keter

(deceased) later sold the parcel leaving behind 0.2 acres which they were ready to transmit to the Protestor. That the 0.2 acres had a clear road access and was marked as Plot No. 29 on the Surveyor's Report.

17. Although the above evidence was tendered in response to a previous Protest, this court is allowed to use prior evidence as evidence in the instant Preliminary Objection. **Section 34 of the Evidence Act** provided: -

(1) Evidence given by a witness in a judicial proceeding is admissible in a subsequent judicial proceeding or at a later stage in the same proceeding, for the purpose of proving the facts which it states, in the following circumstances—

(a) where the witness is dead, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or where his presence cannot be obtained without an amount of delay or expense which in the circumstances of the case the court

considers unreasonable; and where, in the case of a subsequent proceeding—

(b)the proceeding is between the same parties or their representatives in interest; and

(c)the adverse party in the first proceeding had the right and opportunity to cross-examine; and

(d)the questions in issue were substantially the same in the first as in the second proceeding.

(2) For the purposes of this section—

(a)the expression "judicial proceeding" shall be deemed to include any proceeding in which evidence is taken by a person authorized by law to take that evidence on oath; and.....

(Emphasis mine)

18. The Court of Appeal in **Abdi Adan Mohamed v Republic [2017] KECA 517 (KLR)** held: -

“.....To resort to previously recorded evidence under Section 34, the proceeding must be

between the same parties as the previous proceeding....”

19. Flowing from the above, I have tallied the Petitioners' evidence with that of the Protestor and it is my finding that the Protestor was a beneficiary of the estate of the deceased. I say so because the Petitioners acknowledged that the Protestor's father, John Keter (deceased) had purchased the subject land from their father and had left behind 0.2 acres when he sold off the subject land to third parties. The fact that the Petitioners were willing to hand over the 0.2 acres to the Protestor tells it all.

20. Flowing from the above, it is my finding that the Protestor had the *locus standi* to file the Protest dated 13th May 2025. It is my further finding that the Preliminary Objection dated 5th June 2025 has no merit and is dismissed.

ii) **Whether the Grant dated 2nd May 2023 should be revoked.**

21. The law on revocation of Grants is provided for in **Section 76 of the Law of Succession Act** which states that: -

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.

22. From my finding above, the Protestor was a beneficiary of the estate of the deceased. I have gone through the list of liabilities of the deceased's estate and she (Protestor) was not included as a beneficiary. To safeguard the Protestor's interest in the estate which the Petitioners have voluntarily admitted to, it is in the interest of justice that the Grant be revoked and filed again and such Grant to include all the estate's liabilities.

23. Having gone through the record, there may be issues regarding the ownership of the subject land. Parties are reminded that the sole duty of the Probate Court is to distribute the free estate of the deceased. Any issues regarding the ownership of the subject land are to be addressed in the proper forum being the Environmental and Land Court.

24. In the end, the Grant dated 2nd May 2023 is revoked. There will be no orders as to costs.

**Ruling delivered, dated and signed at Bomet this 3rd Day
of March, 2026.**

.....
HON. JULIUS K. NG'ARNG'AR
JUDGE

Ruling Delivered in the presence of;

Susan/Siele Court Assistant

Oduo for the 1st Protestor

Kenduywo 1st Petitioner

Kenduywo 2nd Petitioner

ORIGINAL