



**In re Estate of Chesimet (Deceased) (Succession Cause
120 of 2012) [2026] KEHC 3160 (KLR) (10 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3160 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 120 OF 2012**

JK SERGON, J

MARCH 10, 2026

**IN THE MATTER OF THE ESTATE OF JOHANA MARITIM CHESIMET ALIAS JOHANA
MARITIM ARAP CHESIMET ALIAS MARITIM JOHANA CHESIMET (DECEASED)**

IN THE MATTER OF

WESLEY CHERUIYOT MUTAI PETITIONER

RULING

1. Before this Court is a Chamber Summons application dated 27th January 2026. It is brought by Wesley Cheruiyot Mutai, the Petitioner and Administrator of the estate herein.
2. The application is principally brought under Order 45 of the Civil Procedure Rules, Section 47 of the *Law of Succession Act*, and Rules 49, 63, and 73 of the Probate and Administration Rules.
3. The Applicant seeks the following orders;
 - a) That the orders of 6th May 2014 be reviewed and set aside.
 - b) That the Certificate of Confirmation of Grant issued and dated the 6th May 2014 be cancelled.
 - c) That the Grant of Letters of Administration Intestate issued and dated the 29th April 2013 be confirmed and a Certificate of Confirmation of Grant be issued as per the mode of distribution presented by the Petitioner/Applicant in his affidavit in support of this Application.
 - d) That the necessary directions be made.
4. The application is supported by the annexed affidavit of the Applicant, Wesley Cheruiyot Mutai, sworn on 27th January 2026, and the grounds on the face of the application.
5. The Applicant deponed that he was issued with a Grant of Letters of Administration Intestate on 29th April 2013. Subsequently, on 6th May 2014, the court confirmed the Grant, and a Certificate of Confirmation was issued. He proceeded to distribute part of the estate based on that certificate.



6. The grounds for the application are two-fold. First, the Applicant avers that after the confirmation, two beneficiaries passed away before their respective shares could be vested in their names. He specifically deponed that the Widow, Annah Chesimet, passed away on 5th April 2022, and his brother, Joseph Mutai, passed away on 13th November 2014. Copies of their death certificates were annexed as exhibits “WCM-3” and “WCM-4”.
7. Secondly, the Applicant deponed that he discovered two assets that belonged to the deceased but were omitted from the schedule of assets during the initial confirmation. These assets are:
 - a) Plot No. Block 8939/xx, Bomet Municipality.
 - b) Shares in Safaricom PLC.
8. The Applicant contends that the omission was not intentional, fraudulent, or mischievous. He states that it could not have been discovered with ordinary diligence at the time of filing for the confirmation of the grant.
9. The Applicant has proposed a fresh mode of distribution. He deponed that this new distribution factors in the newly discovered assets and addresses the shares that were to go to the late Annah Chesimet and the late Joseph Mutai. Regarding the late Joseph Mutai, the Applicant proposes that his share devolve to his wife, Miriam Chepogeno, to hold on behalf of his children. He further avers that all the surviving beneficiaries have consented to this new distribution. The proposed distribution is detailed in paragraph 11 of his supporting affidavit.
10. I have carefully considered the application, the supporting affidavit, and the annexures. The main issue for determination is whether the Applicant has met the threshold for review of the orders made on 6th May 2014.
11. The application is premised on Order 45 of the Civil Procedure Rules. While the Civil Procedure Rules are not strictly applicable to succession proceedings, Rule 63 of the Probate and Administration Rules makes certain provisions of the Civil Procedure Rules applicable. However, this court’s power to review its own orders in succession matters is also inherent under Section 47 of the [Law of Succession Act](#), which grants the court wide jurisdiction to make such orders as may be expedient for the interests of justice.
12. For an application for review to succeed under Order 45 Rule 1, of C.P.R. an applicant must demonstrate;
 - a) The discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time the order was made; or
 - b) A mistake or error apparent on the face of the record; or
 - c) Any other sufficient reason.
13. In the present case, the Applicant has brought forth two specific grounds that, in my view, constitute sufficient reasons to warrant a review.
14. First, the discovery of new assets, Plot No. Block 8939/10 Bomet and Safaricom shares, is a significant development. The duty of a personal representative is to administer the whole of the deceased’s estate. The omission of these assets means the distribution confirmed in 2014 was incomplete. The Applicant’s deposition that this omission was not deliberate and could not have been discovered through ordinary diligence at the time is plausible, and I am inclined to accept it.



15. Second, the death of two beneficiaries before the vesting of their shares is a matter that fundamentally alters the administration of the estate. The shares that were to vest in Annah Chesimet (the Widow) and Joseph Mutai cannot simply be transferred to their names now that they are deceased. Their respective shares in this estate now form part of their own estates. This change in circumstances is a crucial factor that the court must consider to ensure the estate is wound up properly and the rightful beneficiaries benefit.
18. The Applicant has presented a new, comprehensive mode of distribution that seeks to address both the new assets and the deceased beneficiaries. The proposal that the share of the late Joseph Mutai be held by his widow, Miriam Chepngeno, on behalf of his children appears to be an attempt to ensure the children's inheritance is protected. The Court notes the averment that this mode has been consented to by the beneficiaries.
19. The justice demands that the estate of the deceased be administered completely and accurately. The current Certificate of Confirmation of Grant is outdated and does not reflect the current reality of the estate's assets or the status of its beneficiaries. To proceed with vesting the assets as per the 2014 orders would lead to complications and potential injustice.
20. Consequently, I find that the Applicant has made out a sufficient case for granting the orders sought.
21. Accordingly, this Court makes the following orders:
 - a) The orders of this Court made on 6th May 2014 confirming the Grant of Letters of Administration are hereby reviewed.
 - c) The Certificate of Confirmation of Grant issued on 6th May 2014 is hereby reviewed and set aside.
 - d) The Grant of Letters of Administration Intestate issued on 29th April 2013 is hereby confirmed, and a fresh Certificate of Confirmation of Grant shall issue. The mode of distribution set out in paragraph 11 of the Applicant's Supporting Affidavit sworn on 27th January 2026 shall apply.
 - e) Given the circumstances, there shall be no order as to costs.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 10TH DAY OF MARCH, 2026.

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J. K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Chepkorir holding brief for J. K. Mutai for Petitioner

