

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**SUCCESSION CAUSE NO.E066 OF 2025**

**IN THE MATTER OF THE ESTATE OF DAVID KIPKOSGEI  
SITIENEI (DECEASED)**

**SARAH CHEROP SITIENEI (The Legal administrator of the  
late DAVID KIPKOSKEY SITIENEI)**

**.....PETITIONER**

**VERSUS**

**KIPCHUMBA KOSGEI SITIENEI.....1<sup>ST</sup>  
RESPONDENT**

**PHILEMON KOSGEI.....2<sup>ND</sup>  
RESPONDENT**

**JAMES KIPCHIRCHIR KOSGEI.....3<sup>RD</sup> RESPONDENT**

**KIPRONO KOSGEI.....4<sup>TH</sup>  
RESPONDENT**

**HARON KIPTARBEI KOSGEI.....5<sup>TH</sup>  
RESPONDENT**

**RULING**

1. Sarah Cherop Sitienei, the petitioner/applicant herein has brought this application dated 3/9/2025 seeking the following reliefs/orders;

**(i) Spent**

**(ii) Spent**

**(iii) Upon grant of prayer (i) and (ii) above, this Hon court be pleased to issue an order of temporary injunction to restrain the respondents Kipchumba Kosgei Sitienei, Philemon Kosgei, James Kipchirchir Kosgei, Kiprono Kosgei and Haron Kiptarbei Kosgei the deceased's sons by themselves or their children and/or any other person acting on their behalf or through their instructions from ploughing on, cutting down trees, constructing, developing or in any other way encroaching into deceased's front portion of land (Cherangany/Nzoia Block 4(Mwaita)/38) bordering the main road and the homestead occupied by the widow or any other portion (Cherangany/Nzoia Block 4 (Mwaita)/38) which the widow has been occupying/utilizing since the deceased's death pending the hearing and determination of this cause.**

***(iv) That pending the hearing and determination of the succession proceedings herein, this court be pleased to make an order for the preservation of the parcel of land known as Cherangany/Nzoia Block (Mwaita)/38 and that status quo prevailing on portions of occupation and utilization at the time of the deceased's death be maintained until the hearing and determination of the succession proceedings herein.***

***(v) That the OCS Cherangany police station be directed to ensure compliance with the orders issued.***

***(vi) Costs be in cause.***

2. The applicant has listed the following grounds;

*(a) That the deceased passed on on 4/9/2018 leaving behind the widow, the applicants herein and other children.*

*(b) That at the time of his death the family of the deceased were settled on the estate herein with each person occupying and utilizing respective portion.*

*(c) That the homestead of the deceased is situate at a specific part of the estate located immediately next to the main road.*

- (d) That the daughters of the deceased have their specific portions for ploughing.*
- (e) That the sons of the deceased have threatened to encroach into the portion next to the main road bordering the homestead for malicious reasons.*
- (f) That the sons have also threatened to encroach on the deceased homestead occupied by the widow as well as portions allocated to the daughters for ploughing with intention of dispossessing them.*
- (g) That the respondents' action is tainted with malice and is intended to waste away the deceased assets before the proceedings are concluded.*
- (h) That it is fair and just for this court to intervene and save the estate for the benefit of distribution to the beneficiaries as required by law.*
- (i) That unless this court intervenes distribution and allocations will prove difficult and impossible.*
- (j) That this court has the authority and discretion to grant the prayers sought.*

3. The applicant has sworn affidavit in support of this application where she has mainly reiterated the above grounds and in addition given a full list of all beneficiaries who are all adults. She has also exhibited a Chief's letter in that regard.

4. She further depones that she is a daughter to the deceased and that the deceased left behind several assets including

parcel No.Cherangany/Nzoia Block 4(Mwaita)/38 measuring 46.01Ha.

5. That the said parcel comprises the parents' homestead occupied by the widow now aged around 88 years old and that the respondents' homesteads are away from the parents' homestead but have now threatened to encroach into the homestead.
6. She seeks a preservation order to stop them from encroaching and allow the daughters also benefit from their respective portions.
7. The respondents through a replying affidavit of Kipchirchir Kosgei Sitienei sworn on 14/10/25 have opposed this application.
8. He avers that the applicant is not an administrator. That they had reached a family consensus to have himself, Philemon Kosgei and Haron Kiptarbei Kosgei as the administrators.
9. He further avers that the parcel of land Cherangany/Nzoia Block 5(Mwaita)/38 has never been subdivided or transferred to individual family members. In his view the issue of encroachment cannot therefore arise.
10. He depones that their mother occupies the homestead and has not complained.
11. He avers that a temporary injunction will prejudice the sons since they are in occupation and have built homes in the estate.

12. This court has considered the application herein and the response made. I have perused through extensive submissions made by the applicant through counsel and the response by the respondents.
13. The reliefs being sought herein are interlocutory in nature. The cause has just been filed and is awaiting gazettelement. It is true that no administrator/administratrix has been appointed. What has been filed here is a petition for letters of administration by Sarah Jerop Sitienei who avers that she has done so in her capacity as the daughter of the deceased. She has also brought the present application seeking to have the estate preserved and ensure that each beneficiary has a piece to utilize and the widow be left to occupy the homestead and the surrounding area.
14. This court finds that the objection or opposition raised is superficial because the respondents have not contested the fact that the applicant is a daughter to the deceased or that the daughters just like sons are equally entitled to some enjoyment or utilizing of the estate in the interim pending the process of succession or administration of the estate of the deceased. The respondents have stated that the applicant has no locus in this succession proceedings because she has not been appointed as the administratrix of the estate but as I have observed above no one has been appointed because the cause is yet to be gazetted at least to best of the knowledge of this court at the time of writing this

ruling. However the fact that no one has been appointed administratrix is no license to anyone to intermeddle with an estate of a deceased person because it is against the law.

15. This court finds that the balance of convenience tilts in favour of preservation of the estate and maintenance of status quo as at the time the deceased died. Each beneficiary shall continue occupying/utilizing the respective parts the deceased left them until this cause is determined. For avoidance of doubt, the homestead and the area surrounding it including where the deceased utilized shall be in the hands of the widow in the interim and she will be at liberty to utilize in the manner she deems fit including allowing voluntarily any of her children to utilize it for her own benefit or the benefit of the beneficiary.

I will not make any order as to costs. I will direct the Area Chief in conjunction with OCS Cherangany police station to ensure that the status quo (as left by the deceased) is maintained pending the determination of this cause. That way no beneficiary is prejudiced and the widow will be left undisturbed pending the determination of this cause.

**DELIVERED, DATED and SIGNED at KITALE this .....10<sup>th</sup> .... day of .....MARCH....., 2026.**

**HON JUSTICE R.K. LIMO**  
**KITALE HIGH COURT**

**Ruling delivered in open court**

**In the presence of**

**Teti holding brief for petitioner**

**Ledisha for the applicant**

**Duke/Chemosop/Joseph - Court assistants**