

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
SUCCESSION CAUSE NO. 50 OF 2012

**IN THE MATTER OF THE ESTATE OF THE LATE GEORGE
CHUMO MIBEI alias GEORGE CHUMO A. MIBEI alias GEORGE
CHUMO MIBEY (DECEASED)**

**GEOFFREY
LANGAT.....BENEFICIARY/APPLICANT**

VERSUS

**WESLEY KIPNGETICH
KIGEN...ADMINISTRATOR/RESPONDENT**

AND

**CHEPKEMOI VICTOLINE (Suing on behalf of the Estate
of the late ZEDDY CHEPKOECH**

**MIBEI -
DECEASED).....APPLICANT/BENEFICIARY**

VERSUS

**WESLEY KIPNGETICH
KIGEN.....1ST
RESPONDENT/ADMINISTRATOR**

**ANDREW MIBEI.....2ND
RESPONDENT/ADMINISTRATOR**

AND

**ALICE CHEPKEMOI
MIBEI.....BENEFICIARY/APPLICANT**

VERSUS

**ANDREW MIBEI.....1ST
PETITIONER/RESPONDENT**

**WESLEY KIPNGETICH KIGEN.... 2ND
PETITIONER/RESPONDENT**

RULING

1. Before this Court for determination are three distinct applications arising from the estate of the late George **Chumo Mibei (hereinafter "the deceased")**. The deceased died on 5th May, 2011, leaving behind two houses with multiple beneficiaries.
2. The Grant of Letters of Administration intestate was initially made to **Andrew Mibei** and **Stanley Cheruiyot Langat** (now deceased) on 11th March, 2013. Subsequently, on 30th October, 2017, the Court delivered a Ruling distributing the estate between the two households. A Certificate of Partial Confirmation of Grant was later issued on 31st July, 2024, facilitating transmission to the 1st House.
3. What was anticipated to be a straightforward administration has, regrettably, metamorphosed into protracted litigation characterized by mutual acrimony, cross-allegations of intermeddling, exclusion, and non-disclosure. The Court has carefully considered the pleadings, affidavits, written submissions, and the bundles of authorities filed by the respective parties.

4. The applications falling for determination are;

a) The Summons dated 8th May, 2025 by Geoffrey Langat (the "**Geoffrey Langat Application**") seeking prohibition orders against the Respondent and the Kericho Land Registrar from dealing with titles known as **LR Nos. KERICHO/KIPKELION/CHEPSEON BLOCK 11(SITIAN) 379, 380, 381** and **382**, and an order of mandamus to cancel the said titles.

b) ***The Amended Notice of Motion dated 1st November, 2024 by Chepkemai Victoline (suing on behalf of the estate of the late Zeddy Chepkoech Mibei) (the "Chepkemai Victoline Application") seeking orders to compel the administrators to render accounts, a finding that the Respondents have not completed administration, and orders compelling the surveyor to hive off her 8.6 Hectares and compelling the Respondents to execute transmission documents.***

c) ***The Summons for Rectification of Grant dated 15th April, 2025 by Alice Chepkemai Mibei (the "Alice Chepkemai Application") seeking to be enjoined as an administrator pursuant to Section 74 of the Law of Succession Act and Rule 43(1) of the Probate and Administration Rules.***

5. This Court has to determine the Notice of Preliminary Objection dated 15th August, 2025 filed by **Alice Chepkemoi Mibei** against Geoffrey Langat's application, challenging the jurisdiction of this Court on grounds of being *functus officio* and that the dispute properly lies before the Environment and Land Court.

6. Before delving into the merits of the substantive applications, it is important to first dispose of the Preliminary Objection raised by **Alice Chepkemoi Mibei** against the Geoffrey Langat Application.

7. The grounds of objection are twofold; first, that this Court is *functus officio* having fully discharged its duty following the partial confirmation of grant issued on 24th October, 2023; and second, that this Court lacks jurisdiction as the application seeks prohibition and mandamus orders over transmitted parcels of land which offends Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act.

8. The principle of *functus officio* is well settled. In **Jersey Evening Post Limited v Al Thani [2002] JLR 542**, the Court observed that a court is *functus* when it has rendered all the decisions that it can on the issues before it. However, Section 47 of the Law of Succession Act donates wide jurisdiction to the High Court to entertain any application and determine any dispute under the Act. Rule 73 of the Probate and Administration Rules further preserves the inherent power of the court to make such orders as may be necessary for the ends of justice.

9. This Court takes the view that the mere issuance of a Certificate of Confirmation of Grant does not render the court *functus officio* where there are allegations that the administrators have acted in breach of the confirmed grant or have failed to complete administration. To hold otherwise would leave beneficiaries without any recourse in the face of administrative malfeasance. As was held In ***re Estate of Mwaura Njoroge (Deceased) [2019] eKLR***, "***The Court cannot fold its arms when administrators act in breach of their statutory duty.***"

10. On the second limb regarding jurisdiction of the Environment and Land Court, this Court notes that the dispute fundamentally revolves around the administration of a deceased person's estate and the implementation of a confirmed grant. The prayers sought, including prohibition and mandamus, are ancillary to the core function of this court in supervising the administration of estates. The Environment and Land Court deals with disputes over title and occupation of land, whereas this Court's mandate under the Law of Succession Act is to ensure due administration of estates in accordance with confirmed grants. The two jurisdictions are distinct.

11. In the persuasive authority of ***In re Estate of the Late Nathaniel Kibitok Sieley (Deceased) [2026] KEHC 2012 (KLR)***, the Court affirmed the supervisory jurisdiction of the High Court in succession matters over the implementation of confirmed

grants. Accordingly, the Preliminary Objection lacks merit and is hereby dismissed.

12. Geoffrey Langat, a beneficiary from the 2nd House, moved this Court by way of Summons dated 8th May, 2025 seeking prohibition orders against the Respondent and the Kericho Land Registrar from dealing with the resultant titles being LR Nos. 379, 380, 381 and 382, and an order of mandamus to cancel the aforesaid titles.

13. The gravamen of his application is that the Respondent has oppressed, ejected, and taken up the property for his exclusive use to the exclusion of the Applicant and other beneficiaries, and is currently selling the same to third parties. He invokes Section 45 of the Law of Succession Act on intermeddling.

14. In response, **Wesley Kipngetich Kigen**, the 1st Respondent/Administrator, swore a Replying Affidavit on 14th March, 2025. His defense is instructive. He depones that the dispositions made in the 2017 Ruling were never effected until 2023 when they filed an appropriate application. He produced a Certificate of Partial Confirmation of Grant issued on 31st July, 2024 ("WKK 2") which facilitated the transmission to the 1st House only. Crucially, he depones that the 2nd Household's entitlement (60.32 Hectares), now comprised in Title Nos. **KERICHO/CHEPSEON/BLOCK 11(SITIAN) 377, 380, 398** and **400**, remains registered in the name of the deceased, as

evidenced by Certificates of Official Search marked "WKK 4(a)-(d)".

15. The Court has carefully perused the said Certificates of Official Search. They confirm that the parcels allocated to the 2nd House remain in the name of the deceased. This factual matrix fundamentally undermines the Applicant's case. If the 2nd House's land remains untouched and registered in the deceased's name, the allegation of intermeddling and exclusion cannot stand.

16. It is trite law that an administrator cannot be said to have intermeddled with or excluded beneficiaries from property that still remains vested in the deceased and has not been transmitted. The Applicant's remedy lies not in seeking prohibition and cancellation of titles belonging to the 1st House, but in taking proactive steps to have the 2nd House's share transmitted to the beneficiaries in accordance with the Certificate of Confirmation of Grant.

17. The Applicant has not demonstrated any steps taken by the 2nd House to effect transmission of their entitlement. In the absence of such steps, the administrators cannot be faulted for proceeding with transmission to the 1st House under a valid Certificate of Partial Confirmation of Grant.

18. Accordingly, the Geoffrey Langat Application fails and is hereby dismissed. Each party shall bear their own costs.

19. **Chepkemoi Victoline**, suing as the administrator ad litem of the estate of her late mother **Zeddy Chepkoech Mibei** (who died on 10th June, 2012), filed an Amended Notice of Motion dated 1st November, 2024. She holds a Limited Grant of Letters of Administration ad litem issued on 14th June, 2023 ("CV-3"), which grants her authority to represent her mother's estate.

20. Her case is that her late mother was allocated 8.6 Hectares from LR No. **KERICHO/CHEPSEON/BLOCK 11(SITIAN)/2** under the Certificate of Confirmation of Grant issued on 30th October, 2017. She contends that the Respondents carried out transmission of the estate without her knowledge, excluded her, and that part of her mother's portion has been disposed of to third parties. She seeks orders compelling accounts, a finding of incomplete administration, and orders for the surveyor to hive off her 8.6 Hectares and for the Respondents to execute transmission documents.

21. The 1st Respondent, **Wesley Kipngetich Kigen**, filed a Replying Affidavit on 10th March, 2025, reiterating that the 2nd House had never sought to effect their dispositions. The 2nd Respondent, **Andrew Mibei**, filed a Replying Affidavit on 7th March, 2025, which introduces a game-changing narrative.

22. **Andrew Mibei depones** that following the Court's Ruling on 30th October, 2017, all beneficiaries, including the Applicant, were shown their portions by surveyors appointed by both families and

have since settled thereon. He makes the grave allegation that the Applicant settled on her portion and later sold the same to third parties while awaiting issuance of title deeds. He annexes sale agreements between the Applicant and third parties marked "AM-1".

23. The Court has not had the benefit of perusing the said sale agreements as they were not annexed to the documents placed before this Court. However, the Applicant, in her Written Submissions dated 21st October, 2025, makes no reference to these sale agreements nor attempts to rebut the serious allegations contained in **Andrew Mibe's** affidavit. Her submissions proceed on the premise that she was wholly excluded, without addressing the counter-narrative that she took possession and sold her portion.

24. The law on affidavit evidence is clear. Where a deponent makes serious allegations that are not controverted by the opposing party, the Court is entitled to draw an inference that the allegations are admitted. In **re Estate of Mutobera Imbai Alexander (Deceased) [2023] KEHC 22984 (KLR)**, the Court emphasized that a party seeking equitable relief must come with clean hands and must disclose all material facts.

25. The Applicant's failure to respond to the allegation of sale is fatal to her application. If she indeed sold her portion to third parties, she cannot simultaneously approach this Court seeking to

have the same portion hived off and transmitted to her. That would amount to unjust enrichment and an abuse of the court process. The law does not permit a beneficiary to approbate and reprobate.

26. Section 83 of the Law of Succession Act imposes duties on administrators to complete administration and render accounts. However, these duties are owed to beneficiaries who have not already received their entitlement. Where a beneficiary has taken possession and alienated their portion to third parties, they cannot invoke the court's equitable jurisdiction to compel further transmission.

27. In the persuasive authority of In ***re Estate of Magdalena Kabon Sawe (Deceased) [2024] KEHC 9228 (KLR)***, the Court declined to grant preservatory orders where there were unresolved factual disputes regarding occupation and alienation of estate property.

28. The Applicant's prayers for accounts and completion of administration are premised on the foundation that she remains a beneficiary entitled to 8.6 Hectares. That foundation has been seriously undermined by the uncontroverted allegations that she sold her portion. This Court cannot grant the orders sought on the basis of contested facts that the Applicant has failed to clarify.

29. Accordingly, the ***Chepkemoi Victoline*** Application fails and is hereby dismissed. Each party shall bear their own costs.

30. **Alice Chepkemoi Mibei**, a biological child of the deceased from the 2nd House, filed a Summons for Rectification of Grant dated 15th April, 2025 seeking to be enjoined as an administrator. She contends that the Grant of Letters of Administration issued on 11th March, 2013 to **Andrew Mibei** and **Stanley Cheruiyot Langat** (now deceased) requires rectification to reflect her name.

31. She depones that the court granted partial confirmation for the 1st House, but the 2nd House is yet to complete the succession process. She alleges that the current administrator (Andrew Mibei) has not made any efforts to complete the process, hence her application to be enjoined to assist in administering and completing the succession.

32. Significantly, none of the Respondents filed a response disputing this application. In her submissions dated 15th August, 2025, the Applicant's counsel emphasized this lack of opposition.

33. Section 74 of the Law of Succession Act empowers the court to rectify grants of representation. Rule 43(1) of the Probate and Administration Rules provides for the procedure. Section 56(1)(b) of the Act permits grants to be made to up to four persons in respect of the same property.

34. The Court notes that one of the original co-administrators, **Stanley Cheruiyot** Langat, is deceased. While Section 81 of the Law of Succession Act provides that where one of several administrators dies, the administration vests in the surviving

administrator, this provision applies where the surviving administrator is actively administering the estate. In this case, there are allegations that the surviving administrator from the 2nd House has not made progress, and the 2nd House remains undistributed.

35. In the present case, the Applicant does not seek to replace a deceased administrator under Section 81, but rather to be added as a third administrator alongside **Andrew Mibei**, representing the 2nd House and **Wesley Kipngetich Kigen**, representing the 1st House. This falls within the four-administrator limit prescribed by Section 56(1)(b).

36. The Applicant has demonstrated sufficient interest in the estate as a beneficiary from the 2nd House. The lack of progress in distributing the 2nd House's share is a matter of concern. The appointment of an additional administrator from the 2nd House may catalyze the completion of administration.

37. The Court must balance the need for expeditious administration with the potential for further discord. The 2nd House is already fractured, as evidenced by the multiple applications before this Court. Adding a third administrator may not necessarily resolve the underlying disputes; it may simply add another voice to the cacophony.

38. Having considered the matter, this Court is of the view that the Applicant's desire to participate in the administration of the

2nd House's share is legitimate. However, instead of rectifying the grant to add her as a third administrator, which may create administrative complexities, the more appropriate order is to direct that the Applicant be appointed as a co-administrator specifically for the purpose of completing the administration of the 2nd House's share, in conjunction with Andrew Mibei.

39. Accordingly, the **Alice Chepkemoi Mibei** Application partly succeeds.

40. Consequently, this Court makes the following orders in respect to the three (3) applications;

a) The Notice of Preliminary Objection dated 15th August, 2025 is hereby dismissed.

b) The Application dated 8th May, 2025 is hereby dismissed.

c) The Amended Notice of Motion dated 1st November, 2024 is also hereby dismissed.

d) Summons for Rectification of Grant dated 15th April, 2025) is hereby allowed in the following terms;

i) The Grant of Letters of Administration issued on 11th March, 2013 is rectified by adding the name of ALICE CHEPKEMOI MIBEI as a co-administrator for the limited purpose of completing the

administration and distribution of the 2nd House's share of the estate.

ii) ANDREW MIBEI and ALICE CHEPKEMOI MIBEI shall take immediate steps to transmit the 2nd House's entitlement to the respective beneficiaries within ninety (90) days.

e) Each party shall bear their own 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

Musili for Applicant/Beneficiary

Miss Tela holding brief for Otieno for 2nd Petitioner