

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
SUCCESSION CAUSE NO. 224 OF 2007

**IN THE MATTER OF THE ESTATE OF THE LATE ABRAHAM
CHERUIYOT TONUI (DECEASED)**

**ISAAC KIPKEMOI
CHERUIYOT.....APPLICANT**

VERSUS

**ROSE CHEPKIRUI TONUI.....1ST
RESPONDENT**

**CHERUIYOT JACOB.....2ND
RESPONDENT**

RULING

1. Before this Court for determination is a Chamber Summons application dated 30th June 2025 filed by the Applicant, Isaac Kipkemoi Cheruiyot. The Applicant is a beneficiary of the deceased's estate. The application is brought under Section 47 of the Law of Succession Act and Rules 49 and 73 of the Probate and Administration Rules. It seeks various orders;

a) Spent.

b) Spent.

c) THAT this Honourable Court be pleased to grant orders to the OCS Kapletundo Police Station to provide adequate security to the District Surveyor, Bomet County, during the undertaking of the demarcation and sub-division of land parcel KERICHO/KIPSONOI/1351.

d) THAT any other or further order as this Honourable Court may deem just and expedient.

e) THAT costs of the application be in the cause.

2. The application is opposed. The 1st Respondent, **Rose Chepkirui Tonui**, swore a Replying Affidavit on 28th July 2025 in opposition to the application.

3. The Applicant's case is set out in his Supporting Affidavit sworn on 30th June 2025 and the grounds on the face of the application.

4. The Applicant deposes that a Grant of representation was confirmed by this Court and a Certificate of Confirmation of Grant issued, distributing the deceased's property to various beneficiaries. He annexed a copy of the said Order marked "IKC 1" to his affidavit.

5. He deposes that the Respondents, together with their children, have been hostile and have prevented the Applicant and other beneficiaries from accessing and utilizing their respective portions of land parcel KERICHO/KIPSONOI/1351.

6. Most critically, the Applicant deposes that on 26th November 2024, the County Surveyor, Bomet County, scheduled an exercise to demarcate the land. However, the Respondents became wild and hostile, forcing the exercise to be aborted. He annexed a letter from the Chief marked "IKC 2" as evidence of this incident.

7. The Applicant contends that unless police security is provided, any future attempt to demarcate and sub-divide the land will be

met with similar resistance, and he will continue to suffer irreparable loss.

8. In his grounds in support of the application, the Applicant reiterates that the grant was confirmed, that the Respondents have been hostile, and that in the interest of justice, the court ought to allow the application.

9. The 1st Respondent, Rose Chepkirui Tonui, swore a Replying Affidavit on 28th July 2025 in opposition to the application.

10. She states that the application dated 30th June 2025 is full of falsehoods and malice because the Applicant is in occupation of his share and has been harvesting tea. This assertion directly contradicts the Applicant's claim that he has been prevented from accessing his portion.

11. She deposes that to the best of her knowledge, she has never hindered the Applicant from accessing and utilizing his portion as per the Grant dated 17th October 2019.

12. She states that the land has already been surveyed in accordance with the Grant issued on 17th October 2019, and that the beneficiaries are in the process of registering the Grant and collecting their respective title deeds from the Land Registry.

13. She concludes that the application is frivolous, vexatious and an abuse of court process and should be dismissed.

14. The Certificate of Confirmation of Grant dated 22nd July 2025 is the final order of this Court distributing the estate. It allocates

specific portions of **KERICHO/KAPSONOI/1351** to the Applicant and the 1st Respondent.

15. The confirmed Grant is binding on all parties. No party has challenged the validity of the confirmed Grant.

16. The 1st Respondent, in her Replying Affidavit, does not specifically address the Chief's letter or deny its contents. She makes a general denial of the Applicant's allegations but does not challenge the authenticity or veracity of the Chief's letter.

17. In the absence of any challenge, the Court accepts that the Chief's letter exists and that it supports the Applicant's claim that a survey exercise was attempted and disrupted by the Respondents. The Chief is an independent administrative officer, and his letter carries some evidentiary weight. The Applicant's case, supported by the Chief's letter, is that a survey exercise was attempted on 26th November 2024 and was disrupted by the Respondents.

18. The 1st Respondent's case is that the land has already been surveyed and that title deeds are imminent. However, she has provided no evidence whatsoever to support this assertion. She has not produced;

(a) A survey report or mutation form from the County Surveyor.

(b) A letter from the Land Registry confirming lodgment of documents or processing of titles.

(c) Photographs or witness statements showing the Applicant on the land or the completed survey.

(d) Copies of any correspondence with the Surveyor or Lands Office regarding the survey.

19. The Applicant, on the other hand, has provided a Chief's letter which, while not conclusive proof, is prima facie evidence that a survey was attempted and disrupted.

20. The Court is mindful of the chronology. The alleged disruption occurred in 26th November 2024. The Grant was confirmed in 22nd July 2025. The Respondent claims the survey was done "in accordance with the Grant issued on 17th October 2019." However, there is no evidence before this Court of any Grant confirmed on 17th October 2019. The only confirmed Grant on record is dated 22nd July 2025.

21. It is trite law that a survey for purposes of subdivision of estate property should be based on the confirmed Grant. Any survey conducted before confirmation may not reflect the final distribution ordered by the Court and may need to be reviewed or redone.

22. Even if a survey was attempted on 26th November 2024, it predates the confirmed Grant of 22nd July 2025 and therefore cannot be said to be in accordance with the final distribution. The beneficiaries are entitled to a survey that accurately reflects their respective shares as per the confirmed Grant.

23. The Court finds, on a balance of probabilities, that the Respondent has failed to prove that a valid survey has been completed in accordance with the confirmed Grant of 22nd July 2025. The Applicant has established that a survey is necessary and that there is a risk of disruption based on past conduct.

24. Where there is a risk of breach of peace during the implementation of court orders, this Court has the power to direct law enforcement agencies to provide security to ensure compliance and maintain order. This power is derived from the Court's inherent jurisdiction and its supervisory role over the administration of justice.

25. In the case of ***re Estate of M'Mukira M'Muchai (Deceased) [2020] eKLR***, the Court held that where there is evidence of hostility or likely breach of peace during the execution of court orders, the Court can direct the police to provide security to facilitate the process.

26. The Chief's letter (IKC 2) provides prima facie evidence that there was a disturbance when a survey was previously attempted. The 1st Respondent has not challenged this evidence.

27. The Court is mindful that surveys and demarcations on disputed land often lead to violence. The past conduct of the Respondents, as evidenced by the Chief's letter, demonstrates a real and present risk that any future survey exercise may be disrupted.

28. It is in the interest of justice and public order that the survey and subdivision exercise be conducted peacefully. The beneficiaries have waited long enough for their inheritance. They should not be further delayed by obstructive conduct.

29. The Court finds that an order for police security is necessary and appropriate to ensure that the District Surveyor can carry out his work without interference and that the confirmed Grant can be implemented peacefully.

30. The Application dated 30/6/2025 is allowed. Consequently,

(a) An order is hereby issued directing the Officer Commanding Station (OCS), Kapletundo Police Station, to provide adequate security to the District Surveyor, Bomet County, during the undertaking of the demarcation and sub-division of land parcel KERICHO/KIPSONOI/1351.

(b) Each party to 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

No Appearance