



REPUBLIC OF KENYA



**In re Chelogot (Deceased) (Succession Cause 16 of 2020)
[2026] KEHC 2969 (KLR) (9 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 2969 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 16 OF 2020**

RK LIMO, J

MARCH 9, 2026

IN THE MATTER OF THE ESTATE OF TERIKI CHELOGOT (DECEASED)

BETWEEN

ANTHONY KIPCHUMBA CHELOGOT PETITIONER

AND

SAMUEL YEGO KAINO 1ST APPLICANT

TIMOTHY KIPROP YEGO 2ND APPLICANT

PHILEMON KIPCHUMBA 3RD APPLICANT

EMMANUEL KIBIWOTT 4TH APPLICANT

RULING

1. This cause relates to the estate of the late Teriki Chelogot (deceased) who died on 3rd January 2015 domiciled in Geta within Trans-Nzoia East.
2. Anthony Kipchumba Chelogot the petitioner (Respondent) herein applied for letters of administration as the only child of the deceased was granted letters of administration on 28/6/2020. The said grant was confirmed vide certificate of confirmation issued on 13th July 2021.
3. Samuel Yego Kaino, Timothy Kiprop Yego, Philemon Kipchumba and Emmanuel Kibiwott the applicants herein have moved this court vide summon for revocation of grant dated 11/7/2023.
4. They have relied on the following grounds namely;
 - i. That the proceedings to obtain the grant were defective in substance.
 - ii. That the grant was obtained through fraud and making of false statement.
 - iii. That there was concealment of material facts.



- iv. That the deceased died testate and there was a Will.
5. Samuel Yego Kaino in a sworn affidavit on 11/7/23 avers that the petitioner/respondent is not a son to the deceased because the deceased did not get any child.
6. That the deceased died testate and left a Will which he has exhibited in his affidavit.
7. He further states that he is a beneficiary in the said Will together with his co-applicants.
8. He avers that the Area Chief was aware of the Will and the beneficiaries who are in occupation of the estate.
9. He avers that upon getting the impugned grant the respondent began the process to evict them.
10. The petitioner/respondent opposed this application through a replying affidavit insisting that the deceased died intestate and faulted the applicants for dishonesty and misrepresentation.
11. This court then presided over by Hon Justice Mrima directed that the matter be canvassed through viva voce evidence.
12. The applicants' first witness (PW1) Fredrick Maoga Nyambarora stated that he is a resident of Geta and knew the deceased well. That he prepared a Will for the deceased on 9/8/2014 at her request in presence of Johah Toroitich. That the deceased distributed her property as follows;
 - A. Chepsiro/Kiptoi Block 2/Kapsimoto/160.
 - i. Samuel Yego Kaino – 2 acres
 - ii. Timothy Kiprop Yego – 1acre
 - iii. Emmanuel Kibiwott – 1acre
 - iv. Jeremiah Cheboi – 1acre
 - v. Philemon Kipchumba – 1acre
 - vi. Jonah Toroitich -5acres
(Conditional upon fencing and meeting cost of subdivision).
13. He stated that he drew the Will while serving as an Assistant Chief Geta Sub-location.
14. He stated under cross-examination that the deceased used both Kalenjin and Kiswahili when instructing him on how she wanted her property distributed. That though he did not understand Kalenjin, Jonah Toroitich translated what the deceased stated in Kiswahili. He clarified that the deceased signed by thumb printing the Will. That he did not place her name next to the mark but he witnessed the deceased thumb printing it.
15. He further stated that the deceased died at very advanced age. He further clarified that the parcel of land in question initially was known as Plot No.160 Cheptugut Farm but after registration it became known as Kapsimoto Farm.
16. Samuel Yego Kaino (PW2) on his part testified that the deceased had no child of her own as she did not give birth to any child. That the deceased took care of him since his childhood until he married and has been living on the land comprising the estate herein since 1968.
17. He testified that the deceased lived with her husband, himself and the 2nd applicant Timothy Kiprop. That he grew up with the 2nd applicant as the children of the deceased.



18. He further insisted that the petitioner/respondent is not a son to the deceased nor a dependent. He added that it is the applicants who have been in occupation of the estate.
19. Under cross-examination, he conceded that the deceased understood Marakwet language and a little Kiswahili. That he did not know if PW1 understood Marakwet language. He also stated that Philemon Kipchumba, the 3rd applicant was his son and was a beneficiary because he is named in the Will.
20. He stated that his mother named Tapkigen was a sister to the deceased and that the husband to the deceased had 2 wives, the deceased and one Talaa Chelogot. That the said Talaa Chelogot is the mother of the petitioner/respondent. That the petitioner had a brother named Evans.
21. Timothy Kiproop Yeyo (PW3) testified and joined hands with Samuel Yego Kaino in his evidence. He added that he was brought up by the deceased though his own mother was Pauline Sute and his father was William Yego.
22. He stated that the petitioner lives in Marakwet and was brought up there by his mother Talaa whose husband was Cheptoo. He added that his mother was a sister to the deceased.
23. He added that PW1 informed them about the Will and that the custodian of that Will was Jonah. He conceded that the deceased spoke little Kiswahili but was fluent in Marakwet language.
24. Philemon Kipchumba (PW4) testified that he was a son to PW2 and was born and brought up in the deceased's land. That he knew his father (PW2) as a son to the deceased in this cause.
25. He further stated that the deceased and Talaa were co-wives and were married to one Chelogot. That the petitioner was a son of Talaa and Chelogot.
26. He stated that he learnt about the Will of the deceased at his funeral.
27. The petitioner/respondent in opposition to the summons for revocation testified and conceded that the deceased was his step-mother. That he was a son to Talaa and Chelogot. That the deceased was not blessed with any child of her own.
28. According to him, the Will exhibited by the applicants is a forgery aimed at misleading the court and disinheriting him. He contested the signature on the Will stating that it did not belong to the deceased.
29. He stated that the date of the alleged Will is an indication that it was suspicious because in his opinion the deceased was old and sickly.
30. He further contends that the language used in the Will is English yet the deceased who was 94 years did not understand English.
31. He faulted the applicants for occupying the estate unlawfully.
32. He stated that Jeremiah Cheboi is a bona fide purchaser from his father.
33. He tendered the copy of Death Certificate of his late father Cheptoo Chelogot (DExhibit1), the Death Certificate of his late mother Teriki Chelogot (Dexhibit 2), the Chief's letter (DExhibit 3), Family meetings minutes (DExhibit 4). He added that he does not recognize the Will as in his view the same is not valid.
34. He conceded under cross-examination that the estate is occupied by the applicants though he holds a title that he got through transmission. He stated that he was a step son to the deceased though in the petition for letters of administration he indicated that he was a son. He conceded that the deceased did not have children of her own as she was not blessed with biological children.



35. Paul Mengich (DW2) testified and stated that he knew the deceased as the wife of the late Cheptoo Chelogot. He stated that he knew the petitioner as a step-son of the deceased. He stated that he was aware of the arrangements to have the land comprising the estate to be registered in the name of the deceased were adding that the same was to ensure the interests of the deceased are secured incase the husband predeceased her and that the deceased feared that the step children might kick her out.
36. Simion Chepkonga Cheserek (DW3) testified that he was from Marakwet and knew the deceased as a wife of Cheptoo Chelogot who hailed from Moin Location where he served at one time as the Chief. He stated that the family later relocated to Kapcherop. He confirmed that he was the author of a letter dated 5/2/2008 which he tendered as DExhibit3.
37. The parties in this matter filed their respective final submissions to support their respective positions.
38. The applicants through their learned counsel M/s Anassi Momanyi & Co Advocate made written submissions dated 19/1/2026. They submit that they have demonstrated concealment of material facts by the petitioner/respondent. They fault the respondent for lies in the petition filed indicating he was a son of the deceased yet he knew he was a step-son as he later conceded in the proceedings.
39. They submit that their occupation of the estate since they were young has been confirmed by the respondent. That the Chief Koitoror Location vide a letter dated 15/6/2020 confirmed that there are other beneficiaries of the estate yet the petitioner/respondent failed to disclose that material fact.
40. They further submit that there was existence of a Will left behind by the deceased and rely on the evidence of Fredrick Maoga Nyambarora (PW1) a retired Chief who tendered the written Will (PExhibit1) indicating how she wished her estate to be distributed. It is their contention that the deceased died testate and it was erroneous for the petitioner/respondent to petition for a grant of letters of administration instead of grant of probate.
41. They submit that under the provisions of section 5 of the *Law of Succession Act* the deceased had the capacity to make a Will and that it was incumbent upon the respondent to prove that the testator at the time she made the Will was not of sound mind or any other incapacity.
42. They contend that the deceased signed the impugned Will by affixing her thumbprint on the Will in front of 2 attesting witnesses namely the Assistant Chief and Jonah Toroitich. They submit that the allegations of fraud made by the respondent have not been proven.
43. The respondent on the other hand vide written submissions through learned counsel M/s Mukabane Kagunza & Co Advocate dated 30/10/2025 contends that the Will is invalid because the deceased only understood vernacular language yet the Will was written in English. He further submits that the person who did the translation one Jonah Toroitich was never called to testify casting doubts and suspicions on the contents of the Will.
44. He further contends that the signature or the mark of the testator cannot be discerned at what place it was affixed and the person who thumb printed is not shown making it difficult to know if it was actually the deceased. He relies on the case of *Re Julius Mimano (deceased) (2019) KEHC 10103 (KLR)* where the court invalidated a Will because the proponents did not call witnesses who attested it to prove that the deceased executed it. The respondent points out that in this cause the author of the Will, the attesting witness namely Jonah Toroitich was not called to testify to give validity to the Will.
45. The respondent further casts doubts on the free will of the deceased given her advanced age of 94 years and her state of health at the time.



46. This court has considered the summons for revocation of grant herein and the evidence adduced. I have also considered the response made by the petitioner/respondent herein. This court has already set out the background of this matter. This is fairly a straight forward matter. The applicants are seeking for revocation of grant and have invoked the provisions of section 76 of *Law of Succession Act*.
47. Section 76 of *Law of Succession Act* provides as follows;
- “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.”
48. The applicants have raised basically two issues for determination which are;
- i. Whether there was concealment of material fact by the petitioner/respondent and
 - ii. Whether the deceased left a valid Will.
- 49.
- (i) Whether there was concealment of material fact(s).
- The gist of the applicants’ grievance in this application is that the petitioner is not a son to the deceased. That the deceased left them behind as dependants.
50. The relationship between the petitioner/respondent is uncontested in this cause. He is a step son to the deceased. His biological mother was known as Talaa Chelogot (deceased). It is not contested that the deceased herein Teriki Chelogot was married to Cheptoo Chelogot (deceased) as a 2nd wife while the 1st wife was Talaa Chelogot, the mother to the respondent.
51. It is also not contested that the deceased herein did not have her own biological children going by the evidence tendered by both the applicants and the respondent.
52. This court has perused through the petition for letters of administration herein and in particular Forms P&A 5 and 80. In both documents, the petitioner/respondent described himself s ‘son’ to the deceased and the only dependent to the deceased. That information is obviously misleading because as conceded by the respondent he was a ‘step son’ not ‘son’ to the deceased.
53. Secondly and more importantly going by the letter from Chief Kiptoror Location dated 15/6/2020 filed by petitioner/respondent himself, even without considering the evidence adduced by the applicants, clearly shows that the deceased had other dependants and/or other people claiming beneficiary interests on the estate.
54. It is obvious that the respondent knew that the applicants were in occupation of the estate and that is why he sought to have them evicted. He failed to disclose that fact which I find material at the time he petitioned for letters of administration. To that extent, this court finds that the applicants have



established sufficient ground under section 76 of the *Law of Succession Act* to have the grant herein revoked.

55. But before revoking the grant, I will address the second issue for determination in this application.

56.

(ii) Whether the deceased died testate with a valid Will.

A Will is defined under section 3(1) of *Law of Succession Act* as “a legal declaration by a person of his wishes or intentions regarding the disposition of his property after his death, duly made and executed according to the provisions of Part II.....”

57. The provisions of section 11 of the Act provides for ‘the requirements needed for a written Will (such as the one in question herein) for a written Will to be valid’. It states;

No written will shall be valid unless—

- a. the testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;
- b. the signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;
- c. the will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

A written Will, will be considered valid if same meets the following requirements;

- i. It must be signed or a mark affixed or signed by another person in presence of and direction of a testator.
- ii. The signature of testator or person signing for him has to appear or be placed in such a manner that it shows the testator wanted to give effect to it.
- iii. Be attested by 2 competent witnesses.

58. The other requirement of course is capacity but the law presumes that a testator is free and has capacity to write a Will unless it is proved that he was incapacitated by any reason or condition of the mind.

59. Now let us look at the copy of the Will exhibited by the applicants and determine if it complies with the above requirements. There is no doubt looking at it that the same was drawn at the office of the Assistant Chief. The author of the Will though not quite indicated, testified in this court as PW1-Fredrick Maoga Nyambarora. He confirmed that he drew the Will at the request of the deceased who was accompanied by Jonah Toroitich who attested the deceased making her Will.

60. This court therefore finds that the deceased appeared to have demonstrated an intention to make a Will. That perhaps explains why she went to the office of the Assistant Chief whom she must have considered to be reliable in ensuring that her Will was respected.

61. Unfortunately, the drawing of the Will appears to have left out crucial gaps or legal requirements to make it valid. For one, the way the signature or thumb print was placed was a bit mixed up because



from the copy supplied to this court there are two thumb prints on the top and bottom of the Will with no name or initial of the person who placed that thumb print.

62. Secondly the 2 attesting witnesses that is the Chief and Jonah Toroitich also did not place their signatures against their names to show that it is them who were executing the Will as attesting witnesses. What is left from the signatures or thumb prints are speculations. That is to speculate that the thumb prints must have been the deceased's and the signature must be for both the Chief and Jonah Toroitich. Now that is a bit risky. Validity of a Will cannot be based on assumptions or speculations. The law requires that the testator and attesting witness must clearly execute the Will by signing or affixing their mark on the Will and so placed to show intention to give effect. In other words the person signing must be shown. The signature or mark whether thumb print or any other mark should be against a named person for clarity and certainty.
63. Thirdly and more importantly the 2nd attesting witness was not called to come and verify that he signed and saw the deceased signing or thumb printing the Will in compliance with requirements of section 11(c) of *Law of Succession Act*.
64. The other legal gap is that the evidence tendered in this cause indicates that the deceased was familiar with Marakwet language and spoke little Kiswahili. The person who drew the Will (PW1) stated that he does not understand Marakwet language and depended on Jonah Toroitich to translate. The legal requirements of translation or a person translating a Will is that he must prepare a Certificate of Translation indicating that he exactly translated what a testator stated in a different dialect to English or Kiswahili. In this matter apart from the fact that Jonah Toroitich never came to testify also did not produce or prepare a Certificate of Translation from Marakwet dialect to English which language was used by the chief in of drawing the impugned Will. I am not however persuaded that the Will is fraudulent as submitted by the respondent. It just fails to meet the legal requirements for its validity.
65. In light of the above highlighted legal hiccups the Will dated 9/8/24 failed to meet the legal requirements stipulated under section 11 of the *Law of Succession Act*. The Will was not properly executed as required by law and therefore invalid. The proceedings herein will therefore be treated as intestate and deceased will be assumed to have died intestate.

In summary this court finds that the applicants have raised sufficient ground to have grant issued on 29/6/2020 and confirmed on 13/7/2021 annulled or revoked which I hereby do. The same is hereby revoked and the titles or any subdivision done is hereby canceled. The title shall revert back to the name of the deceased as this court deals with the question of dependency under section 29 of the *Law of Succession Act* and the distribution of the estate.

I will not make any order as to costs so each party to pay own costs.

DELIVERED, DATED AND SIGNED AT KITALE THIS 9TH DAY OF MARCH , 2026.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Ruling delivered in open court

In the presence of

Mukabane for the petitioner

Wainaina for the objectors

Duke/Chemosop- Court assistants

