

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
SUCCESSION CAUSE NO. 32 OF 2018
IN THE MATTER OF THE ESTATE OF ELIJAH KIPTARUS
KENEI-(DECEASED)

DAVID KIPKORIR TARUS.....1ST
RESPONDENT

HOSEA KIBET TARUS.....2ND
RESPONDENT

STANLEY KIPTOO KENEI TARUS.....3RD
RESPONDENT

VERSUS

ELISHEBA CHEPKOSGEI LELMET.....
.....APPLICANT

RULING

1. Elisheba Chepkosgei Lelmet, the applicant herein has moved this court through summons dated 21/10/2025 for the following orders;

- (i) That the rectified certificate of confirmation of grant dated 9/5/2025 be reviewed to bring to an end the trust granted to the***

respondents to hold properties in their behalf and in trust for Silas Kiprop Tarus.

(ii) That the applicant be apportioned the share of properties belonging to Daniel Kipngetich Tarus (deceased) out of the estate of the deceased herein.

(iii) That costs be provided for.

2. The applicant has listed the following grounds in her application namely;

(a) That the rectified grant issued to the respondents herein on 9/5/2025 gave them the share of the late Daniel Kipngetich Tarus to hold in trust for Silas Kiprop Tarus and herself.

(b) That the applicant's husband was also an administrator in this cause until his demise.

(c) That the applicant has been issued with a grant ad litem to represent the estate of her husband Daniel Kipngetich Tarus.

(d) That it is now in the interest of justice to bring the trust to an end.

3. The applicant has supported her application with an affidavit sworn on 21/10/2025 where she has reiterated the above grounds.

4. In her oral submissions in court, the applicant emotionally and in tears faulted the administrators and her brothers in law for misusing their powers as trustees to impoverish her

and her children making it hard for her to pay school fees for her children and meet other basic necessities.

5. She further accused the trustees for disposing some of the assets and taking rent proceeds from her share of the estate without giving her any cent.
6. She denied the respondents' claim that she has neglected a beneficiary named Sandra stating that her late husband did not attend her engagement.
7. She further avers in her further affidavit sworn on 14/1/2026 that her children are now adults and sees no reason why the respondents should continue holding her share with her children in trust for them.
8. She depones that the rental houses and Safaricom Booster in front of her house should be in her hands and faults the respondents for not declaring them.
9. The respondents have opposed this application through a replying affidavit and further affidavit sworn by Stanley Kiptoo Kenei Tarus the 3rd administrator herein.
10. The respondents aver that before the late Daniel Kipngetich Tarus passed on he had already sold 60 acres of his share out of 90 acres entitlement.
11. They claim that the purchasers' claim on the estate is a liability to the estate that needs to be handled with care so that the estate is not left exposed.
12. They also claim that the deceased Daniel Kipngetich Tarus had initially married one Abigael Cherotich and though

the marriage was later dissolved, there is a child of the union named Sandra who is recognized by the family.

13. They further aver that their late mother left 80.7 acres which have been shared on a temporary basis to all beneficiaries including the applicant and that the issues raised by the applicant are being addressed.
14. They also claim that out of 49.2 acres share of the applicant there is 25 acres which was given out by deceased herein to the late Philip Tongik.
15. They further fault the capacity of the applicant to move the court for the reliefs sought contending that the applicant was only granted a limited grant ad litem with respect to the estate of Daniel Kipngetich Tarus and cannot hold their late brother's share in her own name.
16. The respondents also aver that their late brother had no issue with them in the administration of the estate of the deceased in this case.
17. They aver that the late Daniel Kipngetich Tarus is entitled to 90 acres out of L.R No.6614/13 and that plans are under way to divide their mother's share.
18. They claim that they have applied to Land Control Board to carry out sub divisions and once the consent is given they are planning to do the subdivision, process the titles and bring the trust to an end.
19. They contend that there are other two parcels namely Nandi/Mutwot/143 and 149 which had been charged to

Standard Chartered Bank but that they have discharged the charge and are in the process of registering the discharge.

20. This court has set out the applicant's case as well as the position taken by the respondents. The nature of the reliefs sought in this instant application is to terminate the trust that the respondents are holding for the benefit of the applicant and her children.
21. The trust was created on account of the demise of Daniel Kipngetich Tarus who was the husband of the applicant, the brother to the respondents and a son to the deceased, the late Elijah Kiptarus Kenei.
22. This court vide a Rectified Certificate of Confirmation of grant dated 9/5/2025 granted the administrators (respondents) herein namely David Kipkorir Tarus, Hosea Kibet Tarus and Stanley Kiptoo Kenei the trust over listed properties or shares that the deceased Daniel Kipngetich Tarus was entitled to by virtue of being a son and a beneficiary of the estate of the deceased in this cause. The trust handed over the listed assets to the administrators (respondents) to manage on behalf of the applicant herein and her children.
23. The applicant in this application has accused the administrators of mismanaging the shares of assets that were meant for her late husband Daniel Kipngetich Tarus and from the way she appeared in court, it is obvious that the relationship between the applicant on one hand and the

administrators has broken down completely. She has lost her trust in them and they also do not trust her.

24. When the parties appeared in this court on 28/5/2025 they appeared to be in consensus and compromised the summons for revocation of grant dated 26/5/2025. The applicant was duly recognized as the wife of the late Daniel Kipngetich Tarus. Her complaint then was that her name was not appearing anywhere in the confirmed grant.
25. It is apparent that misunderstandings and mistrust have been simmering which has now come out through the instant application. This court finds that the tensions and differences are quite unnecessary because for one all the parties herein recognize that the late Daniel Kipngetich Tarus was a husband to the applicant and a beneficiary of the estate of the deceased herein. The share going to the late Daniel Kipngetich Tarus and the applicant by virtue of being the surviving spouse is also not contested.
26. A trustee is required by law to act in the best interest of the beneficiary of the trust but where questions are raised about the manner in which the trustee(s) are managing the affairs with respect to the trust, then trust no longer serves the purpose it was intended. In this instance this court finds that the trust held by the administrators on behalf of the applicant no longer serves the ends of justice given the raw emotions exhibited by the applicant at the hearing of this application.

27. The objections raised by the respondents in allowing the applicant manage the shares going to her late husband in my view are lame for the following reasons;

- i) *For one the issue of a beneficiary named Sandra is premature and not relevant at this stage. Furthermore the said Sandra is an adult who can pursue her own rights because there is no evidence of any incapacity on her part.*
- ii) *Secondly the claim that the late Daniel Kipngetich Tarus had sold part of his share is an issue that can be handled by the applicant because she has the capacity to pursue any cause in relation to the estate of Daniel Kipngetich Tarus by virtue of being the widow and the grant of letters of administration ad litem dated 24/5/2024 exhibited in this application.*

28. This court has power and jurisdiction under section 47 of Law of Succession Act and inherent power under Rule 73 of Probate and Administration Rules to make such orders as it considers just or orders that meet the ends of justice. In my considered view the ends of justice will be met if the applicant is granted the right and freedom to manage and hold the shares of the estate that was meant for her late husband Daniel Kipngetich Tarus. Her complaints that she does not receive any proceeds from Safaricom Booster outside her house and rent proceeds from rented premises

have not been rebutted. She is entitled to whatever her late husband was to get so that she can educate her children and meet her basic needs like any other beneficiary in this cause. This court finds no basis for the administrators to overlook her or discriminate her in any way because under Article 27(1) of the Constitution, she has a right to equal protection and benefit of the law. No one can deny her that constitutional right.

In the premises this court finds merit in the application dated 21/10/2025. The trust created over the share of the late Daniel Kipngetich Tarus in the estate of the deceased herein and currently held by the respondents is terminated. The applicant will hold the share of her late husband in the estate for her benefit and in trust of her children namely, Ivy Tarus, Sandara Cherono, Carlos Tarus and Sandra Cherop.

She is entitled to all the shares including rent proceeds that were to go to her husband and she will receive the said proceeds pending the finalization of the distribution of the estate which this court has been told is currently underway. The administrators are directed to involve the applicant in every step in the subdivision or distribution of the estate. This being a family matter, there will be no order as to costs.

DELIVERED, DATED and SIGNED at KITALE this17th day ofMARCH....., 2026.

HON JUSTICE R.K. LIMO
KITALE HIGH COURT

Ruling delivered in open court

In the presence of

Kiarie for the respondent

The Applicant present in person

Duke/Chemosop/Joseph - court assistants