

**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. E005 OF 2024**

**IN THE MATTER OF THE ESTATE OF KIPROTICH SIELE ALIAS**

**KIPROTICH ARAP SIELE**

**CHARLES KIPKOECH ROTICH ..... 1<sup>ST</sup>**

**PETITIONER**

**ROTICH ALFRED ..... 2<sup>ND</sup>**

**PETITIONER**

**VINCENT KIPLANGAT ROTICH ..... 3<sup>RD</sup>**

**PETITIONER**

**VERSUS**

**DOMINIC KIPKEMOI ROTICH ..... OBJECTOR**

**RULING**

1. In the present matter, a Grant was issued to the Petitioners on 9<sup>th</sup> October 2024.
  
2. The Objector filed an Objection dated 25<sup>th</sup> February 2025. The Objector stated that he was the deceased's son and that the Petitioners excluded beneficiaries from the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> houses. That the said beneficiaries did not consent to the appointment of the Petitioners who were all from the 1<sup>st</sup> household.
  
3. It was the Objector's case that the Petitioners also excluded Albert Koech who was their brother from the 1<sup>st</sup> household from the list of beneficiaries. That the shares and proceeds from the tea farm and motor vehicles had been concealed by the Petitioners and they were using the proceeds of the deceased's estate to the exclusion of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> households.

### **Notice of Preliminary Objection**

4. The Petitioners filed a Preliminary Objection dated 27<sup>th</sup> March 2025. They stated that the Objector had no *locus* to bring the Objection as he was neither the deceased's child nor a beneficiary of the deceased's estate. That the Objection did not disclose a legal right or interest in the deceased's estate.
5. The 3<sup>rd</sup> Petitioner stated that the Objector and the alleged 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> households were strangers to the deceased's estate. That they were not the deceased's biological children and were not maintained by the deceased in his lifetime.
6. It was the 3<sup>rd</sup> Petitioner's case that the deceased contracted a marriage when he was 70 years old with the Objector's mother but did not bear any children. That at the time of the marriage, the Objector was already of age. It was the 3<sup>rd</sup> Petitioner's case that the Objector had not approached this court with clean hands.

7. Through their written submissions dated 11<sup>th</sup> August 2025, the Petitioners submitted that the issue of locus was a critical preliminary issue which had to be dealt with and settled before dwelling other matters. They relied on **Ibrahim vs Hassan & Charles Kimenyi Macharia (2019) eKLR**. The Petitioners submitted that the Objector was not the deceased's biological son and had no claim to the estate. That the Objector was already an adult at the time of the marriage between the deceased and the Objector's mother. They relied on **section 29 of the Law of Succession Act and re Estate of Alfred Mutune Munyao (Deceased) (2019) eKLR**.

8. It was the Petitioners' submission that the Marriage Certificate and Chief's Letter did not prove dependency. They relied on **re Estate of Stephen Kimotho Karanja (2022) eKLR**. It was the Petitioner's further submission that the Objector had slept on his rights as the Objection had been overtaken by events. That the Petition was filed on 31<sup>st</sup> January 2024 and by the time of the gazettelement on 12<sup>th</sup> July

2024, no objection had been filed. They relied on **re Estate of Agnes Ogolas Akoth (Deceased) (2016) eKLR** and **Rule 17(1) of the Probate and Administration Rules.**

9. The Petitioners submitted that the Objection was incompetent and defective *ab initio* and ought to be dismissed.

### **Response**

10. In response to the Preliminary Objection, the Objector stated that he was the deceased's son and belonged to the 2<sup>nd</sup> household. That his mother was the 2<sup>nd</sup> wife of the deceased and that they had lived on the parcel of land known as KERICHO/KIMULOT/532 that is registered in the deceased's name.

11. It was the Objector's case that a Preliminary Objection ought to raise points of law and the present Preliminary Objection did not raise any point of law. That the Preliminary Objection

should be dismissed and the estate be distributed as per the deceased's wishes.

12. Through his written submissions dated 22<sup>nd</sup> July 2025, the Objector submitted that the Preliminary Objection was not sustainable. He relied on **Bashir haji Abdullahi vs Adan Mohammed Noor & 3 others (2004) eKLR et.al.**

13. It was the Objector's submission that he was a dependant of the deceased's estate within the meaning of **section 29 of the Law of Succession Act.** That the Chief's Letter introduced him as the deceased's son and further that they had settled on the deceased's parcel of land known as KERICHO/KIMULOT/532. It was the Objector's further submission that the deceased had taken him as one of his children as he had married his mother.

14. I have considered the Preliminary Objection dated 27<sup>th</sup> March 2025, the Replying Affidavit dated 10<sup>th</sup> June 2025, the

Petitioners' written submissions dated 11<sup>th</sup> August 2025 and the Objector's written submissions dated 22<sup>nd</sup> July 2025. The only issue for my determination was whether the Preliminary Objection was sustainable.

15. What constitutes a Preliminary Objection was set out in the oft cited case of **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696**, where it was held that: -

***“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It***

***raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”***

16. In **Independent Electoral & Boundaries Commission v Cheperenger & 2 others [2015] KESC 2 (KLR)**, the **Supreme Court of Kenya** held: -

***“It is quite clear that a preliminary objection should be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with that point of law…….”***

17. In the present case, the Petitioners pleaded lack of *locus* by the Objector and wanted the Objection dismissed. On the other hand, the Objector stated that the issue of *locus* was not a point of law thus the Preliminary Objection ought to be dismissed.

18. The Supreme Court in **Matemu v Trusted Society of Human Rights Alliance & 5 others [2014] KESC 6 (KLR)** held: -

***“.....The issue of locus standi raises a point of law that touches on the jurisdiction of the Court, and it should be resolved at the earliest opportunity.....”***

19. Similarly in **Njau & 5 others v City Council of Nairobi [1983] KECA 56 (KLR)**, the Court of Appeal held: -

***“The term locus standi means a right to appear in Court and, conversely, as is stated in Jowitt’s Dictionary of English Law, to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding.....”***

20. From the above, it is my finding that the issue of locus was a point of law and ought to be determined first as a matter of precedence.

21. Firstly, it is salient to note from the averments and submissions of both parties, it was not in dispute that the deceased married the Objector’s mother. The point of divergence was that the Petitioners claimed that the Objector was not the deceased’s son and was already of age at the time his (Objector’s) mother was getting married. The Objector on the other hand stated that the deceased had

taken him in as one of his sons and they resided on the deceased's parcel known as KERICHO/KIMULOT/532.

22. On the issue of dependency, **section 29 of the Law of Succession Act** describes a deceased's dependant as: -

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;**
- (b) such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and**
- (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.**

23. I have gone through the record and the evidence that the Objector presented to prove that he was the deceased's son was the Chief's Letter and a Marriage Certificate between the deceased and his mother. I agree with the Petitioners' submission that the two documents were not sufficient proof of dependency. In my view, all they showed was that the deceased married the Objector's mother. To establish a direct link to the deceased, the Objector ought to have attached a Birth Certificate as this would have been conclusive proof of paternity, hence dependency.

24. However, **section 29 of the Law of Succession Act** as listed above allows the Objector to prove maintenance by the deceased during his lifetime. In the event of such proof, the Objector would qualify to be a dependant under the tenets of **section 29 of the Law of Succession Act**. The Objector did not adduce such evidence. In **re Estate of**

**Teresia**

**Kimonges**

**Kimengichi**

**[2022] KEHC 15877 (KLR), the court held: -**

***“As for the objectors, they have to proof that they were being maintained by the deceased immediately prior to her death pursuant to Section 29(b) of the Law of Succession Act. Faced with a similar case, the court in the case of In re Estate of Virginia Wanjiku Githuka (Deceased) [2021] eKLR held as follows;***

***“The section however qualifies who becomes a dependant for purposes of inheritance: one who was being maintained by the deceased immediately prior to his death.***

***What would this mean? Plainly in my view it means that as at the time of the demise of the deceased the applicant was being maintained by the deceased.”***

25. Flowing from the above, it is my finding that the Objector failed to prove that he was the deceased's beneficiary and thus had no *locus* to file the Objection dated 27<sup>th</sup> March 2025.

26. In the end, the Preliminary Objection has merit and is sustained. Each party should bear their costs.

**Ruling delivered, dated and signed at Bomet this 19<sup>th</sup> day of March, 2026.**

.....  
**HON. JULIUS K. NG'ARNG'AR**  
**JUDGE**

**Ruling delivered in the presence of:**

**Siele/Susan (Court Assistants)**

**N/A for the Petitioners**

**Malel for Objector**