



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KABARNET**  
**CIVIL APPEAL NO. E017 OF 2023**

AMOS K. CHOMBOI.....APPELLANT

**VERSUS**

CHEMJOR CHEPKUTO..... RESPONDENT

**JUDGEMENT**

**(This appeal is from the Ruling of Hon. P. Koskey SPM delivered on 16<sup>th</sup> November 2023 in Kabarnet SPM COURT SUCCESSION NO.5 OF 1991 CHEMJOR CHEPKUTO PETITIONER (Deceased) CHEMJOR CHEPKUTO vs AMOS K. CHOMBOI-OBJECTOR)**

1. This appeal arises from ruling delivered in petition seeking letters of administration intestate filed by Chemjor Chepkuto who is now deceased in respect to the state of his father Chepkuto Arap Birir. He was the sole petitioner and parcel number POKOR/KEBEN/83 was the only asset in the name of the deceased Chepkuto Arap Birir.

2. The objector who is the appellant herein filed objection alleging fraud on part of the petitioner. He argues that despite his protest, the title deed was transferred to the petitioner who is now deceased.
3. The appellant being dissatisfied and aggrieved by the ruling of the court filed this appeal on the following grounds:
  - a. That the lower court misapprehended the law by going into facts in preliminary objection contrary to principles laid down in the case MUKISA BISCUITS MANUFACTURING CO.LTDVS WST END DISTRIBUTORS LTD(1969)EA 696 at page 701.
  - b. That the trial court knowing very well that the petitioner died 2 years earlier went ahead to hear and ruled in favour of the deceased petitioner without substitution.
  - c. That whereas the objector raised preliminary objection seeking to have public trustee appointed, the trial magistrate went ahead to determine the entire cause and closed the file
  - d. That the trial court failed to appreciate that the petitioner had used the same court to fraudulently obtain title of LR POKOR/KEBEN/83 and at some point the court had asked the petitioner to surrender the title but failed to comply. That the trial court sanctioned the illegal by approving the fraudulently acquired title deed.

- e. that the trial magistrate misconstrued the law by equating the succession cause with ordinary civil suit and that succession cause does not abate and succession cause are not pegged on availability of assets and succession cause does not come to an end due to insolvency.
4. The appellant prays that the ruling delivered on 16<sup>th</sup> November 2023 be quashed and set aside and the cause be restored for full hearing and determination.
5. The appeal proceeded by way of written submissions. The appellant filed written submissions but the Respondent did not file submission.

### **APPELLANT'S SUBMISSIONS**

6. The appellant restated grounds of appeal. The appellant submitted that while before Hon. Biwot in the lower court, he applied for reconstruction of the file as the file went missing and the application was dismissed but on appeal before justice Bwononga, the high directed that the file be reconstructed but before the matter was heard on objection, the petitioner passed on, on 16.11.2020 and when substitution of Cosmas Chemjor was unsuccessful, the appellant applied for public trustee to be appointed for petitioner so that objection proceedings could be heard and decided on merit but the late Chemjor Chepkuto through

Tombe Advocate opposed the application dated 26<sup>th</sup> September 2023 and filed preliminary objection dated 7<sup>th</sup> October 2023. and the trial magistrate held that since the petitioner died before grant was issued, then the matter died with the petitioner and that the matter had been overtaken by events and proceeded to close the case. This is the basis of this appeal.

7. Counsel for the appellant argue that where a petitioner dies before grant of letters of administration and there is objection filed, the cause cannot die with the petitioner; that the court cannot order the succession cause closed where there are pending objection proceedings; that the dead petitioner should be substituted and the objection proceedings proceeds; that the death of petitioner does not erase the need to administer the estate as a new personal representative or public trustee can be appointed to ensure that administration of the estate continue. He cited Eldoret succession cause number 21Bof 1983 the estate of Late Job Kagombe Ngure (deceased) [2025] KEHC,416(KLR) where the court held that succession cause does not exist for the sole purpose of the petitioner but for the benefit of the estate and beneficiaries; that courts prioritize equitable distribution of the estate and the interest of beneficiaries, protestors and objectors hence terminating the cause because the sole has passed on would occasion injustice.

8. Counsel submitted that terminating this case without resolving objector's claim would occasion injustice to objector; that issues of fraudulent obtaining of title deed by the petitioner remain unanswered.

### **ANALYSIS AND DETERMINATION**

9. I have considered the record of appeal, the grounds of appeal, the appellant's written submissions, and the ruling of the learned trial magistrate. This being a first appeal, this Court is obligated to re-evaluate the material placed before the trial court and draw its own conclusions, while bearing in mind that it did not have the advantage of seeing or hearing the parties testify.

10. The main issue for determination in this appeal is whether the learned trial magistrate erred in law in closing the succession cause on account of the death of the sole petitioner, notwithstanding the existence of unresolved objection proceedings.

11. It is not in dispute that the petitioner, Chemjor Chepkuto, died on 16th November 2020 before the grant of letters of administration intestate was issued. It is also common ground that objection proceedings had been filed by the appellant challenging the petitioner's entitlement and alleging fraud in relation to the only asset of the estate, namely LR No. POKOR/KEBEN/83.

12. The learned trial magistrate held that since the petitioner had died before grant, the matter had been overtaken by events and effectively died with the petitioner, and on that basis proceeded to close the succession cause. In my view, that approach was erroneous in law.
13. A succession cause is not a personal claim belonging to a petitioner. It is a proceeding in rem whose primary purpose is the administration and distribution of a deceased person's estate in accordance with the Law of Succession Act. The petitioner merely invokes the jurisdiction of the court on behalf of the estate and for the benefit of all beneficiaries, creditors, and other interested parties.
14. The death of a petitioner does not extinguish the estate of the deceased person whose succession is the subject of the proceedings. Nor does it terminate the court's jurisdiction to determine pending disputes touching on the administration of that estate.
15. Where a sole petitioner dies before the grant is issued, the proper course is not to terminate the cause, but to facilitate substitution or appointment of another suitable person, including the Public Trustee where circumstances so demand, so that the administration of the estate can proceed. This is particularly necessary where there are

pending objections, protests, or allegations of fraud requiring judicial determination.

16. The existence of unresolved objection proceedings in this matter fundamentally distinguished it from a situation where a cause is uncontested. By closing the file without determining the objection, the trial court denied the objector an opportunity to be heard on substantive claims, including allegations of fraudulent acquisition of title to estate property. That outcome offended the right to a fair hearing and undermined the court's duty to resolve disputes conclusively.

17. Further, the learned trial magistrate misdirected herself by treating the preliminary objection as determinative of the entire cause. As correctly argued by the appellant, a preliminary objection must be confined to pure points of law, as set out in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696. It cannot be used as a vehicle to dispose of contested factual issues or to finally determine substantive rights where evidence is required.

18. The trial court also erred in equating the succession cause to an ordinary civil suit capable of abating or being rendered moot by the death of a party. Succession proceedings do not abate in the same manner as civil claims, and they are not dependent on the continued existence of a particular petitioner. The obligation to

administer the estate subsists until the estate is lawfully distributed.

19. I am persuaded by the reasoning in *In the Matter of the Estate of the Late Job Kagombe Ngure (Deceased)* [2025] KEHC 416 (KLR), where the court emphasized that succession proceedings exist for the benefit of the estate and all interested parties, and that termination of a cause merely because a petitioner has died would occasion injustice.

20. In the circumstances of this case, the decision to close the succession cause without substitution, appointment of the Public Trustee, or determination of the objection proceedings was a misdirection in law and resulted in a miscarriage of justice.

21. **FINAL ORDERS:**

- a) The appeal has merit and is hereby allowed.
- b) The ruling delivered on 16<sup>th</sup> November 2023 in Kabarnet SPM Court Succession Cause No. 5 of 1991 is hereby quashed and set aside.
- c) The succession cause is restored for hearing and determination on merit before a Magistrate other than Hon. P. Koskey.

- d) The trial court shall facilitate appointment of administrator, Public Trustee or any other suitable administrator.
- e) Each party shall bear their own costs of the appeal.

**Dated** and signed at **Nairobi** this 11<sup>th</sup> day of March 2026.



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**R NGETICH**

**JUDGE**

**Dated, Countersigned** and delivered at **Eldoret** this 12<sup>th</sup> day of March 2026.

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**J.R. WANANDA**

**JUDGE**

**In the presence of:**

Court Assistant - Brian Kimati

Karanja for Appellant.

No appearance for Respondent.