

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
SUCCESSION CAUSE NO. E011 OF 2023
IN THE MATTER OF THE ESTATE OF THE LATE KIPNGENO
ARAP CHEMURANY alias KIPNGENO CHEMURANY
(DECEASED)

JACKLINE CHEPKURUIPETITIONER

VERSUS

JANE CHEBET NGENO.....PROTESTOR

RULING

1. Before this Court is the Notice of Preliminary Objection dated 31st October 2025 filed by the Respondent together with the application dated 2nd July 2025 seeking additional administrator /or revocation of the grant issued in respect of the estate of the deceased .

2. Neither parties filed any written submissions in respect to the Notice of Preliminary Objection.

3. The Applicants filed in Court the Summons for direction seeking additional administrator or revocation or annulment of Grant dated 26 August 2025.

4. Before the application could be heard, the Respondent filed the Notice of Preliminary Objection dated 31st October 2025 in which he argued that the applicant lacks locus standi to administer the estate as the grant issued to the applicant on 26th July 2023 was revoked on 26th February 2025 and a fresh grant issued to respondent herein.

5. I have carefully considered the Preliminary Objection as well as the court records.

6. The definition of what constitutes a Preliminary Objection was given in the case of ***Mukisa Biscuit Manufacturing Company Ltd -vs- West End Distributors Ltd [1969] E.A*** in which the court stated as follows.

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

7. In ***Aviation & Allied Workers Union Kenya -vs- Kenya Airways Limited & 3 Others [2015] eKLR***, the Supreme Court of Kenya stated that;

‘a Preliminary Objection may only be raised on a “pure question of law”

8. To discern such a point of law, the court has to be satisfied that there is no proper contest as to the facts. The facts are deemed

agreed as they are prima facie presented in the pleadings on record.

9. Therefore in order for a Preliminary objection to succeed, the following tests must be satisfied; -

(i) *The Preliminary Objection should raise a pure point of law.*

(ii) *The Preliminary Objection must be argued on the assumption that all the facts pleaded are correct.*

(iii) *The Preliminary Objection cannot be raised if any fact is to be ascertained or if what is being sought is the exercise of judicial discretion.*

(iv) *A valid Preliminary Objection ought if successful dispose of the entire suit.*

10. Therefore a genuine and proper Preliminary Objection can only raise pure points of law and must not itself derive its foundation on facts or information which stands to be tested by normal rules of evidence.

11. The main grounds on which this Preliminary Objection is based is the applicant lacks locus standi to administer the estate as the grant issued to the applicant on 26th July 2023 was revoked through a ruling delivered on 26th February 2025 and afresh grant issued to the respondent.

14 Therefore, a proper Preliminary Objection may only be raised on a pure point of law. *In Re Estate of Joseph Mutiso Kithome it was held that the issue of locus standi is a pure point of law that can be properly raised in a Succession Cause.*

13. The main objection raised by the respondent is that the Applicant has no locus standi in this matter. *Locus Standi* is a Latin term, which literally means ‘place of standing’ and refers to the right of a particular party to bring an action a suit. Blacks Law Dictionary 10th Edition at Paragraph 1084 defines the term ‘Locus Standi’ as follows:-

‘The right to bring an action or to be heard in a given forum.’

15. I have considered the application dated 2nd July 2025, seeking additional administrator or revocation or annulment of the Grant issued on 26th July 2023.

16. I have equally considered the ruling delivered by this honourable court on 26th February 2025 which revoked the grant issued to the applicant and confirmed the grant in favour of the respondent.

18. The summons dated 2nd July 2025 seeks confirmation of grant issued to the applicant on 26th July 2023, however the record is clear that the said grant was revoked by this court on 26th February 2025, with the court finding that the applicant being a daughter of the deceased, ranked lower in priority compared to the surviving spouse, the respondent. Once a grant is revoked it

ceases to exist in law and cannot be subject of confirmation .The summons dated 2nd July 2025 is therefore incompetent.

19. Having considered the Preliminary Objection and the application dated 2nd July 2025, this Court makes the following Orders:

a) The Preliminary Objection dated 31st October 2025 is upheld, as the applicant lacks locus standi to seek confirmation of a revoked grant.

b) The application dated 2nd July 2025 filed by the applicant is struck out for being incompetent.

c) The administration of the estate shall proceed under the grant confirmed in favour of Jane Chebet Ngeno dated 26th February 2025.

c). Each party to meet their own costs.

Dated, signed and delivered at Kericho this 31st day of March, 2026

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**J. K. SERGON
JUDGE**

In the presence of:

C/Assistant - Rutoh/Naomi

No Appearance

