

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**SUCCESSION CAUSE NO. 303 OF 2015**

**IN THE MATTER OF THE ESTATE OF KIPSOI ARAP MOSONIK  
(DECEASED)**

**JOHN SIMOTWO .....**  
**APPLICANT**

**VERSUS**

**REUBEN MALAKWEN SOI .....**  
**RESPONDENT**

**RULING**

[1] Before this Court is a Summons dated 19<sup>th</sup> June 2025 filed by ***John Simotwo***, one of the joint administrators and a beneficiary of the estate of ***Kipsoi Arap Mosonik (“the Deceased”)***. The Summons is brought under Rules 49 and 73 of the Probate and Administration Rules, and Sections 47 and 83 of the Law of Succession Act (Cap 160).

[2] The Applicant seeks the following orders;

- a) That the Respondent, Reuben Malakwen Soi, be compelled to sign and execute all requisite documents for the transmission of land parcel Kericho/Chesinende/35 in accordance with the Certificate of Confirmation of Grant issued on 27<sup>th</sup> February 2025.***

***b) That the County Surveyor, Kericho County, be ordered to survey and subdivide the said land as per the schedule in the confirmed grant.***

***c) That the Officer Commanding Station (OCS), Chepson Police Station, be ordered to provide security and supervise the survey process until its peaceful conclusion.***

***d) That the costs of the application be provided for.***

[3] The Respondent opposes the application through an Affidavit of Protest dated 29<sup>th</sup> July 2025. The Respondent's core contention is that he has lodged an appeal at the Court of Appeal (Nakuru, Civil Appeal No. E076 of 2025) against this Court's judgment of 27<sup>th</sup> February 2025, and that implementation of the Certificate of Confirmation of Grant should await the outcome of that appeal.

[4] The Applicant filed a Replying Affidavit on 25<sup>th</sup> September 2025 and Written Submissions on 6<sup>th</sup> February 2026. I have carefully considered all the pleadings, affidavits, submissions, and the authorities cited.

[5] The Deceased died intestate on 4<sup>th</sup> March 1991. After protracted proceedings spanning nearly nine years, this Court delivered its judgment on 27<sup>th</sup> February 2025 determining the mode of distribution of the estate land, namely Kericho/Chesinende/35.

[6] Pursuant to that judgment, a Certificate of Confirmation of Grant was issued on the same date, 27<sup>th</sup> February 2025, distributing the land as follows:

<b>Beneficiary (Acres)</b>	<b>Share</b>
<b><i>Esther Cheron Mosonik</i></b>	<b>1.5</b>
<b><i>Reuben Soi (Respondent)</i></b>	<b>2.0</b>
<b><i>Jennifer Chemutai</i></b>	<b>1.5</b>
<b><i>John Simotwo (Applicant)</i></b>	<b>1.0</b>
<b><i>Paul Langat</i></b>	<b>0.5</b>
<b><i>Robert Langat</i></b>	<b>0.5</b>
<b><i>Benard Langat</i></b>	<b>0.5</b>
<b><i>Fancy Chepkemoi</i></b>	<b>0.5</b>

[7] The Applicant deposes that more than four months have elapsed since the grant was confirmed, yet the Respondent has refused or declined to sign the requisite Land Registration Act (LRA) forms to facilitate transmission. The Applicant further alleges that the Respondent has been intermeddling with the estate by selling portions of the land without authority, most recently 0.3 acres in July 2025, contrary to Section 45 of the Law of Succession Act.

[8] The Respondent admits that the judgment was delivered on 27<sup>th</sup> February 2025 and that he is aggrieved. He states that he

filed a Notice of Appeal and a Memorandum of Appeal (annexed to his Affidavit of Protest as RMS3 and RMS4) and that he is in the process of filing an application for a stay of execution.

[9] From the pleadings and submissions, the following issues arise for determination:

- a) Whether the firm of Tengekyon & Koske Co. Advocates is properly on record for the Respondent.***
- b) Whether an Affidavit of Protest is a proper or competent response to the Applicant's Summons dated 19<sup>th</sup> June 2025.***
- c) Whether this Court is functus officio and lacks jurisdiction to entertain the Respondent's protest.***
- d) Whether the Applicant has made out a case for the orders sought in the Summons dated 19<sup>th</sup> June 2025.***
- e) Who shall bear the costs of the application.***

[10] It is not in dispute that during the delivery of the judgment on 27<sup>th</sup> February 2025, the firm of Oboso & Co. Advocates was on record for the Respondent. The firm of Tengekyon & Koske Co. Advocates filed the Affidavit of Protest on 29<sup>th</sup> July 2025 without first seeking leave of this Court or filing a consent from the previous advocate.

[11] Order 9 Rule 9 of the Civil Procedure Rules, 2010 provides as follows;

***“When there is a change of advocate, or when a party decides to act in person having previously engaged an***

***advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—***

***(a) upon an application with notice to all parties; or***

***(b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”***

[12] The provision is couched in mandatory terms. It reflects the long-standing principle that after judgment, a party cannot simply change advocates without the court’s sanction. This protects the record, prevents confusion, and ensures that the outgoing advocate is properly discharged.

[13] In ***Julieta Marigu Nigai v Virginia Njoki Mwangi & another [2022] eKLR***, the court stated;

***“Article 159(2)(d) of the Constitution cannot be invoked to cure failure to adhere to the provisions of Order 9 Rule 9 of the Civil Procedure Rules. I do not consider the non-adherence to the provisions of Order 9 rule 9 to be an issue of technicality as the words of the provision are couched in mandatory terms, hence compliance is a vital requirement.”***

[14] The Respondent has not annexed any consent from Oboso & Co. Advocates, nor has he demonstrated that an application for leave was ever made or granted. The firm of Tengekyon & Koske

Co. Advocates therefore has no right of audience before this Court. Consequently, the Affidavit of Protest dated 29<sup>th</sup> July 2025 is incompetent and is hereby struck out in limine.

[15] Even if I were to overlook the procedural defect of representation, I find that an Affidavit of Protest is not the appropriate vehicle to challenge a Certificate of Confirmation of Grant after judgment has been delivered.

[16] The probate rules provide for objections and protests before confirmation of grant. Once a grant has been confirmed and a Certificate of Confirmation issued, the estate is deemed distributed. A party who is aggrieved by the confirmation has two proper avenues:

***a) An appeal to the Court of Appeal.***

***b) An application for review under Section 80 of the Civil Procedure Act read with Order 45 of the Civil Procedure Rules (on grounds of discovery of new and important matter, mistake, or error apparent on the face of the record).***

[17] An Affidavit of Protest filed after confirmation of grant, without any formal application to set aside the grant or for review, is an abuse of the court process. It invites the court to revisit a matter that has already been determined without any legal basis for doing so.

[18] In ***Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others [2007] eKLR***, the Court of Appeal underscored the principle of finality;

***“This is a doctrine which enables the courts to say litigation must end at a certain point regardless of what the parties think of the decision which has been handed down.”***

[19] The Respondent’s Affidavit of Protest is nothing more than an attempt to re-litigate issues that were conclusively determined on 27<sup>th</sup> February 2025. That is impermissible.

[20] The doctrine of *functus officio* holds that once a court has delivered a final judgment in a matter, it is generally divested of jurisdiction to revisit or alter that decision, except in limited circumstances such as review, correction of clerical errors, or where a statute expressly permits.

[21] This Court delivered its final judgment on 27<sup>th</sup> February 2025, determining the mode of distribution. A Certificate of Confirmation of Grant was issued on the same date. No application for review has been filed. No stay of execution has been granted by this Court or by the Court of Appeal.

[22] In ***Daniel Lago Okomo v Safari Park Hotel Ltd & Another [2018] eKLR***, the Court of Appeal held;

***“We do not review judgments just because a losing litigant is unhappy and despondent. We have no jurisdiction to do so.”***

[23] The Respondent's assertion that he has filed an appeal does not, without a stay order, deprive this Court of jurisdiction to enforce its own orders. An appeal does not operate as an automatic stay. The filing of a notice of appeal and memorandum of appeal does not render the Certificate of Confirmation of Grant a nullity. It remains valid and enforceable until set aside by a higher court.

[24] For completeness, I note that the Respondent's alleged Memorandum of Appeal is dated 9<sup>th</sup> May 2025, which falls well outside the 14-day period prescribed by the Court of Appeal Rules for filing an appeal from a judgment. This raises serious questions about the viability of the appeal itself. However, I need not determine that issue here. It is sufficient to state that no stay has been granted, and therefore this Court is not functus in respect of enforcing its own orders.

[25] The Applicant has demonstrated that:

- ***A valid Certificate of Confirmation of Grant exists, dated 27<sup>th</sup> February 2025.***
- ***The Respondent has refused or declined to sign the necessary transmission documents.***
- ***More than four months have elapsed since confirmation, contrary to the statutory expectation under Section 83 of the Law of Succession Act that personal representatives conclude administration within six months.***

**· The Respondent's conduct is causing unnecessary delay and prejudice to the other beneficiaries.**

[26] Section 47 of the Law of Succession Act gives this Court full jurisdiction to entertain any application relating to the estate of a deceased person and to issue such orders as may be necessary to ensure the due administration of the estate.

[27] Rule 73 of the Probate and Administration Rules provides that nothing in the rules shall limit the inherent power of the court to make such orders as may be necessary for the ends of justice.

[28] Costs follow the event. The Applicant has been forced to bring this application because of the Respondent's unreasonable refusal to cooperate with the transmission process and his filing of an incompetent protest. The Respondent shall therefore bear the costs of this application.

[32] For the reasons set out above, the Summons dated 19<sup>th</sup> June 2025 is allowed thus giving rise to issuance of the following orders;

**a) The Respondent, Reuben Malakwen Soi, is hereby directed to sign and execute all requisite documents for the transmission of land parcel Kericho/Chesinende/35 in accordance with the Certificate of Confirmation of Grant issued on 27<sup>th</sup> February 2025.**

- b) The Respondent shall sign and deliver the said documents to the Applicant's advocates within fourteen (14) days from the date of this ruling.***
- c) In default, the Deputy Registrar of this Court is hereby authorized and directed to sign all necessary LRA forms and transmission documents on behalf of the Respondent.***
- d) The County Surveyor, Kericho County, is hereby ordered to survey and subdivide Kericho/Chesinende/35 as per the schedule in the Certificate of Confirmation of Grant dated 27<sup>th</sup> February 2025, and to file a survey report with this Court within thirty (30) days of being served with this ruling.***
- e) The Officer Commanding Station (OCS), Chepseon Police Station, is hereby directed to provide adequate security and to supervise the survey and subdivision process to ensure it is concluded peacefully and without any obstruction.***
- f) The Respondent shall bear costs of this application.***

**Dated, signed and delivered at Kericho this 31<sup>st</sup> day of March, 2026**

.....  
**J. K. SERGON  
JUDGE**

In the presence of:

C/Assistant - Rutoh/Naomie

Miss Chebet holding brief for E. K. Korir for Applicant

No Appearance for the Respondent