

2. The Summons was heard by Hon. Nekesa who in the end dismissed the same on 10th June, 2025. Being dissatisfied with the decision, the Appellant preferred this Appeal and listed the following grounds in his Memorandum of Appeal.

- (i) The Learned Trial Magistrate erred in law and in fact in dismissing the Appellant's Application without making any or any serious scrutiny of the Appellant's evidence and submissions.***
- (ii) The Learned Trial Magistrate erred in law and in fact by failing to make a determination on the issue whether the Respondents allocated themselves bigger shares of the estate of the deceased than the Appellant.***
- (iii) The Learned Trial Magistrate erred in law and in fact by failing to make a determination on the issue whether the estate of the deceased was shared equally among all the beneficiaries***
- (iv) The Learned Trial magistrate erred in law and in fact by failing to appreciate that the mother of the appellant, who is now deceased did not take part in the proceedings of the succession court leading upto the issuance of the Certificate of Confirmation of Grant dated 10th November, 2016.***

- (v) The Learned Magistrate erred in law and in fact by failing to appreciate that the name Sarah Chepkurui Lel appearing on the Certificate of Confirmation of Grant dated 10th November, 2016 is not the mother of the Appellant.**
- (vi) The Learned Trial Magistrate erred in law and in fact by holding and finding that the Appellant is not a direct heir to the estate of the deceased yet both his parents are deceased.**
- (vii) The Learned Trial Magistrate erred in law and in fact by failing to appreciate that the Respondents fraudulently obtained the Certificate of Confirmation of Grant dated 10th November, 2016 by making false statements and actively concealing material facts involving the estate of the deceased.**
- (viii) The Learned Trial Magistrate erred in law and in fact by failing to appreciate that the proceedings leading upto the Certificate of Confirmation of Grant dated 10th November, 2016 were defective in substance as the estate was not equally distributed.**
- (ix) The Learned Trial Magistrate misdirected herself in applying the wrong principles to dismiss the appellant's Application.**

(x) The entire decision of the Learned Trial Magistrate lacks clarity, reasoning and merit.

3. This Court gave directions to have the Appeal disposed of by written submissions. At the time of writing this Judgment, the Appellant was the only party who had filed his submissions. The appellant put forward a total of ten (10) grounds of Appeal which grounds can be condensed to four main grounds:-

(i) **That the trial Court erred by failing to appreciate that the appellant's mother (now deceased) did not participate in the Succession proceedings before it.**

(ii) **The Trial Senior Resident Magistrate erred by holding and finding that the Appellant is a direct heir to the deceased's estate.**

(iii) **That the Trial Court erred by failing to appreciate that the Respondents fraudulently obtained Certificate of Confirmation of Grant dated 10/11/2016 by making of false statements and actively concealing material facts involving the deceased's estate.**

(iv) **That the Trial Court failed to appreciate that the estate was not distributed equally.**

4. As regards to the first ground of appeal, it is the submission of the Appellant that the Trial Resident Magistrate did not

appreciate the fact that the Appellant's mother (now deceased) did not participate in the succession proceedings before her.

5. The Appellant pointed out that someone by the name **Sarah Chepkurui Lel** appears in the Grant to have inherited the share of the family of **Maritim Arap Lel**, it is the Appellant's submission that **Sarah Chepkurui Lel** is a stranger to his family since his mother is known as **Sarah Chepkemoi Lel**.
6. I have carefully looked at the proceedings of the Trial Court and it is apparent that the Learned Senior Resident Magistrate consider the Appellant's argument and came to the conclusion that there was a slight difference in the name of the Appellant's name. She came to the conclusion that **Sarah Chepkurui Lel** and **Sarah Chepkemoi Lel** referred to one and the same person.
7. She went ahead and concluded that the Appellant's mother was alive by the time of the proceedings before the Trial Court and that she indeed participated in the Succession Proceedings. I am satisfied that the Learned Senior Resident Magistrate came to the correct conclusion and appreciated the issue that was before her therefore, she cannot be faulted.

8. As regards the second Ground of Appeal, it is the submission of the Appellant that the Trial Court erred when it held that the Appellant was not a direct heir of the deceased estate. I have perused the proceedings before the Senior Resident Magistrate and it is clear that the Learned Trial magistrate came to the conclusion that the Appellant's mother was alive at the time of the Succession Proceedings and it was necessary to involve her on behalf of her children. This Court is satisfied that the Learned Senior Resident Magistrate arrived at the conclusion that the Appellant being a grandchild of the deceased was not a direct heir to the estate of the deceased.

9. In the third ground of Appeal, it is the Appellant's argument that the Learned Senior Resident Magistrate failed to appreciate that the Certificate of Confirmation of Grant was obtained by making false statements and actively concealing material facts involving the deceased estate.

10. I have critically examined the recorded proceedings and it is apparent that the Appellant failed to present cogent evidence to prove that false statements were made and that some material facts were concealed to obtain the Grant. It would, the Appellant made sweeping statements instead. Nothing turns out on this ground.

11. As regards the final Ground of Appeal, it is the Appellant's submission that the Trial Court failed to appreciate the fact that the estate was not equally distributed. I have re-evaluated the case that was before the Trial Magistrate and it is apparent that Learned Senior Resident Magistrate came to the conclusion that the Appellant's mother was involved and participated in the succession proceedings. It is her finding also that the beneficiaries were present in Court and they all agreed to the mode of distribution.
12. It is further her finding that the complaint that the Appellant got a smaller size of the property compared to others is put to rest. In other words, nothing turns out on this ground.
13. In the end, this Court finds the Appeal to be without merits. The same is dismissed. This being a family dispute, a fair order on costs is to order that each party bears their own costs. Therefore the Certificate of Confirmation of Grant dated 10/11/2016 made by the Senior Resident Magistrate's Court should be implemented forthwith.

**Delivered, signed and dated at Kericho this 31st day
of March, 2026**

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J.K. SERGON

JUDGE

In the presence of:-

C/Assistant - Rutoh/Naomie

Langat for the Appellant

Malel for the Respondent

