

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE NO. E155 OF 2019

**IN THE MATTER OF THE ESTATE OF THE LATE PETER KIPKURGAT
KUTO**

PRISCA TARKWEN RUTO
PETITIONER/APPLICANT

VERSUS

ABRAHAM KIPRUTO ROTICH 1ST OBJECTOR
METHUSELAH KIPKEMBOI KUTO 2ND OBJECTOR

VERSUS

**SAMUEL KIPKORIR SIMATEI 1ST INTERESTED
PARTY**

**FRANCIS KIPLIMO SUGUT 2ND INTERESTED
PARTY**

**HENRY KATAM 3RD INTERESTED
PARTY**

**DANIEL KIBET TANUI 4TH INTERESTED
PARTY**

**MICAH KIPKOECH KIRWA 5TH INTERESTED
PARTY**

**DESMOND KIPCHIRCHIR 6TH INTERESTED
PARTY**

**JOSHUA KIPNGETICH TIROP 7TH INTERESTED
PARTY**

JOAN JEMELI 8TH INTERESTED PARTY

**LUDIA JEMESUNDE 9TH INTERESTED
PARTY**

**PETER M. MARITIM 10TH INTERESTED
PARTY**

**WILLIAM KIPKOECH MOEK 11TH INTERESTED
PARTY**

AND

**LAMECK KIPRONO KUTO. PROPOSED INTERESTED
PARTY/APPLICANT**

**Coram: Before Justice R. Nyakundi
M/s Wambua Kigamwa & Co. Advocates
M/s Keter, Nyolei & Co. Advocates
M/s Bett K. & Co. Advocates**

RULING

1. On 20th June, 2025 this court delivered a ruling in which the following orders were issued:
 - a. *The ruling that was scheduled for 8th April, 2025 is hereby vacated to allow consideration of the applicant's substantive claims.*
 - b. *All parties, including the applicant Lameck Kiprono Kuto, shall appear before this court on 9th May, 2025 at 9:00 am for a mention and to chart the way forward regarding the applicant's claim of interest in the portion of land measuring approximately 80×100 meters within SIMAT FARM LR NO. 772/8(IR NO 8267).*
 - c. *Costs shall be in the cause.*
2. Subsequently, the petitioner filed a certificate of urgency in which the Advocate representing her requested this matter to be considered urgently for the following reasons:
 - a. That the administratrix of the estate sought police assistance to implement the confirmed grant in this matter to enable the beneficiaries of the estate to enjoy the fruits of the judgment without delay.
 - b. The proposed interested parties has not taken any steps to further his claim if any based on the Ruling of 20th June, 2025 and he can be deemed as abandoned for want of expeditious pursuit.

- c. It is necessary that the court proceeds to give directions as to the delivery on the 30th June, 2025 on the application dated 24th February, 2025.
 - d. That the matter administratrix requires the said matter resolved by a pronouncement of the court to enable her to prosecute her summons dated 5th March, 2025.
3. In the reference application dated 24th February, 2025, the interested parties approached this court seeking the following reliefs:
- a. *Spent*
 - b. *That the Honourable Court be pleased to issue a temporary order of injunction restraining the Petitioners/Respondents whether by themselves, their agents, servants employees and/or any other person acting on their behalf,/under their instructins from surveying, subdividing, encroaching, trespassing into, alienating, occupying, cultivating, claiming, leasing and/or in any way interfering with the applicants' peaceful ownership, possession and use of their respective portions of land comprised in the suit parcel of land known as parcel No. IR NO.8267 LR NO 772/8, pending the hearing and determination of this application inter-parties.*
 - c. *That the Honourable Court be pleased to issue a temporary order of injunction restraining the Petitioners/Respondents whether by themselves, their agents, servants employees and/or any other person acting on their behalf/under their instructions from surveying, subdividing, encroaching, trespassing into, alienating, occupying, cultivating, claiming, leasing and/or in any way interfering with the applicants' peaceful ownership, possession and use of their respective portions of land comprised in the suit parcel of land known as parcel No. IR NO.8267 LR NO 772/8, "the suit property" pending the hearing and determination of the summons for revocation/annulment of grant filed herein.*

d. The costs of this application be awarded to the Applicants/Interested parties.

4. The application is anchored on grounds that:

- a. The applicants/Interested parties are the bona fide owners of portions of land comprised in that land known as IR NO. 8267 LR NO. 772/8 having purchased the same for valuable consideration.
- b. The petitioners/respondents intend to constructively evict the applicants by surveying, subdividing and transferring the suit parcel of land to other beneficiaries and or disposing them off to other third parties thus depriving them their lawfully acquired rights and interests in the suit land in bad faith.
- c. That the Petitioners/Respondents, having obtained letters of administration and confirmed grant through fraud or by concealment of material fact and/or without involving the applicants herein in the proceedings hereby, have threatened to evict the applicants from the suit land for no justifiable reason the whereas the applicants are the lawful owners and have been in continuous vacant ownership, possession/occupation and use since purchasing the same for valuable consideration.
- d. That the petitioners/respondents have moved the court to confirm the grant without involving the applicants nor including them as part of beneficiaries/liabilities of the estate of the late Peter Kipkurgat Kuto and have now engaged a team of surveyors with sole intention of subdividing the suit land as per the confirmed grant.
- e. The portions of the suit land owned/occupied and used the applicants herein do not form part of the free assets of the deceased since the Applicants herein have since acquire appurtenant rights and interest after purchasing the same for value consideration.

- f. That the applicants have been in vacant ownership, possession and use since purchase and have been living with their respective families on the suit land for time immemorial i.e. a period of over 40 years after purchasing it from the deceased.
- g. That the Respondents and other third parties might soon transfer the suit land to themselves and/or other third parties against the rights and interests of the applicants thus rendering the summons for revocation/annulment filed herein a nugatory.
- h. The Clandestine exclusion of the applicants from the list of the proceedings, list of distribution and/or confirmed Grant is in bad faith since the petitioners are quite aware of the applicants' stake, rights and interest in the suit land but have unfairly/maliciously chosen to disinherit the applicants of their lawfully acquired shares/interest.
- i. That there is an imminent danger of violence that will ensue since the applicants have demanded/threatened to evict the applicants upon successful survey and subdivision of the suit land with an aim of locking out the applicants from accessing their lawfully acquired properties.

Analysis and determination

5. The jurisdiction of this court in succession proceedings is defined by the Law of Succession Act, the Probate and Administration Rules, and the Constitution. The specific provisions are as follows:

Section 47 of the **Law of Succession Act** provides that:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”

Rule 73 of the Probate and Administration Rules provides as follows:

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

6. The court in the case of ***In re Estate of Julius Ndubi Javan (Deceased)*** [2018] eKLR, in discussing the jurisdiction and or duty of the Probate Court stated:-

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries.”

7. A foundational principle flowing from this jurisdictional framework is that the estate of the deceased consists only of those assets which belonged to him at the moment of his death, meaning properties that had not been validly alienated or disposed of during his lifetime. It is a proposition firmly grounded in law and as such a person can only transmit that which he/she owns. If the deceased, while alive and with the capacity to do so, sold a portion of land to a third party for valuable consideration and parted with possession of the same, that portion ceased to form part of his assets from the moment that transaction was concluded. It follows as a matter of law that such a portion cannot, upon the deceased's death, form part of the free property of the estate available for distribution to his heirs. The certificate of confirmation of grant can only speak to and operate upon that which rightfully remains as part of the net estate, and any purported transaction of property that was validly sold by the deceased during his lifetime would be without legal foundation.
8. A sharp distinction must, however, be drawn between sales that were genuinely concluded by the deceased during his lifetime and any purported transactions or dealings with the suit property that arose after the deceased's death. Any person who, without the authorisation of the Law of Succession Act or of any other written law, or without a valid grant of representation, purports to take possession of, dispose of, or otherwise intermeddle with the free

property of a deceased person does so in violation of the express provisions of **Section 45** of the Law of Succession Act (**the Act**) which provides as follows:

“(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”

9. Any liability incurred in the course of administration proceedings or through post-death dealings with the deceased's property is not a liability of the estate. The estate is answerable only for those obligations that were legitimately incurred during the deceased's own lifetime. Post-death transactions undertaken without proper authority do not generate enforceable claims against the estate. They are rather acts of intermeddling for which the parties concerned are personally accountable. The court has had occasion to address this principle comprehensively in its earlier rulings in this matter and the law on intermeddling under Section 45 of the Act requires no further elaboration.

10. In **Re Estate of Alfred Mukabana Eshinali (Deceased)** [2023] KEHC 20032 (KLR), the court held: -

“.....A Liability to an estate is a liability that was incurred or entered into prior to a deceased’s person’s demise. Any transaction thereafter is not a liability to the Estate. It is therefore a misconception to allude that a sale which took place after the demise of the deceased, was a liability to the deceased’s Estate.”

11. The court has been presented with assertions by the interested parties that certain portions of the suit land were the subject of sale agreements entered into between the deceased and various persons during his lifetime. These are assertions of significance, for if they are borne out by credible evidence, the portions concerned would not form part of the free estate and could not lawfully be distributed

to the beneficiaries through the confirmation of grant. The court is, however, conscious of the limits of its jurisdiction in this regard. It is not within the province of this court, sitting as a succession court, to constitute itself into a land court for the purposes of investigating, assessing, and pronouncing upon the validity and authenticity of land sale agreements or the title claims of persons asserting purchase from the deceased. Questions of whether a particular sale agreement was genuinely executed by the deceased during his lifetime, whether adequate consideration passed, whether the transaction complies with the requirements of the law governing the disposition of land, and whether a party's possession of the land is lawful, are matters that properly engage the jurisdiction of the Environment and Land Court established under Article 162(2)(b) of the Constitution of Kenya, 2010.

12. The Court of Appeal directly addressed this question in the case of **Rubo Kipngetich Arap Cheruiyot vs. Peter Kiprop Rotich Civil Appeal No. 128 of 2008** where the court stated as follows:

“The Respondent's claim that the Appellant should have lodged his claim to the suit land in the deceased's succession cause has also no merit. There is no legal provision for it. We agree with Mr. Nyairo that deceased persons' succession causes are for purposes of determining and appointing the legal representatives of deceased persons and also for ascertainment of the deceased's heirs and their respective shares. Claims by third parties to deceased persons' properties, although sometimes lodged in the succession causes of such deceased person, are better litigated in separate suits. The Respondent's contention therefore that the Appellant's suit was incompetent for failure to lodge the claim in the deceased's succession cause has therefore no basis in law.”

13. In the case of [*In the Matter of the Estate of Joseph Kipkogei Terer*](#), Eldoret High Court Succession Cause No. 369 of 2014:

“Beneficiaries of estates and also Administrators are also cautioned that once a Court completes the distribution of an estate, the next step and which ought to be concluded within 6 months thereafter, is for transmission of the distributed shares to the respective beneficiaries. It is after such transmission that the beneficiaries, after being registered as owners of the respective properties and obtained titles, are then free to dispose of the same to third parties. The beauty of this situation is that such beneficiary does not need to again involve the Succession Court in disposal of the property. It is therefore only after transmission of shares that beneficiaries should, if they so wish, sell their transmitted portions to purchasers.

The practice of disposing of inherited properties, particularly parcels of land, before transmission has been completed then returning to “bother” the Succession Court for amendment of the Certificates of Confirmation of Grant to amend the schedule of distribution to include purchasers, is wrong and technically, unlawful. Purchasers should also learn that any sale of land should always be supported by proof of a document of title in the name of the vendor, duly issued by the Lands Office. A Certificate of Confirmation of Grant is not by itself a document of title capable of confirming or transferring ownership of land, and does not by itself prove a vendor’s right to dispose of a property to a third party. The Succession Court, for all intents and purposes, becomes technically functus officio once it has distributed the estate. Unfortunately, Advocates, who should know better and advise their clients, are complicit in knowingly participating in such irregular dealings. Any fresh dealings between beneficiaries and purchasers after confirmation of a Grant, even before

transmission, and/or any disputes arising thereafter are ideally matters that should be placed before the Environment and Land Court (ELC)."

14. The certificate of confirmation of grant is a powerful instrument that speaks to the entitlements of the identified beneficiaries of the deceased's estate and constitutes the court's recognition of their shares in the net estate. It is emphatically not an instrument designed to dispossess third parties of property they may have validly acquired from the deceased during his lifetime, nor is it an instrument capable of transmitting to beneficiaries that which does not rightfully belong to the estate. The integrity of the confirmation of grant depends entirely on the accuracy and completeness of the information placed before the court regarding the composition of the estate. If the grant, as presently framed, purports to distribute portions of land that were validly sold by the deceased during his lifetime, then to that extent the grant does not accurately reflect the true estate and must be revisited before implementation. This court cannot, however, make that determination without a proper accounting of the estate's true composition.

15. It is at this point that the duties of the administrators of the estate become of critical importance. Section 83 of the Law of Succession Act provides as follows on the duties of personal representatives:

"Personal representatives shall have the following duties—

- (a) To provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;*
- (b) To get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;*
- (c) To pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);*

- (d) *To ascertain and pay, out of the estate of the deceased, all his debts;*
- (e) *Within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;*
- (f) *Subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;*
- (g) *Within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.*
- (h) *To produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;*
- (i) *To complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”*

16. The duty to collect and get in the estate imports within it a correlative obligation to ascertain with accuracy what the estate consists of at the time of the deceased's death. The administrator's role is not merely to divide what is claimed as the estate, but to ensure, through diligent inquiry and verification, that what is being divided is indeed the estate. The interested parties in this matter

have placed before the court an assertion that various portions of the suit land were the subject of sale transactions with the deceased and some with the beneficiaries. The administrators cannot simply ignore those assertions, proceed with implementation of the grant, and leave the resolution of competing claims to future litigation. The duty under Section 83 requires them to conduct proper due diligence, examine the alleged sale agreements, assess their authenticity and their consistency with what the deceased could lawfully have done, and then provide this court with a frank and verified account of what remains as the true free property of the estate.

- 17.** It is one thing for the deceased to have sold portions of the suit land during his own lifetime. If those sales were genuine, lawful, and concluded with the formalities required by law, then the portions concerned stepped outside the bounds of his estate from the very moment he ceded possession to the purchases. It was a clear intent to transfer the properties in question and as such this court cannot deal with them as though they remained available. It is, however, an altogether different matter for a beneficiary of the estate, or any person purporting to act through a beneficiary, to have dealt with portions of the suit land after the death of the deceased and before lawful transmission of the estate had been completed. Such a transaction cannot create title. It cannot generate a liability enforceable against the estate. It is, at its core, an act of intermeddling, for it involves a person reaching into the estate and disposing of what does not yet belong to him, to the direct prejudice of every other beneficiary who has an equal and legitimate stake in the same property. Section 45 of the Law of Succession Act was enacted precisely to prevent this kind of conduct, and neither the passage of time nor the existence of a written agreement can launder an unlawful transaction into a valid one. A beneficiary who disposes of estate property before transmission acquires no title to pass, and the person who receives from him takes nothing that this

court or any other court is bound to protect as against the rightful beneficiaries.

- 18.** This court has had occasion to examine several sale agreements that have been placed before it in the course of these proceedings. It would not be appropriate, and it is not within the court's mandate in these succession proceedings, to make findings as to the authenticity of those documents or to pronounce on whether the transactions they purport to record were genuinely concluded with the deceased during his lifetime or were crafted after his death to create the appearance of a pre-existing entitlement. What this court can say, and says plainly, is that those agreements raise questions that cannot be wished away. The administrators of this estate must confront these documents directly, engage with the claimants honestly, and bring the findings to this court in a verified form.
- 19.** This court issued an amended Grant dated 25th October, 2024. The said instrument bears the proper beneficiaries and the net estate of the deceased as was pleaded by the parties herein. That Grant as is, cannot be revoked as of now unless and until the interests of the interested parties herein have been properly established. The administrators being officers of the estate should take charge in the verification exercise for reasons that if there exist such purchasers, they have been in possession of their portions and it is likely that they are well known to the beneficiaries. The law in Section 83 places upon them a duty that is not merely procedural but a duty to know what they are distributing, to account for it truthfully, and to ensure that what leaves the estate as the share of each beneficiary is exactly what the law says that beneficiary is entitled to receive.
- 20.** The competing claims of the interested parties remain unresolved, not because this court lacks the will to bring this matter to its proper conclusion, but because the foundation upon which a final and just distribution must rest has not yet been laid with the accuracy that the law demands. To permit implementation of the confirmed grant over land whose true extent as free estate remains unverified, and in

circumstances where this court has itself observed the existence of sale agreements that raise questions which the administrators have not yet been called upon to answer, would be to risk causing harm of a kind that no subsequent order of this court could easily undo. The beneficiaries of this estate have a right to what is due to them, and that right is not diminished by this court's caution. It is, on the contrary, protected by it, for a distribution made on an incomplete or inaccurate account of the estate would be no distribution at all in the eyes of the law.

21. For those reasons, and pending the filing by the administrators of a full and verified inventory and account as directed herein, the implementation of the confirmed grant in respect of the land known as IR. No. 8267 LR. No. 772/8 is hereby stayed. No survey, subdivision, demarcation, or transmission of any portion of the suit land shall take place until this court has received and considered the administrators' report and given further directions.

22. In the premises, the following orders shall abide:

a. The administrators of the estate of the late Peter Kipkurgat Kuto are hereby directed, within forty-five (45) days from the date of this ruling, to convene a meeting with all persons who have presented sale agreements or other instruments asserting an interest in the land known as IR. No. 8267 LR. No. 772/8, whether those interests are said to derive from transactions with the deceased during his lifetime or from dealings with any beneficiary thereafter. The purpose of that meeting is to afford the administrators and the claimants an opportunity to examine the documents, engage honestly with one another, and explore whether the competing interests can be resolved by agreement, so that the true extent of the free estate that remains available for distribution to the rightful beneficiaries can be established without recourse to further litigation.

- b. *If the administrators and the claimants are able to reach agreement on the nature and extent of the interests asserted, the administrators shall file in this court, within the said forty-five-day period, a report sworn on affidavit setting out the outcome of that engagement, the particulars of any portions of the suit land agreed to have been validly disposed of by the deceased during his lifetime, and a clear account of what property remains as free estate for distribution. This court will then give further directions on the final transmission of the estate on the basis of that report.*
- c. *If no agreement is reached, the administrators shall equally report that fact to this court within the same period. In that event, the interested parties and any other persons asserting purchase or other claims over any portion of the suit land are put on notice that their proper forum for the determination of those claims is the Environment and Land Court, and not this court. This court's mandate is to distribute the net estate of the deceased to his rightful beneficiaries, and it will proceed to do so in respect of whatever free property is properly established to remain in the estate.*
- d. *Implementation of the confirmed grant in respect of the land known as IR. No. 8267 LR. No. 772/8 is hereby stayed for the duration of the forty-five-day period directed above. No survey, subdivision, demarcation, or transmission of any portion of the suit land shall take place within that period.*
- e. *The matter is hereby scheduled for mention on **7th May 2026**.*

23. Orders accordingly.

**DATED SIGNED AND DELIVERED VIA CTS & EMAIL AT ELDORET,
THIS 1ST DAY OF APRIL 2026**

.....
R. NYAKUNDI
JUDGE