



**In re Estate of the Late Musa Kipkemoi Chongoti (Deceased) (Succession Cause 59 of 2014) [2026] KEHC 4413 (KLR) (31 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4413 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 59 OF 2014**

**JK SERGON, J**

**MARCH 31, 2026**

**IN THE MATTER OF THE ESTATE OF THE LATE  
MUSA KIPKEMOI CHONGOTI (DECEASED)**

**BETWEEN**

**JENIFFER CHEMUTAI SANG ..... APPLICANT**

**AND**

**BENARD KIPKIRUI CHERUIYOT ..... 1<sup>ST</sup> RESPONDENT**

**VIVIAN CHEPKEMOI ..... 2<sup>ND</sup> RESPONDENT**

**ALICE CHEPNGENO ..... 3<sup>RD</sup> RESPONDENT**

**SHARON CHERONO CHERUIYOT ..... 4<sup>TH</sup> RESPONDENT**

**VINCENT KIPNGETICH SIGEI ..... 5<sup>TH</sup> RESPONDENT**

**CHERUIYOT DENNIS KIPLANGAT ..... 6<sup>TH</sup> RESPONDENT**

**MERCY CHEPKOECH ..... 7<sup>TH</sup> RESPONDENT**

**ERICK KIPLANGAT CHERUIYOT ..... 8<sup>TH</sup> RESPONDENT**

**RULING**

1. The applicant, Jennifer Chemutai Sang, filed a Chamber Summons dated 18<sup>th</sup> August, 2025. She seeks, inter alia, a review of this Court’s orders issued on 24<sup>th</sup> February, 2025, which rectified the Certificate of Confirmation of Grant issued on 22<sup>nd</sup> July, 2020. The central grievance is that the said rectification distributed the share of the late Stanley Cheruiyot Chongoti (the Applicant’s deceased husband) to some of his children while excluding the Applicant as the surviving widow.



2. The Application is opposed by the Petitioners/Administrators, Stephen Kipterer Chongoti and Emily Chepkurui Chongoti, as well as by the 1st–8th Respondents, led by Benard Kipkirui Cheruiyot, who is the Applicant’s own biological son.
3. Directions were given for the Application to be canvassed by way of written submissions, and all parties complied. I have carefully considered the Application, the supporting and replying affidavits, the rival submissions, and the relevant legal law.
4. The primary deceased herein is Musa Kipkemoi Chongoti. Succession proceedings in respect of his estate were concluded, and a Certificate of Confirmation of Grant was issued on 22<sup>nd</sup> July, 2020. Among the beneficiaries was the deceased’s son, Stanley Cheruiyot Chongoti, who passed away after the confirmation of the grant but before the full distribution of his allocated share.
5. On 14<sup>th</sup> December, 2024, an application was filed seeking to rectify the grant by substituting the name of the late Stanley Cheruiyot Chongoti with his beneficiaries. The Applicant herein, Jennifer Chemutai Sang, was the 2<sup>nd</sup> Applicant in that application. She actively participated, consented to the proceedings, and authorized the 1<sup>st</sup> Respondent, Benard Kipkirui Cheruiyot, to swear affidavits on her behalf.
6. In that prior application, the Applicant affirmed that the late Stanley Cheruiyot Chongoti was survived by four households, with the following beneficiaries:
  - 1<sup>st</sup> Household  
Jennifer Chemutai Sang (1st wife),  
Benard Kipkirui Cheruiyot (son),  
Vivian Chepkemoi (daughter)
  - 2<sup>nd</sup> Household  
Alice Chepngeno (2nd wife),  
Sharon Cherono Cheruiyot (daughter),  
Vincent Kipngetich Sigei (son)
  - 3<sup>rd</sup> Household  
Cheruiyot Dennis Kiplangat (son),  
Mercy Chepkoech (daughter)
  - 4<sup>th</sup> Household  
Erick Kiplangat Cheruiyot (son)
7. The rectification was granted, and the estate of the late Stanley Cheruiyot Chongoti was distributed accordingly. The Applicant herself was allocated 2 acres to hold in trust for the family (being the portion with the family home). Her children, Benard and Vivian, received shares equal to those of children from the other households.
8. Dissatisfied, the Applicant filed the present Application on 18<sup>th</sup> August, 2025, now claiming that she is the sole surviving widow, that Section 35 of the *Law of Succession Act* should apply, and that other children were left out.
9. After considering the pleadings and submissions, the following issues arise for determination;



- a) Whether the Applicant has met the legal threshold for review under Order 45 of the Civil Procedure Rules;
  - b) Whether Section 35 of the *Law of Succession Act* applies to the circumstances of this estate;
  - c) Whether the Applicant or her household suffered any exclusion or prejudice;
  - d) Whether the application is an abuse of court process; and
  - e) What orders should be made as to costs.
10. The power to review an order or decree is circumscribed by Order 45 Rule 1 of the Civil Procedure Rules, which provides that a party may apply for review on the following grounds:· Discovery of new and important matter or evidence which, after due diligence, was not within the applicant’s knowledge or could not be produced at the time;· Some mistake or error apparent on the face of the record; or· Any other sufficient reason.
  11. The Applicant has not pleaded or demonstrated any of these grounds. To the contrary, the evidence on record shows that:· The Applicant was a co-applicant in the earlier application dated 14<sup>th</sup> December, 2024, which led to the orders she now seeks to review.· She actively participated, consented to the proceedings, and authorized her son to swear affidavits on her behalf.· She affirmed the identity of the beneficiaries and the existence of multiple households.
  12. A party cannot approbate and reprobate. Having been a participant in the very process that produced the orders complained of, the Applicant cannot now seek to undo those same orders without demonstrating any of the strict grounds for review. She has not done so.
  13. In *Re Estate of William Mbogori Kathiama (Deceased)(2018) eKLR*, the Court held that where an applicant has not shown a discovery of new evidence, an error on the face of the record, or any other sufficient reason, the Court is functus officio and cannot entertain a review. The present application suffers from the same defect.
  14. The Applicant’s central legal argument is that as a surviving spouse, she is entitled to a life interest under Section 35(1) of the *Law of Succession Act*. This argument is misconceived.
  15. Section 35(1) explicitly begins with the words: “Subject to the provisions of section 40, where an intestate has left one surviving spouse...” (emphasis added). Where a deceased person has left more than one surviving spouse, the applicable law is Section 40, not Section 35.
  16. In the present case, it is not disputed that the late Stanley Cheruiyot Chongoti was survived by multiple wives. Apart from the Applicant (1<sup>st</sup> wife), the deceased was also survived by Alice Chepngeno (2<sup>nd</sup> wife). Two other wives predeceased him but left children. The Applicant herself affirmed these facts in the earlier application.
  17. Having previously acknowledged the polygamous nature of her husband’s marriage, the Applicant cannot now invoke Section 35 as though she were the sole surviving spouse. To do so is to ignore the plain wording of the statute and her own prior admissions on oath.
  18. The distribution of the estate of the late Stanley Cheruiyot Chongoti was therefore properly conducted under Section 40 of the *Law of Succession Act*. That provision mandates a two-stage distribution; first, the estate is divided among the houses, with each surviving wife counted as an additional unit alongside her children; second, distribution within each house follows the rules in Sections 35 to 38.



19. The evidence confirms that this was done. Each household was identified, all biological children were included, and shares were allocated equitably. The Applicant received 2 acres to hold in trust for her household, and her children received shares equal to those from other households.
20. The Applicant's claim that she was excluded is not supported by the evidence. She was allocated a portion of land to hold in trust. Her children, Benard Kipkirui Cheruiyot and Vivian Chepkemoi, were allocated shares alongside the children of the other households.
21. The allegation that other children were "left out" is equally unsubstantiated. The Applicant previously confirmed the Chief's letter identifying the true beneficiaries. She cannot now disown her own admissions simply because she has had a change of heart.
22. No prejudice has been demonstrated. On the contrary, granting the present Application would cause significant prejudice to the other beneficiaries who have long accepted and relied on the confirmed distribution, and to the administrators who have proceeded to implement the grant in good faith.
23. The Respondents have correctly characterized this Application as an abuse of court process. The Applicant participated in the earlier rectification proceedings, consented to the orders, and benefited from them. To now return to court seeking to overturn those same orders without any new evidence, error, or sufficient reason is an attempt to re-litigate settled matters.
24. Succession proceedings demand finality. In *Re Estate of Keshaval Kanji Chandaria alias Kashval Kanji Samji Chandaria (Deceased) (2017)eKLR*, the Court emphasized that once a Certificate of Confirmation of Grant is issued, and in the absence of an application for revocation, the Court is rendered functus officio. Endless litigation in succession matters is contrary to the interests of justice and the welfare of the beneficiaries.
25. The Applicant's conduct has unnecessarily delayed the finalization of this estate and forced the Respondents to incur avoidable legal expenses. This is an appropriate case for an award of costs.
26. For the foregoing reasons, I find that: The Applicant has failed to satisfy the legal threshold for review under Order 45 of the Civil Procedure Rules. The Applicant's reliance on Section 35 of the [Law of Succession Act](#) is misplaced, as the estate of the late Stanley Cheruiyot Chongoti is governed by Section 40. The Applicant was not excluded from the distribution; she and her household were fairly and equitably provided for. The Application is an abuse of court process and offends the principle of finality in succession matters.
26. In the end, the Chamber Summons dated 18<sup>th</sup> August, 2025 is hereby dismissed in its entirety. The Applicant shall bear the costs of this Application, awarded to the Respondents and the Petitioners/ Administrators.

**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/Naomi

Miss Jausiku for some beneficiaries

Miss Kiget for the Petitioner

