In re Estate of Chepkemoi (Deceased) (Succession Cause 123 of 2000) [2026] KEHC 4369 (KLR) (31 March 2026) (Ruling)

Neutral citation: [2026] KEHC 4369 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KERICHO

SUCCESSION CAUSE 123 OF 2000

JK SERGON, J

MARCH 31, 2026

IN THE MATTER OF THE ESTATE OF LATE PAUL KIPKOSKEI CHEPKEMOI (DECEASED)

BETWEEN

MERCY CHEPKEMOI ..... APPLICANT

AND

JANE CHEPNGETICH CHEPKEMOI ..... 1ST OBJECTOR

CHEPKORIR BEATRICE ..... 2ND OBJECTOR

CAROLINE CHEPWOGEN ..... 3RD OBJECTOR

EMILY CHEPKURUI SOI ..... 4TH OBJECTOR

AND

JOHN KIPNGENO RONO ..... 1ST RESPONDENT

JOSHUA KIPKURUI RONO ..... 2ND RESPONDENT

JONATHAN K. SIGEI ..... 3RD RESPONDENT

TIMOTHY KIPNGETICH RONO ..... 4TH RESPONDENT

HENRY K. RONO ..... 5TH RESPONDENT

RICHARD KIPNGENO RONO ..... 6TH RESPONDENT

JULIUS K. RONO ..... 7TH RESPONDENT

DANIEL KIPKURUI RONO ..... 8TH RESPONDENT

LILIAN MWILITSA ..... 9TH RESPONDENT

WILFRED CHEPKWONY ..... 10TH RESPONDENT

RULING

1. Before this Court is a Notice of Motion dated 5th August 2025 filed by MERCY CHEPKEMOI. The Application is brought under Order 45 rule 1, Order 42 rule 2, Order 51 rule 1 of the Civil Procedure Rules, 2010, and Sections 1A, 1B and 3A of the *Civil Procedure Act* (Cap 21).

2. The Applicant seeks the following substantive prayers;

    a. Prayer 3: That this Honorable Court be pleased to stay the execution of the Ruling entered herein on 30th July 2025 in Succession Cause No. 123 of 2000 and implementation of the Order dated 31st July 2025.

    b. Prayer 4: That this Honorable Court be pleased to Review and Set aside the Orders of the Court dated 30th July 2025 and all Consequential Orders.

    c. That costs of this application be provided for.

3. Although Prayer 4 of the Application erroneously refers to "30th August 2025," the supporting affidavit and the grounds on the face of the Application consistently refer to the Ruling delivered on 30th July 2025 and the Order issued on 31st July 2025. I shall therefore treat Prayer 4 as seeking to review and set aside the orders of 30th and 31st July 2025.

4. This succession cause concerns the estate of the late PAUL KIPKOSKEI CHEPKEMOI (hereinafter "the Deceased"). A grant of letters of administration was confirmed on 31st October 2001, and the estate was distributed among the beneficiaries.

5. The Applicant, MERCY CHEPKEMOI, is a daughter-in-law of the Deceased, being the wife of RICHARD KIPNGENO RONO (now deceased), who was a son of the Deceased and a beneficiary of the estate.

6. On 2nd October 2024, a Summons for Revocation of Grant was filed, challenging the earlier distribution. That summons was subsequently referred to court-annexed mediation on 10th March 2025.

7. A Mediation Report dated 9th May 2025 was filed. On 30th July 2025, the matter came before this Court for the adoption of the mediation settlement agreement. The proceedings of that day, as recorded in the Court file, show that all counsel were present, including:

    · W.K. Ngenoh for the Applicant, the party who had filed the Summons for Revocation.

    · Malel for the 9th Respondent, the current Applicant, MERCY CHEPKEMOI.

    · Mwita for the 1st to 8th Respondents

8. The record indicates that Mr. Ngenoh prayed for the mediation settlement agreement to be adopted. Mr. Malel, on behalf of the 9th Respondent, stated "That is okay." Mr. Mwita similarly stated "That is okay." The Court thereafter adopted the mediation settlement agreement and issued consequential orders.

9. The Applicant now seeks to stay and review those orders, contending that she was not a party to the mediation proceedings and that the orders were irregularly obtained.

10. The Application is supported by the affidavit of Mercy Chepkemoi sworn on 5th August 2025. Her case, as deponed, is as follows;

    a. She was not a party to the mediation proceedings and was never invited to participate, despite being a beneficiary of the estate.

    b. Her exclusion from the mediation process violated her right to a fair hearing under Article 50 of *the Constitution* of Kenya, 2010.

    c. The Court became functus officio after the grant was confirmed on 31st October 2001 and fully implemented. She argues that the Court cannot later issue orders that fundamentally alter a final distribution.

    d. The orders of 30th July 2025 effectively vary the confirmed grant outside the provisions of Section 74 of the *Law of Succession Act* and Rule 43 of the Probate and Administration Rules.

    e. The impugned orders, if implemented, will affect numerous parcels of land and cause substantial loss.

11. In response to the Application, Jane Chepngetich Chepkemoi, the 1st Objector/Respondent, filed a Replying Affidavit sworn on 16th October 2025. She deponed on her own behalf and on behalf of the 2nd, 3rd, 4th, and 5th Objectors/Respondents. Her response raises several critical issues;

    a. The Applicant was previously represented by Mwita & Co. Advocates, as evidenced by a Notice of Appointment. The firm of Kipyegon Malel Advocates came on record after the mediation settlement was adopted. She questions whether Kipyegon Malel is properly on record.

    b. The Applicant has been prosecuting Kericho Chief Magistrate Succession Cause No. E082 of 2022, which was nullified on 11th July 2024 for including non-beneficiaries of the estate and excluding genuine beneficiaries.

    c. The Applicant is accused of committing fraud by denying family negotiations that took place in the year 2018 and by misrepresenting facts to the court.

    d. The objectors contend that the Applicant's true aim is to disinherit the daughters of the Deceased. According to family discussions, three sons had promised land to the daughters, but this promise was not honored.

    e. The objectors question the mental competence of the Applicant, alleging that third parties are misleading the court to disinherit rightful beneficiaries.

    f. The objectors assert that the Applicant has not demonstrated any irreparable loss and that her application is merely speculative and aimed at scuttling the distribution of the estate to correct the illegality done in 2000.

    g. The objectors contend that the Applicant is not genuine and is geared to misuse the court process by seeking short cuts.

12. Before delving into the legal principles governing stay and review, I must address the fundamental discrepancy between the Applicant's sworn affidavit and the official court record.

13. The Applicant swears in her supporting affidavit at paragraphs 3, 4, 7, and 11 that she was not a party to the mediation, was never invited, and was excluded from the process. She contends that the mediation agreement was based on untrue information and that she was never granted an opportunity to be heard.

14. However, the Court record for 30th July 2025 tells a different story. On that date, when the matter came up for adoption of the mediation settlement agreement:

· The Applicant, Mercy Chepkemoi, was represented by her advocate, Mr. Malel.

· When the Court invited counsel to address the adoption, Mr. Malel stated on the record: "That is okay," indicating his consent to the adoption.

· The Court thereafter adopted the mediation settlement agreement with the express consent of all counsel, including counsel for the Applicant.

15. This Court takes judicial notice of its own record. The proceedings of 30th July 2025 are part of the official court file and cannot be contradicted by affidavit evidence. The Applicant, through her advocate, was present and consented to the very orders she now seeks to set aside on the ground that she was excluded.

16. The Applicant cannot approbate and reprobate. Having been represented and having consented to the adoption of the mediation settlement agreement, she is now estopped from turning around and claiming that she was excluded or that her right to a fair hearing was violated.

16. Beyond the discrepancy in the court record, the Respondents have raised additional concerns that this Court cannot ignore;

a) The Respondents contend that the Applicant was previously represented by Mwita & Co. Advocates and that Kipyegon Malel Advocates came on record after the mediation settlement was adopted. While the Court does not necessarily need to determine the validity of the change of advocates for the purposes of this ruling, the fact that the Applicant was represented by counsel who consented to the adoption is undisputed. The handwritten court record of 30th July 2025 clearly lists "Malel for the 9th Respondent."

b) The Respondents have accused the Applicant of seeking to disinherit the daughters of the Deceased. They have annexed minutes of family discussions from 2018 showing that promises were made to the daughters. Whether these allegations are true is not for determination at this interlocutory stage. However, they underscore that this is not a simple matter of a beneficiary being excluded from mediation, but rather a complex family dispute with a long history.

c) The Respondents have questioned the mental competence of the Applicant, alleging that she is "not in her right state of mind." This is a serious allegation. If true, it would call into question the validity of the instructions given to her advocates and the entire Application. While this Court makes no finding on this issue at this stage, it is a matter that may need to be addressed in the substantive proceedings.

17. The power to grant a stay of execution pending further application is derived from Order 42 rule 6 of the Civil Procedure Rules. The conditions are well settled;

· The application must be made without unreasonable delay;

· The applicant must demonstrate that substantial loss will result if the stay is not granted; and

· The applicant must furnish such security as the court may order.

18. Order 45 rule 1 of the Civil Procedure Rules provides for review of a decree or order on the following grounds;

· Discovery of new and important matter or evidence which was not within the applicant's knowledge or could not be produced at the time the order was made;

· Mistake or error apparent on the face of the record; or

· Any other sufficient reason.

The phrase "any other sufficient reason" has been interpreted to include situations where the order was procured by fraud, where there was a procedural irregularity, or where the court acted without jurisdiction. However, review is not an opportunity for a party to re-argue a case or to raise issues that were or ought to have been raised at the time the order was made.

19. It is well established that an order made by consent of the parties cannot be reviewed or set aside except on grounds that would vitiate a contract, such as fraud, misrepresentation, or mistake. See Flora N. Wasike v Destimo Wamboko [1988] KLR 429.

20. The Court of Appeal in Kenya Commercial Bank Limited v Specialised Engineering Company Limited [1982] KLR 485 held that a consent judgment has a contractual effect and can only be set aside on grounds of fraud, collusion, or mistake.

21. Additionally, under Rule 73 of the Probate and Administration Rules, this Court retains inherent jurisdiction to make such orders as may be necessary to meet the ends of justice. However, this jurisdiction must be exercised judiciously and not to undermine the finality of orders made with the consent of the parties.

22. Before addressing the substantive prayers, I must consider the conduct of the Applicant. She comes before this Court seeking equitable relief, stay and review, yet her supporting affidavit contains material omissions and assertions that are directly contradicted by the court record.

23. The Applicant's advocate was present on 30th July 2025 and consented to the adoption of the mediation settlement agreement. If the Applicant had any objection to the mediation agreement or its adoption, her advocate ought to have raised it at that time. She cannot now, after consenting to the orders, seek to set them aside on grounds that were available to her on that day.

24. A party seeking equitable relief must come to court with clean hands. The Applicant has not done so. This alone is sufficient ground to dismiss the Application.

25. The Applicant's primary ground for review is that she was not a party to the mediation and was excluded. This ground has been falsified by the court record. She was represented, her counsel consented, and she was very much a party to the proceedings that led to the adoption of the mediation settlement agreement.

26. The other grounds advanced, functus officio and improper rectification, are matters that go to the merits of the mediation settlement itself. However, a mediation settlement agreement adopted by the Court with the consent of all parties is binding. The proper avenue to challenge such an agreement would be to demonstrate that it was procured by fraud, coercion, or mistake, or that the mediator exceeded their mandate. The Applicant has not alleged any of these.

27. Moreover, the Applicant's counsel having consented to the adoption, she cannot now seek to review the same orders on grounds that were known and could have been raised at the time. An order made by consent cannot be reviewed or set aside except on grounds that would vitiate a contract.

28. The Applicant has not alleged fraud, misrepresentation, or mistake on the part of the mediator or the other parties. Her sole complaint is that she was excluded, a complaint that is contradicted by the record.

29. I therefore find that the Applicant has failed to establish any valid ground for review under Order 45 rule 1. Prayer 4 for review and setting aside of the orders made on 30th and issued on 31st July 2025 is accordingly dismissed.

30. Having dismissed the substantive prayer for review, the prayer for stay of execution collapses. A stay is ancillary to a substantive application. Where the substantive application fails, there is no basis upon which to grant interlocutory relief.

31. Even if I were to consider the stay prayer independently, I would find that the Applicant has not demonstrated substantial loss. The mediation settlement agreement was adopted with the consent of all parties, including the Applicant's counsel. The Applicant has not shown how the implementation of an order to which she consented would cause her irreparable harm. The mere fact that the orders alter the distribution of the estate does not, in itself, constitute substantial loss, especially where the alteration was consented to. Consequently, Prayer 3 for stay of execution is also dismissed.

33. The Court must now address the question of costs. The Respondents have successfully opposed the Application and are therefore the successful parties.

34. In exercising this Court's discretion on costs, I have considered the following principles:

    a) The general rule under Section 27 of the *Civil Procedure Act* is that costs follow the event. The Respondents, having successfully defended the Application, are entitled to costs.

    b) The Court may consider the conduct of the parties when awarding costs. In this case, the Applicant's conduct has been less than exemplary. She made assertions in her supporting affidavit that were directly contradicted by the court record. She failed to disclose the existence of parallel succession proceedings. These are factors that would justify an award of costs against her.

    c) The Respondents have accused the Applicant of abusing the court process. While the Court has not made a final determination on that allegation, the fact that the Applicant's Application was dismissed in its entirety, and that her primary ground was found to be without merit, supports the conclusion that she should bear the costs.

    d) In succession matters, courts are often reluctant to award costs out of the estate where disputes arise from genuine family disagreements. However, in this case, the Application was not a genuine dispute about distribution but rather an attempt to set aside orders to which the Applicant had consented, based on assertions that were contradicted by the record. This is not a case where costs should be borne by the estate.

35. Having considered all the circumstances, I find that there is no good reason to depart from the general rule that costs follow the event. The Respondents are entitled to their costs. I therefore order that the Applicant shall bear the costs of this Application, to be paid to the Respondents.

36. The Respondents raised the issue that Kipyegon Malel Advocates may not be properly on record. Given that I have dismissed the Application on its merits, I do not find it necessary to determine this issue. However, I note that the Applicant would be well advised to ensure that her representation is properly documented in the court file going forward.

37. In light of the foregoing, the Notice of Motion dated 5th August 2025 is hereby dismissed in its entirety. The Applicant shall bear the costs of this Application.

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

Malel for the Applicant

Morata for the Respondent

W. K. Ngeno for Petitioner