

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT ELDORET**

**SUCCESSION CAUSE NO. E016 OF 2026**

**IN THE MATTER OF THE ESTATE OF JOSEPH KIPKEMOI CHEPKEITANY  
alias JOSEPH KIPKEMOI CHEPKAITANY-(DECEASED)**

**JOHANA                      KIPKORIR                      KEMBOI                      .....1<sup>ST</sup>  
PETITIONER/APPLICANT**

**VERSUS**

**REUBEN                      KEMBOI.....2<sup>ND</sup>                      PETITIONER/1<sup>ST</sup>  
RESPONDENT**

**BARNABA                      KIPROP                      KEMBOI.....2<sup>ND</sup>  
RESPONDENT**

**Coram:      Before Justice R. Nyakundi**

**Limo R.K & Co. Advocates**

**M/s Chemwok & Co. Advocates**

**RULING**

1. Pursuant to Sections 45 and 47 of The Succession Act and Rule 73 of The Probate and Administration Rules and Sections 1a, 1b and 3a or The Civil Procedure Act and all enabling provisions of the Law the Applicant prays for the following orders:

*a. Spent*

*b. An order for preservation of the deceased's estate being TEMBELIO/KIMONING BLOCK 1(CHEBURBUR)/244 be and is hereby issued restraining the Respondents either by themselves their servants and or agents from evicting the legal beneficiaries, selling, disposing off, leasing ploughing, planting crops and/or otherwise intermeddling and/or interfering in any manner with the said*

*deceased's estate the subject matter of this succession herein pending hearing and determination of this application inter parties.*

- c. An order of preservation of the deceased's estate being TEMBELIO/KIMONINGBLOCK 1(CHEBURBUR)/244be and is hereby issued restraining the Respondents either by themselves or their servants, or agents from evicting the legal beneficiaries, selling disposing off, leasing, ploughing and planting crops and or otherwise intermeddling and/or interfering in any manner with the said deceased's estate the subject matter of this succession herein pending hearing and determination of this application and cause.*
- d. That the orders of the Court be implemented by the OCS Talget Police Station.*
- e. Costs be in the cause.*
2. On the grounds that:
  - a. That the Applicant is one of the sons and Administrators of the deceased herein.*
  - b. That since the death of the deceased, the Respondents has continued to intermeddle with the deceased estate.*
  - c. That the deceased estate comprises parcel of land known as TEMBELIO/KIMONINGBLOCK 1(CHEBURBUR)/244.*
  - d. That the Applicants and Respondents are the heirs of the deceased.*
  - e. That the Respondents are masquerading as the only beneficiaries of the deceased's yet the estate of the deceased is comprised of other six surviving beneficiaries.*
  - f. That unless this application is granted as prayed the beneficiaries of the deceased estate will suffer extreme prejudice and loss if the said land is continued being intermeddled with.*
  - g. In view of the Respondents' ill malicious conduct of evicting other beneficiaries, it is in the interest of justice that they be restrained from intermeddling and evicting other legal beneficiaries of the deceased's estate and hence preservative orders of the same be issued.*

3. In support of the application is the affidavit of Johana Kipkorir Ngeno who deponed as follows:
- a. *That I am the 1<sup>st</sup> Petitioner/Applicant herein hence competent to swear this affidavit.*
  - b. *That the deceased estate comprises a parcel of land known as TEMBELIO/KIMONING BLOCK 1(CHEBURBUR)/244.*
  - c. *That the Respondents are intending to evict and continue to intermeddle with the deceased's estate at the detriment of the other legal beneficiaries by demolishing fences and structures of other beneficiaries.*
  - d. *That the Respondents have maliciously continued to destroy the properties of other legal beneficiaries without any colour of right purporting that they are the only beneficiaries in the estate of the deceased yet the estate is comprised of other six legal beneficiaries*
  - e. *That the Respondents' ill motive and actions are geared towards wasting and or disposing off the deceased estate and dislodging the other beneficiaries from the portions they have been utilizing.*
  - f. *That I am apprehensive that unless the Respondents are restrained from interfering and or intermeddling the deceased's estate and other legal beneficiaries shall be evicted and suffer irreparably.*
  - g. *That in the premises I urge Honourable Court to restrain the Respondents from intermeddling with the said land being parcel of the deceased's estate.*
  - h. *That it is the interest of justice that the deceased's estate be protected and preserved.*
  - i. *That no prejudice will be suffered by the Respondents in case orders sought are granted since the said orders intend to preserve and protect the deceased's estate for the benefit of all legal beneficiaries thereof.*
  - j. *That the application now before the honourable Court is made in good faith, for the interest of justice and for the benefit of all beneficiaries.*

4. In response to the application is the replying affidavit 2<sup>nd</sup> Petitioner and the 1<sup>st</sup> Respondent who deponed as follows:
- a. *THAT I have been read to the Applicant's application doted 2<sup>nd</sup> March 2026 and wish to respond as hereto.*
  - b. *THAT the Patriarch our father had settled all his family and more particularly his sons on where each was to settle, or settled and still settling.*
  - c. *THAT sometimes on the 11<sup>th</sup> February 2022 the Area Chief one Mr. David Kemboi Kibet A.KA. Cheptirgei created a division in our family which divided the family down the middle.*
  - d. *THAT in the subject meeting he decided to divide our land the way he wanted and the way the Applicants wanted.*
  - e. *THAT forcefully they implemented purportedly the said resolution last year 2025 whereof serious family disputes escalated.*
  - f. *THAT one of my brothers Mr. Abraham Kemboi as a result of the said agreement destroyed my 1 acre maize field and cut down four (4) mature avocado trees to the ground.*
  - g. *THAT in the meantime, we had resolved to ensure each of the family members were to settle where our father had left us.*
  - h. *THAT it was then that Johana Kipkorir Kemboi my co-Petitioner, Abraham Kemboi decided to take the matter into their own hands.*
  - i. *THAT we did received o letter from my co-Petitioner's Advocate trying to change the Status Quo by fencing up to my house leaving less than a meter into my matrimonial house.*
  - j. *THAT it is not lost then that my other brothers took arms and chased Johana in a manner that it is escalating the family conflict.*
  - k. *THAT when we received Mr. R. K. Limo's letter doted 24<sup>th</sup> January 2026 a forthright response was also filed.*
  - l. *THAT I am aware that the Applicant's intent if of all is to use the Courts order to further their mischief.*
  - m. *THAT it is my desire that each household and children to remain where our father left us till the conclusion of the Probate Cause.*

- n. *THAT the other aspect which is escalating this family feud is because the 1<sup>st</sup> Petitioner and Applicant together with some of our sisters did sold several parcels of land of our parent's Keiyo farms and now intent to gain more on the oforesearched parcels.*
- o. *THAT I do object the issuance of the sought orders but more so the need to harmonize the family relationship when status quo as left by our father be maintained till the conclusion of this grant.*
- p. *THAT the O.C.S Talget Police Station has always had the favour of the Applicant as he has always been on their side toking photos and harassing some of our brothers and failing to act on our complaints.*
- q. *THAT each child to plough Land where they have been ploughing during the lifetime of our father.*
- r. *THAT no one is intermeddling on the estate as we live in the said estate and get our daily bread thereof.*
- s. *THAT nobody has locked out any beneficiaries or of all for all of us will be given on opportunity to be heard and considered by the Court after hearing.*
- t. *THAT Your Lordship the fence being exhibited is the intended fence to move the initial one which had been set by the deceased to a new boundary created by the Chief Mr. David Kemboi Kibet A.K.A. Cheptirgei.*
- u. *THAT the Applicant needs to move to his original position so as to avoid antagonizing our other brothers.*
5. The Respondents counsel in their submissions vehemently opposed to any grant of orders to preservation of the estate as the same has not met the test set out in the following cases: **Giella v Cassman Brown & Co. Ltd (1973) EA 358, Mrao Ltd v First American Bank of Kenya Ltd & 2 Others (2003) KLR 125, in Re estate of M'Marete M'Mithiaru(deceased) [2017] eKLR, Nguruman Ltd v Jan Bonde Niesen & 2 Others [2014] eKLR and Virginia Edith Wambui Otieno v Joash Ochieng Ougo & Another [1987] eKLR.**

6. In nutshell the Respondents held the view that any grant of such orders of preservation, injunction, or prohibition would trigger conflicts among the beneficiaries and ignoring deceased's lifetime distribution.
7. This forms the foundation of the next discourse for the Court to answer the question whether there is merit to grant preservation orders of the intestate estate of the deceased.

### **Decision**

8. The High Courts of Kenya frequently issues orders for the preservation of the intestate estate under the Law of Succession Act often to prevent intermeddling or legal disposal of assets before a lawful Administrator is appointed under Section 66 of the Law of Succession. The appointed of an Administrator to an estate is meant to facilitate collection and preservation of the estate. The reason for this statutory provisions on preservation of an estate is to safeguard the assets during the pendency of the succession dispute on distribution. **The Court in Re Estate od Wilson Omolo Oloo [2019] eKLR and Re estate of Ndiba Thande [2013] eKLR** defines intermeddling as any unauthorized handling of a deceased assets that dissipates or put them at risk. What are the example of intermeddling in law?

- **Asset possession;** unauthorized taking of houses, vehicles, or personal items
- **Asset disposal;** selling or transferring property without organizational
- **Financial control;** collecting rent or withdrawing funds
- **Operational management;** managing the deceased's business

The law of succession act under Section 45 deals with intermeddling with a property of a deceased person and it 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.*

(2) Any person who contravenes the provisions of this section shall-(a)be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and(b)be answerable to the rightful executor or Administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

*On the issue of intermeddling, Courts have said time and again that any person who without the authority of the law of succession act or any other written law or grant of representation, takes possession or disposes of, or otherwise intermeddle with the free property of the deceased is guilty of a criminal offence and is answerable to the rightful executor or Administrator of the extent of the assets he has intermeddled with.*

9. On this remedy the Court in **Gladys Nkirotem'itunga Vs. Julius Majaum'itunga [2016] eKLR**, the Court stated:

*“Whereas the law of succession does not define what intermeddling with the property of the deceased is, there is ample judicial decisions on acts which may amount to intermeddling. For instances, in the case of BENSON MUTUMAMURIUNGI vs. C.E.O. KENYA POLICE SACCO & ANOTHER [2016] eKLR the Court observed that: “Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the Law of Succession Act. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I*

*reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the Law of Succession Act. That is why the law has taken a very firm stance on intermeddling and has clothed the Court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person."*

10. In this matter the record bears me witness that a petition for grant of representation was made on 2<sup>nd</sup> February 2026 by Johana Kipkorir Kemboi and Reuben Kemboi both of P. O. Box 2180-30100 Eldoret. It is a requirement of the law under the law of succession Act that the various forms as defined in the schedule of the law must be filled to accompany the petition. This is also forwarded to the Government Printer for gazettment through the Principle Registry in Nairobi. I have perused the manual record and there is no evidence of Kenya gazette notice that the petition has been gazetted and both Johana Kipkorir Kemboi and Reuben Kemboi appointed as Administrators. In nutshell unless otherwise stated the two beneficiaries have not been formally appointed by this Court as by law established. What this means is that the estate of the deceased has no formalized Administrators, the ones named in the suit paper remains to be nominees identified for purposes of official gazettment through the Kenya gazette by the Government Printer. This vacuum in administration of the estate runs the risk of being intermeddled by any of the beneficiaries pending the issuance of the grant of letters of administration. It has got to be recognized and appreciated that the making of grant of representation is a legal process outlined in the law of succession Act. There is therefore merit on the Applicant's application on intermeddling under Section 45 of the Law of Succession Act.
11. This is what the law envisages as the legal remedies and consequences of intermeddling:
- ***Criminal liability:*** *An intermeddler may be prosecuted and punished, which can lead to jail term, a fine, or both.*

- **Accountability:** *The intermeddler becomes answerable to the rightful Administrator for the assets they interfered to.*
- **Injunction:** *Beneficiaries can obtain a Court injunction to stop the intermeddling immediately.*
- **Suit of accounting:** *The rightful legal representative can sue the intermeddler for an account of profits made while in wrongful possession*
- **Intervention by public trustee:** *The public trustee can intervene to protect the estate from misappropriation.*

12. There are certain acts which are carried out by the beneficiaries during the pendency of making of grant of representation which the law does not consider as intermeddling that is paying for the funeral expenses out of the deceased's money and immediate necessary acts to secure the property from waste or theft. As stated in **Re Estate of M'mboroki M'Rinkanya (Deceased)** the Courts have consistently held that any person who deals with a deceased person's property without obtaining a grant of representation is guilty of an offence.

13. In matters of this nature the Probate Court is empowered by Section 47 to give all necessary orders including injunctions where appropriate to safeguard the deceased estate. This is one case in which interlocutory injunction based on established principle of law primarily derived from the landmark case of **Giella v Cassman Brown & Co. Ltd. [1973] EA 358** and Order 40 Rule 1 of the Civil Procedure Rules as ought to be granted to preserve the subject matter of the dispute being the intestate estate of the deceased pending the final determination of the succession cause which involves appointment of Administrator under Section 66 of the Act who then shall in return provide leadership in correlation of the assets of the deceased and the legitimate beneficiaries under Section 29 of the Act. The three-pronged test in the **Giella Case** are conditioned on the following:

- *Prima facie case: a serious, arguable case exists*

- *Irreparable loss: damages cannot be adequately compensated financially*
- *Balance of convenience: if any (1) and (2) are balanced, the Court weighs potential injury to both parties*

14. In the **Nguruman Ltd. Case** it was further held as follows by the Court of appeal:

*“These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the Applicant is expected to surmount sequentially. See Kenya Commercial Finance Co. Limited v Afraha Education Society [2001] Vol. 1 EA 86. If the Applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the Court must further be satisfied that the injury the Respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the Respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the Applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the Applicant to injunction directly without crossing the other hurdles in between”.*

15. In dealing with the first condition of prima facie case, the Honorable Court guided by the definition meted down in **MRAO Limited v First American Bank of Kenya Ltd & 2 others [2003] KLR 125:**

*“So what is a prima facie case, I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself would conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”*

16. In the present case the Applicant has raised serious concerns on infringement of his rights by the Respondents revolving around eviction so that they can continue intermeddling with the deceased's estate at the detriment of other legal beneficiaries. There is credible evidence of photographic impressions that show some form of intermeddling of the estate which has not been controverted by the Respondents in their replying affidavit. If anything, the record bears me witness that the Respondents are yet to be gazetted as bonafide Administrators to administer the estate of the deceased. In so far as the law is concerned if they are destroying properties of the deceased they are just intermeddlers who deserves to be prosecuted and appropriately punished within the provisions of the law so that the right of inheritance is not rendered nugatory.

17. What the Applicant has demonstrated from the affidavit evidence which remains to be uncontroverted by the Respondents is that if preservation orders of injunction are not issued at this stage he will suffer substantial loss. This Court interpreting and construing as to the exact circumstances in a suit of this nature comprises substantial loss it bears in mind the following conditions:

- **Irreparable damage:** *The loss must be merely inconvenience, but rather damage that cannot be adequately compensated by a later award of damages.*
- **Risk of dissipation (Mareva):** *In freezing orders, substantial loss is shown by proving a real risk that the defendant will dissipate assets, rendering a future judgment fruitless.*
- **Proprietary claim:** *Where a proprietary injunction is sought, the Applicant must show they have a "serious issue to be tried" regarding ownership and that the property needs to be preserved.*
- **Balance of convenience:** *The Court weighs the potential loss to the plaintiff (if the injunction is refused) against the potential loss to the defendant (if it is granted).*

18. I have come to the conclusion upon reviewing the matter since the petition for the grant of representation was filed and I am of the considered view that the principles in the persuasive case of **Manitoba (Attorney General) v Metropolitan Store MTS Ltd [1987] 1 SCR 110** in which the Court remarked as follows:

*“First a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the Applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits”*

19. The purpose of this interlocutory injunction is styled as preservation, its objective is to preserve the status quo, although it is of course impossible to stop the world pending the hearing and determination of this succession cause in which every beneficiary under Section 29 has a right to private property and Article 40 of the Constitution. This order of injunction now put in place by the Probate Court serves the additional purpose of improving the Court ability to do justice after a determination of the issues in the succession cause on the merits at the trial.

20. The position in any event is now clear that the following orders shall abide:

*a. An order for preservation of the deceased's estate being TEMBELIO/KIMONING BLOCK 1(CHEBURBUR)/244 be and is hereby issued restraining the Respondents either by themselves their servants and or agents from evicting the legal beneficiaries, selling, disposing off, leasing ploughing, planting crops and/or otherwise intermeddling and/or interfering in any manner with the said deceased's estate the subject matter of this succession herein pending the gazettment of the cause and the respective Administrators who shall then embark on the process of identifying the legitimate beneficiaries under Section 29 survived of the deceased and the residual net estate to devolve to each one of them as per the law established. This application attracts*

*no costs and a status conference be and is hereby scheduled on 9<sup>th</sup> of June 2026 before Court 1 for further directions.*

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 11<sup>TH</sup> DAY  
OF MAY 2026.**

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**R. NYAKUNDI**

**JUDGE**