



In re Estate of Chesang Suter - Deceased (Succession Cause 28 of 2016) [2026] KEHC 6084 (KLR) (7 May 2026) (Ruling)

Neutral citation: [2026] KEHC 6084 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 28 OF 2016**

RK LIMO, J

MAY 7, 2026

IN THE MATTER OF THE ESTATE OF CHESANG SUTER – DECEASED

BETWEEN

**MAGDALENE JEPCHUMBA CHESANG 1ST APPLICANT
LYDIA CHESANG SUTER 2ND APPLICANT
JOSEPH KOSKEI SANG 3RD APPLICANT
CHERUTO CHESANG 4TH APPLICANT**

AND

**SOLOMON KIPLAGAT CHESANG 1ST RESPONDENT
LUKA RUTO CHESANG 2ND RESPONDENT**

RULING

1. This cause relates to the estate of the late Chesang Suter (deceased) who died testate on 1/8/2012 domiciled at Suwerwa within Trans-Nzoia County.
2. The deceased died leaving behind the following dependants surviving him;
 - i. 1st wife Lydia Suter
 - a. Joseph Sang
 - b. Rose Chesang
 - c. Susan Chesang
 - d. Hellen Chesang
 - e. Linah Chesang



- ii. 2nd wife Annah Chesang
 - a. Luka Chesang
 - b. Margaret Chesang
 - c. Selly Chesang
 - d. Monicah Chesang
 - e. David Chesang
 - f. Solomon Chesang
 - g. Emmily Chesang
 - h. Dancan Chesang
 - iii. 3rd wife Magdalene Chesang
 - a. Martha Chesang
 - b. Monica Chesang
 - c. Mathew Chesang
 - d. Malachi Chesang
 - e. Jebor Chesang
 - f. Melvin Chesang
3. There was a dispute on whether or not the deceased died testate with the 1st and 3rd houses disputing the validity of the Will while the 2nd house rooting for its validity. That issue is now pending in this court for determination.
 4. While the matter was pending, this court was made aware about disputes over occupation and utility of the estate by the beneficiaries and this court was made aware that the deceased had made prior arrangements before his demise and settled each house on 16 acres of land with him remaining with 15 acres. That arrangement was conceded by all the parties to wit the 3 houses in this cause and this court directed that the status quo was to be maintained with each house occupying or utilizing 16 acres each. That status was to be maintained until further orders from this court or from the Court of Appeal as the court was made aware of the existence of a land matter pending in the Court of Appeal. The order of status quo was made on 28/1/2026 in presence of parties and respective counsels.
 5. Magdalene Jepchumba Chesang, the applicant and from the 3rd house has now moved this court through a Notice of Motion dated 23/2/2026 seeking to have Solomon Kiplagat Chesang and Luka Ruto Chesang to be committed to civil jail or fined for disobedience of the orders issued by this court on 28/1/2026.
 6. The main ground for this application is that while each of the 3 houses were required to utilize 16 acres, the respondents have disobeyed the order by ploughing the portions meant for the 1st and 3rd houses.
 7. The applicant has supported this application vide a supporting affidavit sworn on 23/2/2026 where she has deponed that the respondents Solomon Kiplagat Chesang and Luka Ruto Chesang deliberately and willfully disobeyed the orders of this court by ploughing the entire portions meant for the



applicants on 8/2/2026. The applicant annexed photographs of the ploughed section in her affidavit to support her allegations.

8. While the application was pending the 2nd respondent Luka Suter unfortunately passed on, on 25/2/2026.
9. The 1st respondent Solomon Kiplangat Chesang through counsel denied encroaching onto the parcels of the 1st and 3rd houses.
10. This court directed that before the application could be canvassed, a fact finding visit by the Deputy Registrar be made and the Deputy Registrar visited the locus in quo on 1/4/2026 and made her report which is now part of the record of proceedings herein.
11. The applicant through learned counsel M/s Samba advocate orally submitted that each of the 3 houses were confined to the 16 acres of land where they were to utilize in the meantime as the matter awaits determination. He contends that contrary to the orders of status quo the respondent caused the parcels of 1st and 3rd houses to be ploughed and also moved into 15 acres which had been set aside for the deceased.
12. Mr Samba submits that when the court visited the scene, it noted that what Solomon Kiplangat Chesang described as a forest is less than an acre with the other section ploughed and planted with maize. He faults him for disobedience of court order stating that he was aware of the court order but chose to ignore. Mr Samba contends that court orders must be obeyed to preserve the dignity of court and that if allowed disobedience of court orders can lead to chaos.
13. He faults the 1st respondent contending that as a police officer, he should be setting a good example by obeying lawful order instead of disobeying them.
14. He urges this court to sanction him adding that the replying affidavits are more denials.
15. The 1st respondent through a replying affidavit sworn on 16/3/2026 has opposed this application.
16. He avers that he was away in his place of work in Tharaka Nithi County, Kathangacini police station between 19/1/2026 and 25/2/2026. That he only came on 25/2/2026 after the demise of his brother Luka Suter Chesang.
17. He denies ploughing the parcel meant for the 1st and 3rd houses, but adds that the applicant resides in Moiben Elgeyo Marakwet County and not on the suit land.
18. He further avers that Lydia Chesang from the 3rd house resides in Koibarak Location Elgeyo Marakwet County and not on the suit land.
19. He avers that the 1st applicant sold her 16 acres portion in 2024 to Salome Suter and Isaya Silamoi.
20. That the 2nd applicant sold her 4 acres portion to Edwin Kiprono, 4 acres to Isaiah Silamoi, one acre to Koskei Kandie and Jacob Kiplangat.
21. He further avers that the purchasers have been trying to forcefully enter the land.
22. Mr Kiarie for the respondent submits that the nature of the application now before court is in the nature of criminal case because of the consequences. He contends that the standard of proof is much higher than is usually in civil cases because the punishment can lead to loss of liberty.
23. He submits that the applicant does not say she saw the respondent plough their portions and that the respondent denies ploughing the land directly or through agent.



24. He further contends that the status quo precluded the parties from selling their portions but when they visited the scene with the Deputy Registrar, they were told that there were claims of sale. He contends that they saw the portion ploughed and maize grown but according to him it was not certain who did that.
25. He further contends that the application in the Court of Appeal was heard and the 1st applicant was restrained from utilizing same parcel of land she had registered in her name after the demise of the deceased.
26. He submits that the evidence placed before court falls short to find the respondent guilty of disobedience of court order.
27. This court has considered both the applicant's case and the response made. This is an application for contempt. The applicant has invoked the powers of this court under Section 5 of *Judicature Act* to sanction or punish for contempt.
28. A willful disobedience of a valid court order amounts to contempt of court. When one willfully and consciously breaches or disobeys a court order or decree he undermines the authority and dignity of court and therein lies the danger or risk of turning a Society into anarchy where the rule of the jungle reigns. There is no Society or Country in the world where such scenario is acceptable.
29. Kenya cherishes the rule of law, equality, human rights and social justice as some of the pillars of *the Constitution* of Kenya. Anyone breaching a court order disrupts social order and the same is frowned upon by *the Constitution* and this court as a custodian of justice takes allegations of contempt of court seriously.
30. In this matter the applicant accuses the respondent for breaching a valid court order. The respondent has denied the accusations and the singular issue for determination is whether the allegations of breaches have been proved. It is true as contended by the respondent that the standard of proof in such allegations is slightly higher than in ordinary civil cases because of the potential sanction or punishment attendant to prove of contempt.
31. This court because of accusations and denials, sent the Deputy Registrar to find out if it is true that the portion meant for 1st and 3rd houses had been ploughed and by whom.
32. The Deputy Registrar in her report states that the entire parcel of the 3rd house has been ploughed and the person responsible is alleged to be Solomon Kiplagat Chesang the respondent herein, though he denied the allegation.
33. It was also established that the 1st house is not in occupation of the parcel and has leased 3 acres to one Kiprono but the rest of the parcel is cultivated by the respondent a fact he also denies.
34. What however came out clearly is that the person resident on the subject parcel is the respondent who together with one Kobole conceded that they are in exclusive occupation of the 15 acres that had been set aside by the deceased for his use.
35. This court finds from the facts placed before me including the findings of the Deputy Registrar that the 1st and 3rd houses stay far from the subject property. They are however going by the orders of status quo entitled to their respective utility of 16 acres portion in that parcel.
36. This court inquired from both parties in this application during hearing of the same about whether the ploughing and planting of maize was done at night but both counsels on record conceded that the impugned activities could only take place during the day.



37. The question posed is who among the parties in this application have the opportunity and means to plough the parcels. The answer to that question can only point to the respondent who resides on that piece of land.
38. I have carefully looked at his replying affidavit sworn in response to this application and I find it evasive and mere denials. Evasive in the sense that instead of responding to the pertinent questions about acts of contempt, he has skirted around the issue by making irrelevant allegations and counter accusations regarding sales of portions of the estate. While this court cannot condone any sale of any portion of the estate at this stage, because any sale is illegal and void anyway by operation of Section 82 of Law of Succession Act, it cannot condone a party who willfully disobeys a court order and when cornered, he starts pointing fingers at the wrong doings of the opposite party. If there is any wrong doing by the applicant or any other beneficiary this court will act to ensure that the same is addressed and checked.
39. This court further finds that reading from the tone of the replying affidavit particularly alleging that the 1st and 3rd houses are residents of Elgeyo Marakwet County on parcels belonging to the deceased in this cause, one gets the sense in which the respondent has feelings of entitlement of the entire parcel measuring approximately 51 acres.
40. It is quite clear that the orders of status quo issued by this court were clear that the 3 houses were to occupy and utilize 16 acres each pending the determination of this cause. If any party including the respondent felt aggrieved, the remedy lied not in disobedience of the said order but either review or appeal.
41. This court was informed by the respondent's counsel about the existence of an appeal in Court of Appeal with respect to a decision of Environment and Land Court. It was not clear however whether the subject of that appeal relates to the subject of this application or any other parcel. The respondent did not provide details of the case or the ruling of the Court of Appeal. So while this court is bound by decisions of Court of Appeal and holds such decision with deference there was nothing placed before me to show the nexus between the reported Environment and Land Case and the succession cause pending. Be that as it may, this court is dealing with allegations of contempt of court or disobedience of court orders issued on 28/1/2026.
42. This court finds that while there is no direct evidence that the respondent ploughed the parcel belonging to 1st and 3rd houses, the circumstances obtaining points to none else but him as the person who directly or indirectly through agent(s) caused the ploughing of the parcel as exhibited by pictures annexed to the instant application and confirmed by the Deputy Registrar's report which is also accompanied by photographs. This court finds the response filed by the respondent to be just excuses and akin to a situation of when a thief is caught stealing and attempts are made to nab him, he also runs pointing to passersby as thieves to deflect the attention.

This court is not persuaded by the antics of the respondent of trying to point fingers at supposed 'buyers' or even his deceased brother as the culprits. I find him guilty of disobedience of valid court order. He is hereby given a chance to mitigate before appropriate sentence is meted out.

DELIVERED, DATED AND SIGNED AT KITALE THIS 7TH DAY OF MAY, 2026.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Ruling delivered in open court

In the presence of



Kiarie for the 1st defendant

Samba for the Applicant

Duke/Chemosop- Court assistants

