



**In re Estate of Maritim Kiptui Mariko (Deceased) (Succession Cause  
196 of 2015) [2026] KEHC 5784 (KLR) (4 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 5784 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 196 OF 2015  
RN NYAKUNDI, J**

**MAY 4, 2026**

**IN THE MATTER OF THE ESTATE OF THE LATE  
MARITIM KIPTUI MARIKO - (DECEASED)**

**BETWEEN**

**LEAH CHANGAL ..... APPLICANT**

**AND**

**GLADYS SABAI MARITIM ..... 1<sup>ST</sup> RESPONDENT**

**BENJAMIN KIRUSI LAMAI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this Honourable Court for determination is a Chamber Summons Application dated 13<sup>th</sup> January 2026 expressed to have been brought under Order Section 47 of the *Law of Succession Act*, Rule 73 of the Probate and Administration Rules and all other enabling provisions of the law where the Applicant is seeking the following orders: -
  - a. Spent.
  - b. That this Honourable Court be pleased to order the partial implementation of the Ruling delivered on 24<sup>th</sup> August 2022 concerning the distribution of the estate of the Deceased herein.
  - c. That the District Surveyor Uasin Gishu be and is hereby authorized to enter upon LR. No. Turbo West/Osorongai Block 1 (CHEPTERWAI) 4 and carve out/excise a portion measuring 8.0 Acres to be registered in the name of LEAH CHANGAL in accordance with Paragraph 14 of the Ruling delivered on 24<sup>th</sup> August 2022.
  - d. That the Land Registrar is hereby authorized to issue a separate Title Deed in favour of LEAH CHANGAL for the said 8.0 Acres upon receipt of the Mutation Forms and approved subdivision maps.



- e. That in the event that the surviving Administrators, Gladys Sabai Maritim And Benjamin Kimursi Lamai, fail, refuse, or neglect to sign the necessary Mutation Forms, Transfer Forms and application for consent to subdivide within 14 days of this order, the DEPUTY REGISTRAR of this Honourable Court be and is hereby authorized to sign the said documents for and on behalf of the Estate to facilitate the transfer.
  - f. That the costs of this application be provided for in the estate.
2. Which application is premised on the following grounds:
- a. That this Honourable Court delivered a Ruling on 24<sup>th</sup> August 2022, wherein It finally determined the mode of distribution regarding House No.1 and expressly allocated 8.0 Acres to the Applicant herein.
  - b. That subsequently, on 12<sup>th</sup> May 2023, this Honourable Court issued an Order directing the County Surveyor to visit the suit property and undertake a survey to canvass the nature and acreage of the land.
  - c. That despite the clear directions of the Court, the execution of the said orders has been frustrated by the inaction of the Respondents.
  - d. That by a letter dated 25<sup>th</sup> January 2024, the Applicant's Advocates wrote to the Respondents' Advocates seeking cooperation to facilitate the survey and payment of requisite costs, but the Respondents have failed, refused, and/or neglected to respond or cooperate to date.
  - e. That the 1<sup>st</sup> Administrator and Protestor, SALOME CHEMWEI, who was protecting the interests of the Applicant's house, passed away on 8<sup>th</sup> December 2024, leaving the Applicant vulnerable to further delays and the whims of the surviving Administrators.
  - f. That the Applicant is being prejudiced by the continued delay and refusal of the surviving Administrators to facilitate the extraction of her title as ordered by the Court.
  - g. That it is just and equitable that the Applicant's portion be extracted to enable her to
3. The application is further supported by the annexed affidavit sworn by Leah Changal who deponed as follows:
- a. That I am the Applicant herein and a daughter/beneficiary of the Deceased, MARITIMKIPTUI MARIKO, and specifically a beneficiary under the house of SALOME CHEMWEI (Deceased), who was the 1st Administrator and Protestor herein, therefore competent to swear this Affidavit.
  - b. That on 24<sup>th</sup> August 2022, this Honourable Court delivered a Ruling on the Protest filed by the late Salome Chemwei.
  - c. That in the said Ruling, the Court determined the mode of distribution for the estate, specifically regarding House No.1.
  - d. That at Paragraph 14 of the said Ruling, the Court expressly confirmed that I, LEAH CHANGAL, am entitled to 8 Acres out of the share of 31 acres allocated to House No.1 from the suit property known as TURBO WEST/OSORONGAI BLOCK 1 (CHEPTERWAI).
  - e. That the 1<sup>st</sup> Administrator and Protestor, SALOME CHEMWEI, who was my mother and was pursuing this interest, passed on on 8th December 2024.



- f. That following the demise of my mother, the said Salome Chemwei, I moved this Honourable Court seeking to be substituted in her place as an Administrator so as to take her place in the administration of the estate, but the said application was disallowed.
  - g. That following the Ruling, this Honourable Court issued a further Order on 12<sup>th</sup> May 2023 directing the County Surveyor to visit the land and undertake a survey.
  - h. That in an effort to implement the said Order, my Advocates on record wrote a letter dated, 25<sup>th</sup> January 2024 to the Respondents' Advocates requesting cooperation and payment of survey costs to facilitate the exercise.
  - i. That following demise of my mother, Salome Chemwel. I moved this Honourable Court seeking for substitution of my mother, which application was disallowed.
  - j. That despite the receipt of the said letter and the clear orders of this Court, the Respondents have failed, refused, and/or neglected to cooperate, and nothing has been done to date.
  - k. That following the demise of my mother, Salome Chemwei, the process has completely stalled, and I am apprehensive that unless this Honourable Court intervenes, my share as determined by the Court will remain unextracted due to the intransigence of the surviving Administrators.
  - l. That there are other two Administrators of the estate, namely GLADYS SABAIMARITIM and BENJAMIN KIMURSI LAMAI, yet there is an urgent need to proceed with the implementation of the estate as they have shown no interest in finalizing the matter, to my detriment.
  - m. That I am desirous of obtaining my separate title deed to utilize the land for my advancement.
  - n. That the Ruling settled the dispute regarding distribution, and there is no pending appeal or stay of execution against the said Ruling to the best of my knowledge.
  - o. That I pray for orders enabling the Surveyor to excise my portion of 8.0 Acres and for the Deputy Registrar to execute the necessary conveyance documents (Mutation Forms, Transfer Forms, and Consent applications) to effect the transfer, as the surviving administrators have demonstrated a lack of willingness to facilitate the extraction of my specific portion.
4. In response to the application is a replying affidavit sworn by Benjamin Kimursi Lamai who deponed as follows:
- a. He is the Administrator herein hence duly competent to swear this affidavit on his own behalf and on behalf of his co-administrator Gladys Sabai Maritim.
  - b. That his Advocate on record has read and explained the contents of the application dated 13<sup>th</sup> January and wish to respond as hereunder:
  - c. That the application herein is frivolous, vexatious and an abuse of the Court process.
  - d. That the prayers sought are untenable since the ruling of 24<sup>th</sup> August 2022, new orders were issued by this Honorable Court where survey was done when it came to court's attention that the land is not 100 acres as it shows in the title.
  - e. That on 22<sup>nd</sup> March 2024, the Surveyor visited the land and surveyed the parcel turbo West/Osorongai Block 1 (Chepterwai)4 for implementation of Court order issued on 12<sup>th</sup> May 2023.



- f. That the Surveyor surveyed the land in the presence of all parties, the children of the deceased and the purchasers.
- g. That the Surveyor explained to them the acreage of the entire land Turbo West/Osorongai Block 1 (Chepterwai)<sup>3</sup> has encroached over 10 acres on their parcel of land herein.
- h. That the Surveyor further advised them that there is a need to do boundary establishment to reclaim the 10 acres from the parcel Turbo West Osorongai Block 1 (Chepterwai)<sup>3</sup>.
- i. That the Applicant herein is misleading this Honorable Court by stating that survey was never done as seen in paragraph 10 of her Supporting Affidavit.
- j. That due to the discrepancies in the acreage the ruling of 24<sup>th</sup> August 2022 cannot be implemented as stated in the order issued on 12<sup>th</sup> May 2023.
- k. That in response to paragraph 7 & 8 of the supporting affidavit, the same is denied vehemently. The survey was done and report filed.
- l. That in response to paragraph 10, 11 and 12 the same is untrue. The orders were not able to be implemented after the discoveries of the 10 acres encroached by the neighbouring land.
- m. That in response to paragraph 13 the Applicant's supporting Affidavit, the Applicant cannot be issued with a separate title deed before the issue of boundary established is settled.
- n. That he reiterates that there is need to pursue a boundary dispute as there is 10 acres which has been encroached by the neighbouring parcel.
- o. That the application herein is full of half-truths and misleading to this Honorable Court and the same should be dismissed with costs.

### **Direction**

5. This estate is heading towards a protracted litigation if my reading of the affidavits of Benjamin Kimursi Lamai and Leah Chengal is anything to go by. There is a controversy as to whether the Surveyor did visit the parcel of land with a view to implement the orders of this Court. In succession matters, the canons of family participation and inclusivity is of fundamental importance on any decision making process by the Administrators tailored towards the transmission of the shares of the estate to the beneficiaries.
6. The devolution of the shares as of now is out of time as provided under the Succession Act. The first ruling of this Court on 24<sup>th</sup> day of August 2022 ordained as follows:

“ 14. I have taken cognizance of the fact that the house 1 got 31 acres and from the proposed mode of distribution the Protestor is amenable to 3 acres, the three beneficiaries namely Abdi Mutai, Emily chepkoech and Leah Chengal are all entitled to 8 acres each while the two purchasers Tuigoi Primary School and Joyce Mmbone are entitled to 3 acres and 1 acre respectively.

15. Having said that I find that the two beneficiaries namely Abdi Mutai and Emily Chepkoech will share their portions of 8 acres each with the respective buyers they sold their portions to in the following terms:

- a. Henry Ikhesi Athanga 0.2 acres
- b. David Tum Kemboi 1.6 acres



- c. Shadrack Kipsang Rotich 0.2 acres
- d. Roda Odero Kageha 0.5 acres
- e. Julius Kiptoo Chirchir 1 acre
- f. Richard Y. Oviyo 1 acre
- g. Livingstone Kipyegon ruto 0.1 acre
- h. Tuigoi Primary School 2 acres
- i. Daniel Mutai s/o Abdi sold to Ismael Simiyu 0.2 ¼ acres

Remainder 1.175 acres to Abdi Mutai Maritim

Land sold to third parties by Emily Chepkoech Maritim.

- a. Mark Malova Induri 0.3 acres
- b. John Siekisa Misiko 0.4 acres
- c. Paul Kiprop sitienei 1 acre
- d. Nemia Kipkosgei Birgen 1 acre
- e. Veronika Jematia Lagat 1.6 acres
- f. David Kipruto Meli 0.125 acres

Remainder of 3.575 acres to Emily Chepkoech Maritim

As a consequence, having considered the affidavit of protest and material evidence as instructive of this succession cause I am satisfied that Section 38, 40, 41 & 42 of the Act provides the anchor upon which the distribution of the intestate estate should be modeled by this Court. The only rider being the amendment as regards to house No. 1 as outlined elsewhere in this ruling. I accordingly allow for confirmation of grant so issued to the administrators with ensuing amendments.”

7. This Court further notes that on 18<sup>th</sup> day of June 2025 and application dated 18<sup>th</sup> March 2025 expressed to be brought under the provisions of Sections 47 and 48 of the [Law of Succession Act](#) and Art. 159 of [the Constitution](#) of Kenya where the Applicant sought relief to wit:
  - a. Spent
  - b. That this honorable Court be pleased to substitute the deceased joint Administrator Salome Chemwei Maritim with the Applicant Leah Changal.
  - c. That upon such substitution a fresh grant be re-issued to three Administrators Gladys Sabai Maritim, Benjamin Kimursi Lamai and Leah Changal.
  - d. That any other relief that the honorable Court deems fit to award.
  - e. That cost of this application be provided for.
8. This matter therefore on the face of it needs to be addressed first as to the disparities in the survey map before any partial settlement can be ordered. For those reasons, a trial within a trial be held before this



Court 8<sup>th</sup> May 2026 virtually and the purported non-consensus surveyor who visited the parcel of land and shared his opinion on the matter be and is hereby summoned to attend Court to clarify the issue of the encroachment of 10 acres of land and the protocol of reclaiming it back to the estate. It is so ordered.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 4<sup>TH</sup> MAY 2026.**

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**R. NYAKUNDI**

**JUDGE**

