



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Sang v Sang (Miscellaneous Application E004 of 2024)  
[2025] KEHC 1257 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1257 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
MISCELLANEOUS APPLICATION E004 OF 2024  
JK SERGON, J  
FEBRUARY 26, 2025**

**BETWEEN**

**JOHN KIPNGENO ARAP SANG ..... APPLICANT**

**AND**

**JOSEPH KIPKORIR SANG ..... RESPONDENT**

**RULING**

1. The application coming up for determination is a summons dated 1st October, 2024 seeking the following orders;
  - (i) Spent
  - (ii) The estate of the deceased which is estimated in excess of Kshs. 300,000,000/= be forthwith protected from wanton wastage through sale of land, moveable and immoveable assets pending the filing and determination of succession cause which has been commenced vide Kericho HC Citation No. E029 of 2023.
  - (iii) The Respondent be restrained from selling any parcels of land, motor vehicles, tractors, farm implements, commercial plots and any other moveable and immoveable assets belonging to the deceased pending hearing and determination of the succession cause.
  - (iv) The Respondent be stopped from collecting and/or using any form of income from the sale of cattle, sale of milk and rental income from the commercial property at Litein Market (Ngobor Plaza), Kericho/Chemoiben/2026 and that such income be banked directly to be paid to the deceased's account at Kenya Commercial Bank, Litein Branch, Account No. 069-42074240, Account Name: Paul Lipsang Arap Munai
  - (v) The honourable court to declare assets (moveable and immoveable) that have so far been sold by the Respondents as belonging to the deceased's estate that is various parcels of land, farm



implements, tractor registration no. KZQ107 complete with MF Plough and Trailers ZB 1864 and ZA 5400 and Toyota Station Wagon KWQ 630 all registered in the name of the deceased.

- (vi) The honourable court to order all the assets moved from the deceased's home in Litein to Kipkelion or any other places and any assets and/or farm implements/equipment sold or motor vehicles be returned back to the name of the deceased in Litein for the sole protection pending hearing and determination of the succession cause
  - (vii) The estate of the deceased's spouse, Annah Munai (deceased) who died in 2023 having been a beneficiary of the deceased's estate since 2015 be equally protected and preserved pending filing of the succession cause.
  - (viii) All the parcels of land registered in the deceased's name but sold to third parties by the Respondent be recovered, vacated and reverted back to the estate forthwith.
  - (ix) Any other orders that are deemed just and expedient that will meet the ends of justice including sanction of the Respondent for intermeddling with the estate of the deceased contrary to section 45 of the Succession Act.
  - (x) Costs of this application be borne by the Respondent.
2. The application is supported by the grounds on the face of it and the supporting affidavit of John Kipngeno Arap Sang the Applicant herein.
  3. He avers that he is the administrator of the estate of the deceased vide a special limited grant of letters of administration granted to him by this Court on 23rd November, 2023.
  4. The Applicant avers that the deceased is their father who died intestate on 5th October, 2015 while domiciled at Litein Village, Kericho County whereas their mother Annah Munai, passed away sometime in 2023.
  5. The Applicant avers that that he, the Respondent and their five sisters are equal beneficiaries of the estate of Paul Arap Munai and Annah Munai.
  6. The Applicant avers that he and the Respondent are yet to agree on filing of the succession cause and hence the grant thereof is yet to be confirmed.
  7. The Applicant avers that he filed Citation No. E029 of 2023 pursuant to filing succession proceedings in respect to the vast estate of their deceased parents which is due for hearing.
  8. The Applicant avers that the Respondent collects all the rental income of the commercial properties constituting the estate of the deceased and/or refused to account for rental proceeds of the commercial properties to the detriment of the other beneficiaries of the estate of the deceased.
  9. The Applicant avers that the Respondent has disposed off moveable and immovable assets and properties constituting the estate of the deceased to wit parcels of land, two MF Tractors, two Trailers and one Plough.
  10. The Applicant avers that the actions of the Respondent are detrimental to the other beneficiaries of the estate of the deceased.
  11. The Applicant avers that the actions of the Respondent are tantamount to intermeddling contrary to section 45 of the *Law of Succession Act* which prohibits disposing off moveable and immovable properties of a deceased person in the absence of legal representation.



12. The Applicant avers that it is prudent to have the estate of the deceased protected and/or preserved from further wastage on account of the actions by the Respondent.
13. The Applicant avers that it is fair and just in the circumstances that the Respondent be restrained from collecting rental proceeds and that the Respondent should be made to render accounts of rental income collected pending hearing and determination of the succession cause.
14. The Applicant avers that it is imperative that the Respondent be restrained from appropriating for personal use and/or disposing properties belonging to the estate of the deceased pending hearing and determination of the succession cause.
15. Joseph Kipkorir Sang, the Respondent filed a replying affidavit in which he avers that the application herein is an abuse of the court process and that the applicant who is the eldest son of the deceased, instead of filing the instant application, should have initiated succession proceedings, he further avers that the applicant in an overt display of malice had filed a citation against him.
16. He avers that due to the Applicant's lack of cooperation he took initiative and filed Succession Cause No. E313 OF 2024 at the High Court at Kericho which would deal with the succession to the estate of their late father, PAUL KIPSANG MUNAI. The deceased, herein. He vehemently denied that he intermeddled with the estate of the deceased and contended that the Applicant has continuously disposed several properties belonging to the deceased including trees worth approximately 3 million, other properties and also parcels of land, he attached copies of a land sale agreement and an affidavit sworn by the purchaser.
17. He avers that this matter should be closed in view of Succession Cause No. E313 OF 2024 to allow the court to address all the related matters together and that any Applications of objections and/or protest the Applicants have, should be made in the right procedure through the said succession proceedings.
18. He urged this court to restrain the Applicant from intermeddling and/or dealing with the estate of the deceased in any manner pending the hearing and determination of the succession cause.
19. Linner Chepkoech Munai, Mary Cheptonui Munai and Esther Cheronu Munai daughters of the deceased each filed a replying affidavit in response to the application absolving the respondent from any wrongdoing, avering that the purpose of their affidavits was to dispel any allegations that their brother JOSEPH SANG is in any manner or way intermeddling with the estate of the deceased.
20. This court directed the parties to file written submissions in respect to the instant application.
21. The Applicant submitted that the Respondent and the three sisters have not been keen to file the succession cause in this matter because they have been sharing in the proceeds from the rental property and income from the dairy farm in Litein and efforts to hold a joint family meeting to discuss the formalities of filing a succession suit were met with resistance which necessitated filing of the citation cause no. E029 of 2023 and upon being served with the said citation the respondent never entered appearance and they rushed to court to file Kericho CMCC No. E313 of 2024.
22. The Applicant contended that the assertion of intermeddling with the estate of the deceased have not been controverted and/or denied by the Respondents in his response and/or submissions.
23. The Applicant contended that he had met the grounds for issuance of preservation orders in the instant succession suit having demonstrated that the Respondent and his sisters were using income from the farm and rental property to the exclusion of the other siblings. The applicant cited the case of Re Estate of Elijah Ngari (Deceased) [2019] eKLR where the court in dealing with the issuance of conservatory orders in succession matters cited the decision of the high court in Japhet Kaimenyi M'ndatho v



M'ndatho M'mbwiria [2012] eKLR where the court noted that the applicant in an application for preservation orders must satisfy the following conditions;

- (i) That the suit property is at the risk of being disposed of and/or alienated and/or transferred to the detriment of the applicant unless preservative orders of inhibition are issued.
- (ii) That the refusal to grant orders of inhibition would render the applicant's suit nugatory.
- (iii) That the applicant has an arguable case.

24. The Applicant contended that Kericho/Chemoiben/2139 belongs to him, having been bequeathed the same by his deceased father in his lifetime and that he sold a portion measuring 100ft\*100ft to one Prajapati Dhirubhai Rambhai but possession and eventual transfer of the commercial plot had been frustrated by the Respondent.
25. The Applicant contended that this court possessed the jurisdiction under section 47 of the [Law of Succession Act](#) and rule 73 of the Probate and Administration Rules to grant the orders sought in the application.
26. The Respondent filed submissions and contended that the Applicant has not provided proof on acts of intermeddling on the part of the Respondent. He cited section 45 and 82 (b) of the [Law of Succession Act](#) and the case of Eddah Wangu & another v Sacilia Magwi Kivuti (Deceased) Substituted with Ribereta Ngai [2021] eKLR where the court stated as follows; "In Gladys Nkirete M'itunga v Julius Majau M'itunga [2016] eKLR the court stated that; "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 instance, in the case of Benson Mutuma Muriungi v 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 hermetically 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." The Respondent contended that the Applicant has been disposing the deceased's property including trees worth approximately Ksh. 3 million and parcels of land as evidenced in annexures 'JKS -1 & 2' being the sale agreement of part of the estate and an affidavit sworn by the purchaser thereby violating the provision of Section 82 (b) of the Succession Act providing that no immovable property shall be sold before the confirmation of grant.
27. The Respondent contended that the applicant was undeserving of the orders sought, he contended that the court on 21st November, 2023 issued the Applicant a Limited Grant of Letters of Administration Ad Litem only for the purpose of filing an application for orders for temporary injunction pending the filing and conclusion of succession cause. He cited the case of In re Estate of Edward Abondo Kisero (Deceased) [2019] eKLR, the court stated as follows; "The limited grant of letters of Administration and Colligenda bona is for the purpose of dealing with the property



of the deceased where the property is in danger of waste and need to be preserved in circumstances of urgency before the full grant is issued."

28. I have considered the application, response and submissions by the parties and I find that the sole issue for determination is whether the actions of the beneficiaries herein are tantamount to intermeddling and the appropriate reliefs in order to preserve the estate of the deceased pending the conclusion of the succession cause.
29. On one hand, the applicant faulted the respondent for collecting all the rental income of the commercial properties of the deceased and disposing off moveable and immovable assets and properties constituting the estate of the deceased to wit parcels of land, two MF Tractors, two Trailers and one Plough to the detriment of the other beneficiaries of the estate of the deceased. The Applicant maintains that the actions of the Respondent are tantamount to intermeddling contrary to section 45 of the Law of Succession Act which prohibits disposing of moveable and immovable properties of a deceased person in the absence of legal representation. On the other hand, the Respondent countered the Applicants case and contended that the Applicant has been disposing the deceased's property including trees worth approximately Ksh. 3 million and parcels of land thereby violating the provision of Section 82 (b) of the Succession Act providing that no immovable property shall be sold before the confirmation of grant. The Respondent was adamant that having instituted Succession Cause No. E313 OF 2024 in respect of the deceased's estate, any applications of objection and/or protest the Applicants have, should be made procedurally through the said succession proceedings.
30. Having considered the elaborate arguments by both the parties, it is the finding of this court that there is risk of the estate being wasted and the purported actions by the parties will affect the substratum of the subject matter and may result in the dissipation of the estate of the deceased person, it is therefore prudent to issue orders to preserve the estate of the deceased pending the hearing and determination of Succession Cause No. E313 OF 2024. This court is vested with the jurisdiction entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient to ensure that the ends of justice are met, the inherent jurisdiction of the probate court is anchored on section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules. These two provisions cloth the High Court with wide discretion to do what is necessary to ensure that the ends of justice are met. In *Millicent Mbatha Mulavu & another v Annah Ndunge Mulavu & 3 others* [2018] eKLR the court affirmed that the two provisions grant the High Court powers to issue protective measures including injunctions for purposes of preserving the estate of a deceased person.
31. In *Floris Piezzo & Another –vs- Giancarlo Falasconi* (2014) eKLR, the Court of Appeal while considering whether an injunction can issue in a Succession Cause expressed itself as follows; "We have carefully considered the grounds of appeal, rival written and oral submissions, and the law. The application before the high court was for temporary injunction to restrain the appellants from dealing with the suit premises in a manner inimical to the estate of the deceased. The question which arose and had to be determined first was whether the court had jurisdiction to grant an injunction in a Succession Cause.

The appellants took the position that the Court had no such jurisdiction whereas the Respondent took the contrary position. However, the High Court was persuaded that Rule 73 of the Probate and Administration Rules reserved the Court's inherent jurisdiction to allow for the grant of injunctions in deserving cases. We are in total agreement with this conclusion. We have no doubt at all that the Law of Succession Act gives the Court wide jurisdiction in dealing with testamentary and administration issues of an estate. Indeed Section 47 of the said Act gives the Court jurisdiction to entertain any application and



determine any dispute under the Act and to pronounce such decree and orders as may be expedient. It cannot be said that such decrees and orders would exclude injunction orders. In other words, we are of the same view that Section 47 of the Act gives the Court all-embracing powers to make necessary orders, including injunctions where appropriate to safeguard the deceased's estate. This section must be read together with Rule 73 of the Probate and Administration Rules which further emboldens Court's jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court. We would imagine such orders would also include injunctive orders.”

32. The upshot of the foregoing is that the High Court has jurisdiction to issue all manner of orders including the issuance of conservatory and/or injunctive orders where appropriate, to preserve and safeguard the estate of a deceased person. However, the instant application should have filed either Kericho High Court Citation No. E029 of 2023 or within Kericho High Court Succession Cause No.E313 of 2024 and not in a separate miscellaneous application.
33. The Court cannot issue injunctive orders vide a Miscellaneous Application. The instant application is improperly and incompetently before this Court. The same is ordered struck out with each bearing their own costs.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 26TH DAY OF FEBRUARY, 2025.**

.....

**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Mutai for the Respondent

Miss Chebet holding brief for Korir for Applicant

