



**In re Estate of Matayo Cheptaki (Deceased) (Succession Cause E015 of 2022) [2025] KEHC 7201 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7201 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPENGURIA  
SUCCESSION CAUSE E015 OF 2022  
RPV WENDOH, J  
MAY 29, 2025  
IN THE MATTER OF ESTATE OF MATAYO CHEPTAKI – DECEASED**

**BETWEEN**

**EMILY CHEPKEMOI CHEPTAKI ..... PETITIONER**

**AND**

**PHILIP LOKTARI ALOMAI ..... 1<sup>ST</sup> RESPONDENT**

**CHEPOCHAPTATUTUW LOKORWAREN ..... 2<sup>ND</sup> RESPONDENT**

**MARY JACKSON ..... 3<sup>RD</sup> RESPONDENT**

**CHEPOHU ALOMAI ..... 4<sup>TH</sup> RESPONDENT**

**BENJAMIN SENGENG'E ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. For consideration are two applications dated 27/12/2024 and 26/3/2025 all brought by the 1<sup>st</sup> petitioner/applicant. By the application dated 27/12/2024, the applicant seeks the following orders;
  1. Spent;
  2. That pending the hearing and determination of the application, this court do issue an interim injunction restraining the respondents, their agents' servants or anyone acting on their behalf from tilling, cultivating, leasing out to third parties or in any manner Interfering with the land forming part of the deceased's estate;
  3. Pending the hearing and determination of the succession cause, this court do issue a temporary injunction restraining the respondents from engaging in any activities that deny the applicants or other beneficiaries' access to or use of the said land known as West Pokot/Keringet "A"/417situated in Murkwijit area measuring approximately 48.18 Acres;



4. That the OCS Kapenguria Police Station to ensure compliance with the orders;
  5. Costs of the application be provided for.
2. The grounds upon which the application is premised are found in the body of the application and the applicant, Emily Chepkemoi Cheptaki's supporting affidavit of 27/12/2024. The applicant is the 1<sup>st</sup> administrator of the deceased's estate -Matayo Cheptaki. The respondents, Philip Loktari Alomai , Chepocheptatuw Lokorwaren, Mary Jackson, Chepohu Alomai and Benjamin Sengeng'e Alomai are the protestors in this cause; that the subject land West Pokot/Keringet "A" /417, which forms the deceased's estate measures about 48.18 Acres; that she has been utilizing the land for farming to sustain her family but the respondents have interfered with the peaceful use and enjoyment of the said estate by preventing other beneficiaries including the applicant's mother, Cheptanget Matayo Alomai widow of the deceased, and her brother Mark Ruto from using the land; that the Respondents have cut down trees from Mark Ruto's land and if those actions are not stopped, they will cause irreparable damage to the deceased's estate; that the Respondents have been benefiting from the land to the exclusion of other beneficiaries which has resulted in tension and unrest among the beneficiaries. She urged the court to stop the Respondents' activities on the suit land especially that the ploughing season was approaching, in January 2025.
  3. Philip Lokitari Alomai, the 2nd administrator (1<sup>st</sup> respondent) to the deceased's estate filed a replying affidavit dated 3/3/2025. He deponed that their deceased father had two wives; the 1<sup>st</sup> Respondent to 4<sup>th</sup> Respondents belong to the 1<sup>st</sup> house while the applicant belongs to the 2<sup>nd</sup> house; that the applicant's mother got married to their father in 1957; that the land which is the subject of this cause is family land where members of both houses have lived and co-existed peacefully till 1958 when the deceased built their mother a house next to the first house; that the father had set aside a portion of land for the homestead whereas the rest was utilized jointly for grazing and cultivation jointly as a family; that they were never separated on the basis of houses; that when they grew up, their father pointed out each person's share of the land for purposes of putting up homesteads save for the girls who had gotten married and left. However, the land was not subdivided; that they did not experience any conflicts despite the fact that the land was not subdivided and they were surprised by this application and are not aware of any trespass by any of the beneficiaries. The 1<sup>st</sup> Respondent denied felling trees belonging to Mark Ruto but he was aware that Ruto's wife Francisca, has been cutting trees without their involvement; that Ruto has moved to live with his second wife in Maasai land and that neither Ruto nor the wife have complained. He also denied that anyone of the beneficiaries has been denied use of the land nor has it been leased out; that the application is malicious and made by the complainant alone and is meant to delay the distribution process and urged the court to dismiss it.
  4. The applicant filed a second application dated 26/3/2025 in which she sought the following orders: -
    1. Spent;
    2. That provisional orders be issued ex parte for a temporary injunction restraining the Respondents/contemnors whether by ourselves or their agents and servants directing them to maintain the status quo over the Estate of Matayo Cheptaki (deceased).
  5. The applicant deponed that she has sought an ex parte relief for orders of contempt against the Respondent for failing to maintain the status quo ordered made by the court on 6/1/2025; that despite the said order of status quo, the Respondents have commenced tilling the land and intermeddling with the deceased's property. She attached evidence by way of photographs taken on 16/3/2015 and 23/3/2025 confirming the ploughing of the land.



6. In reply to the application dated 26/3/2025, Philip Loktari filed an affidavit dated 4/4/2025 in which he admitted that indeed on 15/1/2025 the court made an order that the prevailing status quo be preserved as regards the suit land and that in essence, the Judge meant that the parties live just the way they had been living and cultivate the portions of land that they had been cultivating; that the said order did not restrain the petitioners from cultivating the land; that both families of the 1<sup>st</sup> and 2<sup>nd</sup> house cultivate the suit land save for the applicant who is married and lives in Tartar; that the applicant has misunderstood the 'status quo' order and the application for contempt is misconceived and that it is in the best interest that the summons for confirmation of grant be heard and determined to avoid these wrangles.
7. Both parties filed submissions. Mr. Kenyanya, Counsel for the applicant highlighted his submissions and urged that the Respondent had willfully and deliberately breached the court order of 6/1/2025 and relied on the decision of *Hadkinson -V- Hadkinson* (1952) 2 ALL ER 567 where the court held that disobedience of court orders undermines the administration of justice; that the Respondents' actions also violate Section 45 of the Laws of Succession Act which prohibits intermeddling. Counsel also relied on the decision of *Re. Estate of M'Mgarithi*(1981) KLR 558. Counsel also urged that the Respondents have admitted to excluding the applicant from the estate which is a violation of the applicant's rights which Article 27 and 61 of *the Constitution* and Section 29 of the Laws of Succession Act being a recognized dependant of the deceased.
8. As regards the court order of 6/1/2025, it was submitted that it was unambiguous and its intent was to preserve the estate and that the misinterpretation of the order by the Respondents does not absolve them from the breach. Counsel urged the court to find the Respondents in contempt of the court's order and impose appropriate sanctions and issue an injunction restraining the Respondent from cultivating or intermeddling with the suit land.
9. Mr. Kiarie, Advocate for the Respondents also filed submissions dated 5/5/2025 in which Counsel reiterated that the Respondents understood the order of status quo to mean i.e., to live on the land as they had been living before and cultivating the portions they had been cultivating; that the court should establish what the status quo was at the time the court made the order. Counsel relied on the decision of *Gatharia K. Mutitika -V- Baharini Farm Ltd* (1985) KLR 227 where it was held that the alleged breach must be precisely defined and satisfactorily proved and the guilt of the contemnors proved. In this case, the applicant has to prove that: -
  - a. The order of 6/1/2025 was clear, unambiguous and binding on the Respondent;
  - b. That the Respondent had the knowledge of the proper notice of the terms of the order and;
  - c. That the Respondents have deliberately failed to obey the terms of the order;
10. Counsel also relied on the cases of *Re. Estate of Kiplagat Kigen (deceased)* (2019) eKLR.
11. Counsel urged that since the court's order was ambiguous, the application must fail.
12. The court has considered the applications, affidavits filed in support thereof and the parties' submissions.
13. Grant of representation in respect of the Estate of Matayo Pkerker Cheptaki were issued to Emily Chepkemoi Cheptaki and Phillip Loktari Alomai. They are the first and second petitioners respectively. The fact of Philip Loktari referring to himself as the 1<sup>st</sup> petitioner is a mere mix up by his Counsel and I do not think that such a mistake goes to suggest that he intended to mislead the court or usurp the applicant's role as 1st petitioner. The 1<sup>st</sup> and 2<sup>nd</sup> Petitioners play the same role and one is



not higher than the other. Their duties as administrators are the same under section 83 of the Laws of Succession Act. The Respondents' Counsel should be more careful because the court record is clear as to who the 1<sup>st</sup> and 2<sup>nd</sup> petitioners are.

14. It is not in dispute that after the applicant filed first application dated 27/12/2024 during vacation. The duty judge gave orders that the matter be mentioned before this court and the second order was that "in the interim, all parties do maintain the status quo prevailing"
15. The applicant then filed the application dated 26/3/2025. I have looked at the said application and, it is incomplete because this court has not seen the prayer seeking to hold the Respondent's to be in contempt of the court's order of 6/1/2025. The application has two prayers 1 and 2. Prayer 1 seeks to have the applicants heard *ex parte* while prayer 2 seeks provisional orders of interim injunction restraining the Respondents contemnors.
16. In their submissions both parties refer to the application seeking that the Respondents to be held to be in contempt of court. The court will proceed on the premise that such prayer exists though not seen on the court file or online.
17. At this juncture, I wish to point out to the 1st Respondent that the order that is said to have been disobeyed by the Respondents is the one dated 6/1/2025. There is no order dated 15/1/2025.
18. The application herein is premised on section 5 of the [Judicature Act](#) which provides as follows; -
  - “ 5. Every Superior court shall have power to
    - a. Punish for contempt of court on the face of the court;
    - b. Punish for contempt of court; and
    - c. Uphold the dignity and authority of the courts.”
19. In the case of [Econet Wireless \(k\) Ltd -v- Minister For Information and Communication of Kenya Authority](#) (2005) eKLR. J. Ibrahim said as follows; -

“ It is essential for the maintenance of the rule of law and order that the authority and dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain unqualified obligation of every person against whom an order is made by a court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.”
20. The standard of proof required in cases of contempt of court is higher than that required in ordinary civil cases. Before a finding of contempt can be made, there must be demonstration of willful and deliberate disobedience of the court's order.
21. In [Gatharia K. Mutitika -V- Baharini Farm Ltd](#) (1985) KLR 227, the court held.

“ The courts take the view that where the liberty of the subject is, or might be involved, the breach for which the alleged contemnor is cited must be precisely defined. A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved.... The guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge..... The jurisdiction of committing for contempt



being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of judges to see whether there is no other mode which is not open to the objection of arbitrariness, and which can be brought to hear upon the subject.”

22. Taking cue from the above decision, the applicant must demonstrate that; -
  1. the order of 6/1/2025 was clear and unambiguous;
  2. that the Respondents had proper notice of the terms of the order;
  3. that the Respondents willfully and deliberately failed to obey the terms of the said order.
23. In the application dated 27/12/2024, the applicant at prayer 3 had sought an interim injunction to restrain the Respondents, their agents or anyone acting on their behalf from cultivating leasing or tilling the land or in any manner interfering with the land forming part of the deceased’s estate. The duty judge did not grant that prayer. Instead, he ordered that the status quo prevailing should be maintained as per the order of 6/1/2025. The status that was prevailing according to the Respondents, is that the Respondents have been tilling and cultivating the said land and some of them reside on the same land, and they should continue with what they had been doing, with and on the land. None of the parties sought clarification of the order from the judge whether it meant the Respondents cease any activities on the suit land or not. The order was not clear or specific. The order was ambiguous and not enforceable.
24. Whether an order of injunction can issue as prayed; In the case of *Giella -V- Cassman Brown & Co., Ltd* (1973) EA 358, the court laid down the principles for granting an interlocutory injunction which are that:
  - a. the applicant must show a prima facie case with a probability of success;
  - b. An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not be adequately compensated by award of damages;
  - c. If the court is in doubt, it will decide an application on the balance of convenience.
25. The Respondents have deponed and which fact has not been denied that the deceased’s two families have been residing on the suit land and using it for cultivation and grazing. The court sent the Deputy Registrar to visit the suit land and she filed a report to the effect that many members of the family live on the said land. There were ongoing farming activities and the rest of the land used for grazing.
26. The first applicant was said to be married and lives in Tartar but has two acres allocated to her. The 1<sup>st</sup> applicants’ mother and brothers live and farm on the suit land. Interestingly, the applicant seeks restraining orders only against members of the 1<sup>st</sup> house not her own siblings. If any orders were made against one house, they would be discriminatory and unfair.
27. Besides, the Respondents have been residing and farming on the land. If the court were to grant injunctive orders, where do they live and how would they earn their livelihood?
28. It is not denied that the 1<sup>st</sup> applicant belongs to the second house hence a beneficiary of the deceased’s estate. She does not reside on the suit land and so any orders granted would not affect her but the other beneficiaries will be adversely affected. The applicants’ rights as a beneficiary will be determined at the time of distribution. This matter is pending Confirmation of Grant and the parties should work towards distribution and Confirmation of Grant instead of stalling the process by filing one application after the other.



29. In the end, I find that the applicant has not demonstrated that she has prima facie case with chances of success.
30. In the circumstances, this court finds that the order of 6/1/2025 was not clear as to what the status quo was. Each party understood it differently and I would agree with the Respondents as to what the order meant. The Respondents were not in contempt of the order of 6/1/2025.
31. As to whether an order of injunction can issue to be as the Respondents as prayed, as observed above the prayer is skewed against some parties therefore unfair and not brought in good faith. An injunction is an equitable remedy and he who comes to equity must come with clear hands.
32. Both applications dated 27/12/2024 and 26/3/2025 are hereby dismissed with each party bearing their own costs.

**DELIVERED, DATED AND SIGNED AT KAPENGURIA THIS 29<sup>TH</sup> DAY OF MAY, 2025**

**R. WENDOH**

**JUDGE**

Judgment delivered in the presence of:-

Mr. Kiarie for Respondents

Mr. Kachapin holding brief for Mr. Kenya for Applicants

Juma/ Hellen - Court Assistants

