



REPUBLIC OF KENYA



**In re Estate of Chebochok Mitei (Succession Cause E031 of 2023)  
[2025] KEHC 9185 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9185 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E031 OF 2023  
RN NYAKUNDI, J  
JUNE 27, 2025  
IN THE MATTER OF THE ESTATE OF CHEBOCHOK MITEI**

**BETWEEN**

**SAMMY KIPKOECH CHERUIYOT ..... PETITIONER**

**AND**

**ESTHER CHEPKURUI LELEI ..... 1<sup>ST</sup> OBJECTOR**

**DAVID MALAKWEN TUIKONG ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. What is pending before this court is the Objection to Making of Grant dated 17/05/2024 wherein the objectors object to the making of the Grant to Esther Chepkurui Lelei and David Malakwen Tuikong. The objection is premised on the grounds that the Objectors are dependants to the deceased and beneficiaries of the estate of the deceased. Further, that the Petitioners failed to seek their consent or notify them of the Petition.
2. They additionally filed a Cross Petition for the Grant seeking to be appointed administrators of the estate of the deceased. Their petition is premised on the grounds that they are the 2<sup>nd</sup> Widow and Son of the deceased.
3. I have perused the Petition for Grant of Letters of Administration dated 17/02/2023 and filed on 18/03/2023 and among the beneficiaries of the estate, the Objectors have been included as beneficiaries of the estate. I also note that the 1<sup>st</sup> Petitioner is a son to the deceased. The court issued a Grant of Letters of Administration Intestate to the Petitioner on 08/09/2024 and on 10/03/2025, an Amended Grant was issued in favour of the Petitioner and the 2<sup>nd</sup> Objector. They additionally filed a Summons for Confirmation of the Amended Grant dated 22/04/2025.



4. The Petitioner filed an affidavit dated 06/05/2025 where he disclosed the assets and liabilities of the estate. He stated that the deceased apportioned the estate during his lifetime, giving the 1<sup>st</sup> house 25.6 acres and the 2<sup>nd</sup> house 6 acres out of Land Title No. Moi's Bridge/Ziwa Block 9 (Lemorungeny) and had even began the process of sub division of the property. Further, that on 21/03/2020 the families had a meeting where they identified the shares of the estate that were to be divided among the beneficiaries as follows;

1. 1<sup>st</sup> House
  - A. Jepketer Tabutany Sambu 6.625 Acres
  - B. John Kipsang A. Cheruiyot (deceased)
  - C. Stephen Sitienei Tuikong 6.625 Acres
  - D. Joseph Kipkosgey Cheruiyot 6.625 Acres
  - E. Sammy Kipkoech Cheruiyot 6.625 Acres
2. 2<sup>nd</sup> House – 6 Acres To Be Shared Equally
  - A. Esther Chepkirui Lelei
  - B. Mika Kipchirchir Cheruiyot
  - C. Susan Jepkurgat Lagat (deceased)
  - D. David Malakwen Tuikong
  - E. Monica Jeptoo
  - F. Rodah Jelagat Tuigong
  - G. Jonah Seroney Mitey
  - H. Edinah Jelimo Maiyo

5. He urged the court to allow this mode of distribution.

### **Analysis & Determination**

6. There are therefore two issues that come up for determination; the objection to the grant of letters of administration and if the same is disallowed, the confirmation of the summons for confirmation of grant.

7. The objection is premised mainly on the issue of consent to the petition for grant of letters of administration intestate. The first port of call is to establish the priority to petition for grant as set out in the law. The law under Rule 26 of the *Probate and Administration Rules* provides as follows:-

26.

- (1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.
- (2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.”



8. The court in the case of *Antony Karukenya Njeru v Thomas M. Njeru* [2014] eKLR in Meru Succession Cause No. 663 of 2011 held that where persons of equal priority by virtue of Rule 26(2) of the *Probate and Administration Rules* do not give consent or renounce their rights to petition for the grant then the proceedings to obtain the grant are rendered defective in substance and the grant becomes one obtained by means of untrue allegation of facts essential in point of law.
9. The provisions of Rule 40(8) of the *Probate and Administration rules* provide as follows;

“Where no affidavit of protest has been filed the summons and affidavit shall without delay be placed by the registrar before the court by which the grant was issued which may, on receipt of the consent in writing in Form 37 of all dependants or other persons who may be beneficially entitled, allow the application without the attendance of any person; but where an affidavit of protest has been filed or any of the persons beneficially entitled has not consented in writing the court shall order that the matter be set down as soon as may be for directions in chambers on notice in Form 74 to the applicant, the protester and to such other persons as the court thinks fit”.

The priority to Petition for Grant of Letters of Administration Intestate was laid out in section 66 of the *Law of Succession Act* as follows;

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

10. The upshot of the foregoing is that the 1<sup>st</sup> Objector did not consent to the Petition of Grant of Letters of Administration Intestate. As it is a mandatory requirement that there be consent by any beneficiaries who rank higher or equal in priority to the petitioner consent to the petition, I find that the objection is merited.
11. I note that the 2<sup>nd</sup> Objector was made an administrator by way of an Amended Certificate of Confirmation of Grant dated 10/03/2025. I invoke the provisions of section 47 of the *Law of Succession Act* which provides as follows;
- The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.
12. It is my considered view that it would be in the interests of justice to allow the Petition by way of Cross Application dated 17/05/2024. However, the Petitioner shall also remain an administrator of



the estate. Therefore, all the houses shall be adequately represented in the proceedings and the same shall be in compliance with statute.

13. This therefore dispenses with the Summons for Confirmation of Grant as there shall be an Amended Certificate of Confirmation of Grant indicating that the Grant of Letters of Administration Intestate are hereby issued to Sammy Kipkoech Cheruiyot, Esther Chepkurui Lelei And David Malakwen Tuikong.
14. Consequently, the administrators are directed to file a proposed mode of distribution of the estate of the deceased. I note that the 1<sup>st</sup> Petitioner, Sammy Kipkoech Cheruiyot has already filed his proposed mode of distribution vide the Affidavit dated 16/05/2025. Accordingly, the other two administrators are directed to file their proposed mode of distribution within the next thirty days.
15. The upshot of the foregoing is that I issue the following orders
  1. Sammy Kipkoech Cheruiyot, Esther Chepkurui Lelei And David Malakwen Tuikong are hereby appointed administrators of the estate of the deceased and an Amended Grant of Letters of Administration Intestate shall issue to that effect.
  2. Esther Chepkurui Lelei And David Malakwen Tuikong to file their proposed modes of distribution.
  3. That the model of distribution be shared with the court latest 10.7.2025

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 27<sup>TH</sup> DAY OF JUNE 2025**

.....

**R. NYAKUNDI**

**JUDGE**

