



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Kitur Chepsungulgei (Deceased) (Civil Case
53 of 2020) [2025] KEHC 9092 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9092 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL CASE 53 OF 2020
RN NYAKUNDI, J
JUNE 27, 2025
IN THE ESTATE OF KITUR CHEPSUNGULGEI (DESEASED)**

RULING

1. Before this court is an application dated 7th day of April 2025 seeking the following orders:
 - a. Spent.
 - b. That pending the hearing and determination of this summons inter-parties, there be stay of execution of the ruling delivered by the trial court on 1st April 2025 and all its consequential orders
 - c. That pending the hearing and determination of Kapsabet ELC no. E014/2023, there be stay of execution of the ruling delivered on 1st April 2025 and all its consequential orders
 - d. That the costs of this summons be in the cause
2. The application is anchored on grounds that:
 - a. That the 1st and 4th Administrators/Applicants are dissatisfied with the ruling of the trial court delivered on 1st April 2025
 - b. That the distribution in the above ruling includes L.R No. Nandi/Cheptil/49 which is currently registered in the name of a 3rd party, the late Malakwen Cheptallam Rotich hence rendering the above ruling unenforceable.
 - c. That there exist parallel succession proceedings distributing the aforesaid parcel of land to the beneficiaries of the late Malakwen Cheptallam Rotich vide Eldoret High Court Succession Cause no. E001 of 2022 hence creating a quagmire on execution of the impugned ruling
 - d. That further to the above L.R No. Nandi/Cheptil/49 is also being claimed by the government having been declared trust land on 16th June 1962.



- e. That the issued of ownership can only be legally ventilated vide Kapsabet ELC No. E014/2023 which suit is pending hearing and final disposal
- f. That the trial court in reaching its impugned ruling placed reliance on the averments made the 2nd Administrator/Respondent oblivious of the fact that he is a party in Kapsabet ELC No. E014/2023
- g. That in the above circumstances, there are in force two conflicting orders in favour of the beneficiaries herein and the beneficiaries of the late Malakwen Cheptallam Rotich over L.R No. Nandi/Cheptil/49 hence rendering the impugned unenforceable in the circumstances
- h. That in the foregoing the best interest of justice will be served only after ownership of L.R No. Nandi/Cheptil/49 which all the Administrators deem as having been irregularly declared a trust land is ventilated by the environment and lands court, vide ELC no. E014/2023
- i. That occupation/possession of the disputed parcel of land (L.R No. Nandi/Cheptil/49) by some of the beneficiaries of the estate herein does not constitute ownership as observed by the impugned ruling
- j. That the respondents may commence execution of the aforesaid ruling within the 90 days period provided by the trial court in its ruling hence compromising the outcome of L.R No. Nandi/Cheptil/49 which is pending hearing and determination on merit
- k. That there is a possibility of the two courts of concurrent jurisdiction issuing conflicting orders hence rendering stay of execution of the ruling delivered on 01/04/2025 necessary in the circumstances
- l. That no prejudice will be suffered by respondents who will have their entitlements enforced after the conclusion of Kapsabet ELC No. E014/2023 especially since the status quo has obtained since the deceased herein passed away in the year 1980
- m. That ends of justice will be served by allowing this application prayed

Orders

- 3. Based on the strength of this application the following orders shall abide:
 - a. That pending the hearing and determination of this summons inter-parties, there be stay of execution of the ruling delivered by the trial court on 1st April 2025 and all its consequential orders
 - b. That witness summons due issue to the surveyors who visited the suit property to carry out a topographic survey together with boundaries settings and measurements to adduce evidence before this court.
 - c. In addition the land Registrar of Nandi county is also summoned to attend court to provide the executive summary as indicated in the green card and other accountable registry of instruments with regard to L.R No. Nandi/Cheptil/49
 - d. That the two expert witnesses be served with witness summons issued by the Deputy Registrar to give appropriate perspectives on the subject matter. The hearing herein has been scheduled on the 10th of July 2025. It is so ordered

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 27TH DAY OF JUNE 2025



.....

R. NYAKUNDI

JUDGE

