



REPUBLIC OF KENYA



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**In re Estate of the Late Kipkogei arap Chesoen (Deceased) (Succession Cause 141 of 2008) [2025] KEHC 9056 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9056 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 141 OF 2008  
RN NYAKUNDI, J  
JUNE 27, 2025  
IN THE MATTER OF THE ESTATE OF THE  
LATE KIPKOGEI ARAP CHESOEN (DECEASED)**

**BETWEEN**

**ALFRED KIBIY SUGE ..... 1<sup>ST</sup> PETITIONER**

**AMOS KIMURGOR KERONEY ..... 2<sup>ND</sup> PETITIONER**

**AND**

**RODAH CHEPTOO LELEI ..... 1<sup>ST</sup> OBJECTOR**

**RUSSY JEPKORIR ..... 2<sup>ND</sup> OBJECTOR**

**WILLIAM KIBOR LAGAT ..... 3<sup>RD</sup> OBJECTOR**

**MARY JEPKETER ARUESA ..... 4<sup>TH</sup> OBJECTOR**

**RULING**

1. There are two pending applications before this court, the first one is dated 19<sup>th</sup> March, 2025 in which the 1<sup>st</sup> Objector/Applicant seeks reliefs as follows:
  - a. Spent
  - b. Pending the hearing and determination of this application inter-parties, the status quo on both the land and the register of all that parcel of land known as LR Nandi/Ndalat/241 and its resultant titles be maintained.
  - c. This honorable court be pleased to grant leave to the Applicant/Objector herein to file an appeal against the ruling delivered by this court delivered on 21<sup>st</sup> February, 2025.



- d. Pending the hearing and determination of the intended appeal, the status quo on both the land and the register of all that parcel of land known as LR Nandi/Ndalat/241 and its resultant titles be maintained.
2. The application is anchored on several grounds among them being:
    - a. That the applicant is greatly aggrieved by the ruling delivered by this honorable court on 21<sup>st</sup> February, 2025 and desires to seek another opinion from the superior court.
    - b. That the intended appellant has been informed that there is no automatic right of appeal to the court of appeal in probate and administration matters hence rendering leave before any appeal is preferred mandatory.
    - c. That the applicant has an arguable appeal to be lodged and it is only fair and just that the intended appellant is granted leave to file his appeal against the impugned ruling in exercise of his constitutional right.
    - d. That the applicant stands to suffer irreparable loss should the leave sought not be granted as having been in occupation of a portion measuring approximately 0.7 of an acre for more than thirty years.
    - e. That the respondents have threatened to evict the applicant anytime hence rendering appropriate orders necessary pending the hearing and determination of the application filed herewith and the intended appeal.
    - f. That the beneficiaries in whose favour the estate has been transmitted may deal with the titles issued to them adversely hence rendering preservative orders necessary.
    - g. That the grant of the order sought will maintain the status on the suit parcels of land which has existed for more than thirty (30) years hence the Respondent and her children don't stand to suffer any prejudice.
  3. In response to the application, the Petitioners through Alfred Kibiy Suge argued that the application is fatally and incurably defective. That the leave to appeal should be denied since there is nothing to base the appeal on. It is their response further that once the court has distributed the estate, then it becomes functus officio, and the court lacks the jurisdiction to entertain the application. That the leave to appeal is therefore not merited at all.
  4. Another application which is pending determination is Summons dated 24<sup>th</sup> April 2025 brought pursuant to sections 45, 47 & 48 Cap of the Law of Succession Act, Rules 73 of the Probate and Administration Rules, in which the Applicants are seeking the following orders:
    - a. Spent
    - b. That pending the hearing and determination of this summons interpartes and/or further orders/directions of this court, a temporary injunction do issue restraining the 1<sup>st</sup> Administrator/Respondent either in person or through his servants, agents and/or assigns from selling, mortgaging, evicting, leasing, demolishing or erecting structures and/or in any other adverse manner dealing with LR No Nandi/Ndalat 241.
    - c. That pending the hearing and determination of the objection proceedings filed herewith, and/or further orders of this court, a temporary injunction do issue restraining the 1<sup>st</sup> Administrator/Respondent either in person or through his servants, agents and/or assigns



from selling, mortgaging, evicting, leasing, demolishing or erecting structures and/or in any other adverse manner dealing with LR No Nandi/Ndalat 241.

- d. That pending the hearing and determination of the objection filed herewith and/or further directions of this court, the County Land Registrar, Nandi be restrained from in any adverse manner dealing with the register of all that parcel of land known as LR No Nandi/Ndalat 241.
  - e. That this Honourable Court do issue any such other or further orders/directions as it may deem expedient in the circumstances.
  - f. That the cost of this application be provided for.
5. The Application is supported on the grounds on the face of it among others;
- a. That the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Objectors/Applicants are grandchildren of the deceased herein by virtue of being the children of his late daughter one Kabur Jepkoech.
  - b. That the 1<sup>st</sup> Administrator/Respondent is guilty of non-disclosure of material facts with the sole intention of disinheriting the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Objectors/Applicants leading to a miscarriage of justice.
  - c. That the 1<sup>st</sup> Administrator/Respondent has threatened to evict the 3<sup>rd</sup> Objector/Applicant from 0.7 of an acre comprised in LR No Nandi/Ndalat/241 on which he has resided with the deceased from childhood.
  - d. That strangers have been visiting the deceased's parcel of land with the intention of purchasing the same hence rendering appropriate orders necessary pending the determination of the objection proceedings filed herewith.
  - e. That the estate has been distributed oblivious of the legal interest of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Objectors/Applicants.
  - f. That there is a likelihood of the 1<sup>st</sup> Administrator/Respondent dealing with the parcel forming the substratum of this estate before determination of the objection proceedings filed herewith.
  - g. That the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Objectors/Applicants risk losing their legal interest in the estate should the Administrator/Respondent and/or his children make good their threats to deal with the suit parcel of land before the objection filed herewith is heard and determined on merit.
  - h. That in the above circumstances, there is need to preserve the estate pending hearing and determination of the objection filed herewith and/or further orders/directions of this Honourable court.
  - i. That the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Objectors/Applicants stand to suffer substantial loss and damage should the orders sought herein not issue as prayed as the asset constituting the estate herein in light of their mother having predeceased them.
  - j. That this summons has been brought promptly in the best interest of justice and fairness.
  - k. That the 1<sup>st</sup> Administrator/Respondent herein will not be prejudiced in any way should preservatory orders issue as prayed as he too will have his day in this court during the hearing of the objection proceedings filed herewith.
6. The Application is supported by the Annexed Affidavit dated 24<sup>th</sup> April 2025 sworn by Russy Jepkorir, William Kibor Lagat And Mary Jepketer Aruesa, the Objectors/Applicants herein in which they aver as follows;



- a. That we are the grandchildren to the deceased herein by virtue of being the children of his late daughter one Kibur Jepkoech.
- b. That the deceased herein was polygamous having married two wives in his lifetime namely House one Tabaigoi Boit Kipler (widow) with whom he sired the following children
  - a. Kabur Jepkoech (deceased)
  - b. Maria Jeptum (deceased)
  - c. Kipler Suge (deceased)
  - d. Malakwen Sambu (deceased)
  - e. Amos Kimurgor (deceased)
  - f. Tina Jembwambok Sawe
  - g. Jepkosgei Chesoen (deceased)
  - h. Christopher Samoei (deceased)
  - i. William Kirwa
 House Two Boit Kibii (Widow) with whom he sired the following children;
  - a. Alfred Kibii Anna Sigei (deceased)
  - b. Anna Sigei
  - c. Elizabeth Jepkemboi
  - d. Daniel Kirwa
- c. That our mother passed away sometimes in the year 1965 while we were very young having been born in the years 1944, 1957 and 1963 respectively.
- d. That we have been unable to obtain the death certificate of our late mother since her body was interred as unclaimed body after her relatives failed to collect the same for interment.
- e. That we recently discovered that the 1<sup>st</sup> Administrator herein who is my step-uncle had instituted these proceedings without our involvement as the beneficiaries.
- f. That the 1<sup>st</sup> Administrator/Respondent is guilty of non-disclosure of material facts with the sole intention of disinheriting us hence leading to a miscarriage of justice.
- g. That strangers have been visiting the deceased's parcel of land with the intention of purchasing the same hence rendering appropriate orders necessary pending the determination of the objection proceedings filed herewith.
- h. That the 1<sup>st</sup> Administrator/Respondent has distributed the estate to our exclusion hence leading to a miscarriage of justice.
- i. That title deeds maybe issued in the names of the 1<sup>st</sup> Administrator and the other enumerated beneficiaries who may deal adversely with them before the determination of the objection proceedings filed herewith.



- j. That the Administrator has threatened to evict me, (the 3<sup>rd</sup> Objector) albeit having been in occupation and use of about 0.7 of an Acre comprised in LR. No Nandi/Ndalat/241 for more than 40 years.
  - k. That we risk losing our legal interest in the estate should the Administrator and/or other beneficiaries make good threats sell the parcels of land allocated to them before the objection we have filed is heard and determined on merit.
  - l. That there is a danger of parcels of land constituting the assets of this estate before the issue of our entitlement I determined by the Honourable Court.
  - m. That in above circumstances, there is need to preserve the estate pending the hearing and determination of the objection filed herewith and/or further orders/directions of this Honourable Court.
  - n. That we stand to suffer substantial loss and damage should the orders sought herein not issue as prayed as the assets constituting the estate of our late grandfather maybe transferred to unsuspecting third parties before the objection proceedings are heard and determined on merit.
  - o. That this summons has been brought promptly in the best interest of justice and fairness.
  - p. That the Administrator herein will not be prejudiced in any way should preservatory orders issue as prayed as he too will have his court in day in court during the hearing of the objection proceedings filed herewith.
7. The Application is opposed vide a Preliminary Objection dated 6<sup>th</sup> May 2025 by sworn Alfred Kibiy Suge, the 1<sup>st</sup> Petitioner/Respondent on the following grounds:
- 1. That the application and the summons for Revocation of Grant both dated 24<sup>th</sup> April 2025 are res judicata as the issues raised therein were heard viva voce and conclusively determined vide the ruling dated on 21<sup>st</sup> March 2022. The court is thus functus officio and has no jurisdiction to hear the two applications.
  - 2. That the applications herein are frivolous, vexatious, an abuse of the court process, bad and untenable in law and should be struck out, in limine with costs.
8. The Application is also opposed vide a Replying Affidavit dated 6<sup>th</sup> May 2025 sworn by Alfred Kibiy Suge in which he avers as follows;
- a. That this application is a continuation of the 1<sup>st</sup> Applicant's (Rodah Cheptoo Lelei) attempts to challenge the ruling aforesaid in an unprocedural manner despite the fact that she has failed three applications post the ruling which have all been dismissed.
  - b. That the 1<sup>st</sup> Applicant together with her children benefitted from the estate of the deceased herein by way of inheriting parcel number Nandi/Ndalat settlement Scheme/22 which was purchased by the deceased herein.
  - c. That Nandi/Ndalat settlement Scheme/22 measuring approximately 15 acres was registered in the name of Kipler Suge who is my brother and the husband to the 1<sup>st</sup> Applicant whom the deceased herein had put on the land when he married the 1<sup>st</sup> Objector/Applicant.



- d. That the land is a settlement scheme and the registration was done after a long time when the deceased had already passed on a fact which the 1<sup>st</sup> Objector/Applicant and her advocate acknowledged in court that the land belong to the deceased in this cause.
  - e. That the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicants have 26 acres of land in a place called Chepterwoi in Nandi County which rightfully belongs to them.
  - f. That prior to his death, the deceased herein had provided for his two sons of the 1<sup>st</sup> House that is Kipler Suge the husband to the 1<sup>st</sup> Objector/Applicant and Malakwen Suge inside the suit land. They were all happy and satisfied with what they had been given and never demanded land during their lifetimes.
  - g. That I have not attempted to evict the 3<sup>rd</sup> Applicant, William Kibor Lagat. He is not on my parcel of land as alleged. Subdivision has already been done and there was an arrangement between him and my Amos Kimurgor Keroney.
9. On 26<sup>th</sup> May 2025, the 3<sup>rd</sup> Objector/Applicant herein, William Kibor Lagat vide the leave granted to him by the trial court on 7/5/2025 replied to the Petitioner's replying affidavit dated 6<sup>th</sup> May 2025 and averred as follows: -
- a. That it is not in dispute that my late mother's entitlement and by extension that of my sister's has never been deliberated upon by this Honourable court as insinuated by the Petitioner.
  - b. That contrary to the averments of paragraphs 5 and 6 of the replying, my sisters and I reiterate the fact that our late mother's entitlement in the estate having never been considered, our summons are indeed legally tenable.
  - c. That it is not in dispute that the letter used by the petitioner to move this court for succession does not include our late mother as the deceased's beneficiary albeit her having been survived by us.
  - d. That in reply to paragraph 7 of the affidavit, the 1<sup>st</sup> Objector's case concerns the share of her late husband one Kipler Suge whose entitlement is distinct from that of our late mother, Kabur Jepkoech.
  - e. That the decision on record pertains to the objection raised by the 1<sup>st</sup> objector and not our stake in the estate with respect to our late mother.
  - f. That paragraphs 8, 9 and 10 of the replying affidavit concern the share of the late Kipler Suge which was raised by the 1<sup>st</sup> Objector which as stated above is distinct from the share of our late mother Kabur Jepkoech.

### **Analysis and Determination**

10. The applications before this court present a convergence of fundamental questions touching on the constitutional right of access to justice, the finality of succession proceedings, and the balance between judicial expedition and the preservation of legitimate interests in estate distribution.
11. The first application, dated 19<sup>th</sup> March 2025, brought by the 1<sup>st</sup> Objector seeks leave to appeal against this court's ruling delivered on 21<sup>st</sup> February 2025, coupled with orders to maintain the status quo on the land in question pending the determination of the intended appeal. The second application, filed on 24<sup>th</sup> April 2025 by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Objectors who claim to be grandchildren of the deceased



through their late mother Kabur Jepkoech, seeks temporary injunctive relief to preserve the estate pending the determination of their substantive objection proceedings.

12. The starting point in determining these applications must be the established legal position regarding appeals in succession matters. It is now well settled that there is no automatic right of appeal to the Court of Appeal in probate and administration matters. This principle was comprehensively articulated by the Court of Appeal in *Rhoda Wairimu Karanja & another v Mary Wangui Karanja & another* [2014] eKLR where the court observed that:

“In view of these and given the adversarial nature of litigation in our system of justice, it would be unconscionable to allow as final the decision of a single judge, and limit the right of appeal to the High Court, especially now when the court hierarchy has been opened by the creation of the Supreme Court as an apex court.

We think we have said enough to demonstrate that under the *Law of Succession Act*, there is no express automatic right of appeal to the Court of Appeal; that an appeal will lie to the Court of Appeal from the decision of the High Court, exercising original jurisdiction with leave of the High Court or where the application for leave is refused with leave of this Court.”

“under the *Law of Succession Act*, there is no express automatic right of appeal to the Court of Appeal; that an appeal will lie to the Court of Appeal from the decision of the High Court, exercising original jurisdiction with leave of the High Court or where the application for leave is refused with leave of this Court. Leave to appeal will normally be granted where *prima facie* it appears that there are grounds which merit serious judicial consideration. We think this is a good practice that ought to be retained in order to promote finality and expedition in the determination of probate and administration disputes.”

13. This position has been consistently upheld in subsequent decisions including *John Mwita Murimi & 2 others v Mwikabe Chacha Mwita & another* [2019] eKLR and *In re Estate of Wanga Ole Oiyie* [2022] eKLR. The requirement for leave serves the dual purpose of ensuring that only meritorious appeals proceed to the appellate court while simultaneously promoting the expeditious resolution of succession disputes.
14. Turning to the merits of the first application, the 1<sup>st</sup> Objector seeks leave to appeal the ruling of this court delivered on 21<sup>st</sup> February 2025. While the petitioners have argued that the application is fatally defective and that this court has become functus officio having distributed the estate, this position requires careful consideration in light of established jurisprudence on the constitutional right to appeal.
15. While it is true that leave to appeal is not automatic and requires demonstration of a *prima facie* case, the threshold for granting such leave should not be set so high as to effectively deny parties their constitutional right to seek redress from superior courts. The 1<sup>st</sup> Objector has averred that she has been in occupation of approximately 0.7 acres of the suit land for more than thirty years and faces the threat of eviction. These circumstances, viewed against the backdrop of the lengthy occupation and the potential for irreversible prejudice, present grounds that merit judicial consideration.
16. Article 48 of the *Constitution* guarantees access to justice for all persons, while Article 50 enshrines the right to fair hearing. These constitutional provisions must inform the court’s approach to applications for leave to appeal, particularly in succession matters where the stakes are often high and the consequences of the court’s decision can be life-altering for affected parties.



17. The intended appeal in this case represents the 1<sup>st</sup> Objector's first appeal, and denying leave would effectively preclude any appellate review of this court's decision. Such an outcome in my view would then be inconsistent with the constitutional principle of access to justice and the hierarchical structure of our court system which contemplates various avenues of review as a safeguard against judicial error. Therefore, I find merit in allowing the prayer for leave to file an appeal.
18. The second application presents equally significant factors worth consideration. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Objectors claim to be grandchildren of the deceased through their late mother Kabur Jepkoech who allegedly predeceased the testator in 1965. Their case is that they were inadvertently excluded from the succession proceedings due to non-disclosure of material facts by the administrator.
19. The affidavit evidence reveals that these applicants only recently became aware of the succession proceedings and have filed an objection challenging their exclusion from the estate distribution. They aver that their late mother was one of the children of the deceased but was omitted from the family tree presented to the court, resulting in their disinheritance.
20. The principle governing the grant of temporary injunctions is well established. The applicant must demonstrate a *prima facie* case, that the balance of convenience favors the grant of the injunction, and that irreparable harm would result if the injunction is not granted.
21. Lord Hoffman in *Films Rover International Ltd v Cannon Film Sales Ltd* (1987) 1WLR 670 at 680-681 stated that in determining whether to grant an interlocutory injunction, a court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been "wrong," in the sense of granting an injunction to a party who fails to establish his or her right at trial (or would fail if there was a trial) or in failing to grant an injunction to a party who succeeds (or would succeed at trial). In determining which course carries the lower risk of injustice, the court is informed by, among other things, the well-established interrelated considerations of whether there is a serious question to be tried and whether the balance of convenience or justice favours the grant.
22. The grant of interlocutory injunctive relief requires evaluation of the applicants' likelihood of ultimate success, as this assessment forms the bedrock upon which the court's discretionary power rests. The applicants' prospects of prevailing in their substantive claims constitute both a necessary component in determining whether there exists a serious question to be tried and an almost invariable consideration in evaluating where the balance of convenience lies. The court must assess the strength and probability of success as an essential factor in deciding which course of action carries the lower risk of injustice; whether to grant relief and on what terms, or to maintain the existing state of affairs.
23. The *prima facie* case test represents the law in relation to the grant of interlocutory injunctions. A *prima facie* case in a civil application includes but not confined to a genuine and arguable case. It is sufficient that the plaintiff shows a sufficient likelihood of success to justify in the circumstances the preservation of the status quo pending the trial rather than demonstrating that it was more probable than not that the plaintiff would succeed at trial.
24. In the present matter, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Objectors present a compelling case grounded in their assertion that they are the legitimate grandchildren of the deceased Kipkogei Arap Chesoen through their late mother Kabur Jepkoech, who allegedly predeceased the testator in 1965 when the applicants were mere infants aged between two and twenty-one years. Their case has particular strength from the undisputed fact that their mother was omitted from the family tree presented to this court during the original succession proceedings, despite being listed in the affidavit evidence as one of the children of the first house. The systematic exclusion of an entire branch of the deceased's lineage, particularly where the



affected beneficiaries were minors at the time of their mother's death and had no opportunity to assert their rights, raises serious questions about the completeness and accuracy of the estate distribution.

25. In making my assessment, I must take into account all relevant matters, including the practical realities of the case before this court. I must also weigh the harm that the injunction would produce by its grant against the harm that would result from its refusal.
26. In the present case, maintaining the status quo on LR Nandi/Ndalat/241 pending both the intended appeal and the determination of the objection proceedings carries the lower risk of injustice. If the appeals and objections ultimately fail, the temporary restriction would be lifted with no permanent prejudice to the successful parties. Conversely, if these proceedings succeed after the property has been disposed of, the resulting injustice could be irreversible.
27. Having carefully considered the applications, the affidavit evidence, the legal submissions, and the applicable law, this court finds that both applications have merit and should be granted. The 1<sup>st</sup> Objector has demonstrated grounds that merit serious judicial consideration for her intended appeal, while the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Objectors have established a *prima facie* case warranting preservation of the estate pending determination of their objection proceedings. The constitutional imperative of access to justice, the need to preserve the subject matter of litigation, and the balance of convenience all converge to favor the grant of the reliefs sought.
28. In the end, the following orders do abide:
  - a. Leave is hereby granted to the 1<sup>st</sup> Objector/Applicant, Rodah Cheptoo Lelei, to file an appeal to the Court of Appeal of Kenya against the ruling delivered by this Honorable Court on 21<sup>st</sup> February 2025 in accordance with the applicable rules and within the prescribed timelines.
  - b. Pending the hearing and determination of the intended appeal by the 1st Objector/Applicant and the objection proceedings filed by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Objectors/Applicants, the status quo on both the land and the register of all that parcel of land known as LR Nandi/Ndalat/241 and its resultant titles be and is hereby maintained, and all parties including the 1st Administrator/Respondent, the County Land Registrar Nandi, and any other person claiming under them are hereby restrained from selling, mortgaging, evicting, leasing, demolishing, erecting structures or in any other adverse manner dealing with the said parcel of land.
  - c. Each party shall bear their own costs.
29. Orders accordingly.

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

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**R. NYAKUNDI**

**JUDGE**

