



REPUBLIC OF KENYA



**In re Estate of Joel Chepkonga Chemirmir (Deceased) (Succession Cause  
E43 of 2022) [2025] KEHC 11466 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11466 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE E43 OF 2022**

**HI ONG'UDI, J**

**JULY 31, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE  
JOEL CHEPKONGA CHEMIRMIR (DECEASED)**

**BETWEEN**

**DAVID KIPCHUMBA CHEMIRMIR ..... 1<sup>ST</sup> APPLICANT**

**PATRICK KIPSAMBU CHEMIRMIR ..... 2<sup>ND</sup> APPLICANT**

**AND**

**EMILY KIPLAIPUL CHEMIRMIR ..... 1<sup>ST</sup> RESPONDENT**

**TOM KIPKOECH CHEMIRMIR ..... 2<sup>ND</sup> RESPONDENT**

**NOAH KIPKERICH CHEMIRMIR ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. In the Summons dated 10<sup>th</sup> January 2025 the applicants seek to be enjoined in this cause so as to file witness statements and affidavits of protest against the proposed mode of distribution of the Estate of the late Joel Chepkonga Chemirmir (deceased). They have also sought for costs of the application.
2. The said application is premised on the grounds on its face as well as the affidavit sworn by the 1<sup>st</sup> applicant on even date. He deponed that him together with co-applicant are children of the late Samson Chemirmir who died on 27<sup>th</sup> November 2010 and was a son to the deceased herein. He further deponed that as beneficiaries of the estate of Samson Kipketer Chemirmir they ought to be heard on the preferred mode of distribution of the Estate. He added that the said distribution ought to be done in a just and fair manner.
3. The respondents filed grounds of opposition dated 15<sup>th</sup> January 2025. They stated that the applicants were not direct or primary beneficiaries of the estate of the deceased herein and the applicants' late father had been included in the succession cause. They further stated that the late Silas Kibet



Chemirmir represented the 1<sup>st</sup> house and had testified in the matter on behalf of all the children of the 1<sup>st</sup> house including the applicants' late father. They added that their proposed mode of distribution had been done according to houses. Thus, the applicants' application was meant to frustrate the Succession Cause and the same ought to be rejected.

4. The application was canvassed by way of written submissions.

### **Applicants' submissions**

5. These were filed by Waiganjo & company advocates and are dated 5<sup>th</sup> March, 2025. Counsel submitted that a deceased person could not give instructions to be represented in any legal proceedings and any such representation could only be done by the legal representatives and or an executor. He further submitted that it was necessary to include the families of the deceased beneficiaries in the pleadings so that the court could be able to ascertain their interests and who they were. He placed reliance on the decision In the Matter of the estate of *Veronica Njoki Wakogoto Deceased* 2013 eKLR Musyoka J held as follows:

“.....Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1<sup>st</sup> July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents. In this case, the applicant's mother survived the deceased. She is the one entitled under Part V to inherit her mother, the applicant's deceased grandmother. The applicant clearly has no claim under Part V so long as his mother survived the deceased.....”

6. He urged the court to allow the applicants' application with costs.

### **Respondents' submissions**

7. These were filed by B. O. Akang'o advocates and are dated 20<sup>th</sup> March, 2025. Counsel identified one issue for determination which is whether the applicants have made out a case for joinder to the proceedings as interested parties. He cited the Supreme Court decision where it defined an interested party and set out the criteria for joinder as such in the case of *Trusted Society of Human Rights Alliance versus Mumo Matemo & 5 Others* SC. Petition application No. 12 of 2013; [2015] eKLR;

“(18) ...an interested party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made, either way. Such a person feels that his or her interest will not be articulated unless he himself or she herself appears in the proceedings, and champions his or her cause...”

See also;

- i. *Francis Karioko Muruatetu & another v Republic & 5 others*, SC Petition No. 15 Consolidate with SC Petition No. 16 of 2013 [2016] eKLR (Muruatetu Case).



- ii. *Yash Pal Ghai & Another v Judicial Service Commission (JSC) & Another* [2016] eKLR.

8. Counsel further submitted that the applicants had come to court in their capacity as grandchildren of the deceased and as such it is important to point out that they're not primary beneficiaries of the estate of the deceased pursuant to Part V of the *Law of Succession Act* as was held in the *Matter of the estate of Veronica Njoki Wakagota (Deceased)* (*supra*) where the court stated as follows:

“...Under part V, the grandchildren have no right to inherit their grandparents who die intestate after 1<sup>st</sup> July 1981... the only time grandchildren inherit directly from their grandparents is when the grandchildren's parents are dead.”

9. He asserted that the applicants had not met the remaining two grounds for joinder. Thus, allowing such an occurrence would definitely compromise the overarching objective of administration of justice, to wit, that justice must be administered in an efficient and expeditious manner. He urged the court to dismiss the application with costs.

### **Analysis and determination**

10. I have considered the application together with the affidavit sworn in support, the grounds of opposition and the submissions by the respective parties. In my view, the issue for determination is whether the applicants have a right to be enjoined in this cause.

11. It is the applicants' case that they ought to be enjoined in this cause in order for them to represent their late father who is a son to the deceased herein. The respondents on their part contend that the applicants have come to court in their capacity as grandchildren of the deceased and as such they were not primary beneficiaries of the estate of the deceased.

12. In *Cleopa Amutala Namayi vs. Judith Were* Succession Cause 457 of 2005 [2015] eKLR where Mrima, J observed as follows:

“Be that as it may, under Part V of the Act grandchildren have no automatic right to inherit their grandparents (sic) who died intestate after 01/07/1981 when the Act came into operation. The argument behind this position is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents (sic) indirectly through their own parents, the children of their grandparents. The children to the grandparents inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren can inherit directly from their grandparents is when the grandchildren's own parents are dead. Those grandchildren can now step into the shoes of their parents and take directly the share that ought to have gone to the said parents. Needless to say, such grandchildren must hold appropriate representation on behalf of their parents.”

13. Further, *In re Estate of Hellen Wangari Wathiai (Deceased)* [2021] Eklr where in declining to shut out a grandchild from claiming a share in his grandfather's estate the court stated as follows:

52. The evidence on record suggests that the applicant herein brought these proceedings on behalf of his father; Abdi Ibrahim Hassan (deceased) who was the beneficiary to his father's estate. The Applicant's interest emanates from the fact that his father was a beneficiary to the suit property, thus the Applicant being dependent to his father Abdi Ibrahim Ibrahim's estate within the provisions of Section 29 of the *Law of succession Act*, he acquires an interest in his



grandfather's estate; the suit property by virtue of his father's share. Therefore, in the court's view, the instant Application is properly before this court.

53. In my humble view, therefore, it is clear that the applicant had the locus standi and he was rightfully before the court to fight for the interests of the estate of his late father with regard to the deceased grandmother's estate. The fact that he was a grandchild of the deceased taken care of by his deceased grandmother prior to her death and a dependant of his father's estate has not been disputed.
54. This therefore supports the fact that he and his sister acquired interest over the deceased's grandmother's estate and thus he had the necessary locus standi. ...."
14. In the summons before this court the applicants have described themselves as grandchildren of the deceased and it is not being in dispute that their father died before distribution of the estate of their grandfather. In my view that the applicants disclosed a legally recognized interest. However, I do not agree that the said interest was dependent on them being legal representatives as was held in *Cleopa Amutala Namayi vs. Judith Were* (supra). The only burden that the applicants were to discharge was to prove the allegations made in their summons which the respondents did not produce any evidence to the contrary.
15. To buttress this position W. Musyoka J *In re Estate of Imoli Lubatse Paul (Deceased)* [2021] KEHC 1389 (KLR) observed as follows;  

“.....Section 39 of the *Law of Succession Act* makes grandchildren heirs in intestacy, where their own parents, who are biological children of the deceased, are dead. Section 41 of the *Law of Succession Act* is the provision that enables grandchildren to step into the shoes, of their own parents, and to step into those shoes they need not take out letters of administration.”
16. Consequently, I allow the summons dated 10<sup>th</sup> January 2025.
17. The applicants are granted leave to file and serve affidavits of protest and witness statements within 30 days.
18. Upon service of the same the respondents shall file and serve their responses and witness statements within 30 days.
19. Mention on 30<sup>th</sup> September, 2025 to confirm compliance and further directions on the hearing.
20. Orders accordingly.

**DELIVERED, DATED AND SIGNED THIS 31<sup>ST</sup> DAY OF JULY, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

