



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Kipkoske Arap Maswai (Deceased) (Succession Cause 323B of 2015) [2025] KEHC 11491 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11491 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 323B OF 2015**

JK SERGON, J

JULY 31, 2025

IN THE MATTER OF THE ESTATE OF KIPKOSKE ARAP MASWAI (DECEASED)

BETWEEN

WILLIAMSON CHERUIYOT NGENO APPLICANT

AND

JOSEPH KIPNGETICH KOSKEI 1ST RESPONDENT

ESTHER CHEPKEMOI 2ND RESPONDENT

RULING

1. The application coming up for determination is a chamber summons dated 2nd December, 2024 seeking the following orders;
 - (i) Spent
 - (ii) That the honourable court be pleased to issue an order of eviction against the Respondent herein from the Applicant's portion of land measuring 1.79 acres comprised under estate land known as Kericho/Kapsaos/881.
 - (iii) That the honourable court be pleased to issue an order compelling the 1st Respondent to sign transmission forms namely LRA 39 and LRA 42 to enable beneficiaries to acquire the distributed portions of land as per the certificate of grant dated 18th July, 2017 and failure to do so the deputy registrar of this honourable court do execute the said forms and other relevant documents to effect transfer of the portions of lands aforesaid to beneficiaries therein.
 - (iv) That the OSC Brooke Police Station be ordered to provide security during eviction aforesaid.
 - (v) That the costs of this application be provided for.



2. The application is supported by grounds on the face of it and an affidavit in support of the application sworn by Williamson Cheruiyot Ngeno the applicant herein.
3. He states that this court issued orders dated 6.3.2023 restraining the Respondents from interfering with his rightful share of the estate measuring 1.79 acres comprised in title no. Kericho/Kapsaos/881 pending transmission and issuance of titles as per the certificate of confirmed grant dated 18.7.2017.
4. He states that upon service of the aforesaid court order to the Respondents they adamantly failed to adhere with the terms of the said order and have continued to encroach on the subject parcel of land by grazing cattle thereon and it is therefore prudent for this court to issue eviction orders against the Respondents.
5. He depones that the beneficiaries of the estate of the deceased have approached the 1st Respondent to sign transmission documents to enable them acquire the title deeds of their portions of land apportioned to them as per the certificate of confirmation of grant issued by this court on 18.7.2017, however, he has adamantly refused and/or failed to execute the transmission documents.
6. He asserts that is prudent to have this application allowed to enable the beneficiaries to acquire the title deeds to their respective parcels and afford him the chance to repossess his rightful portion of the estate measuring 1.79 acres apportioned to him in the instant succession proceedings.
7. The application came up for inter partes hearing. The learned counsel for the applicant confirmed that they had served the instant application, however, there was no response and therefore the same should be allowed unopposed. There was no response and/or representation on the part of the Respondents.
8. I have considered the application which is unopposed and find that the issue for determination is whether to issue eviction orders and to compel the 1st Respondent to execute the transmission documents in respect to the estate of the deceased or alternatively have the deputy registrar of this court execute the transmission documents.
9. On the issue as to whether to issue eviction orders, this court finds that it is not clothed with the power to issue eviction orders. The current land legislative framework has lengthy provisions on eviction from land with elaborate procedures set out therein, therefore before anyone is evicted from any land, due process must be followed. *In the matter of the Estate of Nebemiah Muhati Lubya (Deceased)* (Succession Cause 650 of 2012) [2022] KEHC 13494 (KLR) (23 September 2022) (Ruling) the court declined to issue eviction orders and stated as follows; Regarding the application dated March 11, 2021, I have no jurisdiction, sitting, as I am, as a Judge of the High Court, to grant any orders for eviction of anyone from land. Eviction of a person from a piece of land that they occupy is a matter of use and occupation of land. Under Article 165(5) of the *Constitution*, the High Court has no jurisdiction to handle any dispute which turns around the issues the subject of Article 162(2) of the *Constitution*. Article 162(2) envisages a specialized court to handle disputes around title to land, and occupation and use of land. That court was established under the *Environment and Land Court Act*, No 19 of 2011. Jurisdiction to order eviction from land is vested in that court. The jurisdiction vested by law on a probate court is about distributing property of a dead person, it does not extend to ordering removal of persons from any land. If the *Constitution* tells me, as a Judge of the High Court, that I have no jurisdiction to determine questions on use and occupation of land, on what basis would I then order someone to be evicted from land, which is a matter which concerns use and occupation of land. The probate court, whether the High Court or the magistrate's court, merely determines who gets the land belonging to a dead person. If any person has to be evicted or removed from such land, thereafter, those wishing to have such eviction done have to file an appropriate suit before the appropriate court,



which is the Environment and Land Court, or the subordinate court to which jurisdiction has been extended.”

10. On the issue as to whether to compel the 1st Respondent to execute the transmission documents in respect to the estate of the deceased or alternatively have the deputy registrar of this court execute the transmission documents, this court is vested with power under section 47 of the Law of Succession Act and rule 73 of the Probate and Administration Rules which clothes the probate court with powers to entertain any application and make orders as may be necessary for the ends of justice such as the instant application. Therefore section 47 of the Act and rule 73 of the Probate & Administration Rules empowers the court to enforce its orders and give effect to the administration of the instant estate.
11. In light of the foregoing, the chamber summons dated 2nd December, 2024 partially succeeds. It is allowed giving rise to issuance of the following Orders:-
 - i. The 1st Respondent is hereby ordered to execute the transmission documents in respect to the estate of the deceased within thirty (30) days of this order failure to which the deputy registrar of this court is authorized and hereby directed to execute the transmission documents in place of the 1st Respondent.
 - ii. Each party to meet their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 31ST DAY OF JULY, 2025.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Koske for the Applicant

No Appearance for the Respondent

