



**In re Estate of the Late Cherotich Lango Kikwai (Deceased) (Succession Cause 440 of 2013) [2025] KEHC 11388 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11388 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 440 OF 2013  
HI ONG'UDI, J  
JULY 31, 2025  
IN THE MATTER OF THE ESTATE OF THE LATE  
CHEROTICH LANGO KIKWAI (DECEASED)**

**BETWEEN**

**ROBERT KIBII KIPNGENY ..... 1<sup>ST</sup> PETITIONER**

**REUBEN KIPKEMOI KIPTINGOS ..... 2<sup>ND</sup> PETITIONER**

**AND**

**RICHARD KIBET'RONO ..... OBJECTOR**

**RULING**

1. The petitioners filed summons for confirmation of grant dated 18<sup>th</sup> October 2023 together with the annexures therein. The same is supported by an affidavit by the petitioners sworn on even date.
2. The objector filed an affidavit of protest dated 9<sup>th</sup> April 2024 opposing the said summons. This court in its ruling dated 18<sup>th</sup> December 2024 dismissed the said affidavit as it amounted to an abuse of the Judicial process. In further protest of the summons for confirmation of grant, he filed a supplementary affidavit dated 8<sup>th</sup> April 2025. He averred that this court cannot issue a confirmation of grant outside the provisions of section 66 of the *Law of Succession Act*, which outlines the persons entitled to administer the estate of a deceased person who died intestate. He stated that the petitioners did not fall under the groups provided therein. He added that the petitioners had brought in their application in the guise of being creditors when they were merely intermeddlers.
3. He further averred that the petitioners had only made a claim that they bought the property known as Nakuru/Lengenet/564 from the late Tapkili Chelangat Kikwai but failed to produce the requisite evidence in respect of the same. He stated that he assisted his mother in all her dealings and she did not sell the said property to the petitioners. He deponed that creditors in the estate could only be issued with Letters of Administration as a measure of last resort. He stated that they ought to be listed as a



liability in the schedule of distribution of the Estate of the deceased. He concluded by further stating that if this court proceeded to confirm the grant a great catastrophe would be occasioned to the estate of the deceased.

4. The petitioners filed an affidavit dated 10<sup>th</sup> April 2025 in response to the objector's supplementary affidavit. They averred that the objector was not a child of Tapkili Chelangat Langat as alleged in his affidavit. Further, that the objector had not told the court in what way he was related to the deceased herein since he was not from her line of consanguinity. Furthermore, that if the objector had any claims arising from his relationship with Tapkili Chelangat Langat (deceased) he ought to channel them through her estate and not through the estate of the deceased herein. They added that the objector had become a vexatious litigant bringing up the same issues in one application after another to their detriment.
5. The summons for confirmation of grant was canvassed by way of written submissions.

#### **Petitioners' submissions**

6. The said submissions were filed by Omwenyo & Company advocates and are dated 3<sup>rd</sup> April 2025. Counsel identified four (4) issues for determination.
7. On the first issue, whether the administrators, Robert Kibii Kipngeny and Reuben Kipkemoi Kiptingos, are creditors to the estate of Cherotich Lango Kikwai (deceased), counsel submitted that there were three valid agreements concerning sale of property parcel number 564 between Tapkili and the two administrators (petitioners). He stated that the first was dated 9<sup>th</sup> February 2013 (Exhibit R.K.K.5) made before the chief Lengenet location. Further, that the second agreement for the same parcel of land was dated 27<sup>th</sup> June 2013 (R.K.K.8) executed by Tapkil and the two administrators (petitioners) in the presence of L.R Kipsang advocates and witnessed by four (4) witnesses. The third agreement is dated 15<sup>th</sup> January 2014 and the same was given a seal of approval by the assistant chief, Moricho sublocation.
8. Counsel further submitted that the late Tapkili Chelangat Langat admitted to having met the administrators (petitioners) as per her affidavit dated 5<sup>th</sup> November 2018 but later denied that fact. He stated that the petitioners' claim over the estate of the deceased was also supported by the averments in three affidavits sworn on 22<sup>nd</sup> July 2020, He added that Tapkil did not deny the facts deponed therein.
9. On the second issue, whether the agreements for sale between Tapkili Chelangat Langat and Robert Kibii Kipngeny and Reuben K. Kiptingos were legitimate and within the law, counsel submitted that the sale transactions between Tapkili and the two administrators began in the year 2013 and she would have reported the matter to authorities higher than the chief and the assistant chief who supervised the sale agreements if she not aware of the sale transactions.
10. Regarding the third issue on whether the objector has a valid claim against the estate of the deceased, counsel submitted that none of the objector's pleadings disclosed how he was related to either the deceased herein or Tapkili Chelangat Langat as defined in Section 39(1)(e) of the [Law of Succession Act](#). Further, that for him to lodge his claim through the estate of the deceased he would first have to obtain Grant of Letters of Administration to the estate of Tapkili Chelangat Langat but he failed to do so.
11. Finally, on what should be the mode of distribution of the asset in the estate of the deceased herein, counsel urged the court to exercise its wide discretion and find that the administrators are creditors to the estate.



## Objector's submissions

12. The said submissions were filed by GKL Advocates LLP and are dated 24<sup>th</sup> April 2025. Counsel identified three (3) issues for determination.
13. On the first issue on whether the petitioners/administrators are creditors to the estate of deceased herein, counsel submitted that for the petitioners to be creditors with the legal capacity to administer the estate of the deceased Cherotich Lango, they ought to have purchased the property from the deceased herself. He stated that the purported transaction related to the estate property which Tapkili could not lawfully dispose of in her personal capacity in the absence of a confirmed grant or complete administration. He further stated that from the petitioners pleadings they could not be recognized as creditors. He placed reliance on the decision in *Re Estate of Barasa Kanenje Manyu (Deceased)* Succession Cause 263 of (2002) [2020] KEHC 1 KLR (30 July 2020) (Ruling) where the High Court at Kakamega ruled as follows in a similar case:

“The applicants did not purchase the portions of the asset of the estate that they laid claim to from the deceased, but rather from a son of the deceased. They were not creditors of the estate. They would only have a claim against the estate if they had transacted over the land with the deceased owner himself”.
14. On the second issue as to whether the petitioners/administrators are intermeddlers in the estate of Cherotich Lango Kikwai, counsel cited section 45 of the *Law of Succession Act* on the repercussions of intermeddling with any free property of a deceased person. He submitted that the petitioners had taken possession of land parcel L.R. Nakuru/Lengenet Settlement Scheme/564 even before the subsistence of these proceedings. He stated that their actions were supported by a sale agreement which was otherwise impugned and illegal since none of the parties involved in the purported agreement were administrators of the estate as at the time. Thus, their actions were criminal in nature and the court ought not to protect and regularize an unlawful act.
15. He placed reliance on the decision in *Re Estate of the Late E. harus N ambura Nduati Jeceased* 2021 eKLR where the court made this position clear when it stated as follows:

“The above position was also held by the court in the case of *Morris Mwiti Mburungu v Denis Kimathi M’Mburungu* [2016] as follows:  
“...Where any person interferes with the free property of the deceased or deals with an estate of a deceased person contrary to the provisions of section 45 and 82 of the Act that is intermeddling, is unlawful and cannot be protected by the court. The transaction is subject to be nullified and set aside at the instance of innocent beneficiaries who may have been affected by the act but were not involved in the same.”
16. On whether the objector should be granted administration of the estate of the deceased, counsel submitted that the objector had locus standi and a valid claim in the estate of the deceased pursuant to the provisions of section 39 and 66 of the *Law of Succession Act*. He stated that the letter from the Chief of Barut Division (exhibit RKR1) indicated that the objector and four other individuals were dependants of the late Tapkili Chelangat Langat. He stated further that the objector had obtained Letters of Administration to the estate of the late Tapkili Chelangat Langat. Thus, he had a valid claim and could obtain grant of representation as a grandchild of the deceased herein.
17. He concluded by submitting that the petitioners had failed to meet the legal threshold required to be recognized either as creditors or as legitimate administrators of the estate of the deceased. Further, that



their claim was founded upon an irregular and legally untenable sale agreement which amounted to intermeddling within the meaning of Section 45 of the *Law of Succession Act*. Thus, they could not be conferred with any lawful interest in the estate of the deceased. He urged the court to dismiss the petitioners' summons for confirmation of grant with costs.

### Reply to the objector's submissions

18. These were filed by Omwenyo & company advocates and are dated 30<sup>th</sup> April 2025. Counsel referred the court to paragraphs 1 to 10 of the objector's submissions and submitted that the several orders earlier issued by this court had not been appealed against and that the petitioners had been appointed as administrators to the estate of the deceased. He urged the court to exercise its unfettered discretion under rule 73 of the *Probate and Administration Rules* to determine in finality all the issues arising.

### Analysis and determination

19. I have considered the summons for confirmation, the affidavits and submissions by both the petitioners' and the protestor's counsel. I find the issue for determination to be distribution of the deceased's estate.
20. The duty of a probate court was elaborated In *Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR where court held as follows:

“.....The *Law of Succession Act*, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.”

21. There is no doubt that the petitioners are creditors to the estate of the deceased. This has consistently and regularly been acknowledged and recognized throughout these proceedings. The said findings have not been overturned or reviewed by a higher court to this one. Further, no evidence was adduced by the Objector to prove the contrary and the petitioners were appointed as administrators to the estate of the deceased after the only beneficiary to the estate Tapkili Chelangat Langat died. Additionally, the Objector failed to prove his relationship with the deceased herein and therefore in my humble view he has no legal claim over the estate of the deceased. This means the mode of distribution annexed to the petitioner's application remains unchallenged and I will therefore accept and adopt it.
22. The upshot of my findings above is that the Summons for Confirmation of grant dated 18<sup>th</sup> October 2023 is allowed. Accordingly, the grant of letters of administration issued on 28<sup>th</sup> September 2023 to Robert Kibii Kipngeny and Ruben Kipkemoi Kiptingos is confirmed on the terms of the following distribution of the deceased's estate:

List of properties Who to inherit Share Nakuru/Lengenet Robert Kibii Kipngeny 2 acres Settlement Scheme/564 Reuben Kipkemoi Kiptingos 3 ½ acres Estate of Tapkili Chelangat 2 acres Langat

23. Each party to bear its own costs.
24. Orders accordingly.

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



**H. I. ONG'UDI**  
**JUDGE**

