



REPUBLIC OF KENYA



In re Estate of the Late Kipkosgei Arap Choge (Deceased) (Probate & Administration 66 of 2006) [2025] KEHC 11975 (KLR) (11 August 2025) (Ruling)

Neutral citation: [2025] KEHC 11975 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 66 OF 2006
RN NYAKUNDI, J
AUGUST 11, 2025**

BETWEEN

JANE MAIYO APPLICANT

AND

PAUL KIPTOO KOSGEI 1ST RESPONDENT

PHILIP KIPKORIR KOSGEI 2ND RESPONDENT

GEOFFREY KIPTANUI KOSGEI 3RD RESPONDENT

RULING

1. What is pending before this Court for determination is a Notice of Motion Application dated 26th March 2025 in which the Applicant is seeking the following orders;
 - a. That this Honorable Court be pleased to substitute Jacob Cheruiyot Baliach (deceased) with the Applicant, Jane Maiyo, as a beneficiary to the estate of Kipckosgei Arap Choge(deceased) in respect of the property 1/6 Share LR 8309 PARCELS 2, 4 and 73.
 - b. That the Applicant, Jane Maiyo, be granted the legal capacity to continue litigating in respect of the said estate as the rightful beneficiary.
2. The Application is made on the following grounds on the face of it among others:
 - a. The Applicant is the widow of the late Jacob Cheruiyot Baliach, who was a son and beneficiary of the estate of Kipckosgei Arap Choge(deceased).
 - b. The said Jacob Cheruiyot Baliach passed away, thereby necessitating his substitution with the Applicant to ensure proper representation of his interests.
 - c. The estate property 1/6 Share LR 8309 PARCELS 2, 4 and 73 is part of the inheritance of the deceased's dependents, including the Applicant.



- d. It is in the interest of justice that the substitution be granted to avoid delays and enable proper administration of the estate.
 - e. There is no prejudice occasioned to any other beneficiary by the substitution.
3. The Application is supported by the annexed Affidavit sworn by the Applicant who deposed as follows;
- a. That I am the Applicant herein and therefore competent to swear this affidavit.
 - b. That I am the widow of the late Jacob Cheruiyot Baliach, who was a son of the deceased, Kipkosgei Arap Choge.
 - c. That the late Jacob Cheruiyot Baliach was a beneficiary of the estate of his father, the deceased herein, including the property 1/6 Share LR 8309 Parcels 2, 4 and 73.
 - d. That following the death of my husband, it is necessary for me to be substituted in his place to enable me to represent his interests in the estate proceedings.
 - e. That I and my children continue to reside on the said property and rely on it for our livelihood.
 - f. That unless I am substituted, I will be unable to protect my rights and those of my children over the estate of my late father-in-law.
 - g. That I make this application in the interest of justice and to facilitate the efficient administration of the estate.
 - h. That no prejudice will be occasioned to any party by granting the orders sought.

Analysis and Determination

4. This application was withdrawn and in its place, both parties agreed to adopt the map dated 28th May 2025 of the suit property together with the findings made by the surveyor which are indicative as follows:
- a. From the Part Development Plan (PDP) that was in custody of the proprietors, and which formed the basis of the 2015 RIM has the areas indicated as;
 - a. Moiben/ Moiben Block 10 (Itigo)/1 – 4.047Ha
 - b. Moiben/Moiben Block 10 (Itigo)/50 -6.070Ha
 - c. Moiben/ Moiben Block 10 (Itigo)/2 - 0.809 Ha
 - d. Moiben/ Moiben Block 10 (Itigo)/74- 14.569 Ha
 - e. Moiben/ Moiben Block 10 (Itigo)/72 – 1.214Ha
 - f. The total Map area of the parcels above = 25.90Ha
 - g. The total Ground area of the parcels above = 25.617Ha
 - h. Total Deficit = 0.283 Ha
 - b. The measurements on the RIM (©1997) on the distance from start of parcel 1 to the end of parcel 4 has a discrepancy in distance by -10.46m and -2.17m (RIM= 1254m Ground = 1243.54m and RIM = 1056m Ground = 1053.83m) on the western side and along the road respectively. Averagely a discrepancy of -6.32m (Disputed dimensions of parcel 73)



- c. The RIM does not coincide with the current road reserve demarcation (Pillars) by KeRRA that increased the road reserve hence affecting areas all the parcels along that major road.
 - d. The RIM shows generally only the position of the parcel in relation to the adjacent parcels as well as the shape and relative distances between them. However, it is indicted on the RIM 'This Map is not Authority on boundaries
 - e. The physical demarcation/beaconing of parcel 72,73 & 2 on the ground was to be determined by implementing the distances sourced from the RIM which shows to be inconsistent with the ground measurements.
 - f. The position as it is on the ground before resurvey is the exact near match to that on the RIM which we adopt.
 - g. The distances on the RIM may not always be as exact as that on the ground. Therefore, approximate distances are allowed as long as the areas remain as per the register. (RIM is not authority on boundaries).
 - h. There is a uniform discrepancy in areas on all the surveyed parcels
 - i. We recommend that since this © 1997 RIM was as a result of a fixed boundary survey (Cadastral survey of LR No. 8309) initial survey plans can be sourced so as to correct on the © 2015 RIM so as to reflect the ground status and prevent future disputes.
5. Given the above details from Geocon Surveys Limited, both parties in the presence of Mr. Okari and Mr. Bett have agreed that the survey map dated 27th May 2025 be harmonized by the County Surveyor using the certificate of confirmation of grant dated 7th August 2023 as the basic reference. After harmonization and making the appropriate entries, the parcel of land referenced as L.R. 8309 instead of a 1/6 Share of L.R. 8309 shall be consolidated. The matter is scheduled for a status conference on 25th September 2025. It is so ordered.

DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 11TH AUGUST 2025.

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R. NYAKUNDI

JUDGE

