



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Kimeli arap Kogo alias Kimeli Kogo (Deceased) (Succession Cause 197 of 2014) [2025] KEHC 11885 (KLR) (11 August 2025) (Ruling)

Neutral citation: [2025] KEHC 11885 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 197 OF 2014
RN NYAKUNDI, J
AUGUST 11, 2025
IN THE MATTER OF THE ESTATE OF KIMELI
ARAP KOGO ALIAS KIMELI KOGO (DECEASED)**

BETWEEN

DAVID KIPTOO MELLY 1ST PETITIONER

ALFRED KIBET TANUI 2ND PETITIONER

AND

SARAH JELAGAT MARITIM 1ST OBJECTOR

HILLARY KIPTOO BOSIO 2ND OBJECTOR

AND

HELLEN CHEROTICH ROTICH INTERESTED PARTY

DAVID KIPKEMBOI YEGO INTERESTED PARTY

EUNICE CHEPCHUMBA INTERESTED PARTY

RULING

1. What is pending before me for determination is a Notice of Motion Application dated 23rd April 2025 in which the Applicants are seeking the following orders:
 - a. Spent
 - b. That the 1st, 2nd and 3rd interested parties/applicants be enjoined to the suit and be granted leave to respond to the application dated 27/1/2025.
2. The Application is based on the following grounds among others;



- a. That the interested parties are the children of the late Kipyego Maritim who is the brother to Kimeli Arap Kogo..
 - b. That land parcel known as Nandi/Kurgung/281 belonged to Kipyego Maritim though it was registered in the names of his brother Kimeli Arap Kogo..
 - c. That the late Kipyego Maritim had 2 wives and the interested parties herein are the children to the 2nd wife whereas the Objector is the child to the 1st wife.
 - d. That the Objector in its application dated 27th January 2025 is misleading the court that she is the only beneficiary land parcel known as Nandi/Kurgung/281 and the grant to be rectified to reflect her as the sole beneficiary leaving out the interested parties.
 - e. That unless the interested parties are enjoined to the cause and granted leave to respond to the application dated 27th January 2025, they can be greatly prejudiced.
3. The Application is supported by the annexed affidavits sworn by the interested parties/applicants who aver as follows:
- a. That we are children to the late Kipyego Maritim who was the brother Kimeli Arap Kogo..
 - b. That the late Kipyego Maritim was the owner of land parcel known as Nandi/Kurgung/281 though the same was registered under the names of the brother.
 - c. That during his lifetime, the late Kipyego Maritim had two (2) wives.
 - d. That we heard that our sister Sara who is a child to the 1st Wife has made an application to the court to be given land parcel known as Nandi/Kurgung/281 belonging to our late father without our involvement
 - e. That we never had a meeting over the estate of our father and/or been informed of any steps being taken.
 - f. That on several occasions we tried to make inquiry and follow up on our father's inheritance but the same was met with hostility and even being chased from the land and being told never to step foot there.
 - g. That our mother the 2nd wife was staying in the land until sometime in 2000 after our father passed on she was chased out of the land and went to stay with the grandchildren in Tabolwa.
 - h. That our mother died in 2011 and was buried in Tabolwa in the grandchild land.
 - i. That our brother David Kipkemboi Yego does not have a place to live having been denied to live in the land parcel known as Nandi/Kurgung/281 belonging to our late father Kipyego Maritim and stays with his nephew in Tabolwa where our mother was buried.
 - j. That we stand to be greatly prejudiced as we stand to lose our inheritance as the children of the late Maritim Kipyegon if the prayers sought in this application are not granted.

Decision

4. I have read through the application and the supporting affidavit. I have not had sight of a response to the application but I shall nonetheless consider the application on its merits.
5. Under the *Constitution of Kenya (Protection of Rights and Fundamental freedoms practice and procedure Rules 2013)*, Rule 2 defines "interested party" as: -"A person or entity that has an identifiable



stake or legal interest in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigations.”

6. Gitari J. in the case of *AMM Vs JMN* [2019] eKLR had this to say about an interested party:-

“An interested party is one who has a stake in proceedings, though he was not a party to the cause ab initio. He is one who will be affected by the decision of the Court when it is made, either way. The Court should not act in vain by enjoining a party that clearly would have no interest in the subsequent proceedings”

7. In succession causes, persons who would be outright interested parties are beneficiaries, spouses, children, creditors and any other person who has a legal claim to an estate. From the application, the proposed interested parties, Hellen Cherotich Rotich, David Kipkemboi Yego And Eunice Chepchumba deponed that they are children to the late Kipyego Maritim who was the brother Kimeli Arap Kogo.; that the late Kipyego Maritim was the owner of land parcel known as Nandi/Kurgung/281 though the same was registered under the names of the brother; that during his lifetime, the late Kipyego Maritim had two (2) wives; that they heard their sister Sara who is a child to the 1st Wife has made an application to the court to be given land parcel known as Nandi/Kurgung/281 belonging to their late father without their involvement and that they never had a meeting over the estate of their father and/or been informed of any steps being taken.
8. This establishes that they have an identifiable stake in the proceedings as persons with a legal claim to part of the estate. Therefore, the proposed interested parties have demonstrated a direct, substantial and legally protectable interest in the subject matter of this litigation.
9. The purpose of enjoining an interested party to proceedings is to ensure that all persons who may be affected by the outcome of a case are given an opportunity to be heard in accordance with the rules of natural justice. This is in line with Article 50(1) of the *Constitution* which guarantees the right to a fair hearing. A right to a fair trial is both procedural and substantive in the administration of justice. It is widely recognized in our constitutional framework as expressly entrenched in the provisions of Article 50, as read with Article 47 and 48. The Applicant demonstrated locus standi in the ongoing proceedings and is desirous to be given an opportunity to advance her case together with the 2nd Objector Hillary Kiptoo. In my considered view there is no prejudice or injustice that will suffer in giving the objectors to lay before court the issues which are likely to impact the inheritance of this intestate estate. Therefore at an opportune time this court will be at liberty to adjudicate over their claim as asserted in the affidavit in support of the application.
10. The Court notes that the application has been brought timeously before the determination of the objection proceedings. No prejudice will be occasioned to the parties if the proposed interested parties are enjoined to these proceedings. In fact, it would be in the interest of justice to have all claims to the estate of the deceased determined conclusively to avoid multiplicity of suits.
11. On whether the other parties would be prejudiced with the joinder, the applicant pleaded that no prejudice would be occasioned on the respondents. On their part, the respondents did not demonstrate that they will suffer any prejudice if the applicant is enjoined in the cause.
12. In light of the foregoing observations, it is my finding that the applicants have convinced the Court that they merit to be enjoined to the proceedings involving the estate of the deceased where their beneficial interests will be determined. Consequently, the Notice of Motion dated 23rd April 2025 is hereby allowed with no orders as to costs, whereas a trial within a trial be held on 17th September 2025.
13. It is so ordered.



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

.....

R. NYAKUNDI

JUDGE

In the presence of Mr. Kiboi Advocate for the Objector.

