



In re Estate of Mary Chesiro Yebei alias Maria Chesiro Yabei (Deceased) (Succession Cause 93 of 2012) [2025] KEHC 12356 (KLR) (3 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12356 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 93 OF 2012
RN NYAKUNDI, J
SEPTEMBER 3, 2025
IN THE MATTER OF THE ESTATE OF MARY CHESIRO
YEBEI ALIAS MARIA CHESIRO YABEI (DECEASED)**

BETWEEN

RICHARD KIPTUM CHUMO 1ST PETITIONER

WILSON KIPROTICH LELEI 2ND PETITIONER

AND

JOEL KIPLETING OBJECTOR

RULING

1. What is pending before this court for determination is summons for confirmation of Grant dated 28th May 2025 in which the Applicants are seeking the following orders;
 - a. That this Honourable Court be pleased to confirm grant issued on 9th April 2025 before the expiry of 6 months.
 - b. That the grant of probate for letters of administration intestate on the said matter on 29th May 2025 be confirmed.
 - c. That the costs be provided for.
2. The application is based on the following grounds on the face of it among others;
 - a. That it is in the interest of justice that this application be allowed as prayed.
 - b. That no party will suffer prejudice sound the same be allowed.
 - c. That it is only fair and just that the application be allowed.



3. The Application is supported by the annexed affidavit dated 28th May 2025 sworn by Richard Kiptum Chumo And Wilson Kiprotich Lelei who aver as follows;

a. A grant of letters of administration of the said estate was made to me in this matter on the 17th July 2012.

b. The deceased was survived by the following siblings: -

a. Philip Kibet Busienei Son

B. Richard Kiptum Chumo Son

C. Joseph Kimaiyo Kebenei Son

D. Jude Kiprono Limo Grandson

E. Joel Kipleting Son

F. Hellen Jepkemei Kosgei Daughter

G. Prisca Jepkoech Sonkok Alias
Grace Chelagat Songok Daughter

H. Wilson Kiprotich Lelei Son

C. No Application For Dependents Is Pending.

D. The Identification Of All Persons Beneficially Entitled To The Said Estate Has Been Ascertained And Determined As Follows: -

Annexed Schedule Of Distribution

Land Parcel Title Number:

Kapsaret/simat Block 2 (simat)/228 Measuring Approximately 3.530 Ha

Beneficiary 1d No Share

A. Richard Kiptum Chumo XXXXXXXX 2.600 Acres

B. Wilson Kiprotich Lelei XXXXXXXX 2.100 Acres

C. Joseph Kimaiyo Kebenei XXXXXXXX

D. Ezekiel Kipngetich Bett XXXXXXXX

E. Nickson Kiptoo Rotich XXXXXXXX Jointly Own 1.025 Acres

F. Hillary Kipchirchir Bett XXXXXXXX

G. Hellen Jepkemei Kosgei XXXXXXXX 0.1 Acre

H. Prisca Jepkoech Sonkok Alias
Grace Chelagat Songok XXXXXXXX 0.1 Acre

I. Jude Kiprono Limo XXXXXXXX 0.1 Acre

J. Nicholas Kimeli XXXXXXXX 0.45 Acres

K. Faith Jerono SonGOK XXXXXXXX 0.2 Acres



- e. No estate duty is payable (remain unpaid) in the respect of the estate of the deceased and refer to an estate duty compliance certificate.
4. I take note that the Objector herein also filed chamber summons application dated 26th June 2025 brought pursuant to sections 47, 76 (a)(b) of the [Law of Succession Act](#) and Rules 73, 74 of the Probate and Administration Rules seeking the following orders;
 - a. Spent
 - b. That the Certificate of Confirmation of a Grant be rectified.
 - c. Costs be provided for.
5. The Application is made on the following grounds among others;
 - a. The proceedings to obtain the grant were defective in substance.
 - b. The name of the objector/applicant one Joel Kipleting was omitted from the grant being a purchaser and hence disinherited.
6. The application is supported by the annexed affidavit sworn by the Objector herein who avers as follows;
 - a. That the Certificate of Confirmation of a Grant issued herein omitted my name as a beneficiary by way of purchase.
 - b. That on 17/3/2012, I entered into a sale agreement with the 1st administrator herein Richard Kiptum Chumo for purchase of 1.5 acres for kshs. 457,500/=
 - c. That I paid kshs. 167,500/= leaving a balance of kshs. 167,500/=.
 - d. That the said Richard Kiptum Chumo refused to take the said balance of kshs. 167,500/= from me subsequently and at the same time refused and/or failed to refund me the sum of kshs. 167,500/=.
 - e. That I now claim a parcel of land measuring one (1) acre being the equivalent of the sum of kshs. 290,000/=.
 - f. That I need my share of 1-acre land accordingly from the estate.
 - g. That I pray that the said Grant be rectified to include my share.

Analysis and Determination

7. I have read and considered the 2 applications and the affidavits in support. There are 2 issues manifest for determination as follows;
 - a. Whether this court should grant the orders of confirmation of Grant vide summons application dated 28th May 2025?
 - b. Whether this Court should order rectification of the grant vide chamber summons dated 26th June 2025?



Whether this court should grant the orders of confirmation of Grant vide summons application dated 28th May 2025?

8. The applicable law in this succession cause is Section 71(2) (a) of the *Law of Succession Act* which states as follows:

(2) The court to which application is made, or to which any dispute in respect thereof is referred may (a) If it is satisfied that the grant was rightly made to the applicant, and that he is administering and will administer, the estate according to law, confirm the grant or...

Provided that in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities of the all persons beneficially entitled and when confirmed the grant shall specify all such persons and their respective shares.

9. Rule 41(3) of the Probate and Administration Rule States:

“Where a question arises as to the identity, share or estate of my person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant but subject to the provision of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to section 71(2) of the Act, Proceed to confirm the grant.

10. It is also clear from the Law of Succession that the rights of children on inheritance are guaranteed and protected as can be appreciated under Section 36 & 38 of the Act.

35(2) A surviving spouse shall during the continuation of life interest provided by subsection (1) have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as take effect at any future date.

(2) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.

(3) Subject to the provisions of section 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

11. Section 38 provides as follows:

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall subject to the provisions of Section 41 and 42 devolve, upon the surviving child if there be only one, or be equally divided among the surviving children.



12. I respectfully agree with the Court in *Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR, (W. Musyoka J) held that: -

“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.”

13. Given this background and the principles applicable, I allow the summons for confirmation dated 28th May 2025.

Whether this Court should order rectification of the grant vide chamber summons dated 26th June 2025?

14. The jurisdiction of this court to order for the rectification of grant is granted by section 74 of the *Law of Succession Act*. In particular, section 74 of the *Law of Succession Act* provides as follows;

“Errors in names and descriptions, or in setting out the time and place of the deceased’s death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.”

15. The marginal notes under the section states that errors may be rectified by the court. On the other hand, Rule 43(1) of the Probate and Administration Rules provides: -

“Where the holder of grant seeks pursuant to provisions of Section 74 of the Act, rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time and places of death of the deceased or, in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was made.”

16. From the wording of these provisions which deal with rectification of grant, it is clear that the scope of rectification of grant is limited to correction of errors in the names and description or in setting forth the time and place of the deceased’s death and place of death of the deceased. In general terms rectification is meant to correct errors which will not substantially interfere or change the grant and the certificate of grant. I may also point out that minor errors are what rectification seeks to address. In the matter of the Estate of Geoffrey Kinuthia Nyamweinga deceased [2013] eKLR the court stated;

“The law on rectification or alteration of grants is Section 74 of the *Law of Succession Act* and Rule 43 of the Probate and Administration Rules-What these provisions mean is that errors may be rectified by the court where they relate to names or descriptions, or setting out of the time or place of deceased’s death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general...”

17. A clear reading of the record confirms that the deceased Mary Chesiro Yebei died on December 20th, 2010 and that she left behind an estate comprising of only one asset namely, the aforementioned land



- parcel known as Kapsaret/Simat Block 2/ (Simat) 228 measuring 3.530 Ha) estimated at a total value of kshs. 24,000,000 (Kenya Shillings Twenty-Four Million only). In accordance with the provisions of the *law of succession Act*, the 1st Applicant/Administrator as one of the sons of the deceased filed this succession cause on 20th March 2012 for Grant of Letters of Administration intestate in respect of the Estate of the deceased. The record confirms that he had the approval and consent of his siblings to file the petition on their behalf. Thus, having complied with all the requirements for issuance of Grant, the 1st Applicant/Administrator was issued with Grant of Letters of Administration intestate in respect of the Estate of the deceased on 17th July 2012.
18. The applicant by the name Samwel Kimaiyo Bitok filed an application dated 1st November 2012 seeking that the Grant of Letters of Administration intestate issued on 7th July 2012 to Richard Kiptum Chumo be revoked or annulled and an order for full and accurate inventory be made. Consequently, vide a ruling dated 20th February 2019, the Grant of Letters of Administration issued on 17th July 2012 to Richard Kiptum Chumo in respect of the Estate of the Deceased, Mary Chesiro Yeberi was revoked. The Petitioners herein being Richard Kiptum Chumo and Wilson Kiprotich Lelei petitioned for Letters of Administration Intestate and an amended letters of Administration intestate was issued on 9th April 2025 by this Honourable Court.
 19. The basis for rectification of the Grant dated 9th April 2025 by the Objector herein is based on the grounds that: the proceedings to obtain the grant were defective in substance and that the name of the objector/applicant one Joel Kipleting was omitted from the grant being a purchaser and hence disinherited. This was further premised on the affidavit evidence where the Objector deponed as follows: That on 17/3/2012, I entered into a sale agreement with the 1st administrator herein Richard Kiptum Chumo for purchase of 1.5 acres for kshs. 457,500/=; That I paid kshs. 167,500/= leaving a balance of kshs. 167,500/=; That the said Richard Kiptum Chumo refused to take the said balance of kshs. 167,500/= from me subsequently and at the same time refused and/or failed to refund me the sum of kshs. 167,500/= and that I now claim a parcel of land measuring one (1) acre being the equivalent of the sum of kshs. 290,000/=.
 20. In view of the above, it is not in dispute that that the deceased Mary Chesiro Yebei died on December 20th, 2010 and left behind an estate comprising of only one asset namely, the aforementioned land parcel known as Kapsaret/Simat Block 2/ (Simat) 228 measuring 3.530 Ha). The 1st Applicant/Administrator as one of the sons of the deceased filed this succession cause on 20th March 2012 for Grant of Letters of Administration intestate in respect of the Estate of the deceased which was issued on 17th July 2012 and revoked on 20th February 2019. The Petitioners petitioned afresh for letters of administration intestate and an amended letters of administration intestate was issued on 9th April 2025. From the record, the Objector deponed that on 17/3/2012, he entered into a sale agreement with the 1st administrator herein Richard Kiptum Chumo for purchase of 1.5 acres for kshs. 457,500/= and attached a sale agreement in that effect. It is clear that by the time the sale was effected, the letters of administration intestate had not been taken out by the Administrators.
 21. The sale agreement referred by the Objector before this court is dated 17th March 2012 for selling of land of the deceased. Certainly, by this time, the grant had not been confirmed. The land was still in the name of the deceased herein Mary Chesiro Yebei. It is therefore clear that this sale agreement to sell some parcel of land of Mary Chesiro Yebei (deceased) by the 1st Administrator was done before confirmation of grant. Section 82(b)(2), of the *Law of Succession Act* provides that; personal representatives have powers to sell the assets of the deceased, but it goes on to state that “no immovable property shall be sold before confirmation of grant”.



22. There are numerous court decisions on this aspect. This court in the case of *In Re Estate of Isaac Kaburu Marete(deceased)* (2017) eKLR, held as follows;

“acquisition of land before confirmation of grant is unlawful and does not enjoy property rights under *the constitution*..... I will restate once again what I stated in the case of the *Matter of the Estate of M’Ajogi M’ikiugu Ajogi(deceased)* on sale of estate property before confirmation of grant as follows: - Courts have said time and again, and I will not be tired of stating it again, that under section 82(b)(2) of the Succession Act, sale of immovable property of the estate before confirmation of grant is prohibited. Again, under section 55 of the Succession Act, the law had placed a restriction on distribution of any capital assets of the estate before confirmation of grant. Therefore, no person shall have any power or legal authority or capacity to sell immovable property of the deceased before confirmation of grant. As such, any such attempted sale of immovable property of the estate before confirmation of grant shall be null and void for all purposes and intents....”

23. It is trite that without a confirmed grant, the legal representative of Mary Chesiro Yebei (deceased), could not enter into any sale agreement for sale of immovable property of the estate. Section 55 of the *Law of Succession Act* provides that no grant of representation, whether or not limited in its term, shall confer power to distribute any capital assets, or make any division of property, unless and until the grant has been confirmed as provided by Section 71 of the *Law of Succession Act*. In the case of *In re Estate of Paul M’Maria (Deceased)* [2017] eKLR, the Court held that;

“[10] The restriction provided by law that no immovable property shall be sold or distributed before confirmation of grant is not merely directory or an embellishment. It is a statutory command with fatal consequences on any transaction done in contravention of the said law. Accordingly, acquisition of immovable property of the estate in contravention of the *Law of Succession Act* is tainted with killer poison; and is unlawful acquisition; thus, property so acquired does not enjoy the protection of property rights under article 40(6) of *the Constitution*. See the claw-back provision of *the Constitution* that: -

40(6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.”

24. Further, the law forbids any person, may it be a beneficiary or not from dealing with the estate of a deceased person before being allowed by the court through succession proceedings. Section 45 of the *Law of Succession Act* provides that dealing with such an estate of the deceased without authority one commits an offence known as intermeddling. In particular, this section provides as follows;

45. No intermeddling with property of deceased person

- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
- (2) Any person who contravenes the provisions of this section shall-
 - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and



- (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

25. In the case of *Samuel Ariga Bosire vs Abagusii Otenyo Self Help Group (2021) eKLR*, the court held;

“... an administrator is not allowed to dispose of any part of the deceased's property even if he is a beneficiary..... if he does so, he will be guilty of intermeddling with the deceased estate under section 45 of the *Law of Succession Act* and is guilty of an offence under sub section (2) punishable by a fine not exceeding kshs. 10,000/= or to a term of imprisonment not exceeding 1 year or both penalties”

26. It is clear from the applicable law that the 1st Petitioner/Administrator herein Richard Kiptum Chumo could not have entered into a sale agreement for sale of the deceased estate being part of parcel of land before confirmation of grant. That could have been intermeddling which is forbidden by Section 45 of the Succession Act. The court will rely on the findings of the court in the case of *Morris Mwiti Mburugu vs Dennis Kimanthi M'mburugu (2016) eKLR*; where the court held:

“from the foregoing, it is clear and I so hold, that where any person interferes with the free property of the deceased or deals with the estate of a deceased person contrary to the provisions of sections 45 and 82 of the Act, 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 the innocent beneficiaries, who may have been affected by the act, but were not involved in the same.”

27. It is my considered view that a sale agreement does not confer rights in a succession case before the grant of representation is confirmed because the confirmed grant is the legal authority that empowers a personal representative to distribute the deceased's estate. Without a confirmed grant, the personal representative lacks the full legal authority to deal with the estate's capital assets, making any sale agreement before that point invalid for transferring property rights.

28. Since the 1st Petitioner/Administrator herein Richard Kiptum Chumo allegedly entered into transaction for sale of the deceased estate being a portion of the parcel of land before grant was confirmed or without authority of the court, then he had no legal authority to sell land.

29. In view of the foregoing, the following orders shall abide: -

- a. The Summons for Confirmation of Grant dated 28th May 2025 is hereby allowed. The Grant of Letters of Administration intestate issued on 9th April 2025 in respect of the estate of the deceased Mary Chesiro Yebei is confirmed in terms of the schedule of distribution annexed to the supporting affidavit of the administrators' subject to the directions given below regarding the claim by the Objector.

Land Parcel Title Number:

Kapsaret/simat Block 2 (simat)/228 Measuring Approximately 3.530 Ha

Beneficiary 1d No Share

- A. Richard Kiptum Chumo XXXXXXXX 2.600 Acres
B. Wilson Kiprotich Lelei XXXXXXXX 2.100 Acres
C. Joseph Kimaiyo Kebenei XXXXXXXX



- D. Ezekiel Kipngetich Bett XXXXXXXX
- E. Nickson Kiptoo Rotich XXXXXXXX Jointly Own 1.025 Acres
- F. Hillary Kipchirchir Bett XXXXXXXX
- G. Hellen Jepkemei Kosgei XXXXXXXX 0.1 Acre
- H. Prisca Jepkoech Sonkok Alias
Grace Chelagat Songok XXXXXXXX 0.1 Acre
- I. Jude Kiprono Limo XXXXXXXX 0.1 Acre
- J. Nicholas Kimeli XXXXXXXX 0.45 Acres
- K. Faith Jerono Songok XXXXXXXX 0.2 Acres

- b. The Chamber Summons dated 26th June 2025 by the Objector Joel Kipleting seeking rectification of the grant is hereby dismissed. This Court finds that the purported sale agreement dated 17th March 2012 between the Objector and the 1st Administrator, Richard Kiptum Chumo was entered into at a time when no confirmed grant had been issued. In terms of Sections 55, 82(b)(ii) and 45 of the Law of Succession Act, the said transaction amounted to unlawful intermeddling and is null and void for purposes of conferring rights in the estate of the deceased.
- c. This Court notes that the Objector paid a substantial consideration under the said sale agreement and has an equitable claim in law. The Objector is therefore at liberty to pursue his claim directly against the 1st Administrator, Richard Kiptum Chumo and/or any other beneficiary who may have been privy to the transaction from their allocated share of the estate upon confirmation. In this regard, the confirmed grant shall not be amended to include the Objector as a beneficiary of the estate.
- d. Each party shall bear their own costs.

30. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS AT ELDORET THIS 3RD SEPTEMBER 2025

.....

R. NYAKUNDI

JUDGE

