



In re Estate of the Late Peter Kiptonui Arap Chelule (Deceased) (Succession Cause E119B of 2024) [2025] KEHC 11974 (KLR) (11 August 2025) (Ruling)

Neutral citation: [2025] KEHC 11974 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E119B OF 2024
RN NYAKUNDI, J
AUGUST 11, 2025**

BETWEEN

PATRICK CHELULE 1ST PETITIONER

STANLEY CHELULE BOIT 2ND PETITIONER

AND

EVELYNE KIOMBE 1ST BENEFICIARY

MARIELLE CHEPKEMEI CHELULE 2ND BENEFICIARY

RULING

1. What is pending before me for determination are summons dated 30th July 2024 brought pursuant to Rules 49 & 16(1) of the Probate and Administration Rules, Section 45(1), 71 & 83 of the [Law of Succession Act](#) Cap 160 Laws of Kenya in which the Beneficiaries/Applicants are seeking the following orders;
 - a. Spent
 - b. Preservatory order do issue restraining the Respondent and his agents from disposing of wasting or in any other way intermeddle with land parcels Transnoia/zea/695/10, Uns. Residential Plot 18/10 Kitale Municipality (milimani) & Chemalal Farm (chepkoilel) Lr No. 5376/5 or any other property constituting the estate of the deceased pending final distribution of the estate.
 - c. Evelyne Kiombe, Merielle Chepkemei Chelule, Tamara Cherotich Chelule & Armstrong Kibet Chelule be listed as the beneficiaries of the deceased estate.
 - d. The applicants be granted equal access to the use of estate property pending confirmation of Grant.



- e. The Respondent do show cause why he should not be substituted by such other heir as the Court may order.
2. The Application is based on the grounds on the face of it among others;
 - a. The Applicant has filed this summons as a beneficiary
 - b. Upon the death of the applicant's husband in December 2023, one of her brother in-law namely Robert Chelule attempted to demolish her matrimonial home.
 - c. In the month of February 2024, the applicant visited estate land parcels Transzoia/zea/695/10, Uns. Residential Plot 18/10 Kitale Municipality (milimani) & Chemalal Farm (chepkoilel) Lr No. 5376/5 with view of preparing the same for this season's planting.
 - d. On getting to the land parcels Transzoia/zea/695/10, Uns. Residential Plot 18/10 Kitale Municipality (milimani), she noted that persons' unknown to her had ploughed the same parcels.
 - e. She has since established that the Respondent had sold land parcel Transzoia/zea/695/10 to someone unknown to her.
 - f. The Applicant has also learnt that one Anil Sutar purchased land parcel Waitaluk/mabonde Block 9/kebulwet/65 and has gone ahead to secure the property by erecting a wall and steel gate.
 - g. The Respondent's actions have occasioned prejudice to the applicant and her children because they cannot access estate land for farming.
 - h. Further, the applicant has failed to amend this cause so as to list the children of the late Patrick Chelule as beneficiaries/Dependents of the deceased's estate.
 - i. The actions of the Respondents are unlawful and amount to intermeddling with the deceased's estate.
 - j. It is only in order that a preservative order do issue restraining the Respondent and his agents, accomplices or other persons deriving interest under him from further inter-meddling wasting or in any other way deal with the deceased's estate pending distribution of the deceased's estate.
 3. The Application is supported by the annexed affidavit dated 30th July 2024 sworn by Evelyne Kiombe in which she avers as follows;
 - a. That I have filed this summons as a beneficiary by virtue of being the widow of Patrick Chelule (Deceased), who passed away on 14/12/2023 at Nairobi West Hospital.
 - b. That the late Patrick Chelule was one of the sons and co-administrator of the estate of Peter Chelule (Deceased) to whom this estate relates.
 - c. That my matrimonial home is within land parcel Uasin Gishu/Ngenyilel/522 which is part of the deceased's estate herein, and our marriage was blessed with 3 issues namely:
 - a. Marielle Chepkemei Chelule (25 years) deceased's granddaughter.
 - b. Tamara Cherotich Chelule (12 years) deceased's granddaughter.
 - c. Armstrong Kibet Chelule (7 years) deceased's grandson.



- d. That I know of my knowledge that long before my father in law passed on, he had informally pointed out to all his sons the general boundaries of portions of land comprised in land parcel Uasin Gishu/Ngenyilel/522, within which each of them could build their homes and engage in farming activities.
- e. That further to the foregoing, my father in law allowed his sons to cultivate the rest of the family land parcels on equal basis.
- f. That the said living arrangements ran well during the lifetime of my father in law and upon his demise, one of my brother in law namely Stanley Chelule went against the deceased's wish by proceeding to set up his home at Chemalal Farm (chepkoilel) Lr No. 5376/5 thereby restricting access to the rest of his siblings.
- g. That after death of my husband in December 2023, one of my brother in law namely Robert Chelule attempted to demolish my matrimonial home. The issue was however resolved at the family level and I repaired the broken grill ad window.
- h. That in the month of February 2024, I planned to visit land parcels Transnzoia/zea/695/10, Uns. Residential Plot 18/10 Kitale Municipality (milimani) & Chemalal Farm (chepkoilel) Lr No. 5376/5 with view of preparing the same for this season's planting.
- i. That on getting to land parcels Transnzoia/zea/695/10, Uns. Residential Plot 18/10 Kitale Municipality (milimani), I noted that persons' unknown to me had ploughed the same.
- j. That I carried out further investigations and have established that my brothers in law led by the administrator leased out the land parcel Trans Nzoia/zea/695/10 to one Kennedy Chemai and before the lease could even expire, they went ahead to sell the said estate property to a 3rd Party who is unknown to me.
- k. That I also learnt that one Anil Sutar purchased land parcel Waitaluk/mabonde Block 9/kebulwet/65 and has gone ahead to secure the property by erecting a wall and steel gate.
- l. The Respondent's actions have occasioned me and my children serious prejudice since the purported lessees or purchasers have dispossessed me and the deceased's grandchildren as a source of livelihood. We rely on farming to generate income with which I spent in meeting my children's educational and other upkeep expenses.
- m. The actions of the Respondents are unlawful and amount to intermeddling with the deceased's estate.
- n. It is only in order that a preservative order do issue restraining the Respondent and his agents, accomplices or other persons deriving interest under him from further inter-meddling wasting or in any other way deal with the deceased's estate pending distribution of the deceased's estate.
- o. That further to the foregoing, I wish to state that the Grant was issued on 11/08/2011, but the administrators never took any action to finally distribute the estate as statutorily required of him.



- p. That the Respondent has failed to amend the petition so as to bring in the beneficiaries/interested parties who claim under the late Patrick Chelule.
 - q. That instead, has gone about wasting the estate in violation of section 45 and 82 of the *Law of Succession Act*.
 - r. That in view of the foregoing, I urge the court to find that the Respondent's role as an administrator of the estate is no longer tenable and should show cause why he should not be substituted or replaced with any other heir as the deceased's estate may nominate.
4. The Application is opposed by the 2nd Petitioner vide a Replying Affidavit dated 2/08/2024 which can be summarized as: the beneficiaries are raising issues that the deceased 1st Petitioner ought to have raised before he passed on and that the Application is an afterthought.
5. The Application was canvassed by way of written submissions.

Applicant's written submissions

6. The Applicant filed written submissions dated 27th January 2025 where the learned Counsel Mr. Nyekwei submitted that the only issue for determination is whether the prayers are merited and submitted as follows: -
7. On the issue of Prayer for preservatory orders, the Learned Counsel submitted that the 2nd Petitioner/ Respondent has not denied that he has disposed of part of the deceased's estate and that he however justified his actions by suggesting that whatever he did was as per the deceased's wish. Counsel added that there is no written will and even if it were a testate estate, Grants would have to be confirmed before dealing in the estate. Reference was made to Section 45 of the Law of Succession (Cap 160) which bars anyone from dispose of or otherwise intermeddle with the estates free property. Counsel stated that the Respondent's actions violates the provisions of Section 45 of the Succession Act and therefore the grant of preservatory order as prayed will be appropriate remedy.
8. On the issue of Amendment of Petition, the Learned Counsel submitted that the beneficiaries have adduced evidence that the 1st Petitioner - Patrick Chelule has passed on and that the deceased was married to the 1st Beneficiary, with whom they bore the 1st Beneficiary and 2 others. He added that it is only in order to amend Form P/ A 5 so as to indicate the beneficiaries as daughter in law and grandchildren respectively. Counsel further submitted that the Respondent did not address the issue of amendment of P/A 5 at all and he therefore urged this Court to find that the amendment is necessary to enable the 1st Petitioner's (dcd) heirs inherit his share of the estate.
9. On the issue of Equal access to the Estate property, the Learned Counsel submitted the Applicants have averred that they have been enjoying equal access to the deceased property prior to the demise of the 1st Petitioner. He added that the Respondent has since deprived them of access to the land they have been cultivating.
10. On the issue of Substitution of the 2nd Petitioner, the Learned Counsel submitted that the Respondent dis not expressly oppose the prayer that he should be stripped of the roll of the estate's administrator because of the following reasons: -he Respondent subtly admits to have disposed of the deceased free property in ""- contravention of Section 45 of Succession Act. Moreover, on Confirmation of Grants, the learned counsel submitted that section 71 provides that the holder of any grant of representation shall apply for confirmation of grants within six months and also in the present case, the Respondent has been the estate's administrator since the year 2011, and has never taken any steps to comply with



Section 71 of the Act. Counsel stated that no explanation for the delay has been given and the only appropriate remedy is to replace the Respondent with any other heir who shall be directed to promptly apply for confirmation of Grants.

Analysis and Determination

11. I have read and considered the application, the affidavit in support, replying affidavit in opposition of the same and the written submissions. There is one sole issue of determination;

Whether a preservative order should issue restraining the Respondent from dealing with the estate properties pending distribution.

12. The *Law of Succession Act* grants the High Court wide power to issue orders that may be required to preserve the estate pending distribution to the rightful heirs and to guarantee that the goals of justice are fulfilled. Section 47 of the *Law of Succession Act*, gives this court power to preserve the assets of the deceased's estate if it is being wasted. In particular, this section provides as follows: -“The High Court shall have jurisdiction to entertain any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient, provided that the High Court may for the purpose of this Section be represented by the Resident Magistrate appointed by the Chief Justice.”

13. The above Section was considered by the Court of Appeal in *Floris Piezzo & Another vs Giancarlo* [2014]:-

“..... In other words, we are of the firm view that Section 47 of the Act gives the court all-embracing powers to make necessary orders, including injunctions where appropriate to safeguard the deceased's estate. This Section must be read together with Rule 73 of the Probate & Administration Rules which further emboldens court's jurisdiction to make such orders as may be necessary for the ends of justice to prevent abuse of the process of court. We would imagine such orders would also include injunctive orders.”

14. Moreover, Rule 73 of the Probate and Administration Rules provides that:-“ 73.Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.” In *Re Estate of Simon Kimendero (deceased)* [2020] eKLR, the court noted that of specific significance to preservative order in respect of estate property is that: - The Applicant has an arguable case; The property is estate property; and The property is likely to be dissipated or wasted away. Additionally, In *Re Estate of Jeremiah Ngiri Kibati (Deceased)* [2019] eKLR, the court in dealing with the issue of issuance of conservatory orders in succession matters cited with approval the decision of the court in *Japhet Kaimenyi M'ndatho v M'ndatho M'mbwiria* [2012] eKLR noting that an Applicant in an application for preservative orders has to satisfy the following conditions: - That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the Applicant unless preservative orders of inhibition are issued; that the refusal to grant orders of inhibition would render the Applicant's suit nugatory and that the Applicant has an arguable case.

15. Accordingly, preservative orders are in essence similar to injunctive orders. In the *Matter of the Estate of Paulo Kiplagat Boiwo (Deceased)* (2012) eKLR, the court while affirming that preservative orders are similar to injunctive orders noted that Applicants have to abide by the conditions set out in the celebrated case of *Giella vs Cassman Brown* (1973) E.A 358 namely the Applicant must: Make out a prima facie case and; show that they will suffer irreparable loss which loss cannot be compensated by damages and lastly that the balance of convenience should tilt in their favour where doubt exists.



16. The Applicant deponed in her affidavit that in the month of February 2024, I planned to visit land parcels Transzoia/zea/695/10, Uns. Residential Plot 18/10 Kitale Municipality (milimani) & Chemalal Farm (chepkoilel) Lr No. 5376/5 with view of preparing the same for this season's planting; that on getting to land parcels Transzoia/zea/695/10, Uns. Residential Plot 18/10 Kitale Municipality (milimani), I noted that persons' unknown to me had ploughed the same. She further deponed that she carried out further investigations and established that her brothers in law led by the administrator leased out the land parcel Trans Nzoia/zea/695/10 to one Kennedy Chemai and before the lease could even expire, they went ahead to sell the said estate property to a 3rd Party who is unknown to her. The Applicant furthermore submitted that she also learnt that one Anil Sutar purchased land parcel Waitaluk/mabonde Block 9/kebulwet/65 and has gone ahead to secure the property by erecting a wall and steel gate.
17. It is clear from the material placed before the court that the Petitioner/Applicants are beneficiaries of the estate of the deceased and in their submissions and annexures thereto laid out the ways in which the Respondent have been in exclusive possession and use of the deceased's estate and even intermeddled with the estate, sentiments which have been rebutted by the Respondents. These actions in one way or another may result in the dissipation of the deceased's estate. It is my view that they have established that they have a prima facie case.
18. To this end, I put reliance to section 45 of the *Law of Succession Act* which provides as:
1. Except so far as expressly authorized by this Act, or by cvany 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.
 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 find 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."
19. In Jane Kagige Geoffrey & Another v Wallace Ireru Njeru & 2 others [2016] eKLR it was held that:-
- “The net effect of the foregoing is clear; before a grant has been issued and confirmed, no part of the estate of the deceased may be dealt with in a manner that amounts to intermeddling. This includes those not entitled therewith taking possession of, disposition, or alienation, as well as trespassing onto the property. Such acts are subject to reversal by the court summarily. The spirit behind sections 45 and 82 of the Act, in my view, is to preserve the property of a deceased person until the beneficiaries and their respective shares are identified, ascertained and distributed. If intermeddling is allowed, the likelihood of the innocent beneficiaries being prejudiced by having their shares affected by reduction is real whereby, there may be no settlement and or peaceful co-existence or end to disputes between of the family members. In this regard, it is for the purposes of preserving the social fabric, cohesion and peaceful co-existence of or end to disputes between family members who are beneficiaries to estates that the law restricts, indeed prohibits any dealings with an estate until the grant is confirmed. The net effect of the aforesaid provisions of the law and decided cases is that, the estate of the deceased cannot be dealt with without the sanction of the court. Before the grant of



letters of administration are confirmed, no one including the administrators of the estate of the deceased can deal with the property of a deceased by way of intermeddling therewith or effect a sale of immovable property belonging to the estate. Anyone who purports to purchase property from the estate before confirmation therefore does so at his own peril.”

20. From the material availed by the Applicant herein, it is evident that the Administrator and some of the beneficiaries have already disposed of some of the properties of the Estate yet the Grant has not been confirmed. To be particular, the Applicant deponed that land parcel Transzoia/zea/695/10 has been sold and also a third party Anil Sutar purchased land parcel Waitaluk/mabonde Block 9/kebulwet/65 and has gone ahead to secure the property by erecting a wall and steel gate. This thus calls for this court to discuss Section 83(e)(f) &(g) of the Law of Succession Act, which provides for duties of administrators as follows:-

- e. within six months from the date of the grant, to produce to the Court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- f. subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
- g. within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.”

21. Section 94 of the Law of Succession Act provides that:-

“A personal representative neglects to get in any asset forming part of the estate in respect of which re-presentation has been granted to him, or misapplies any such asset, or subjects it to loss or damage, he shall, whether or not also guilty of an offence on that account, be liable to make good any loss or damage so occasioned.”

22. Section 95(1)(a) &(b) states that;

“Any personal representative who, as regards the estate in respect of which representation has been granted to him-

- a. willfully or recklessly neglects to get in any asset forming part of the estate, misapplies any such asset, or subjects any such asset to loss or damage; or
- b. willfully fails to produce to the court any such inventory or account as is required by the provisions of paragraphs (e) and (g) of section 83; or.....d..... shall be guilty of an offence, and shall be liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.”

23. Upon Grant of Letters of Administration, the properties of the deceased are vested on the Administrator by virtue of section 79 of the Law of Succession Act and the powers set out in Section 82 that includes the power to sell estate property. That power is restricted with regard to immovable property, which can only be dealt with upon confirmation of Grant. In the circumstances, all



transactions purportedly carried out by any of the parties herein in regard to properties which form part of the Estate of the deceased herein are therefore illegal, null and void.

24. As previously mentioned, Section 83(e) of the Law of Succession Act mandates that an Administrator provide the court with a complete and accurate inventory of the deceased's assets and liabilities as well as a complete and accurate account of all dealings with them up to the date of the account within six months of the grant date. Additionally, in accordance with Section 83(g), an Administrator must finish administering the estate in all respects within six months of the grant's confirmation date and provide the court with a full and accurate account of the administration's completion.
25. In this case, the Grant of Letters of Administration was issued to the Administrator/Respondent herein on 11th August, 2011. In that Grant, Patrick Chelule, the 1st Petitioner herein and Stanley Chelule Boit were named as the Administrators of the Estate of the Deceased. However, the said Patrick Chelule (Deceased), passed away on 14/12/2023 at Nairobi West Hospital.
26. I take note that this Court has powers on either its own motion or on the application of any interested party in the estate, to order an Administrator to produce a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account. In the circumstances herein, it is thus vital to compel the remaining Administrator herein, Stanley Chelule BOIT to produce a full Inventory of the Assets and Liabilities of the Estate herein, together with the beneficiaries and/or accurate account of his dealings with the estate.
27. In view of the foregoing and in the interest of justice, the following orders shall abide:
 - a. A Preservatory order be and is hereby issued restraining the Respondent and his agents from disposing of wasting or in any other way intermeddle with land parcels Transnoia/zea/695/10, Uns. Residential Plot 18/10 Kitale Municipality (milimani) & Chemalal Farm (chepkoilel) Lr No. 5376/5 or any other property constituting the estate of the deceased pending final distribution of the estate.
 - b. An order be and is hereby issued for the 2nd Petitioner/Administrator herein Stanley Chelule Boit to show cause why he has not distributed the Estate in compliance with section 83(g) of the Law of Succession Act.
 - c. Stanley Chelule Boit (the Administrator herein) shall within 30 days from the date hereof produce a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.
 - d. Stanley Chelule Boit (the Administrator) be and is hereby ordered to apply for the Confirmation of Grant after filing the Inventory as contemplated in Order (c) above.
 - e. The parties in this succession cause are at liberty to file their mode of Distribution upon service of the Application for Confirmation of Grant contemplated in Order (d) above.
 - f. The parties to move the Court upon compliance for further directions.
 - g. Each party shall bear its own costs.

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

.....
R. NYAKUNDI
JUDGE

