

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
SUCCESSION CAUSE NO.27 OF 2019

**IN THE MATTER OF THE ESTATE OF CHEROP KIBOWEN alias
ARAP KIBOWEN.....DECEASED**

**1. EMMANUEL CHEBII CHEROP
2. RAEL .K. KIPEL.....PETITIONERS/RESPONDENTS
VERSUS**

**1. JOHN YATOR KIPROP
2. BENARD KOSGEI
3. WILLIAM KIMUTAI KIPROP...OBJECTORS/APPLICANTS**

RULING

1. William Kimutai Kiprop, the applicant/objector herein has moved the court for the following orders;

- (i) That pending the hearing and determination of this application there be stay of execution and/or further proceedings arising from orders made on 20/5/25.***
- (ii) The orders issued on 20/5/25 be set aside and the matter be reinstated for hearing interpartes.***
- (iii) That this hon court be pleased to issue further directions regarding compliance with the court order dated 26/2/25 directing Land Registrar Elgeyo Marakwet to visit Elgeyo Marakwet/Lelan/Kaptalamwa/170 and file a comprehensive report on the occupation visa-a-vis the respective shares of the beneficiaries.***
- (iv) That costs be provided for.***

2. The applicant has listed the grounds for the above prayers namely;
 - (a) *That this court issued orders on 20/5/25 affecting the applicant/objector without a concluded agreement between the parties.*
 - (b) *That the Land Registrar Elgeyo Marakwet had not complied with court orders.*
 - (c) *That unless the order issued on 20/5/25 is set aside the objector will suffer great prejudice.*
3. The applicant has sworn a supporting affidavit sworn on 2/7/25 where he reiterates the above grounds.
4. He avers that this court issued orders on 20/5/25 in his absence and that of his advocate.
5. He claims that his advocate on 20/5/25 was logged in virtually but could not be heard owing to what he terms technical hitches.
6. That he had made efforts through his advocate to enforce orders issued on 26/2/25 but claims that the Land Registrar did not set sufficient time to comply due to short notice.
7. That it would be unfair to mark the matter finalized when the report from Land Registrar has not been availed and prays that the order made on 20/5/25 concluding the matter be set aside.
8. He submits through counsel that the report by the Land Registrar is critical for fair and just determination of the dispute.
9. He faults the Land Registrar for responding late to their letter to have him go to the ground as directed. He

contends that his application is made in good faith and that their failure to attend court was due to technical challenges and not deliberate.

10. The respondents have opposed this application through a replying affidavit sworn by Emmanuel Chebii Cherop on 22/9/25.
11. He avers that the applicant and his counsel did not attend court on 20/5/25 and gave no reason for not attending yet the said date was taken by consent. That the matter came up on 20/5/25 when he was present in court when this court waited until 1130am for the applicant or his advocate to appear but none appeared.
12. That the applicant and his counsel have on several occasions failed to appear in court and have formed a habit of causing unnecessary delay in finalizing this matter.
13. He further avers that the estate was distributed and each beneficiary has a title contrary to the assertions by the applicant.
14. That the court's judgment was duly implemented by the County Surveyor and everyone shown their respective portions adding that it is only the objector who has failed to collect his title and faults him for vexaciousness.
15. That the application now before court is an afterthought and belated as the applicant did not move the court timeously.

16. He faults the applicant for extracting an order that was not consistent with the order given by court and reads ill motive and an intention to cause delay.
17. He blames the applicants' counsel for not being candid on what transpired on 20/5/25 because on one hand he says the matter was not called out and on another he says he suffered technical hitch. In his view the application is made in bad faith and further faults the application for being incompetent for citing wrong provisions of the law.
18. He submits that the applicant is undeserving of this court's discretion citing the principles in **Shah -vs- Mbogo & Anor (1967) EA 116** where the court held that court's discretion should not be used to assist a person who is out to obstruct or delay the cause of justice.
19. He submits that the applicant has not demonstrated excusable reason to explain his absence adding that the technical hitches alleged are not supported by any evidence.
20. The counsel submits that reopening this matter would cause prejudice since parties have already taken possession and developed their respective portions.
21. This court has considered this application and the grounds raised. I have also looked at the strong opposition made.
22. It is true going by the record that the applicant and his counsel were absent in court on 20/5/2025 and no reasons

were advanced to explain their absence yet that date was taken by consent of both counsels on record on 26/2/2025.

23. The record further shows that on 20/5/25 only Chebii advocate and his client John Yator Kiprop attended court. The court after calling out the file and noting the absence of the applicant and his client directed the file to be placed aside. In the meantime Chebii advocate had informed the court that he had instructions that the Land Registrar had asked the applicant to pay charges to facilitate ground visit but he had failed to pay. The applicant and his counsel were still absent at 11.30am.

24. The respondent submits that the survey work was substantially undertaken and that titles have since been issued and though the same have not been exhibited, the same has not been contested or denied.

25. This court finds that the applicant has not taken this matter seriously and that lethargy is even demonstrated by pleadings filed where counsel describes the applicant's submission as **“respondent's submissions”**.

26. It is also true that the applicant has not exhibited technical evidence to demonstrate or explain exactly what technical hitches he suffered. Besides this, even if he suffered technical hitch on 20/5/25 why wait from 20/5/25 to 2/7/25 to move this court? What caused the delay? There is no explanation given. The assumption made is that the

applicant simply wants to use technology as a cover up for his indolence.

27. Furthermore the applicant himself has not stated where he was if he was as diligent in this matter as the respondent who was present physically in court on 20/5/25.

28. This court further finds no basis for this application but for the ends of justice to be met, I will allow it but with conditions.

- (i) *The application dated 2/7/25 is allowed but the applicant will pay thrown away costs of Kshs.10,000/- to the respondent within 15 days upon delivery of this ruling. In default the order made on 20/5/25 will revert.*
- (ii) *Secondly, the Land Registrar Elgeyo Marakwet is directed to comply with the actual orders issued on 26/2/2. Those orders will issue afresh and served on the Land Registrar because the respondent contests the contents of the extracted order. The applicant will pay charges to the Land Registrar for purposes of complying with the cited court order.*
- (iii) *A mention date to be taken in court upon delivery of the ruling and both counsels going forward together with their clients will be required to attend court physically to avoid any further and unnecessary delays.*

DELIVERED, DATED and SIGNED at KITALE this22nd day ofJANUARY....., 2026.

HON JUSTICE R.K. LIMO
KITALE HIGH COURT

Ruling delivered in open court

In the presence of;

Chepii for petitioner

Murei holding brief for Songok for the objector

Duke/Chemosop - Court assistants