



REPUBLIC OF KENYA



**Koitumet & 2 others v Koitumet & another (Probate & Administration
13 of 2020) [2024] KEHC 9955 (KLR) (24 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 9955 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
PROBATE & ADMINISTRATION 13 OF 2020**

SN MUTUKU, J

JUNE 24, 2024

N THE MATTER OF THE ESTATE OF KOITUMET MASOJO (DECEASED)

BETWEEN

ELIZABETH NAIYANUI KOITUMET 1ST APPLICANT

ROSE NANTEI NASHUNCHU 2ND APPLICANT

LILIAN NAISIMOI KOITUMET 3RD APPLICANT

AND

JOSEPH SIRONKA KOITUMET 1ST RESPONDENT

NAISENKE ENE SIRIMOI 2ND RESPONDENT

JUDGMENT

Background

1. The deceased in this matter died on 15th April 2017 aged 75 years. He left two families. The letter of the Chief of Oloirien Location in Kiserian shows that the deceased left the following heirs:
 - i. Mukonyo Koitumet – widow
 - ii. Lilian Naisimoi Koitumet – Widow
 - iii. Naisenke Ene Sirimoi – Daughter
 - iv. James Mamit Koitumet – Son
 - v. Tapesuan Koitumet – Son
 - vi. Joseph Sironka Ole Koitumei – Son
 - vii. Mokami Ene Parsintei – Daughter



- viii. Collins Saitoti Koitumet – Son
 - ix. Naomi Resiato Rimpaso – Daughter
 - x. Rempeyan Koitumet Nasuju – son
 - xi. Nadupoi Ene Koitumet – Daughter
 - xii. Bebi Koyoko – Deceased
 - xiii. Ruth Seleyian Kereya – Daughter
 - xiv. Elizabeth Naiyanui Koitumet – Daughter
 - xv. Rose Nantei Nashunchu – Daughter
 - xvi. Dorcas Sintoiya Nasuju – Daughter
 - xvii. Philip Sokoipei Ole Koitumet – Son
2. The two widows petitioned for Letters of Administration Intestate which was issued on 9th October 2020. Following the death of Mukonyo Koitumet on 5th September 2021, the beneficiaries moved the court to have another administrator appointed in place of Mukonyo Koitumet. An amended Grant was issued to Joseph Sironka Ole Koitumet and Lilian Naisimoi Koitumet on 24th May 2022.
 3. The two co-administrators filed Summons for Confirmation of the Grant dated 9th November 2022. This application attracted an Affidavit of Protest filed by Elizabeth Naiuanui Koitumet and Rose Nantei Nashunchu both daughters of Lilian Naisimoi Koitumet, the widow in the second house and a co-administrator. The two protestors were contesting distribution of Kajiado/Olchoro-Onyore/9775 for the reasons advanced in their Affidavit of Protest and Kajiado/Olchoro-Onyore/6458.
 4. On 1st of March 2023, the Court partially confirmed the Grant and distributed the Estate as shown in the Certificate of Confirmation of Grant dated 18th April 2023. The Court directed that the issues surrounding the contested properties be canvassed through oral evidence.

Affidavit of Protest

5. The Affidavit of Protest is dated 11th November, 2022. The Protestors are daughters of the deceased from the second house. Their contestation relates to two properties Kajiado/Olchoro-Onyore/6458 and Kajiado/Olchoro-Oyore/9775. Their case is that the former property (6458) should not be distributed solely to their brother Philip Sokoipei Ole Koitumet but should be registered in the names of the four beneficiaries from the second house, namely, Philip Sokoipei Ole Koitumet, Elizabeth Naiyanui Koitumet, Rose Nantei Nashunchu and Dorcas Sintoyia.
6. They stated that their brother, if given the sole ownership of the property, would dispose of the whole property without regard for his children and that this property should be registered in their joint names in trust for the two children. They proposed distribution of the property so that Philip Sokoipei Ole Koitumet could hold 50% share of the land in his sole name and that the sisters, Elizabeth Naiyanui Koitumet, Rose Nantei Nashuncha and Dorcas Sintoyia should be registered as joint holders of the 50% share together with Philip Ole Kotumet in trust for the two minor children namely Kevin Sankale and Patience Rayon until they attain the age of majority and that their mother should hold a life interest in the said 50% share of this same land.
7. In respect to Kajiado/Olchoro-Onyore/9775, the Protestors have deposed that they are the registered owners of the property after the deceased gifted the land to them while he was alive; that this can be



shown in the minutes of the meeting held on 28th April, 2017 (Annexure “ENK – 2.”- The minutes bear April 27, 2024 as the date of the meeting) They stated that the land in question was given to them as a gift due to the proper care they gave the deceased when he fell ill and that when the members from the first house got to learn of their father’s intention of gifting them the land, Naisenke Ene Sirimoi and Joseph Sironka Koitumet registered a caution over the land to stop the deceased from transferring the land to them. They stated that the deceased was not happy with this, and he wrote a letter to Joseph Sironka Koitumet to withdraw the said caution.

8. They stated that they did not in any way coerce the deceased to transfer the land to them. That prior to his death their mother Naisimoi Koitumet swore an affidavit dated 11th August, 2016 supporting the transfer of the said land to them. It is their case that the deceased signed the transfer document and the land was transferred to them as shown by annexure “ENK 6” and a title deed issued in both their names.

Reply to the Affidavit of Protest

9. Naisenke Ene Sirimoi and Joseph Sironka Ole Koitumet filed an affidavit dated 21st February 2023 in response to the Protest. They stated they are the biological daughter and son, respectively, of the deceased and the deceased was the sole owner of Kajado/Olchoro-Onyore/9775. They stated that they also took care of their father during his lifetime. That the allegation that the protesters are the only ones who took care of their father is frivolous, malicious and unbelievable. They denied allegations that they neglected the deceased when he was ill. They stated that the purported transfer of the said land was selective as the deceased had daughters from each house.
10. They stated that between 2011 and 2016 they registered caution on the said land as they needed to protect their interests against any dealings in the said property without their knowledge; that the letter to withdraw the caution was done by the deceased when he was not in the right health to make such a decision; that their advocates advised them that for gift inter vivos to be valid, the presumption is that land must be by way of a registered transfer and must be complete and that the transfer of the said land was not complete at the death of the deceased and therefore the title is invalid.
11. They stated that the transfer has no date indicating when it was signed by the deceased; that the same was allegedly registered on 12th September, 2018 while the deceased died on 15th April, 2017 making it impossible for the deceased to transfer the land; that during the transfer only one consent was obtained being the consent of the 2nd wife while that of the 1st wife was not obtained; that the allegations that the deceased paid stamp duty was false as the same was paid by Elizabeth Naiyanui Koitumet on 12th September, 2018 a year after the deceased demise and that the deceased died intestate and therefore all his properties are liable for division to beneficiaries of his estate.
12. They claimed that the transfer of the land to the Protestors is illegal and amounts to intermeddling with the estate; that the transfer was obtained through fraud; that this Court has powers to revoke such title and order that the title reverts back to the estate of the deceased and that the division of Kajado/Olchoro-Onyore/9775 be guided by the provisions of Section 40 of the Law of Succession Act for the benefit of all beneficiaries of the deceased.
13. Phillip Sokoipei Ole Koitumet filed his affidavit dated 28th February, 2023 in which he deposed that he is the only son of the deceased from the second house. He denied allegations regarding his character and stated that he at no time demonstrated incompetence that would lead to mismanagement of the Kajado/Olchoro-Onyore/6458; that he has been taking care of his children and that contrary allegations by the Protestors is baseless and that it was the wish of the deceased that he was the sole



owner of the aforementioned land. He proposed that he holds 50% of the land and the other half be registered in trust of all his current and future children equally.

14. The Applicant/co-administrator Lilian Naisimoi Koitumet filed a further affidavit dated October 3, 2023. She stated that she is in support of the Protestors mode of distribution proposed in the affidavit dated 11th November, 2022 with regards to Kajiado/Olchore-Onyore/6458. She reiterated the contents the Protestors' Affidavit dated 11th November, 2022 and stated that the intention of the deceased was that Kajiado/Olchore-Onyore/9775 be distributed to the Protestors. She further stated that she signed a spousal consent that enabled the transfer of this land and at no time was the deceased suffering from mental illness that would affect his decisions.

Applicant's Evidence

15. The matter proceeded to hearing on 4th October, 2023. Elizabeth Naiyanoi stated that she is a daughter of the deceased from the 2nd house. She relied on her affidavit dated 11th November, 2022. It was her case that her and Rose Naantai were given the land Kajiadod/Olchore – Onyore 9775 in 2010. She stated that members from the second house placed a caution on the said land in 2011 and 2016. That their deceased father was not pleased with this and wrote a letter to the land registry to have the caution withdrawn. That later Joseph Sironka wrote a letter dated 14th November 2016 to have the caution removed.
16. She stated that before the deceased died on 15th April, 2017 he had finished with the land board consent; that after the burial they had a meeting with the elders to sort out the issue of inheritance; that they have produced the said minutes as exhibit 7; that their mother consented to them getting the land; that there is a title in her name and that of her sister dated 12th September 2018 and produced as exhibit 10.
17. She also stated that they were taking care of their father when he was alive and even bought him a car but stated that she had no evidence to demonstrate they bought a car for their father. She stated that their father took transfer form to the Land Registry in 2016 and that she has no evidence that the Land Registrar received the forms. She stated that the 1st wife did not consent to the transfer.
18. Paul Ole Ngatia testified that he had filed an affidavit dated 3rd October, 2023; that the deceased was from his clan; that the deceased had an issue with the legs and that he was of sound mind; that there was a family meeting after the deceased's burial; that the deceased had told them that his two unmarried daughters (the Protestors) would be given 15 acres out of the 30 acres he had put aside and that Joseph Sironka was also in the meeting and did not say anything concerning the land measuring 30 acres but that he signed the minutes. On cross examination he stated that the deceased had no will. That he communicated his verbal wishes to them. That he did not sign the transfer.
19. Ole Mukuku testified and adopted his affidavit dated October 3, 2023. He testified that he was present during the meeting held after the deceased died and his sentiments were similar to those of Paul Ole Ngatia.
20. Lilian Naisimoi Koitumet testified that she recorded a further affidavit dated 3rd October, 2023. That she is the second wife of the deceased; that she lives on Kajiado/Olchore-Onyore/6458 measuring 80 acres and that the same was in the name of the deceased and that of her son Phillip. She proposed that the said land be distributed into two between her and Philip. She stated that she wants to hold the land in her name on behalf of other children and her daughters.
21. With regards to Kajiado/Olchore-Onyore/9775 she testified that the deceased gave this land to Rose and Elizabeth. That Sironka Joseph opposed this land being given to the said daughters and cautioned



the land and that the deceased died before the caution was removed. She stated that Rose and Elizabeth could not have paid for stamp duty on the said land because there it is still overdue.

Respondent's Evidence

22. Regina N. Sirumoi testified that she is a daughter of the deceased from the first house. She relied on her affidavit dated 21st February 2023. She stated that the meeting held on 28th April, 2017 was not attended to by all children. That daughters from the 2nd house were the only daughters present. That the minutes were not consented to by all children. That they placed caution in 2016 for fear that something may happen to the land and that their father had said that the 30 acres should be given to any child who missed land and not just to the Protestors. She further stated that it was not true that the two daughters (Protestors) were the only ones who took care of the deceased.
23. Joseph Sironka stated that he is a son to the deceased from the 1st house. He relied on his affidavit dated 21st February 2023 and testified that he placed a caution in 2010 and that the deceased told him to remove it. That the caution was removed in 2018 after the deceased had died. He refuted claims that the deceased wrote to the Land Registrar to have the caution removed and that it was not true that they did not take care of the deceased when he was alive.
24. He further testified that children from the first house were not involved in the meeting held on April 28, 2017; that he signed the minutes of the said meeting without knowing what he was signing and that he wants the land to be shared to all children of the two houses.
25. Philip Sokoipei Ole Koitumet relied on his an affidavit dated 8th February 2023 and testified that with regards to Kajiado/Olchoro-Onyore/6458, the land was registered in his name and that of the deceased and that his mother had her own land measuring two and a half acres and has no right to take half of the land.

Protestors submissions

26. The Protestors filed their submissions dated 22nd January, 2024. They have reiterated the contents of their affidavits and evidence adduced in court. It was their submissions that Kajiado/Olchoro-Onyore/9775 was erroneously listed as “contested” in the proposed mode of distribution, but they have demonstrated in their evidence that the said land was given to them by the deceased as a gift due to their exceptional care they gave him during his lifetime. They stated that from the evidence as adduced by the two clan elders, it is clear that the intention of the deceased was to gift them the aforementioned land.
27. They submitted that the reason they paid the stamp duty was to allow for the transfer of the land and that the reason for the delay was that they were unable to raise the amount before the death of the deceased and after the deceased death.
28. They submitted that from the evidence of the clan elders it was clear that the deceased had granted them the said land; that the reference to the land as contested was aimed at disinheriting them as they are women contrary to article 27(3) of the *Constitution*; that the deceased had every right to gift them; that the deceased had signed the necessary transfer documents and therefore the process of transfer was procured by the deceased during his lifetime.
29. With regards to Kajiado/Olchore-Onyore/6458, they reiterated their position that it should be distributed 50-50 between Philip Solkoipei and their mother. They submitted that the matrimonial home of the deceased sits on the said land and that granting Philip Solkoipei the entire land would disinherit their mother.



30. Phillip Sokoipei Ole Koitumet filed his submissions dated 17th January, 2024. He submitted that parties are bound by their pleadings; that during the hearing, the Protestors together with Lilian Naisimoi Koitumet stated that they wanted 50% of his land to be given to them absolutely and not held in trust for his two children as they had averred in their affidavits but during the hearing it was established that he had 3 children and another on the way and therefore it is illogical for his property to be held in trust for only his two children as alleged by the Protestors.
31. He submitted that the Protestors are bound by their pleadings and should not be allowed to change their position; that the Protestors failed to prove why they thought that he was incapable of handling his full portion of land and why he would need their help to manage 50% of his land.
32. The co-administrator's and the first house submissions are dated 21st February, 2024 They have raised 3 issues for determination being:
 - i. Whether the deceased made Kajiado/Olchoro-Onyore/9775 gift inter vivos to the respondent/objectors.
 - ii. If the answer to (1) above is in the negative, whether there was fraud on the part of the protestors.
 - iii. Whether the proposed mode of distribution of the estate is fair and equitable.
33. They submitted that the alleged transfer and the obtaining of the land was through unlawful means. They relied on section 7(1) of the *Land Registration Act*, 2012 and submitted that from the evidence of the Applicants, the transfer documents of the said property were lodged in the year 2018 exactly one year after the deceased died. Further the transfer document is stamped as received on 12th September, 2018. That this lays basis of the improper acquisition of the title to the said property. That therefore the claim of transfer which is aimed at disinheriting other dependants should be dismissed.
34. They further submitted that questions of fraud arise as no title can be issued the same day transfer documents were lodged at the Land Registry. They relied on *Alice Chemutai Too v Nickson Kipkurui Korir & 2 others* [2015] eKLR and *Elias Joseph Waburi Wamunyu v Joseph Mwangi Njoroge* [2017] eKLR.
35. They submitted that the deceased never transferred the land to the Applicants/Protestors. That the land remained in his name upon his death and the transfer of ownership amounted to intermeddling. The claim that the said property was transferred as a gift is misconceived and defeated by facts and law. They relied on the case in *Re Estate of the Late Gedion Mantbi Nzioka (Deceased)* [2015] eKLR
36. They argued that there was no evidence that the deceased procured land board consent to transfer the property to the objectors and that there was no spousal consent from the first wife to have the property transferred.
37. On the issue of whether the proposed mode of distribution of the estate is fair and equitable they submitted that the Respondents proposed that the property be distributed under the provisions of section 40 of the *Law of Succession Act*. Further that the deceased died intestate and the property should be distributed under intestate succession and that this parcel of land should form part of free property of the deceased liable for distribution.

Analysis and Determination

38. I have considered this matter. The contested properties are Kajiado/Olchoro-Onyore/9775 and 6458. The 1st house is not interested in the latter property. Their issue lies with parcel 9775 which they claim



was not gifted to the two protestors by their late father. They claim that the property belongs to their late father and ought to be distributed to the two houses equally. Parcel 6458 is being contested by the children of the 2nd house. The protestors want to have this property distributed into two equal portions, 50% to be given to their brother Philip and the other 50% to be registered in the names of the three sisters and their brother Philip to hold in trust for the children of Philip and their mother to hold life interest.

39. They seem not clear on this property because they also stated that they wish to have the property distributed between their mother Lilian and their brother Philip in equal shares and that their mother should hold the share that goes to her in trust for the children of Philip and to retain life interest in the property.
40. The grant in this case has been partially confirmed leaving the two properties named above as the only contested properties. To my mind the issues for determination are:
 - i. Whether the deceased made Kajiado/Olchoro-Onyore/9775 was gifted to the Protestors by the deceased before he died?
 - ii. Whether Kajiado/Olchoro-Onyore/6458 should be distributed into two equal shares and shared between Philip Sokoipei Ole Koitumet and the Applicants?

Whether the deceased made Kajiado/Olchoro-Onyore/9775 was gifted to the Protestors by the deceased before he died?

41. I have considered this issue. It is the evidence of the Protestors that their late father gifted them Kajiado/Olchoro-Onyore/9775 and transferred the same to them before he died. The Protestors' evidence is that their father gifted them because of the care and love they showed him during his lifetime and his sickness. They also claimed that they bought motor vehicle registration number KAV 308K for purposes of their father's mobility when he fell ill.
42. I have read their evidence contained in the affidavits and oral evidence. I have not come across any evidence to show that the Protestors bought this motor vehicle for their late father. Further the available evidence is that it is the 1st Respondent, Joesph Sironka Koitumet, who accompanied their father for medical treatment in India. It is not true therefore that the two Protestors are the only children who took care of their elderly and ailing father.
43. In her evidence to court on cross examination, Elizabeth admitted that both wives of the deceased were taking care of him and that it is Joseph who accompanied their father to India for treatment. She however maintained that the other daughters did not take care of their father. She admitted that not all the children attended the meeting during which it was alleged that the issues of inheritance and parcel No. 9775 were discussed. She admitted that it was only the Protestors who attended and that she did not sign the minutes and that the minutes did not have signatures of everyone alleged to have attended.
44. Elizabeth also admitted that there was nothing on record to show that their late father had promised to gift them parcel No. 9775. She further admitted that the late Mukonyo Koitumet, the first wife, did not consent to the alleged transfer of parcel No. 9775 to them.
45. Elizabeth had testified that their late father had taken the transfer documents in respect to this land to the Land Registry in 2016 but she contradicted herself by stating that they took the transfer document to the Registry on 12th September 2018, the date stamped on the transfer document. She claimed that they paid for the stamp duty, Kshs 400,000, on 12th September 2018. She stated that the title was issued on the same date, 12th September 2018 after she paid for the stamp duty.



46. The evidence of Ole Ngatia and Ole Mukuku, the two elders said to have been instructed by the deceased testified that the deceased told them that 15 acres from the land he had set aside, parcel No. 9775, was to be given to the Protestors. On cross-examination, Ole Ngatia told the court that the deceased did not leave a written minutes but verbal wishes. He also told the court that the deceased did not sign transfer documents. He contradicted himself on cross examination by stating that the deceased wanted the entire 30 acres to go to the unmarried daughters.

47. I have considered the evidence that the deceased gifted the Protestors with the disputed property, Kajjado/Olchoro-Onyore/9775. I have noted that the copy of the transfer document is undated. This document has a book entry of 164/9/18. It also bears a stamp of 12th September 2018. Elizabeth has told the court that this is when they presented the transfer documents to the Land Registry, contradicting herself that their father had taken the said documents in 2016. It is clear to me that this date, 12th September 2018, is after the death of the deceased which is said to have occurred on 15th April 2017.

48. Section 42 of the *Law of Succession Act* provides that:

“Where-

- (a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or
- (b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”

49. In *Micheni Aphaxard Nyaga & 2 others v Robert Njue & 2 others* [2021] eKLR, the Court had this to say on gift inter vivos:

“The characteristics of the gifts inter vivos are that they are made and settled during the lifetime of the deceased and have been identified, awarded and settled for the person to whom it has been given. It is a gift made to a beneficiary when the deceased was alive and is considered when distributing the net intestate estate so that person who received it may be considered as having received his share and may reduce or diminish any entitlement to the net intestate estate. The gift which is transferred and settled for the beneficiary during the life-time of the deceased, will not form part of his estate but it will be taken into account in determining the share of the net intestate estate finally accruing to that beneficiary.In any event the person who makes such a gift must have the capacity and competency to gift the property and the gift must be perfected. In the case of inter vivos the gift must go to the donee absolutely during the lifetime of the donor. It is also well established that where the gift has been made, delivery to the beneficiary is necessary to consummate the gifts”.

50. Further, in *Halsbury's Laws of England* 4th Edition Volume 20(1) at paragraph 67 it is stated as follows with respect to incomplete gifts:

“Where a gift rests merely in promise, whether written or oral, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it, except in circumstances where the donor's subsequent conduct gives the donee a right to enforce the promise. A promise made by deed



is however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do.”

51. I have considered all the evidence tendered to support the claim that the deceased gifted the Protestors parcel No. 9775 exclusively. The evidence of Elizabeth on this issue is contradictory. That of Ole Ngatia and Ole Mukuku does not help the situation either. I have noted that the transfer document, attached to the Affidavit of Protest as “ENK6” has not date on page 1. It bears a stamp of 12th September 2018 and was registered on that date. It does not bear a date on the certification page. This evidence, weighed together with what Elizabeth and her witnesses told the court, leaves a lot to be desired. It is contradictory and incredible.
52. It is my considered view that the Protestors are not telling the court the truth given the contradictions in their evidence and lack of clarity on the transfer of the property said to be gifted to them. It is also not clear whether both spouses had consented to the transfer of that property to the Protestors. Ole Ngatia contradicted himself by stating that the deceased had said that 15 acres out of the land be given to the unmarried daughters. He changed that to say that it was 30 acres.
53. Even if this court were to believe that the deceased had gifted the Protestors parcel No. 9775, which has not been proved, the process of transfer of this land did not meet the legal requirements for gift inter vivos. That process was not completed during the lifetime of the deceased and the gift did not pass to them during the lifetime of the deceased. From the evidence adduced the transfer of the said property was effected on 12th September, 2018 the same day the title was issued. This was after the death of the deceased who died on 15th April, 2017. This therefore clearly shows that the gift did not pass during the lifetime of the deceased further that the transfer was incomplete as the deceased died without having transferred the property.
54. In my considered view, the Protestors have failed to adduce evidence to persuade this court that their late father gifted them parcel No. 9775. It is my considered view, as submitted by the Respondents, that the transfer documents of the said property were lodged in the year 2018 exactly one year after the deceased died and that the document is stamped as received on 12th September, 2018 laying the basis of the improper acquisition of the title to the said property.
55. To my mind, the claims of transfer of parcel No. 9775 to the Protestors is aimed at disinheriting the other dependants. The result of this finding is that the actions of the Protestors amount to intermeddling with the estate of the deceased and that their claim that the said property was transferred as a gift to them is misconceived and defeated by facts and law, as submitted. In view of this, it is my finding that the transfer of Kajiado/Olchoro-Onyore/9775 to the Protestors was improperly procured. This requires the intervention of this court to bring this property back to the estate of the deceased for the benefit of all the beneficiaries.
56. With regards to Kajiado/Olchoro-Onyore/6458, the dispute on the mode of distribution remains between the 2nd house. Evidence shows that the said property was registered in the names of Philip Sokoipei Ole Koitumet and the deceased. This fact has not been disputed. The applicants together with their mother Lilian Naisimoi Koitumet proposed that the land should be distributed equally between Phillip Sokoipei and their mother. They stated that the said Philip had violent tendencies and would chase their mother from the said land.
57. It is not lost to this court that the Protestors and their mother were not consistent in their evidence. They contradicted themselves in both their affidavits and their oral evidence in court. The Protestors



wanted to have this property divided into two equal portions, one portion to go to Philip their brother and the other portion to go to the three sisters and Philip to hold in trust for the children of Philip. They changed this to state that the second half of the property should be registered in the name of their mother to hold in trust for all the children of the daughters because Philip is unable to take care of his children.

58. On her part, Lilian told the court that she wanted to be registered in trust for the children of her daughters. Phillip Sokoipei proposed that this property be subdivided into two portions; that he holds 50% of the property absolutely and the other 50% he holds in trust for his children.
59. I have considered this issue. It is my considered view that since the 1st house is not claiming any share of this property, it should be distributed between Philip and their mother. The latter shall distribute her share to her daughters in equal shares and she shall retain her life interest on the property.
60. After careful consideration of the issues being canvassed in this Protest, it is my view that the Protestors have not proved on a balance of probabilities that their late father gifted them Kajiado/Olchoro-Onyore/9775. This property therefore remains the property of the deceased as stated in this judgment. Consequently, I find that the Affidavit of Protest lacks merit and is hereby dismissed.
61. I make the following orders:
 - i. That the title of Elizabeth Naiyanui Koitumet and Rose Nantei Nashunchu to the land parcel Kajiado/Olchoro-Onyore/9775 was improperly procured and the same is hereby revoked and cancelled.
 - ii. That the register of the land parcel Kajiado/Olchore-Onyore/9775 shall be rectified, so as to remove the entries in favour of Elizabeth Naiyanui Koitumet and Rose Nantei Nashunchu and the title to that parcel of land shall revert to the name of Koitumet Ole Masojo, deceased.
 - iii. That parcel Kajiado/Olchoro-Onyore/9775 shall be distributed to all the beneficiaries of the deceased from the two houses in equal shares.
 - iv. That parcel Kajiado/Olchoro-Onyore/6458 shall be subdivided into two equal portions and distributed between Philip Sokoipei Ole Koitumet and Lilian Naisimoi Koitumet. The share that goes to Lilian Naisimoi Koitumet shall be held in trust for her three daughters.
62. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 24TH JUNE 2024.

S. N. MUTUKU

JUDGE

In the presence of:

1. Mr. Senteu, learned counsel for 1st Administrator
2. Mr. Mutitu, learned counsel for the Protestors
3. Mr. Taliti, learned counsel for Philip Koitumet

