



**In re Estate of William Cherop Murgor (Deceased) (Succession Cause  
112 of 2012) [2024] KEHC 16151 (KLR) (20 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16151 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 112 OF 2012  
JRA WANANDA, J  
DECEMBER 20, 2024**

**IN THE MATTER OF THE ESTATE OF WILLIAM CHEROP MURGOR (DECEASED)**

**BETWEEN**

**ENID CHEPTANUI MURGOR RONO ..... OBJECTOR**

**AND**

**FRANCIS MURGOR ..... 1<sup>ST</sup> PETITIONER**

**CHEMUTAI MURGOR ..... 2<sup>ND</sup> PETITIONER**

**SHEILA MURGOR ..... 3<sup>RD</sup> PETITIONER**

**LAWRENCE KIPRUTO MURGOR (NOW REPRESENTED BY JOSEPHINA  
KANDIE MURGOR) ..... 4<sup>TH</sup> PETITIONER**

**AND**

**COLLINS KIPKOECH MURGOR ..... BENEFICIARY**

**FLORENCE CHEPKEMEI MURGOR ..... BENEFICIARY**

**DR JAMES MURGOR ..... BENEFICIARY**

**MATTHEW KIPRUTO MURGOR (THE LATE) ..... BENEFICIARY**

**AND**

**ROBERT KIBET CHERUIYOT ..... INTERESTED PARTY**

**SAMSON E KIBET ..... INTERESTED PARTY**

**KIPKOSGEI ARAP SANG ..... INTERESTED PARTY**



## JUDGMENT

1. This Judgment is in respect to a Summons for Confirmation of Grant of Letters of Administration and by extension, on distribution of the estate of the deceased herein. While some beneficiaries wish that the Court now proceeds to conclude this Succession Cause which has been under litigation in Court for the last 12 years, by distributing the estate, other beneficiaries contend that the estate is not yet ripe for distribution and that the Court should “hold its horses”. Further, other third parties have now emerged laying claim, as purchasers, to some of the properties identified as comprising the estate and who have, as a result, applied to be joined herein as Interested Parties. Recognizing the delays already experienced in this matter, the plethora of Applications previously filed and determined, deaths of several beneficiaries during the intervening period, and considering the stage at which the Applications for joinder of Interested Parties have been brought, it was directed, upon concurrence of the parties, that all the said matters be dealt with and determined in this one Judgment.
2. The background to this Succession Cause is that the late William Cherop Murgor (the deceased herein) died on 28/09/2006 at the age of 87 years. He left an expansive estate comprising vast assets, both movable and immovable, and is said to have left behind 5 widows and about up to 35 children. In their capacity as son and daughter of the deceased, respectively, Francis Murgor (1<sup>st</sup> Petitioner) and Chemutai Murgor (2<sup>nd</sup> Petitioner) jointly filed herein on 12/04/2012 the Petition for Letters of Administration dated 4/04/2012 seeking to be appointed the Administrators of the estate of the deceased and which Grant was later on 8/10/2012 issued to the two Petitioners jointly. They then filed the Summons dated 25/02/2015 seeking confirmation of the Grant. However, before the Summons for Confirmation of Grant could be heard, the Petitioners’ sister, Enid Cheptanui Murgor (Objector), on 9/11/2015, filed the Application dated 5/11/2015 challenging the whole process.
3. The Application was heard by H. Omondi J (as she then was) by way of viva voce evidence and who, by her 127-page Ruling dated 11/05/2012 and delivered on 12/05/2022, ordered as follows:
  - a. Pending the final distribution of the Estate of the deceased, the households of Mrs. Soti Murgor, Mrs Rosa Kimoi Murgor, Mrs Anna Kimoi Murgor and Mrs. Philomena Kimoi Murgor each nominate one representative for appointment as administrators in the estate.
  - b. The Respondents be restrained from exercising any powers over the estate of the deceased, pending submissions of names of 4 proposed administrators reflective of separate houses.
  - c. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents provide a comprehensive financial account for the administration of the estate from the date of their appointment as administrators, to the present date.
  - d. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents pay into court all rental income received from the date of their appointment as administrators, to the present date including cash held in the estate’s bank accounts to facilitate distribution to the widows in keeping with their life interest in the estate of the deceased.
  - e. The 3<sup>rd</sup> Respondent and Florence C. Murgor be restrained from intermeddling or otherwise managing the property of the estate, specifically Plot No. Eldoret Municipality/Block 4/84, pending final distribution of the estate.
  - f. The 3<sup>rd</sup> Respondent and Florence C. Murgor be ordered to pay into court all rental and other income derived from Plot No. Eldoret Municipality/Block 4/84 including the rent paid by



Caltex Oil Kenya Ltd and Total Kenya Ltd for the last 20 years, pending final distribution of the estate.

- g. James K. Murgor had been in possession of/gifted IRONG/KESSUP/52- 28HA (70 acres, during the lifetime of the deceased, this parcel shall not form part of the estate to be distributed.
- h. The following are readily available for partial distribution;  
Eldoret Municipality Block 4/83Eldoret Municipality Block 4/84Iten/Irong 984,993,994,995,996,997,998,1001,1002,1003 and 1005Iten Township/054LR No. Sergoit/Koiwptaoui Block 8/10Plot No.003 Kapkoi Centre73 acres of Chepsigot Farm (and all the portions where the beneficiaries obtained title after the demise of the deceased but excluding parcels whose transactions were done during the lifetime, and are supported by records from Advocate Birech's Office.
4. The 1<sup>st</sup> Respondent referred to in the above Order is Francis Murgor (1<sup>st</sup> Petitioner-Administrator herein), the 2<sup>nd</sup> Respondent referred to is Chemutai Murgor (2<sup>nd</sup> Petitioner-Administrator herein) and the 3<sup>rd</sup> Respondent referred to is Dr. James Murgor (a beneficiary)
5. I may also mention that although the said Francis Murgor and Chemutai Murgor were the Petitioners in this Cause and therefore the initial Administrators, and Enid Murgor the Objector, the two said initial Administrators were however on 13/06/2022, pursuant to the above Ruling delivered on 12/05/2022, replaced and/or substituted, respectively. The new Administrators, representing 4 of the 5 houses/widows' family, therefore became Francis Murgor, Enid Murgor, Lawrence Murgor (now deceased) and Sheila Murgor. By the further consent orders recorded on 15/12/2023, the said Lawrence Murgor having later died, was replaced by one Josephina Kandie Murgor.
6. After a series of further Applications filed thereafter and eventually disposed of, namely, for a finding of contempt of Court, for stay of execution pending Appeal and for stay of proceedings pending Appeal, this Court then directed the parties to now file their proposed modes of distribution

**Affidavit on proposed mode of distribution under protest – Francis Murgor (1<sup>st</sup> Petitioner-Administrator)**

7. This Affidavit was sworn by Francis Murgor and filed on 22/07/2024 through Messrs Chebii & Co. Advocates, represented herein by Dr. John Chebi. In the Affidavit, Francis Murgor deponed that he is opposed to any distribution at this stage as the Administrators have not complied with Section 83 of the *Law of Succession Act* and Rule 7(1)(d) of the Probate & Administration Rules which require the Administrators to produce to the Court a full and accurate inventory of the assets, liabilities and account of all dealings therewith and an estimate of the values thereof. He cited the case of High Court Succession Cause No. 500 of 1997, in the estate of the late Kibowen Komen (deceased) (2019) eKLR. He deponed further that he opposes any distribution at this stage as there are properties listed as being available for distribution vide the Ruling delivered on 12/05/2022 that fall under the ambit of gifts inter vivos and cited Civil Appeal No. 29 of 2019 Michemi Aphaxard Nyaga & 2 Others v Robert Njue & 2 Others (2021) eKLR. He deponed further that in the event that partial distribution is directed, it may in the end and during the final distribution of the estate, cause imbalance, prejudice and unfairness and it is also likely to prejudice his Appeal.
8. According to him, the property known as Uasin Gishu/Kaptagat/416 registered in his name falls under the ambit of gifts inter vivos as the deceased obtained the Land Control Board consent to transfer and duly executed a transfer in 2005. Further, according to him, the property known as Uasin Gishu/Kaptagat/417 also falls under the ambit of gifts inter vivos. Regarding the property known as Sergoit/Koiwptaoui Block 8 (previously known as L.R No. 8409/3), he proffered the history that the same was



leased to the deceased in 1975 from an entity known as Lands Limited, was then surrendered to the deceased in August 1996, and was later surrendered to the Lands Office for sub-division in September 1996. He stated that this, too, was gift inter vivos by the deceased.

9. He then deponed that upon the Administrators performing their duties pursuant to Section 83 and Rule 7(1)(d) aforesaid, the estate be distributed as follows:
  - a. Eldoret Municipality Block 4/84 be registered in the name of James K. Murgor.
  - b. Eldoret Municipality Block 4/83 be registered in the name of Thomas K. Murgor.
  - c. 30 acres (upon a valuation and Surveyor's Report) of Sergoit/Koiwoptai 8/10 be shared equally amongst Josephine Kandie, Veronica Birgen, Jennifer Murgor, Margaret Murgor, Chemutai Murgor, Florence Murgor, Janerose Murgor, Stella Murgor, Enid Cheptanui Murgor, Hilda Chepchumba and Sheila Murgor.
  - d. 34 acres (upon a valuation and Surveyor's Report) Sergoit/Koiwoptai Block 8/10 be registered in the name of James K. Murgor.
  - e. Plot numbers Iten/Irong/1002, 1003, 1005 and 984 (upon a valuation and Surveyor's Report), be shared amongst Francis Murgor, Vicky Murgor (as the Administrator of the estate of Mathew Kipruto Murgor), Estate of Lawrence Murgor, Donald Murgor, Robert Murgor, Collins Murgor, Mark Murgor and Kenneth Murgor.
  - f. Plot numbers Iten/Irong/993, 994, 995, 996, 997, 998 and 1001, (upon a valuation and Surveyor's Report) be shared amongst Josephine Kandie, Veronica Birgen, Jennifer Murgor, Margaret Murgor, Chemutai Murgor, Florence Murgor, Janerose Murgor, Stella Murgor, Enid Cheptanui Murgor, Hilda Chepchumba and Sheila Murgor.
  - g. Plot numbers 054 Iten Township, (upon a valuation and Surveyor's Report) be shared amongst James Murgor, Thomas Murgor, Francis Murgor, Estate of Mathew Murgor, Estate of Lawrence Murgor, Donald Murgor, Robert Murgor, Collins Murgor, Mark Kimaiyo Murgor and Kenneth Murgor.
  - h. Kapkoi Centre Plot, be registered in the name of Vicky Murgor as the Administrator of the estate of Estate of Mathew Kipruto Murgor.

#### **Affidavit on proposed mode of distribution under protest – Dr. James Murgor**

10. This Affidavit was sworn by Dr. James Murgor (the presumed de facto leader of the family) and filed on 22/07/2024 through Messrs Morgan Omusundi & Co. Advocates, represented by Mr. Omusundi. In the Affidavit, Dr. James Murgor deponed that he is opposed to any mode of distribution by the Administrators for reasons that during the lifetime of the deceased, he gifted some beneficiaries a number of parcels of land and that whereas some were transferred during his lifetime, others are pending to date, and that he (Dr. James Murgor) was gifted 2 parcels of land, namely, Plot No. Eldoret Municipality Block 4/84 and Sergoit Koiwaptai/Block 10/Chepsigot Farm measuring 73 acres. He deponed further that he has been cultivating and/or living in the said parcels of land together with his family for over 26 years now, that the Administrators have now included the said parcels of land as part of the assets of the deceased awaiting distribution thus ignoring that the same were gifted to him during the deceased's lifetime. He, too, deponed further that partial distribution of the estate may, during the final distribution, cause imbalance, prejudice and unfairness given the fact that he has an Appeal against the Ruling of Omondi J (as she then was). According to him, partial distribution may undermine the Appellate Court as well as render the Appeal nugatory.



11. He deponed further that in the event that partial distribution is to be carried out, then he proposes distribution as follows:
- i. Plot No. Eldoret Municipality Block 4/84 be removed from the free properties forming part of the estate and the same be registered in his name.
  - ii. Regarding Sergoit/Koiwaptoi Block 8/10, he averred that although he was gifted the entire 73 acres by the deceased, and whereas only 50 acres is available for occupation and use, for purposes of concession, he is willing to relinquish 30 acres thereof to be shared equally amongst Josephine Kandie, Veronica Birgen, Jennifer Murgor, Margaret Murgor, Chemutai Murgor, Florence Murgor, Janerose Murgor, Stella Murgor, Enid Cheptanui Murgor, Hilda Chepchumba and Sheila Murgor.
  - iii. Regarding Plot numbers Iten/Irong/1002, 1003, 1005 and 984, he proposed that, upon a valuation and Surveyor's Report being submitted, the same be shared amongst Francis Murgor, Vicky Murgor, Estate of Lawrence Murgor, Donald Murgor, Robert Murgor, Collins Murgor, Mark Murgor and Kenneth Murgor.
  - iv. Regarding Plot numbers Iten/Irong/993, 994, 995, 996, 997, 998 and 1001, he proposed that the same be shared amongst Josephine Kandie, Veronica Birgen, Jennifer Murgor, Margaret Murgor, Chemutai Murgor, Florence Murgor, Janerose Murgor, Stella Murgor, Enid Cheptanui Murgor, Hilda Chepchumba and Sheila Murgor.
  - v. Regarding Plot numbers 054 Iten Township, he proposed that the same be shared amongst James Murgor, Thomas Murgor, Francis Murgor, Estate of Mathew Murgor, Estate of Lawrence Murgor, Donald Murgor, Robert Murgor, Collins Murgor, Mark Kimaiyo Murgor and Kenneth Murgor.
  - vi. Regarding Kapkoi Centre Plot, he proposed that the same be registered in the name of Vicky Murgor as the Administrator of the estate of Estate of Mathew Kipruto Murgor.

**Affidavit on mode of distribution – Collins Kipkoech Murgor**

12. This Affidavit is sworn by Collins Kipkoech Murgor and filed on 8/10/2024 through Messrs Munene Micheni & Co. Advocates. In the Affidavit, the deponent states that he swears the Affidavit on behalf of Veronica Chematia Birgen, Florence Chepkemai Murgor, Robert Kibiwott Murgor, Jennifer Jepkeitany Murgor, Mark Kimaiyo Murgor, Margaret Chebichii Murgor and Maiyo Domitila Vicky (as the Legal Representative of the estate of Mathew Kipruto Murgor. Indeed, the deponent has attached a consent indicated to have been signed by the said persons.
13. He, too, deponed that he is opposed to any distribution of the estate at this stage as the Administrators have not complied with the provisions of Section 83 of the Law of Succession Act and Rule 7(1)(d) of the Probate & Administration Rules which, as already cited above, require the Administrators to produce to the Court a full and accurate inventory of the assets, liabilities and account of all dealings therewith and an estimate of the values thereof. He, too, cited the case of the Estate of the late Kibowen Komen (supra).
14. He, too, then deponed that he is opposed to any distribution at this stage as there are properties listed as being available for distribution vide the Ruling delivered on 12/05/2022 that fall under the ambit of gifts inter vivos and he, too, cited the case of Michemi Aphaxard Nyaga (supra). He, too, mentioned one such property that has moved from the estate having been given out as a gift inter vivos as Sergoit/Koiwoptaoi Block 8 (previously known as L.R. No. 8409/3) and gave a background history thereof.



According to him, that property cannot form part of the estate and further, that the beneficiaries should not be disqualified from benefiting from the net estate. Other properties that he cited as having devolved as gifts inter vivos are Uasin Gishu/Kaptagat/417 (to him) and Uasin Gishu/Kaptagat/416 (to Francis Maina Murgor)

15. He deponed further that should partial distribution proceed, then he proposes that, upon the Administrators performing their duties pursuant to Section 83 and Rule 7(1)(d) aforesaid, the estate be distributed as follows:
  - i. Eldoret Municipality Block 4/84 be registered in the name of James K. Murgor.
  - ii. Eldoret Municipality Block 4/83 be registered in the name of Thomas K. Murgor.
  - iii. 30 acres (upon a valuation and Surveyor's Report) of Sergoit/Koiwoptai 8/10 be shared equally amongst Josephine Kandie, Veronica Birgen, Jennifer Murgor, Margaret Murgor, Chemutai Murgor, Florence Murgor, Janerose Murgor, Stella Murgor, Enid Cheptanui Murgor, Hilda Chepchumba and Sheila Murgor.
  - iv. 34 acres (upon a valuation and Surveyor's Report) Sergoit/Koiwoptai Block 8/10 be registered in the name of James K. Murgor.
  - v. Plot numbers Iten/Irong/1002, 1003, 1005 and 984 (upon a valuation and Surveyor's Report), be shared amongst Francis Murgor, Vicky Murgor (as the Administrator of the estate of Mathew Kipruto Murgor), Estate of Lawrence Murgor, Donald Murgor, Robert Murgor, Collins Murgor, Mark Murgor and Kenneth Murgor.
  - vi. Plot numbers Iten/Irong/993, 994, 995, 996, 997, 998 and 1001, (upon a valuation and Surveyor's Report) be shared amongst Josephine Kandie, Veronica Birgen, Jennifer Murgor, Margaret Murgor, Chemutai Murgor, Florence Murgor, Janerose Murgor, Stella Murgor, Enid Cheptanui Murgor, Hilda Chepchumba and Sheila Murgor.
  - vii. Plot numbers 054 Iten Township, (upon a valuation and Surveyor's Report) be shared amongst James Murgor, Thomas Murgor, Francis Murgor, Mathew Murgor, Lawrence Murgor, Donald Murgor, Robert Murgor, Collins Murgor, Mark Kimaiyo Murgor and Kenneth Murgor.
  - viii. Kapkoi Centre Plot, be registered in the name of Vicky Murgor (as the Administrator of the estate of Estate of Mathew Kipruto Murgor).

### **Proposed mode & Schedule of distribution – Sheila Murgor (3<sup>rd</sup> Administrator)**

16. This proposal was made by Sheila Murgor under oath and was filed on 22/09/2023 through Messrs Omollo Rotich Barasa & Co. Advocates, represented in this matter by Mr. Aseso. In the proposal, Sheila Murgor deponed that she has the consent of her co-Administrator, Enid Murgor, to swear the Affidavit. She then identified and listed the properties forming the estate as 29 immovable properties and 32 movable assets (cash, personal effects, farm machinery, and motor vehicles, among others). She urged that all the said properties be sold off and upon payment of verified liabilities, the proceeds thereof be distributed equally amongst all the beneficiaries subject to the application of Section 42(a) of the [Law of Succession Act](#) to the effect that the inheritance of the following beneficiaries be reduced by the benefit to be determined by a Court appointed valuer and/or Accountant:
  - i. Francis Maina Murgor (farming and residing for 16 years on 69 acres).
  - ii. Collins Kipkoech Murgor (farming and residing for 11 years on 69 acres).
  - ii. Mathews Kipruto Murgor (farming and residing for 14 years on 50 acres).





- ii. Larence Kiplimo Murgor (farming and residing for 15 years on 50 acres).

### **Affidavit on proposed mode of distribution – Sheila Murgor (3<sup>rd</sup> Administrator)**

17. This Affidavit is also sworn by Sheila Murgor and also filed on 22/09/2023, again through Messrs Omollo Rotich Barasa & Co. Advocates. In the Affidavit, she deponed that she had the consent of her co-Administrator, Enid Murgor, and several other beneficiaries who also support the proposal. She cited paragraph 201 of the Ruling delivered on 12/05/2022 by Omondi J (as she then was) in which it was held as follows:

“It is important to point out that the what will follow is equitable redistribution of the estate in terms of the Constitution and the Law of Succession, taking into account all valid gifts inter vivos. The 4 Administrators once appointed shall make proposals on the distribution of the estate taking into account that some of the houses have already benefited, and the guideline is as set out under Section 42 of the Act as read with Section 40 .....

18. She also cited Part V of the Law of Succession Act, specifically Section 40 thereof, which sets out the formula for distribution of estate property in a polygamous setting. She then observed that the beneficiaries of the estate, as determined by this Court in the said Ruling are 5 widows and 28 children. She however listed 5 widows and 30 children aggregating to a total list of 35 beneficiaries. She also reproduced the schedule of assets (29 immovable and 36 movable) forming the estate as already listed in her proposal above. As liabilities, she listed the following:

- a. Lands Limited Kshs 672,540/- (paid on 13/04/1983).
- b. Agricultural Development Corporation Kshs 75,893.15 (paid on 19/06/1995)
- c. Agricultural Development Corporation Kshs 176,252.50 (paid on 27/06/1990)

19. She also listed what she described as known land transactions involving the estate (sale to third parties or purchases) as follows:

- a. 2/6/83 - Sale to Elijah Kipkosgei Sumbeiywo - 250 acres for Ksh 1,000,000/-
- b. 2/6/83 - Sale to John Kibiy Kiptogoch - 150 acres for Ksh 600,000/-
- c. 30/7/84 - transactions of the following individuals for which there is no indication of purchase price on the undated multiple applications for Land Control Board consent - Ernest Saina - 50 acres, Samuel Emanuel – 100 acres, Thomas Bore - 100 acres, Michael Kurgat - 50 acres, Joseph Kipkurui Changwany - 20 acres, Samuel Kipsoi - 30 acres, Miriam Cherop - 20 acres, and Florence Murgor - 40 acres,
- d) 3/10/84 – Lands Ltd to deceased, 1,270 acres for Ksh 672,540/-
- e) 30/4/86 – Sale to Thomas K. Bore - 100 acres for Ksh 500,000/-

20. The deponent has not however disclosed the parcel or parcels of land from which the said “known sales” are from. She has also not disclosed whether the above transactions are sales that she does not challenge and therefore whether she accepts as genuine and thus not forming part of the estate.

21. As reasons for her proposed mode of distribution, she again cited paragraph 201 of the Ruling delivered on 12/05/2022 already reproduced above and deponed that for the beneficiaries who have had possession of portions of the estate’s property, their interest by way of gift inter vivos has been invalidated by the said Ruling hence are now subject to accrued benefits from the invalidated gifts



inter vivos. She then reproduced the list of the 4 such beneficiaries which she had already done in her Proposal above, namely, Francis Maina Murgor, Collins Kipkoech Murgor, Mathew Kipruto Murgor and Lawrence Kiplimo Murgor. She also listed 22 beneficiaries (including herself and the said Enid Cheptanui Cheron) who, according to her have not at all benefited from the estate, and also a separate list of 18 beneficiaries who have allegedly received gifts inter vivos, including cash and parcels of land.

22. She then attached respective consents signed by 9 other beneficiaries indicated to be in support of her proposed mode of distribution above. These are Enid Murgor, Josephina Murgor Kandie, Hilda Murgor, Stella Murgor, Janerose Murgor, Ambrose Murgor, Oscar Murgor, Sharon Murgor and Faith Cheptoo Murgor.

#### **Proposed mode of distribution – Enid Murgor (Objector-Administrator)**

23. Messrs Murgor & Murgor Advocates acting for Enid Cheptanui Murgor, and represented in this matter by Senior Counsel Mr. Philip Murgor, appearing alongside Mr. Ouma, informed the Court that they are in support of the mode of distribution proposed by Messrs Omollo Rotich Barasa & Co., Advocates acting for 9 beneficiaries as aforesaid, and would not therefore file their own separate mode of distribution.

#### **Application by 1<sup>st</sup> Intended Interested Party – Robert Kibet Cheruiyot**

24. This Application is dated 24/09/2024 and is filed through Messrs Tum & Associates Advocates, represented in this matter by Ms. Tum Advocate. It seeks prayers as follows:
- i. That the Applicant herein be identified and listed as a liability/creditor of the estate of William Cherop Murgor by the Administrators of the estate of William Cherop Murgor.
  - ii. That parcel number Irong/Iten/991 be included in the list of assets forming part of the estate of William Cherop Murgor and be distributed to the Applicant.
25. The Application is supported by the Affidavit sworn by the said Robert Kibet Cheruiyot in which he deponed that he purchased the whole of the parcel of land known as Irong/Iten/991 from the Administrators of the estate of one the late Cheboi Kipchoge who had himself purchased the same from the late William Cherop Murgor and who is still the registered owner thereof. He deponed further that the consent of the Land Control Board to transfer the land was obtained but William Cherop Murgor passed away before the transfer could be effected, that he has been in possession and occupation of the said parcel of land upon the purchase and has made extensive developments therein, and that since he has a purchaser's interest in the whole of the parcel of land, he ought to be listed as a liability/creditor thereto. According to him therefore, it is fair and proper that the parcel of land be included in the list of assets available for distribution and the same be distributed to himself. He then swore a Further Affidavit reiterating the said matters.

#### **Application by 2<sup>nd</sup> & 3<sup>rd</sup> Intended Interested Parties – Samson E. Kibet & Kipkosgei Arap Sang**

26. This Application is dated 26/08/2024 and was filed on 8/10/2024 through Messrs Munene Micheni & Co. Advocates, represented in this matter by Mr. Munene. It seeks prayers as follows:
- i. That the Applicants be granted leave by this Honourable Court to join these proceedings as Interested Parties.
  - ii. That upon granting of prayer 1 above, the 2<sup>nd</sup> Applicant's duly filed Affidavit of Protest sworn on 19<sup>th</sup> July 2024 be admitted on record and be deemed as properly filed.
  - iii. That the costs of this Application to be in the Cause.





27. The Application is supported by the Affidavit sworn by the said Samson E. Kibet in which he deponed that he has been authorized by the 2<sup>nd</sup> Interested Party (Kipkosgei Arap Sang), his brother, to swear the Affidavit on his behalf, and that on 12/05/2022, a Ruling was delivered herein in which this Court declared that the 2<sup>nd</sup> Interested Party's property, title number Sergoit/Koiwoptaoi Block 19 forms parts of the estate of the deceased and is available for distribution. According to him, the Court erred in fact and law as the Interested Parties purchased 100 acres from L.R. No. 8309/3 (now Segoit/Koiwoptaoi Block 8) from the deceased vide an Agreement for Sale executed on 4/11/1983, and took possession. He deponed further that the joinder sought will meet the objective of assisting and completely adjudicate upon and settle all questions regarding the said land parcel and assist the Interested Parties to seek relief against the said Ruling delivered on 12/05/2022 and that unless the orders sought are granted, the Court will proceed to distribute the property as part of the estate and consequently causing the Interested Parties to suffer substantial loss.

**Affidavit of protest – Kipkosgei Arap Sang (2<sup>nd</sup> Intended Interested Party)**

28. This Affidavit of Protest is supplemental to the above Application and is sworn by the said Kipkosgei Arap Sang and filed on 8/10/2024 also through Messrs Munene Micheni & Co. Advocates aforesaid. In the Affidavit, the deponent echoed the matters stated in the above Application and added that he is the registered owner of the property known as Title No. Sergoit/Koiwoptaoi Block 8/145 (formerly known as Title No. Sergoit/Koiwoptaoi Block 8/19). He deponed that he opposes the inclusion of the said parcel of land in the list of properties forming the estate of the deceased herein as was held in the Ruling delivered of Omondi J delivered herein on 12/05/2022 since vide the Agreement dated 4/11/1983, he and his said brother, Samson Kibet, purchased 100 acres of the said property from the deceased and that he is included in the sub-division Register as Parcel No. 19. He contended that as the deceased had, during his lifetime, done everything within his control to transfer the property to him, the said parcel of land cannot form part of the estate herein and that he has further subdivided the property to produce current Title Deeds Title No. Sergoit/Koiwoptaoi Block 8/19 to parcel numbers /145 to /151. He deponed further that he is not the only third party who may be affected if distribution is conducted without getting an opportunity to be heard.

**Opposition to Applications by Intended Interested Parties – Enid Murgor (Objector-2<sup>nd</sup> Administrator)**

29. Messrs Murgor & Murgor Advocates acting for Enid Cheptanui Murgor, also filed Grounds of Opposition to the two said Applications by the Intended Interested Parties. In opposition to the Application by Robert Kibet Cheruiyot dated 24/09/2024, Counsel submitted that the Applicant has no legitimate interest and or locus in the estate herein as he is not a beneficiary, dependant, creditor or debtor thereto, and that the Sale Agreement dated 7/10/2002 exhibited by the Applicant is between Nicholas Kipchumba Cheboi and Joseph Cheboi Kipchoge. He submitted further that Irong/Iten /991 is still registered in the name of the deceased, that there is no proof of sale by the deceased to Robert Kibet Cheruiyot or to any other person and that under Article 162(b) of *the Constitution* of Kenya, this Court does not have jurisdiction to determine rights over use and occupation of, and title to land.
30. In opposition to the Application by Samson E. Kibet and Kipkosgei Arap Sang, Counsel similarly submitted that they, too, have no legitimate interest and or locus in the estate as they are not beneficiaries, dependants, creditors or debtors thereto, that the Sale Agreement exhibited by Kipkosgei Arap Sang is between Samson E. Kibet and William Cherop Murgor, and not Kipkosgei Arap Sang. It was also contended that the title deed exhibited indicates that it was issued to Kipkosgei Arap Sang



on 4/10/2010, after the death of the deceased which occurred on 28/09/2006, and which amounts to intermeddling, and therefore illegal.

### **Hearing of the Application**

31. The several proposals and/or Affidavits on the issue of distribution, and the respective Applications for joinder as Interested Parties were all canvassed by way of written Submissions. The Submissions filed by the parties are as follows:
- i. Messrs Chebii & Co. acting for the Petitioners, Francis Murgor and Chemutai Murgor, filed their Submissions dated, and filed on 30/10/2024.  

(Regarding Chemutai Murgor however, I may mention that at some point, Messrs TripleOKLaw LLP Advocates appeared for her in this matter and it is not clear whether she changed her Advocates or whether she is still being represented by Messrs Chebii & Co.)
  - ii. Messrs Morgan Omusundi & Co. acting for Dr. James Murgor, filed their Submissions dated 23/07/2024.
  - iii. Messrs Munene Micheni & Co. acting for 8 beneficiaries, namely, Collins Kipkoech Murgor, Veronica Chematia Birgen, Florence Chipkemoi Murgor, Robert Kibiwott Murgor, Jeniffer Jepkeitany Murgor, Mark Kimaiyo Murgor, Margaret Chebichii Murgor and Maiyo Domitila Vicky (as the legal representative of Mathew Kipruto Murgor filed their Submissions dated 20/08/2024 on 8/10/2024.
  - iv. Messrs Omollo Rotich Barasa & Co., acting for 9 beneficiaries, namely, Sheila Murgor, Stella Murgor, Hilda Murgor, Josephine Kandie Murgor, Ambrose Kiplagat Murgor, Janerose Chechichir Murgor, Sharon Murgor, Oscar Toroitich Murgor and Faith Cheptoo Murgor, filed their Submissions dated 9/08/2024.
  - v. Messrs Murgor & Murgor Advocates, acting for Enid Cheptanui Murgor filed their Submissions on 6/08/2024.
32. I have not come across any Submissions filed by Messrs Tum & Associates, the Advocates acting for the 1<sup>st</sup> intended Interested Party, Robert Kibet Cheruiyot.

### **Submissions – Francis Murgor (1<sup>st</sup> Petitioner-Administrator)**

33. In his Submissions, Dr. Chebii, acting for Francis Murgor reiterated that the said Francis Murgor is the registered owner of the parcel of land known as Uasin Gishu/Kaptagat/416. He reiterated the position that taking this parcel of land at this stage as part of the estate of the deceased will fly in the face of the provisions of Section 83(b) of the *Law of Succession Act* as read with Section 3(1) thereof and as amplified by Rule 7(1)(d) of the Probate & Administration Rules which the Administrators have not complied with. He also pointed out that some of the properties are in the Central Business District of Eldoret city yet no valuation has been undertaken. He again cited the case of Estate of Kibowen Komen (supra). He also reiterated the submission that the properties listed for distribution are already gifted by the deceased to known beneficiaries, including the said Francis Murgor. He re-cited the case of Michael Aphaxard Nyaga v Rabert Njue (supra) and submitted that as long as the donee has obtained full ownership of the property, the same ceases to be estate property. Other properties that Counsel listed as having similarly already been transferred to beneficiaries as gifts inter vivos, he again cited Uasin Gishu/Kaptagat/417, Sergoit/Koiwoptoa/Block 8 and all resultant parcels as well as Eldoret Municipality Block 4/83 and also Eldoret Municipality Block 4/84.



### Submissions – Dr. James Murgor

34. In his Submissions, Mr. Omusundi, acting for Dr. James Murgor submitted that it is important to take cognizance of the fact that Dr. James Murgor’s contestation mainly revolves around the 2 properties, Plot No. Eldoret Municipality Block 4/84 and Sergoit Koiwaptoi/Block 10/Chepsigot Farm - 73 Acres. He submitted that the family held a meeting on 15/03/2011 in which they discussed that the deceased bequeathed/gifted some of his properties during his lifetime and that whereas some were transferred, others are pending to date. He submitted that Francis Murgor was gifted the said 2 parcels of land but to his surprise, the Administrators have included the 2 as part of the assets of the deceased, free for distribution. According to Counsel, the inclusion of the 2 parcels of land has greatly prejudiced Francis Murgor who has utilized and possessed the same for more than 15 years now. Regarding property passing as gift inter vivos, Counsel cited the case of *Re Estate of Godana Songoro Guyo (Deceased)* [2020] eKLR and also submitted that Francis Murgor, in his testimony, confirmed the above matters and has also produced supporting documents. He also reiterated that they have appealed against the Ruling delivered on 12/05/2022 on the issue of the gifts inter vivos and that if the same are distributed, the Appeal will be rendered nugatory.

### Submissions – Collins Murgor & 7 Other beneficiaries

35. In his Submissions, Mr. Munene urged that the Submissions is made on behalf of 8 beneficiaries, namely, Collins Kipkoech Murgor, Veronica Chematia Birgen, Florence Chpkemoi Murgor, Robert Kibiwott Murgor, Jeniffer Jepkeitany Murgor, Mark Kimaiyo Murgor, Margaret Chebichii Murgor and Maiyo Domitila Vicky (Suing as the Legal Representatives and Administrator of the Estate of Matthew Kipruto Murgor). He submitted further that the Submissions is in opposition to distribution at the current state of the estate due to the reasons of the Administrators/Personal Representatives disregard of statutory obligations and of gifts inter vivos being listed as properties of the estate.
36. Counsel reiterated the matters already deponed in the Affidavit of Collins Murgor, namely, that the current Administrators have not complied with Section 83 and Rule 7(1)(d) of the *Law of Succession Act* and the Probate and Administration Rules, respectively, on presenting a full and accurate inventory of the estate together with a valuation. He reiterated that distribution without a full and accurate inventory together with valuation in a contentious probate will, later on, raise a situation where there will be a plethora of Applications seeking Revocation/Rectification of Grant e.g. if beneficiaries later on note that one of them has been distributed a property that is way higher in value than theirs. He cited Succession Cause No. 4 of 2015, *In Re Estate of the late Mwaura Makuro (Deceased)* [2021] eKLR. According to him therefore, the consents attached to the Affidavit sworn by Shiela Murgor are invalid.
37. Regarding the allegation of gifts inter vivos being listed as properties of the estate, he again cited the case of *Micheni Aphaxard Nyaga (supra)*. He then submitted that the conduct of the deceased proving uncontroverted evidence of giving of the gifts inter vivos, were that he surrendered Title No. Sergoit/Koiwoptaai Block 8 to the Lands office for sub-division on 10/09/1996, and that the sub-division Register for the Title was lodged with the Lands office on 15/04/1997, and that for Title No. Uasin Gishu Kaptagat/417, the deceased attended the Land Control Board meeting on 12/08/2005 and affixed his thumb print on the Transfer. According to him, Omondi J (as she then was) erred in law and fact by failing to hear the evidence of the 8 beneficiaries and consequently did not take into consideration that the deceased donor had done everything in accordance to the nature of the properties gifted and that the donees were holders of gifts inter vivos. He submitted that non-compliance with Section 83 and Rule 7(1)(d) aforesaid is substantive and cannot be cured by Article 159 (2)(d) of *the Constitution*. He cited Succession Cause 1670 of 2004 - *In Re the Estate of David Wahinya Mathene (Deceased)* [2005] eKLR. In conclusion, he urged that before this Court



proceeds with distribution, the Administrators should be compelled to so comply to prevent further convolvement of the matter.

### **Submissions – Enid Murgor (Objector-2<sup>nd</sup> Administrator)**

38. In his Submissions, Murgor, SC (appearing with Mr. Ouma) for Enid Murgor, submitted that the estate has been mismanaged, and has thus not benefitted the majority of the beneficiaries, to date, and that following their appointment, 3 Administrators have worked to consolidate the estate, without the support of Francis Murgor - the other co-Administrator - as is clear from the Affidavit of Francis Murgor. He added that in her Affidavit, Sheila Murgor has set out the assets of the estate, and deponed that there are no known liabilities, and observed that none of the Affidavits filed in protest by other beneficiaries has listed any liabilities. According to him therefore, there is no justification for the protests and the rival proposed modes of distribution for the reason that Francis Murgor has forgotten that he is an Administrator, and has not included all the beneficiaries of the estate of the deceased. He listed 34 of the 35 beneficiaries listed in the Affidavit of Sheila Murgor. He then submitted that the list of assets was settled by the Ruling of Omondi J and that any property transferred after the death of the deceased amounted to intermeddling and is therefore void.
39. Regarding the Affidavit of Francis Murgor, Counsel submitted that the Application for Consent of Land Control Board exhibited is not signed. Regarding the Affidavit of Dr. James Murgor, and the one of Collins Kipkoech, he submitted that these Affidavits have not included all the beneficiaries of the estate, a matter which was settled by Omondi J. He also pointed out that the Application for Consent of Land Control Board exhibited is incomplete, and does not bear the signature of the deceased, that the Transfer of Land exhibited is also not signed by the deceased, and is purported to have been registered on 29/03/2012, way after the death of the deceased, thus confirming the findings of Omondi J and that any property transferred after the death of the deceased amounted to intermeddling and is therefore void.
40. Regarding the rival modes of distribution presented, Counsel submitted that the same have no justification as it is not denied or disputed that there are beneficiaries that have benefitted immensely from the assets of the estate while others have not benefitted at all and others left out absolutely. According to him, the proposals by Francis Murgor, Dr. James Murgor, and Collins Kipkoech Murgor are all contrary to Section 42 of the Law of Succession Act, which basically provides that where an intestate has, during his lifetime, given or settled any property to or for the benefit of any beneficiary, that property shall be taken into account in determining the share of the net intestate estate finally accruing to such beneficiary child, grandchild or house. He submitted that such beneficiaries who have had possession of portions of the estate property and whose purported interest by way of gifts inter vivos has been invalidated by the Ruling of Omondi J, hence subject to accrued benefits from the invalidated gifts inter vivos, will be entitled to a portion of the assets available for distribution. He named such beneficiaries as Francis Maina Murgor, Collins Kipkoech Murgor, Mathews Kipruto Murgor and Lawrence Kiplimo Murgor. For the beneficiaries who have not inherited at all, he listed the 22 earlier mentioned in the Affidavit of Sheila Murgor.
41. Regarding the Affidavit of Protest by Kipkosgei Arap Sang, Counsel submitted that the Sale Agreement exhibited is between Samson E. Kibet and William Cherop Murgor, and not Kipkosgei Arap Sang, and that the Title Deed exhibited is indicated to have been issued to Kipkosgei Arap Sang on 4/10/2010, after the death of the deceased which occurred on 28/092006, and which amounts to intermeddling, and therefore illegal. Regarding the Affidavit of Protest by Robert Kibet Cheruiyot, he submitted that the property known as Irong/Iten /991 is still registered in the name of the deceased and that there is no proof of sale by the deceased.



42. On his proposal on distribution, he submitted that on the authority of *the Constitution* which guarantees the right to equal treatment before the law, and on the precedence of the case of *Mary Rono v Jane Rono & another* [2005] eKLR and *In re Estate of Kipkosgey Kiplagat Kamar (Deceased)* [2020], there should be an equitable distribution of the estate to all beneficiaries. According to him, the Ruling delivered on 12/05/2022 at paragraph 202 provides a roadmap, guided by Sections 40 and 42 of the *Law of Succession Act*, and urged the Court to proceed to distribute the estate in terms of the Schedule for Distribution of Assets presented by Sheila Murgor.

### **Submissions – Sheila Murgor (3<sup>rd</sup> Administrator)**

43. In his Submissions, Mr. Aseso, Counsel representing Messrs Omollo Rotich Barasa & Co., the Advocates acting for Sheila Murgor pointed out that Francis Murgor and Chemutai Murgor, as Petitioners, entirely left out 4 beneficiaries from the distribution and whom he named as Ambrose Kiplagat Murgor, Sharon Murgor, Oscar Toroitich Murgor and Faith Cheptoo Murgor. He then submitted that the distribution was discriminatory against most of the daughters. He also pointed out that by her said Ruling delivered on 12/05/2022, Omondi J (as she then was) at paragraph 156 held that the individuals left out by the Petitioners as aforesaid, qualify as beneficiaries by virtue of Section 29 of the *Law of Succession Act* and at paragraph 159 also held that the mode of distribution proposed by the Petitioners was discriminatory against the daughters. He pointed out that the mode of distribution proposed by Sheila Murgor is supported by 9 beneficiaries, including Enid Murgor, thus making it supported by a total of 10 beneficiaries. He also pointed out that the 3 Affidavits by Collins Murgor (supported by 7 beneficiaries), James Murgor and Francis Murgor ignore the locus classicus case of *Mary Rono v Jane Rono & Another* [2005] eKLR on non-discrimination of parties entitled to inherit as well as the Court's said Ruling delivered herein on 12/05/2022.

44. Regarding the Applications by the 1<sup>st</sup> and 3<sup>rd</sup> Intended Interested Parties, Samson E. Kibet and Kipkosgei Arap Sang, respectively, Counsel submitted that the Affidavits of Protests filed by them fall short of proving any interest in the property of the deceased as is required under Section 107 and 108 of the *Evidence Act*. Regarding Kipkoech Arap Sang, he submitted that the Sale Agreement exhibited does not relate to the deponent. Regarding the 2<sup>nd</sup> Intended Interested Party, Robert Kibet Cheruiyot, he submitted that the annexure exhibited also does not relate to the deceased but to strangers.

45. In conclusion, Counsel submitted that based on the totality of the Affidavits before the Court, the mode of distribution proposed by Sheila Murgor is the fairest and most equitable. He urged further that it is time to put this matter to rest, as it is close to 18 years since the demise of the deceased.

### **Determination**

46. Upon considering the pleadings, Affidavits and submissions present herein, I find the issues that arise for determination in this matter to be the following:

- a. Whether the Intended Interested Parties should be allowed to join these proceedings.
- b. Whether the estate is ripe for distribution and whether therefore, such distribution should now be carried out by this Court.
- c. If distribution of the estate should be conducted, what mode of distribution should be applied and/or adopted?

47. I now proceed to determine the said issues:





**a. Whether the Intended Interested Parties should be allowed to join these proceedings**

48. As aforesaid, the 1<sup>st</sup> Intended Interested Party, Robert Kibet Cheruiyot, claims that he purchased the whole of the parcel of land known as Irong/Iten/991 from the Administrators of the estate of one the late Cheboi Kipchoge who had himself allegedly purchased the same from the deceased herein. On their part, in regard to the property Sergoit/Koiwoptaoi Block 19, the 2<sup>nd</sup> and 3<sup>rd</sup> Intended Interested Parties (who are brothers) claim that they jointly purchased 100 acres from L.R. No. 8309/3 (now Segoit/Koiwoptaoi Block 8) from the deceased in the year 1983, and took possession.
49. In respect to allegations of the nature cited by the Intended Interested Parties, I refer to the decision of Musyoka J in the case of In the matter of the Estate of Stone Kakhuli Muinde (Deceased) [2016] eKLR. As herein, the case involved an Application by third parties for joinder into a Succession Cause. In dismissing the Application, the Judge stated as follows:
- “24. The probate process is meant to be largely administrative, where the documents lodged in the cause are scrutinized administratively by court officers before certain instruments are processed and executed by relevant judicial officers before being issued to the parties. It is intended that there be minimal court appearance. The whole process is tailored to be non-contentious, and the only contemplated court appearance is at the stage of the confirmation of the grant of representation. In that scenario then there would be no need to join any person or entity to the succession cause.
25. The cause can and does, as a matter of course, turn contentious. To facilitate distribution of the estate, the court should identify the persons who are entitled to inherit from the estate of the deceased and the assets to be shared out amongst the person entitled. Disputes often arise on those issues. It may become necessary for the court to determine whether a particular person is entitled to a share in the estate of the deceased or not. An issue may also arise whether some asset formed part of the estate of the deceased or not.
26. The Act and the Rules have elaborate provisions on resolving such questions, and to settle them there would be no need to bring in persons who have no direct interest in the matter, especially those who are not family members. Whether a person is entitled to the part of the estate is an issue to be resolved without joining other persons to the matter.
27. With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.
28. Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the Civil Procedure Rules. This could mean filing suit at the magistrates’ courts, or at the Civil or Commercial Divisions of the High Court,





or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.

29. It is the failure to observe the foregoing, and allowing non-survivors or beneficiaries of the estate to prove their claims against the estate within the probate court that has often made succession causes complex, unwieldy and endless. It is by the same token that it had become necessary for the court to allow joinder of persons to the succession cause who ideally ought not to be party to the cause in the first place.”

50. There is also the case of *In Re Estate of Mbai Wainaina (Deceased)* [2015] eKLR, in which again, W. Musyoka J, held as follows:

“ Even if there was material establishing that there was such a trust, I doubt that the resolution of this issue would be a matter of the probate court. The mandate of the probate court under the *law of succession Act* is limited. It does not extend to determining issues of ownership of property and determination of trusts. It is not a matter of the probate court being incompetent to deal with such issues but the provisions of the law of succession and the relevant subsidiary legislation do not provide a convenient mechanism for determination of some issues. A party who wishes to have such matters resolved ought to file a substantive suit to be determined by the Environment and Land court. Consequently, and for the reasons above stated, I wish to find and hold that this court has no mandate to resolve the proprietary interest on land based on the alleged trust”.

51. Similarly, in the case of *In re estate of Solomon Mwangi Waweru (deceased)* (2018) eKLR, A.K. Ndungu J remarked as follows:

“Therefore, claims by interested third parties against the estate of the deceased ought to be litigated in separate proceedings. It is imperative that any adverse claims against the estate of a deceased person are determined through settlement or where inapplicable through suits against the administrator (s) of the estate and not through an objection like the one before court”

.....

“It is my opinion that the fact that the applicant has laid claim to the estate does not give rise to an automatic right to have the distribution of the property stayed by the succession cause. The applicant ought to disclose a legitimate claim which needs to be determined by the Environment and Land court. The succession court would then proceed with the administration of the estate in respect of other properties not affected by the conservatory order if obtained awaiting the outcome of the suit”.

52. I fully associate myself with the views expressed in the said decisions and I am satisfied that the claims made by the Intended Interested Parties herein are matters that are squarely within the province of the Environment & Land Court (ELC) and not this High Court. Article 162(b) of *the Constitution* gives to the Environment and Land Court the sole mandate and jurisdiction to determine issues of ownership, use and occupation of land. This Court cannot usurp that role.

53. The parties who would be outright interested parties in a Succession Cause are beneficiaries, spouses and children. Creditors and any other persons with proven legal claims against the estate may, in appropriate cases and as guided under the *Law of Succession Act*, be also admitted as interested parties.



I do not find this to be one such case and there are several reasons why I find it not viable to admit the Applicants as Interested Parties.

54. First, I consider the very late stage at which the Applicants have brought their claims. This Succession Cause was commenced in the year 2012, 12 years before the instant Applications now filed. The late William Murgor was a prominent son of the Elgeyo Marakwet County and a well-known veteran politician and as a result, this Cause has regularly received intensive media coverage. The Ruling by Omondi J (as she then was) which identified the properties forming the estate, was itself rendered in 2022, 2 years ago. For the Applicants, I would expect them to have had an even extra interest in the Cause considering their “interests” over land that they allege to have purchased from or was owned by the deceased. It is inconceivable that all this time, the Applicants would not have been aware of this Succession Cause and/or the progress thereof or that the properties claimed by the Applicants were a subject of the Cause. In the circumstances, I am convinced that the Applicants must have always been aware of this Cause but never deemed it necessary to act. It is trite law that “equity aids the vigilant, not the indolent”. The Applicants have offered no explanation whatsoever for the delay and/or why they had to wait until this matter is at the current stage of distribution for them to act. Allowing the Applicants to join this Cause at this late stage will, in my view, only delay the resolution of this already very old, prejudice the primary beneficiaries and only complicate the process further.
55. On the merits of the two Applications, the Advocates for the Objector-2<sup>nd</sup> Administrator, Enid Murgor and the Advocates for the 3<sup>rd</sup> Administrator, Sheila Murgor, respectively, have poked holes thereon. For instance, regarding the claim by Kipkosgei Arap Sang, they have argued that the Sale Agreement exhibited is between Samson E. Kibet and William Cherop Murgor, and that it does not therefore relate to Kipkosgei Arap Sang. They also argued that the Title Deed exhibited is indicated to have been issued to Kipkosgei Arap Sang on 4/10/2010, long after the death of the deceased which occurred on 28/092006, and which therefore amounts to intermeddling, and thus illegal. Regarding the Affidavit of Protest by Robert Kibet Cheruiyot, they have submitted that the property known as Irong/Iten /991 is still registered in the name of the deceased and that there is no proof of sale by the deceased.
56. Although the challenges raised against the claims lodged by the Intended Interested Parties are no doubt weighty, having found that the claims are improperly before this Court, I will restrain myself from making any comments or making any findings thereon lest I prejudice the claims that the Applicants may file before the Environment and Land Court.
57. Should the Applicants file suits before the Environment & Land Court, then at that stage, they may on the strength of the existence of such suits, return to this Court and seek stay of execution of the orders that may be given herein on distribution, pending determination of such suit.
58. For the foregoing reasons, I decline to allow joinder of the Applicants to this Cause as interested parties. The Applicants’ remedy or recourse, if any, is at this stage, in another forum, not this probate Court.

**b. Whether the estate is ripe for distribution and whether therefore, such distribution should now be carried out by this Court**

59. According to Francis Murgor (1<sup>st</sup> Petitioner/1<sup>st</sup> Administrator), Dr. James Murgor and Collins Murgor, this matter is not ripe for distribution of the estate because the Administrators have not complied with Section 83 and Rule 7(1)(d) of the *Law of Succession Act* and Probate and Administration Rules, respectively, requiring them to present a full and accurate inventory of the estate together with a valuation. They also urge that distribution of the estate will prejudice the Appeals that



they have each filed before the Court of Appeal challenging the Ruling delivered on 12/05/2022 by Omondi J (as she then was).

60. As already stated hereinabove, by her said Ruling, Omondi J (as she then was), identified some of the properties comprising the estate and allowed the same to proceed for distribution. The properties alleged by Francis Murgor (1<sup>st</sup> Petitioner/1<sup>st</sup> Administrator), Dr. James Murgor and Collins Murgor to have passed to them as gifts inter vivos are some of those identified by Omondi J as being available for distribution, the Judge having dismissed the claims of gifts inter vivos advanced by the said parties.
61. In arguing that distribution will prejudice their Appeals, what the said parties do not however disclose is that they each did apply to this Court for orders of stay of execution and stay of proceedings of the said Ruling, pending Appeal and that the Applications were all declined. To again raise the same argument of the existence of the Appeals or Intended Appeals as being a ground for seeking suspension of the distribution of the estate, is, in my view, attempting to sneak back the already determined issue of stay of execution and stay of proceedings.
62. Omondi J (as she then was) being a Judge of equal jurisdiction at the time that she pronounced herself, I have no jurisdiction to overturn, overrule or ignore her findings or directions. The Judge having allowed the matter to proceed to distribution of the estate, the Applications for stay of execution and stay of proceedings having been declined and there being no contrary order from a higher Court, this Court cannot re-open the matter.
63. Further, regarding the contention that the Administrators are yet to comply with Section 83 and Rule 7(1)(d) of the Law of Succession Act and Probate and Administration Rules, requiring them to present a full and accurate inventory of the estate, together with a valuation of the estate, those provisions provide as follows:

Section 83 of the Law of Succession Act:

“personal representatives shall have the following duties-

.....

- (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 full and accurate account of all dealings therewith up to the date of the account.

.....

- (h) to produce to the court if required by the court either of its own motion or on the application of any interested parties in the estate 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.”

Rule 7(1) of the Probate and Administration Rules:

“7. Application for grant: general provisions

- (1) Subject to the provisions of subrule (9), where an applicant seeks a grant of representation to the estate of a deceased person to whose estate no grant or no grant other than one under section 49 or a limited



grant under section 67 of the Act has been made, the application shall be by petition in the appropriate Form supported by an affidavit in one of Forms 3 to 6 as appropriate containing, so far as they may be within the knowledge of the applicant, the following particulars —

.....

d) A full inventory of all his assets and liabilities at the date of his death (including such, if any, as may have arisen or become known since that date) together with an estimate of the value of his assets, movable and immovable, and his liabilities;

64. As aforesaid, Francis Murgor is a co-Administrator and Chemutai Murgor is a former Administrator of the estate. Francis Murgor has been an Administrator since 2012 and Chemutai Murgor was an Administrator until the year 2022 pursuant to the said Ruling of Omondi J (as she then was). It is therefore comical to hear Francis Murgor using non-compliance by “Administrators”, whom he is a part of, as a ground for seeking postponement of distribution of the estate. He has not claimed that he, at any time, sought to comply with the said provisions of law and that his co-Administrators refused to co-operate. He does not also claim that there is any other reason that stopped him, as co-Administrator, from causing compliance with the requirements. To therefore cite his own omission, inaction, failure or breach the law to seek to gain or obtain an advantage or benefit against the other beneficiaries is in my view, farcical and is unacceptable.
65. In any event, in the course of this matter, an Application seeking a finding of contempt of Court against the same Francis Murgor and Chemutai Murgor as some of the Administrators, and also Florence Murgor, was filed. In my Ruling of 28/04/2023, I directed the 3 to file their individual respective Affidavits setting out, explaining and/or giving an account or Report of how, in what manner and to what extent they had each complied with the Orders issued by H. Omondi J (as she then was) on 12/05/2022. Pursuant thereto, they filed Affidavits as directed giving accounts and/or explanations of various matters relating to the estate. In my view, save for valuations, they gave the relevant information that would have been required for the purposes of the said provisions of law. Although no formal valuation has been presented, it shall become evident that the issue of valuation shall be addressed by the mode of distribution that I shall adopt and apply herein.
66. In any event, neither Section 83 or Rule 7(1) above expressly mentions a requirement for “valuation of assets” of a deceased person. What is mentioned as a requirement is an “inventory of the assets and liabilities of the deceased” and an “account of all dealings therewith”. The only reference to “value of the assets” is in Rule 7(1)(d) of the Probate & Administration Rules and even then, what is stated to be required in respect to the estate of the deceased person, is “an estimate of the value of his assets” at the time of applying for the Grant of Letters of Administration. There is therefore no express mandatory requirement that an Administrator must, before distribution of an estate, always file a formal Valuation Report for the assets.
67. For the said reasons, I find that pursuant to and in line with the Ruling of Omondi J (as she then was) delivered herein on 12/05/2022, this Succession Cause is indeed ripe for distribution of the estate.



68. Considering the prejudice already suffered by the parties due to the long delay to conclude this 12 years old Succession Cause, including deaths of several beneficiaries so far and the unending wrangles within the family, and weighing it against the logic of undue insistence on procedures aforesaid, I choose to mitigate on the delay. As it is often stated, “rules were made for man, not man for the rules” and further, that “rules are handmaids of justice not mistresses”. Rules must therefore serve the justice of the case and should not be given a pedantic interpretation which at the end of the day denies parties the justice they crave for. Where rules and/or procedures become a hindrance to the Court’s obligation of rendering justice, such procedures must, in appropriate cases, give way.

**c. What mode of distribution should be applied and/or adopted?**

69. As aforesaid, the deceased was proudly a polygamous Keiyo man and left behind 5 widows. Regarding distribution of the estate of a polygamous intestate, Section 40 of the [Law of Succession Act](#) provides as follows:

- “(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children;
- (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38”.

70. As was stated by Hon. Justice J.K. Karanja in the case of *In re Estate of Michael George Tendwa Said (Deceased)* [2020] eKLR, Section 40 above is the applicable law where there is no agreement on distribution of the estate. He stated as follows:

“any proposed mode of distribution ought to be compatible with and in accordance with the provision thereby leaving no room for distribution based on the whim of the holder of the grant or his/her sentimental feelings”

71. Regarding “equality” in distribution as mentioned in Section 40 above, the Court of Appeal in the case of *Stephen Gitonga M’murithi –v- Faith Ngira Murithi* [2015] eKLR, observed as follows:

“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried.

Section 40 on the other hand enjoins the inclusion of a surviving spouse as an additional unit to each house hold of a polygamous deceased. Applying the above principles ..... it is our finding that the learned trial Judge fell into an error when he failed to accord equal distribution to all the children of the deceased in violation of section 38 of the [Law of Succession Act](#) by discriminating against the married daughters of the deceased .....

72. Further, in the case of *In Re Estate of John Musambayi Katumanga – (Deceased)* [2014] eKLR, Musyoka J stated as follows:

“Under Section 40 of the Act, if the deceased had several wives, as opposed to households, the estate would devolve depending on the number of children. Ideally, the estate would



be divided equally among all the members of the entire household, lumping the children and the surviving spouses together. After that the family members would retreat to their respective houses where Section 35 of the Act would be put into effect, so that if there was a surviving spouse in a house she would enjoy life interest over the property due to her children. The house without a surviving spouse would split its entitlement in terms of Section 38 of the Law of Succession Act, the children would divide the estate equally amongst themselves. Section 40 was not designed for the circumstances of the instant estate, but it would appear more appealing for the purpose of distribution of the said estate than Section 35. The spirit of Part V, especially Sections 35, 38 and 40, is equal distribution, of the intestate estate amongst the children of the deceased. There have been debates on whether the distribution should be equal or equitable. My reading of these provisions is that they envisage equal distribution for the word used in Sections 35(5) and 38 is “equally” as opposed to “equitably”. This is the plain language of the provisions. The provisions are in mandatory terms - the property “shall ... be equally divided among the surviving children.” Equal distribution is envisaged regardless of the ages, gender and financial status of the children.”

73. However, in the case of *Esther Wanjiku Burugu Vs Margaret Wairimu Burugu*, Civil Appeal No. 319 of 2002, the Court of Appeal guided that Section 40 does not stipulate that the division of the estate must be equal and states that although the distribution of the estate of a polygamous person is in the first instant to be among the houses, nonetheless distribution would be done according to the number of children in each house. The Court stated that the language adopted in Section 40 negates any argument that the division must necessarily be equal between or among the houses, for to say so, would ignore the fact that in most instances, the number of children in each house is never equal.
74. Similarly, in another Court of Appeal case, namely, *Mary Rono Vs Jane Rono & Another* [2005] eKLR, while concurring with the Judgment of Waki JJ, Omollo JJ stated that if Parliament had intended that there must be equality between the houses, then there would have been no need to provide in Section 40 above that the number of children in each house be taken into account. This is how he put it:

“My understanding of that section is that while the net intestate estate is to be distributed according to houses, each house being treated as a unit, yet the Judge doing the distribution still has a discretion to take into account or consider the number of children in each house. If Parliament had intended that there must be equality between houses, there would have been no need to provide in the section that the number of children in each house be taken into account.

Nor do I see any provision in the Act that each child must receive the same or equal portion. That would clearly work an injustice particularly in case of a young child who is still to be maintained, educated and generally seen through life. If such a child, whether a girl or a boy, were to get an equal inheritance with another who is already working and for whom no school fees and things like that were to be provided, such equality would work an injustice and for my part, I am satisfied the Act does not provide for that kind of equality.”

75. The above views, read together, give rise to the generally agreed position that Section 40 does not give blanket discretion to a Court to deviate from the general principles stipulated therein. Thus, where a matter is contentious and the parties have not reached a consent, the Court is bound to apply the statutory provisions. In other words, the Court has no power to substitute the statutory principles for its own notion of what is an equitable or just decision. It is however also agreed that a Court has some





level of limited residuary discretion within the statutory provisions to make adjustment to the share of each house or of a beneficiary. This was the view adopted in the case of *Re Estate of Chesimbili Sindani (Deceased)* [2021] eKLR.

76. Applying the above principles to the facts of this case, although it has not been expressly pronounced, it is evident that there are 2 camps that have emerged within the family in this matter. The first camp is led by Enid Murgor and Sheila Murgor and on their side, they have Josephina Murgor Kandie, Hilda Murgor, Stella Murgor, Janerose Murgor, Ambrose Murgor, Oscar Murgor, Sharon Murgor and Faith Cheptoo Murgor. This team therefore comprises about 10 family members. The Advocates representing this team are Murgor & Murgor Associates and Omolo Rotich Barasa & Co.
77. I note that among the 6 members comprising the 1<sup>st</sup> house, including the widow (Soti Murgor), only Josephine Kandie is said to be still alive, the rest having passed on. This only one survivor, Josephine Kandie, as listed above, is in the above team. The surviving members of the 4<sup>th</sup> house (widow-Anna Kimoi Murgor) are also almost all in this team as well.
78. On the opposing side, the team is led by Dr. James Murgor, Francis Murgor, Chemutai Murgor and Collins Murgor. The majority in this team are from the 2<sup>nd</sup> house (widow-Rosa Kimoi Murgor) and it also comprises of Veronica Chematia Birgen, Florence Chepkemai Murgor, Robert Kibiwott Murgor, Jeniffer Jepkeitany Murgor, Mark Kimaiyo Murgor, Margaret Chebichii Murgor and Maiyo Domitila Vicky (as the Legal Representative of the estate of Mathew Kipruto Murgor. These are about 11 family members. The Advocates representing this team are Chebii & Co., Morgan Omusundi & Co., and Munene Micheni & Co.
79. There seems to be a third category of beneficiaries whose members have not expressly participated in this matter and neither have they come out expressly to align themselves with either of the 2 sides. In this category are Thomas K. Murgor, Kenneth Murgor, and Donald K. Murgor.
80. There are also deceased beneficiaries whose estates may not be operational or if they do, have also not come out to participate in these proceedings or to support either side. These deceased beneficiaries include the late Soti Murgor (widow-1<sup>st</sup> house), Margrina C. Tiren, Mary C. Kabilo, Aloishia Koech, and Lawrence Murgor (all from the 1<sup>st</sup> house), Rosalina Teriki Murgor (widow-2<sup>nd</sup> house) and Gladys Kandie Bor.
81. Before Omondi J (as she then was), the then 2 Administrators, Francis Murgor and Chemutai Murgor in their Summons for Confirmation of Grant, and which was supported by the de facto leader of the family, Dr. James Murgor and also by Collins Murgor, argued that the deceased had, during his lifetime, given out the following properties as gifts inter vivos to the following beneficiaries and that therefore the same do not comprise the estate and for this reason, are not available for distribution:



i)	Irong/Kessup/52	Dr. James Murgor	2 <sup>nd</sup> house
ii)	Eldoret Municipality Block 4/83	Thomas K. Murgor	3 <sup>rd</sup> house
iii)	Eldoret Municipality Block 4/84	Dr. James K. Murgor	2 <sup>nd</sup> house
iv)	Uasin Gishu/ Kaptagat Scheme/416	Francis Maina Murgor	2 <sup>nd</sup> house
v)	Uasin Gishu/ Kaptagat/417	Collins Kipkoech Murgor	2 <sup>nd</sup> house
vi)	Kapkoii Centre Plot	Mathew Kipruto Murgor	3 <sup>rd</sup> house
vii)	Sergoit/Koiwoptaoi Block 8/10	James K. Murgor	2 <sup>nd</sup> house

82. Chemutai Murgor who had also presumably supported the above claim of gifts inter vivos is from the 3<sup>rd</sup> house.
83. It is evident that in her said Ruling, Omondi J was not impressed by the said mode of distribution and correctly observed that the same discriminated against the daughters of the deceased in breach of *the Constitution* of Kenya and also appears to have favoured the 2<sup>nd</sup> and 3<sup>rd</sup> houses to the detriment of the other 3 houses. Omondi J also trashed the claim that gifts inter vivos were given out as she could not find any evidence to support the allegations. She also declined the claim that some other properties had passed to third parties as she observed that some of the alleged properties found their way to such third parties, and titles issued long after the deceased had already died and thus amounted to intermeddling with the estate.
84. I would therefore have expected the said parties to have now reviewed their proposed modes of distribution and altered the same by aligning them to the findings made Omondi J and the roadmap already given by her. However, despite all the clear and express observations made by the Judge, Francis Murgor, James Murgor and Collins Murgor, again before me presented exactly the same mode of distribution as before. Since, as already stated, I have no jurisdiction to overturn, overrule or ignore the findings already made by Omondi J who was at the relevant time similarly sitting as a Judge of the High Court with equal jurisdiction as myself, it means that technically, only the mode of distribution proposed by the rival team comprising the said Enid Murgor and Sheila Murgor is before me for consideration.
85. As aforesaid, Sheila Murgor, and supported by Enid Murgor and 8 other beneficiaries, has proposed that all the estate properties be sold off at and upon settlement of liabilities owed by the estate, the proceeds distributed be equally amongst all the beneficiaries. Upon holistically perusing the relevant material herein and the arguments presented before me, and considering the wide disagreements evident herein, I agree that the mode of distribution proposed by Sheila Murgor is the fair and equitable



one. I find the proposal to be the closest to being in line with Section 40 of the *Law of Succession Act* insofar as it considers all the beneficiaries and provides for them at an almost equal footing without favouring or discriminating against any beneficiary or any of the 5 houses. It also does not propagate discrimination on account of gender. In the circumstances, I uphold the same.

86. Although Francis Murgor and Chemutai Murgor had in their Petition and in the Summons for Confirmation of Grant presented a shorter list of beneficiaries and properties comprising the estate, Sheila Murgor and Enid Murgor claimed that the Petitioners left out and/or omitted other beneficiaries and estate properties and have now presented an expanded list of beneficiaries and of estate properties. In the Submissions and Affidavits presented before me, these expanded lists have not been challenged by the other parties. In the circumstances, I also uphold the said lists of beneficiaries and of properties as presented by Sheila Murgor, as comprising the estate.

87. Sheila Murgor and Enida Murgor have also submitted that some of the family members have, by occupying and/or or possessing some of the estate properties for a long time, already benefited therefrom to the detriment of the rest. For this reason, they urged that Section 42(a) of the *Law of Succession Act* should apply such that the value of the inheritance due to the beneficiaries who have already benefited be reduced by the value of such benefit received from previous occupation and use. Section 42 aforesaid is premised as follows:

“ 42. Previous benefits to be brought into account 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 of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”

88. It is therefore true that Section 42 of the *Law of Succession Act* indeed enjoins the Court, when distributing an estate amongst the beneficiaries, to take into account, previous benefits received by any of the beneficiaries. However, in as much as the submission hereinabove is no doubt merited, the difficulty is that no formula for computing such benefits has been presented and also no sufficient facts have been adduced. The number of years that the affected beneficiaries are alleged to have used or occupied the subject parcels of land appears to be outright guesswork not supported by any evidence, and the exact nature of use giving rise to the alleged benefits have also not been demonstrated or clearly explained. Striving to unravel the same will be an act of speculation by this Court. In the circumstances, I am not satisfied that the said argument has been sufficiently established to warrant reduction of the shares of inheritance due to respective beneficiaries.

89. Regarding movable properties comprising the estate, only Sheila Murgor has presented a list thereof and which, again, is supported by Enid Murgor. The rest have not provided any list. I would therefore have adopted the said list presented by Sheila Murgor. However, even that list presented by Sheila Murgor does not seem to be supported by any documentation. I would therefore be hesitant to accept and declare such alleged movable properties as part of the estate when I have not been presented with any supporting proof. I will not therefore make any declarations for now in respect to movable assets owned by the deceased. Needless to state, the parties would still be at liberty to return to this Court for inclusion of any movable assets should such proof be found.



## Final Orders

90. The upshot of my findings above is that I order as follows:

- i. The Applications by the intended Interested Parties, dated 26/08/2024 and 24/09/2024, respectively, are both declined, and are consequently dismissed but with no order on costs.
- ii. The identified beneficiaries of the estate of the deceased herein are declared to be the following 35 persons, as listed at paragraph 9 of the Affidavit sworn by Sheila Murgor on 19/09/2023:



No.	Beneficiaries
1.	Mrs. Soti Murgor (deceased 7/8/18) – 1 <sup>st</sup> House
2.	Magrina C. Tiren (deceased 2001)
3.	Josephine Kandie
4.	Mary C. Kabilo (deceased April 2005)
5.	Aloishia C. Koech (deceased 2004)
6.	Lawrence K. Murgor (deceased 28/07/2022)
7.	Mrs. Rosa Kimoi Murgor – 2 <sup>nd</sup> House
8.	James K. Murgor
9.	Margaret C. Murgor
10.	Florence A. Murgor
11.	Francis M. Murgor
12.	Veronica C. Birgen
13.	Robert K. Murgor
14.	Mark K. Murgor
15.	Jenifer C. Murgor Ouko
16.	Collins K. Murgor
17.	Mrs. Rosalina Teriki Murgor (deceased 13/01/23)
18.	Thomas K. Murgor
19.	Mathew K. Murgor
20.	Winsum C. Murgor
21.	Stella C. Murgor



22.	Hilda C. Murgor
23.	Kennedy K. Murgor
24.	Mrs. Anna Kimoi Murgor
25.	Gladys Kandie Bor (deceased 1995)
26.	Enid C. Murgor Ronoh
27.	Janerose C. Murgor Kositany
28.	Donald K. Murgor
29.	Ambrose K. Murgor
30.	Oscar T. Murgor
31.	Sharon C. Murgor
32.	Faith C. Murgor
33.	Mrs. Philomena Soti Murgor
34.	Sheila C. Murgor
35.	Robert K. Murgor

- iii. The immovable properties comprising and/or constituting the estate of the deceased, and which have been satisfactorily identified are declared to be the following, as listed at paragraph 14 of the Affidavit sworn by Sheila Murgor on 19/09/2023:





No.	Immovable Assets
*	Iten/irong/054
*	Iten/Irong/984
*	Iten/Irong/985
*	Iten/Irong/991
*	Iten/Irong/992
*	Iten/Irong/993
*	Iten/Irong/994
*	Iten/Irong/995
*	Iten/Irong/996
*	Iten/Irong/997
*	Iten/Irong/998
*	Iten/Irong/999
*	Iten/Irong/1000
*	Iten/Irong/1001
*	Iten/Irong/1002
*	Iten/Irong/1003
*	Iten/Irong/1005
*	Eldoret Municipality Plot 4/83
*	Eldoret Municipality Plot 4/84
*	Sergoit/Koiwoptaoi/Block 8/10
*	Sergoit/Koiwoptaoi/Block 8/12
*	Sergoit/Koiwoptaoi/Block 8/22
*	Kapkoi Centre Plot No. 003
*	Uasin Gishu/Kaptagat Scheme/416



*	Uasin Gishu/Kaptagat Scheme/417
*	Sergoit/Koiwoptaoi/Block 8/6
*	Sergoit/Koiwoptaoi/Block 8/18
*	Sergoit/Koiwoptaoi/Block 8/19
29.	Sergoit/Koiwoptaoi/Block 8/3

- iv. All the said properties shall be valued by a Professional Valuer to be appointed by the Administrators, within a period of thirty (30) days from the date hereof, and sold off at the prevailing market rates and upon payment of verified liabilities, the proceeds thereof, shall be distributed equally amongst all the said 35 beneficiaries. The fees and/or expenses of such Valuer shall be paid from the estate.
- v. Should the Administrators fail to appoint such Valuer, or should there be no agreement on such appointment, any party shall be at liberty to move the Court to make the appointment.
- vi. No movable assets belonging to the estate of the deceased has or have been established or proved. The parties shall however be at liberty to return to this Court for inclusion of any movable assets should proof thereof be found or availed.
- vii. The following beneficiaries, who claim to have all along been in possession or occupation of the following respective properties, are at liberty and shall be given first priority to offset the values of such respective properties from the net values of their *pro rata* respective shares of the estate and should they satisfactorily exercise this option, then in that case, they shall retain the respective properties as owners and the same shall not therefore be sold off in the manner directed in order (iv) above.
  - a. Eldoret Municipality Block 4/83 claimed by Thomas K. Murgor.
  - b. Eldoret Municipality Block 4/84 claimed by James K. Murgor.
  - c. Uasin Gishu/Kaptagat Scheme/416 claimed by Francis Maina Murgor.
  - d. Uasin Gishu/Kaptagat/417 claimed by Collins Kipkoech Murgor.
  - e. Kapkoi Centre Plot, claimed by the estate of Mathew Kipruto Murgor.
  - f. 34 acres of Sergoit/Koiwoptaoi Block 8/10 claimed James K. Murgor
- viii. Any other beneficiary, who may wish to inherit any other specific property of the estate not referred to in order (vii) above, within the estate, shall also be at liberty to give notification to that effect to the Administrators within a period of thirty (30) days from the date hereof, and upon receiving such notice, the Administrators shall give first priority to such beneficiary over acquisition of that property and such beneficiary shall also be at liberty to offset the value of such property from the values of his/her net share of the estate and should he/she satisfactorily exercise this option, then in that case, such property shall not therefore be sold off in the manner directed in order (iv) above but shall be allocated to such individual beneficiary.
- ix. Any third party, not being an immediate member of the family of the deceased herein, including the said intended Interested Parties, who claims ownership as a purchaser, of any of



the properties declared as comprising the estate herein, is at liberty to file such claim before the Environment & Land Court or any other Court or Tribunal with the necessary jurisdiction, for determination. Once any such third party has filed a suit, he or she shall be at liberty to then return to this Court and seek an order of stay of execution pending determination of such suit.

- x. This matter shall be mentioned after lapse of a period of 60 days from the date hereof, for the Administrators to give to the Court an update on the progress of implementation of the orders made herein and during which any other matter arising in relation to or concerning implementation of the orders herein may be brought up and the Court shall, if necessary, give further orders or directions over the same.
- xi. Costs shall be in the Cause.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 20<sup>TH</sup> DAY OF DECEMBER 2024**

.....

**WANANDA J. R. ANURO**

**JUDGE**

Delivered in the presence of:

Mr. Philip Murgor, SC, with Mr. Ouma for Enid Murgor (Objector/2<sup>nd</sup> Administrator)

Mr. Omusundi for Dr. James Murgor (a beneficiary)

Mr. Munene for 8 beneficiaries and 2 Interested Parties

Mr. Omusundi h/b for Dr. Chebii for Francis Murgor (1<sup>st</sup> Petitioner/1<sup>st</sup> Administrator)

Mr. Asseso for Sheila Murgor (3<sup>rd</sup> Administrator) and also 9 Interested Parties

Mr. Njuguna for Chemutai Murgor (2<sup>nd</sup> Petitioner/Formal Administrator)

Court Assistant: Brian Kimathi

