



In re Estate of William Cherop Murgor (Deceased) (Succession Cause 112 of 2022) [2023] KEHC 26885 (KLR) (15 December 2023) (Ruling)

Neutral citation: [2023] KEHC 26885 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 112 OF 2022
JRA WANANDA, J
DECEMBER 15, 2023**

BETWEEN

ENID CHEPTANUI MURGOR ROHOH OBJECTOR

AND

FRANCIS MURGOR 1ST RESPONDENT

CHEMUTAI MURGOR 2ND RESPONDENT

DR. JAMES MURGOR 3RD RESPONDENT

FLORENCE MURGOR 4TH RESPONDENT

AND

SHEILA MURGOR APPLICANT

RULING

1. This Ruling is an offshoot of and/or ancillary or consequent to the earlier Ruling I delivered herein on 28/04/2023 and which arose from the Application filed by the Applicant, Sheila Murgor dated 15/08/2022. I dismissed that Application but ordered the Respondents to comply with directions that I gave in the Ruling.
2. The background of the current Ruling is that on 12/05/2022, H. Omondi J (as she then was), delivered a 121-page Ruling whereof she partially distributed the estate herein. The orders she made were 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 1st and 2nd 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 1st and 2nd 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 3rd 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 3rd 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 4/83 Eldoret Municipality Block 4/84 Iten/Irong 984,993,994,995,996,997,998,1001,1002,1003 and 1005 Iten Township/054 LR No. Sergoit/Koiwaptaoi Block 8/10 Plot No.003 Kapkoi Centre 73 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.
3. On 28/04/2023. I delivered the Ruling I referred to hereinabove in respect to the Application by the Applicant, Sheila Murgor, seeking a finding of contempt of Court insofar as she alleged that the Respondents had disobeyed the said Ruling of H. Omondi J (as she then was). In my Ruling, I directed the Respondents to file Affidavits setting out and/or giving an account or Report of how, in what manner and to what extent they have complied with the orders given by H. Omondi J (as she then was) on 12/05/2022. I then fixed the matter for Mention for purpose of confirming compliance. Pursuant thereto, the Respondents filed Affidavits as directed.
 4. During the Mention, the parties advanced conflicting opinions on whether the Affidavits filed by the Respondents complied with the directions that I had given. For this reason, I invited the parties to file Submissions on the issue before I make a determination, which they did.
 5. I will now give a recapitulation of the Affidavits and the Submissions filed before I determine the matter.



6. Since there is apparent confusion over the titling of the parties including their numbering description, for the purposes of this Ruling, I will refer to the parties in the same sequence in which they were described in the Order made by H. Omondi J above, and also in my Ruling of 28/04/2023, as follows:

Enid Cheptanui Murgor Ronoh	Objector/Applicant
Francis Murgor	1 st Respondent
Chemutai Murgor	2 nd Respondent
Dr. James Murgor	3 rd Respondent
Florence Murgor	4 th Respondent
Sheila Murgor	Applicant

7. I may however just mention that Francis Murgor (1st Respondent) and Chemutai Murgor (2nd Respondent) were the Petitioners and therefore the initial Administrators. The two were however, pursuant the orders made herein on 12/05/2022 and 13/06/2022, replaced and/or substituted, respectively. The present Administrators are now therefore Francis Murgor (1st Respondent), Enid Murgor (Objector), Lawrence Murgor and Sheila Murgor (Applicant).

1st Respondent's Affidavit

8. The 1st Respondent, Francis Murgor through Messrs Chebii & Co. Advocates filed his Affidavit on 14/06/2023. He deponed that in regard to order (a) of the Ruling of H. Omondi J requiring the appointment of new Administrators, such Administrators have since been appointed. In regard to order (b), the 1st Respondent deponed that he has not exercised any specific power over the estate and that indeed, by 18/07/2018, he had already handed over all the title deeds in his custody to his Advocates referred to above, to hold them in trust for the estate, and that the Advocates are under duty to remit the said title deeds to the Administrators as and when required or as the Court may direct. In regard to order (c) requiring the furnishing of a comprehensive financial account, he deponed that he has never received even a single shilling deemed to be estate property as none of the deceased's estate properties earned any income at all, the estate did not have any rentable premises that earned income which came into her control or at all, at the time of the deceased's death on 28/09/2006, a large part of his estate had been given out inter vivos and none came into the 1st Respondent's possession nor did he earn any income therefrom. Regarding the property known as Eldoret Municipality Block 4/83 he deponed that the same is estate property which is in the hands of one Thomas Murgor and that the same is open land being utilized as a car wash for which the said Thomas Murgor should be the one account.
9. In regard to the order (d), he deponed that the estate did not at any one time have any bank or estate account and further, the property Eldoret Municipality/Block 4/84 was gifted inter vivos to the 3rd Respondent, this property, along with others gifted earlier inter vivos, were not under his control, he has no means of taking control of it as an individual as the same did not come into his possession, the said Eldoret Municipality/Block 4/84 was gifted to the 3rd Respondent, Dr. James Murgor inter vivos and no income came into the 1st Respondent's hands, Caltex Oil Limited did not pay any rent to Florence Murgor or the Administrators at all. He then exhibited a copy of the title deed for the property



EM/Block 4/83 to demonstrate that the encumbrance section shows that the deceased leased out the property to Caltex Oil Limited on 5/12/2006 for 5 years from 1/12/2005 and the lease expired on 1/01/2011, the rent due in 2011 was never paid by Total (K) Ltd the successors of Caltex (K) Ltd, upon expiry of the Lease, Caltex Oil (K) Ltd did not renew it, they removed their movable structures and left, in effect therefore, no rent came into his hands or that of Florence Murgor or the 3rd Respondent from Caltex Oil (K) Ltd.

10. In regard to order (h), the 1st Respondent deponed that he handed over all the title deeds in respect of the titles identified as Irong/Iten/984, 993, 996, 994, 998, 1001, 1002, 1003 and 1005 to his said Advocates on record and all the titles are safe and this Court may make any order on how the new Administrators may secure the same, the said properties are free land earning no income and all parties know this. He exhibited a bundle of photographs to demonstrate that the said parcels of land operate as a parking yard and added that Iten Township/054 is unknown to him and the current Administrators can identify it, if at all, Kaptagat Centre Plot No. 103 is undeveloped land and the same was allocated by the family to Mathews Murgor, it is an open field earning no income, the new Administrators have not called for a meeting over which these matters can be ventilated and it is not possible to simply hand over documents in a vacuum, as a family they have in the past raised money out of their own personal pockets to maintain the 3 widows. He exhibited copies of some receipts of payments made to the Applicant's Advocates to that effect.
11. In conclusion, the 1st Respondent deponed that regarding Eldoret Municipality Block 4/83, the said Thomas Murgor holds the title deed on the basis that he has been in occupation thereof since the lifetime of the deceased, and regarding the 2 acres in Chepsigot Farm, one Donald Murgor farms on it also on the basis that he too has been in occupation thereof since the lifetime of the deceased. He then exhibited a photograph to show the maize planted thereon and added that Eldoret Municipality Block 4/84 is a gift inter vivos just like the other properties.

2nd Respondent's Affidavit

12. The 2nd Respondent, Chemutai Murgor through Messrs TripleOKLaw LLP Advocates filed her Affidavit on 7/07/2023. She deponed that she is a daughter of the deceased from his 3rd wife. She then gave a lengthy account of how the deceased took deliberate steps to ensure the family lived in harmony including indicating how his property should be distributed among the family members. She deponed further that after his death, the family held several meetings and agreed on distribution of assets in line with the wishes of the deceased as indicated by the signed minutes of meetings, the family affirmed the gifts of Eldoret Municipal Block 4/83, Eldoret Municipality Block 4/84 and Plot No. 003 Kapkoi Centre to Thomas Murgor, Dr. James Murgor (3rd Respondent) and Mathews Murgor, respectively.
13. She deponed further that the 3rd Respondent, Dr. James Murgor, gifted 30 acres in total of his Chepsigot Farm to all his sisters (both living and deceased) and that the modalities of transferring this back to the Administrators to actualize the wishes of the family were to be completed upon obtaining the grant from the Court. She added that the properties Irong/Iten/984, 993, 994, 995, 996, 997, 998, 1001, 1002, 1003 and 1005 and the gift to the estate of 30 acres of Chepsigot Farm by the 3rd Respondent, Dr. James Murgor are all free land earning no income, there were no objections registered against all these gifts between 1994 and 2015 (a period of 21 years) when their sister Enid Murgor Rono filed an Application seeking a number of orders against the 2 Administrators as well as the 3rd Respondent leading to the orders given by Omondi J in July 2021.
14. She further deponed that she is not able to give accounts on rental income for the property gifted inter vivos and/or sold by the deceased in his lifetime and in respect of which the deceased handed over possession in his lifetime as these were not discussed in the family meeting of 2011, she respects



all orders of the Court and because possession was not handed over to her as an Administrator and the status of his brothers being in possession or third parties was prior to the death of the deceased, she did not as an Administrator follow up to determine income from such properties due to the narrow mandate given to them by the family, in addition, the 1st Administrator was the one who swore Affidavits and handled matters of the estate after their appointment, she has never been in custody of any income or proceeds of sale from the deceased's property following his death or even after she was appointed an Administrator, and that she is not in possession of any vehicles, tools or any other assets belonging to the deceased.

15. It will be noted right away that in this Affidavit, instead of the 2nd Respondent proceeding straight to the matters which she was required to address, namely, to give an account of how and to what extent she has complied with the orders of H. Omondi J, she unnecessarily chose to convolute the Affidavit by first taking the Court through lengthy historical narratives and background which the Court never even asked for and which in fact added no value to the matters presently before Court for determination. My orders of 28/04/2023 were very express and clear on what the Respondents were required to address. The 2nd Respondent had no reason to dwell on extraneous and immaterial matters in the manner that she has chosen to do. Be that as it may, I will say no more regarding this strange tangent adopted by the 2nd Respondent.

3rd Respondent's Affidavit

16. The 3rd Respondent, Dr. James Murgor through Messrs Morgan Omusundi Law Firm Advocates, filed her Affidavit on 13/06/2023. He deponed that he is one of the beneficiaries of the estate, he has never managed, administered or adversely come into contact with the administrative role and/or obligations in as far as the affairs of the estate is concerned, he played a major selfless role in taking care of his late father during his last moments in life when he was ailing, he also played a crucial role in managing, safeguarding and protecting the property of the deceased when some properties were getting wasted and almost auctioned, the deceased died on 28/09/2006, 16 years ago and not 20 years as alluded, he is not aware of any rental income operated by the estate, he is not aware of any existing estate bank accounts and that just like other beneficiary, he too is waiting for a statement of account for the estate to be prepared, updated and furnished by the Administrators, he has never received any monies relating to or from the estate, he is being unfairly and selectively victimized and targeted as one of the bequeathed beneficiary of the estate, especially on Eldoret Municipality Block 4/84, he took possession and ownership of the said property during the deceased's lifetime, that the Administrators should give a proper, and transparent inventory of the estate, and they should disclose properties which belong to third parties (purchasers, bequeathed, beneficiaries) and all beneficiaries prior to the deceased's death

4th Respondent's Affidavit

17. The 4th Respondent, Florence Murgor through Messrs Munene Micheni & Co. Advocates filed her Affidavit on 15/06/2023. She deponed that in the Ruling of H. Omondi J, the orders directed against her were order (e), which restrained her, together with the 3rd Respondent, from intermeddling with the property Eldoret Municipality Block 4/84 and (f) which required her, together with the 3rd Respondent to pay into Court all rental income derived from the same property. She deponed that the Ruling has an error, the deceased died on 28/09/2006, the order requiring that income be paid for the last 20 years was erroneous, the orders made against her were against rules of natural justice as she was condemned unheard, she was not involved in any lease negotiations and payment between the deceased, 3rd Respondent and Caltex Oil (Kenya) Limited and Total Kenya Limited, upon request from the deceased she took early retirement from her job as a teacher, in 1985 she successfully applied to be a dealer/retainer for the said Caltex Oil (Kenya) Limited, the revenue from the dealership paid for



employees' salaries, town licences and land rates that was still not subdivided to 4 plots that includes plot Eldoret Municipality Block 4/84, her Advocates have made numerous attempts to obtain the Retainer Agreements from Total Kenya Limited but no response has been forthcoming, from 1985 to 2012 during the subsistence of the business, she was required to issue bank guarantees for money on transit to the bank plus volumes of product purchased, as the revenue could not cover the day to day costs plus the costs of the guarantee, she offered her property Eldoret Municipality/Block 9/258 as security.

18. She deponed further that after suffering substantial losses in 2010 and 2011 due to increased competition and loss of product through underground leakages she was forced to close the business, she then took a loan of Kshs 12,000,000/- with Ecobank Kenya Limited against her property Sergoit/Koiwoptaoi Block 8/24 to construct a temporary structure/building on plot Eldoret Municipality Block 4/84, the construction stalled in 2012 due to lack of funds, since 2012 she has rented out the 5 premises from which she earns Kshs 63,000/-, out of that amount she is to pay land rates and settle security costs, her net income is around Kshs 48,000/-, the premises also includes a dedicated area for a restaurant, she leased out the hotel on 1/01/2014 at Kshs 60,000/- per month, she was paid Kshs 1,440,000/- during the commencement of the term but the balance was never settled as the tenant passed away, the rental income could not cover the loan from Ecobank Kenya Limited, to settle the loan she requested for the release of the property Sergoit/Koiwoptaoi Block 8/24 from Ecobank Kenya Limited for subdivision and sale, the Court order deprives her of her only income for the last 20 years without the consideration of the years of losses and sale of her property Sergoit/Koiwoptaoi Block 8/24 to enhance/improve the property, not all beneficiaries of the estate were ordered to pay into Court their earnings, for example, Thomas K. Murgor earned rental income on plot Eldoret Municipality Block 4/83, his earnings should be factored and deducted from his share of the estate during distribution, at the point of distribution, her input in plot Eldoret Municipality Block 4/84 should be factored and deducted from her share of the estate.

Submissions

19. While I have seen Submissions from all the other parties, I have not come across Submissions filed on behalf of the 3rd Respondent, Dr. James Murgor (represented by Messrs Morgan Omusundi Law Firm Advocates) and Submissions filed on behalf of the 2nd Respondent, Chemutai Murgor (represented by Messrs TripleOKLaw LLP Advocates). I presume they opted not to file any.

Applicant's Submissions

20. Messrs ORB & Co., Advocates for the Applicant, Sheila Murgor and also stated to be acting for 8 other beneficiaries filed their Submissions on 9/10/2023. They submitted that on 13/06/2022, pursuant to clause (a) of the order given, the Court adopted and confirmed the Applicant, Sheila Murgor, as one of the Administrators to the estate, it is in this capacity that she filed the contempt Application dated 17/08/2022, the Application was heard and subsequently the Court on 28/04/2023 issued fresh directions that the Respondents to individually file reports in the form of Affidavits explaining to what extent and show the manner of compliance with the Court orders of 12/05/2022. He submitted that the Affidavits filed raise irrelevant issues and are not in compliance with the Court's directions.
21. Regarding the 3rd Respondent, Dr. James Murgor, Counsel submitted that his compliance is in respect to orders (e) and (f), to date no monies have been paid to Court in respect of Eldoret Municipality/Block/4/84, a perusal of the Affidavit shows a party who is dissatisfied with the Court's decision and is merely rehashing his arguments made during hearing, he also confirms still being in possession of the said parcel of land, in express violation of order (e) which forbade managing the said property.



22. Regarding the 1st Respondent, Francis Murgor, Counsel submitted that being the co-Administrator at the time of filing of the proceedings herein, the orders directed to him were (c) and (d), similarly, that in violation of the orders, to date no monies have been paid to Court nor a comprehensive financial account for the Administration of the estate provided, and that paragraph 5 of the Affidavit is a contemptuous attempt to provide accounts.
23. As regards the 4th Respondent, Florence Murgor, Counsel stated that her compliance is on orders (e) and (f), and contended that to date, no monies have been paid to Court in respect of Eldoret/ Municipality/Block/4/84, and that she admits to profiting from the said property contrary to express wording of the Court orders.
24. Regarding the 2nd Respondent, Chemutai Murgor, Counsel stated that being the co-Administrator at the time of filing of the proceedings herein, the orders directed to her were (c) and (d), that similarly, in violation of the orders, to date no monies have been paid to Court nor a comprehensive financial account for the Administration of the estate provided.
25. It was Counsel's conclusion that none of the Respondents is in compliance with the Court's directions and urged the Court to take appropriate action to remedy the same

Objector's Submissions

26. The Objector's Advocates, Murgor & Murgor, filed Submissions on 18/12/2023 (advance copy emailed earlier). It was submitted that the Respondents have filed Affidavits which do not conform to nor comply with any of this Court's orders, and that the Court orders have neither been reviewed nor set- aside and are still valid, and in force.
27. Regarding the Affidavit filed by the 4th Respondent, Counsel submitted that Florence Murgor, admits to having generated income from estate property, that her Affidavit is vague on figures and where pertinent figures such as rent received are given, no documents are provided to support the said statements, she was ordered to inter alia pay into Court all rental and other income derived from plot number Eldoret/Municipality/Block 4/84 including rent paid by Caltex Oil (Kenya) Limited and Total Kenya Limited for the last 20 years, pending final distribution of the estate, to the extent that no funds/income, whether prior to, or after delivery of the Ruling, have been paid in Court, Florence Murgor is in contempt of Court, it is admitted by Florence Murgor that she generated income from the use of estate property, which she has never accounted for to date, and that the Court order does not deprive her of any legitimate source of income as her activities on estate property amount to intermeddling and any such funds legitimately belong to the estate.
28. Regarding the Affidavit filed by the 1st Respondent, Francis Murgor, Counsel submitted that the 1st Respondent admits the failure in carrying out his responsibilities as an Administrator, confirms that estate properties have been leased out yet he has neither collected rent nor instituted proceedings against defaulters, his averments are further contradictory to those of Florence Murgor, who confirms that the estate property generates rental income, he confirms and even provides pictures of the estate property being used as a parking lot, payment is obtained and have not been accounted for, the rent due from Caltex Oil (Kenya) Limited and Total Kenya Limited from 1/12/2006 to 1/01/2011 is stated as not having been paid but it is suspect that the same has not been recovered, unless it was recovered and not declared, Eldoret Municipality Block 4/83 is stated to have been leased as a car wash yet no account for the income collected from the said lease has been provided, similarly other estate properties are stated to be in use for planting maize from which no income has been accounted for, Francis Murgor was either derelict in his duty as an Administrator or he has intentionally refused to account as directed by



the Court, in which case he is in contempt and together with his sureties must make good the losses of income to the estate.

29. Regarding the Affidavit filed by the 2nd Respondent, Chemutai Murgor, Counsel submitted that it is clear that upon being appointed Administrator, she was derelict in her duty as an Administrator, her mandate as such was provided by this Court and not by the family as she deponed, having intentionally refused and or neglected to secure the estate from plunder and intermeddling, she is in contempt, and that together with her sureties must make good the losses of income to the estate.
30. Regarding the Affidavit filed by the 3rd Respondent, Dr. James Murgor, it is submitted that to the extent that no funds/income, whether prior to, or after delivery of the Ruling, have been paid in Court, he is in contempt of Court for failure to comply with order (f) in the Ruling dated 11/05/2022.
31. Counsel then cited the case of Ochino And Another Vs Okombo And 4 Others [1989] KLR and submitted that it is not in dispute that the abovementioned Court order and penal notice was served on the Respondents, that they have acknowledged receipt by their correspondence, alleging that the Court orders were incapable of implementation, they have however chosen to disregard the said orders, failed to account and even disclose further assets of the estate, and that this Court should find that the Respondents/Contemnors are in breach of its orders and allow the Application dated 15/08/2022.

1st Respondent's Submissions

32. Messrs Chebii & Co., Advocates for the 1st Respondent, Francis Murgor filed their Submissions on 13/12/2023 (advance copy emailed earlier). It was submitted that no funds relating to the estate have come into the hands of the 1st Respondent to date, the properties identified as Iten/Irong/984, 993, 994, 995, 996, 997, 998 1001, 1002, 1003 and 1005 earn no income, they are empty lands within the County of Elgeyo Marakwet, the property identified as Eldoret Municipality/Block 4/83 is within the custody of Thomas Murgor who is running it as an open parking yard and it is him who should account for the same, he has maintained all along that the deceased gifted him the land, the property identified as Eldoret Municipality /Block 4/84 is also an open parking yard initially gifted by the deceased to the 3rd Respondent, Dr. James Murgor, as issued, the order is incapable of implementation it is the deceased himself who leased out the said land from 1/12/2005 to 1/01/2011, the 1st and the 2nd Respondents were appointed Administrators on 8/10/2012, it was soon after that these objections proceedings commenced putting everything to a standstill, it has been case after case, the claims that the 1st and 2nd Respondents account for money received remains sketchy as no specific payment was identified as due to the two of them, and that there is no evidence in any form of document, receipt or tenants' Affidavit to confirm receipt of any money by the Respondents.

Submissions by Messrs Munene Micheni & Co. Advocates

33. Messrs Munene Micheni & Co. Advocates filed two sets of Submissions, one on 20/09/2023 and the second one on 13/10/2023 stated to be filed on behalf of 8 beneficiaries of the estate.
34. In the 1st set of Submissions, it is curiously stated that "these Submissions are not anchored/pegged on any pending Application(s)". Indeed, the Submissions then proceed to address matters having nothing to do whatsoever with the Application before Court, it states that the said beneficiaries have filed an Application seeking stay of execution, stay of proceedings and leave to Appeal against the Ruling of H. Omondi J of 12/05/2022. It then appears to challenge and/or criticize the said Ruling and particularly, the identification of some properties and categorization thereof as ready for distribution, and denial of the "beneficiaries" Application seeking to join the matter. The Submissions also object to any attempt at partial confirmation of the grant.



35. The 2nd set of Submissions filed by the law firm appears to be addressing matters arising from the Application for contempt dated 15/08/2022 whose substantive aspects I had already determined vide my Ruling of 28/04/2023. It is not clear why such Submissions are being presented long after the fact.
36. As I have stated, the two sets of Submissions do not address any issue relating to the matters presently before Court, and I do not understand what is meant to be achieved by the Submissions. I would have swiftly proceeded to expunge them since they only serve to convolute the record and unnecessarily confuse issues. However, I will let them remain in the file for whatever it is worth but I will not take the same into consideration while determining the matters presently before Court.

Analysis and Determination

37. I have carefully considered the Affidavits, Submissions presented and decisions cited. In my view, the broad issue that arises for determination is as follows:

“whether the Respondents have complied with the orders given by this Court on 28/04/2023 requiring them to demonstrate in what manner and to what extent, they have complied with the earlier orders given herein on 12/05/2022 and therefore, whether a finding of contempt of Court against them would be merited”.

38. From my analysis of the record, it is evident that the portion of H. Omondi J’s orders of 12/05/2022 that the Respondents are alleged to have disobeyed are orders (c), (d), (e) and (f) as follows:

- c. The 1st and 2nd 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 1st and 2nd 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 3rd 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 3rd 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.

39. It is clear from the foregoing that order (c) and (d) were directed to the 1st and 2nd Respondents, while order (e) and (f) were directed to the 3rd and 4th Respondents.

40. Regarding order (c), requiring the 1st and 2nd Respondents to furnish a comprehensive financial account for the administration of the estate from the date of their appointment as Administrators to the present date, the 1st Respondent (Francis Murgor) has stated that he has never received any funds deemed to be estate property as none of the deceased’s estate properties earned any income, the estate did not have any rentable premises that earned income which came into her control or at all, at the time of the deceased’s death on 28/09/2006, a large part of his estate had been given out inter vivos and none came into the 1st Respondent’s possession nor did he or the 2nd Respondent earn or misuse any income, Eldoret Municipality Block 4/83 is estate property which is in the hands of Thomas Murgor



and that the same is open land being utilized as a car wash for which Thomas Murgor is the one who should account.

41. He stated further that he handed over all the title deeds in respect to the properties known as Iron/ Iten/984, 993, 996, 994, 998, 1001, 1002, 1003 and 1005 to his said Advocates on record and that all the titles are safe, the same are free land earning no income. He then exhibited a bundle of photographs to demonstrate that the said parcels of land operate as a parking yard and added that Iten Township/054 is unknown to him, Kaptagat Centre Plot No. 103 is undeveloped land and the same was allocated by the family to Mathews Murgor, that it is an open field earning no income, and that as a family they have in the past raised money out of their own personal pockets to maintain the 3 widows. He also exhibited copies of some receipts of payments made to the Applicant's Advocates to that effect.
42. The 1st Respondent further stated that Eldoret Municipality Block 4/83 is estate property and is in possession of Thomas Murgor who has leased it out as a car wash yard, the said Thomas Murgor holds the title deed on the basis that he has been in occupation thereof since the lifetime of the deceased, regarding the 2 acres in Chepsigot Farm, one Donald Murgor farms on it also on the basis that he too has been in occupation thereof since the lifetime of the deceased. He then exhibited a photograph to show the maize planted thereon and added that Eldoret Municipality Block 4/84 is a also gift inter vivos.
43. Regarding order (d), requiring the 1st and 2nd 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, the 1st Respondent stated that the estate did not at any one time have any bank or estate accounts, the property Eldoret Municipality Block 4/84 was gifted inter vivos to the 3rd Respondent, along with others gifted earlier inter vivos, the same were not under his control, he has no means of taking control of it as an individual as the same did not come into his possession, Eldoret Municipality Block /Block 4/84 was gifted to the 3rd Respondent, Dr. James Murgor inter vivos and no income came into the 1st Respondent's hands, the property Eldoret Municipality Block 4/83 is estate property which is in the hands of Thomas Murgor, the same is leased as car wash for which the said Thomas Murgor should account, Caltex Oil Limited did not pay any rent to the 4th Respondent, Florence Murgor or the Administrators at all, the deceased leased out the property to Caltex Oil Limited on 5/12/2006 for 5 years from 1/12/2005 and the lease expired on 1/01/2011, the rent due in 2011 was never paid by Total (K) Ltd the successors of Caltex (K) Ltd, upon expiry of the Lease, Caltex Oil (K) Ltd did not renew it, they removed their movable structures and left, and that in effect therefore, no rent came into his hands or that of Florence Murgor or the 3rd Respondent, Dr. James Murgor, from Caltex Oil (K) Ltd.
44. On her part, in regard to order (c) and (d), the 2nd Respondent (Chemutai Murgor) has stated that she is not able to give accounts on rental income for the property gifted inter vivos and/or sold by the deceased in his lifetime and in respect of which the deceased handed over possession in his lifetime, possession was not handed over to her as an Administrator, his brothers and/or or third parties took possession thereof prior to the death of the deceased, she did not therefore as an Administrator follow up to determine income from such properties due to the narrow mandate given to them by the family, she has never been in custody of any income or proceeds of sale from the deceased's property following his death or even after she was appointed an Administrator, and that she is not in possession of any vehicles, tools or any other assets belonging to the deceased.
45. The 3rd Respondent, Dr. James Murgor, in addressing order (e) and (f), stated that he has never managed, administered or adversely come into contact with the administrative role and/or obligations in as far as the affairs of the estate is concerned, he is not aware of any rental income operated by the



- estate, he is not aware of any existing estate bank accounts, he has never received any monies relating to or from the estate, and that he took possession of Eldoret Municipality Block 4/84 during the deceased's lifetime.
46. On her part, the 4th Respondent, Florence Murgor stated that she was not involved in any lease negotiations and payment between the deceased, 3rd Respondent and Caltex Oil (Kenya) Limited and Total Kenya Limited, in 1985 she successfully applied to be a dealer/retainer for Caltex Oil (Kenya) Limited, the revenue from the dealership catered for employees' salaries, town licences and land rates that was still not subdivided to 4 plots that includes plot Eldoret Municipality Block 4/84, she was required to issue bank guarantees for money on transit to the bank plus volumes of product purchased, as the revenue could not cover the day to day costs plus the costs of the guarantee, she offered her property Eldoret Municipality/Block 9/258 as security, after suffering substantial losses in 2010 and 2011 she was forced to close the business, she then took a loan of Kshs 12,000,000/- with Ecobank Kenya Limited against her other property Sergoit/Koiwoptaoi Block 8/24 to construct a temporary structure/building on plot Eldoret Municipality Block 4/84, the construction stalled in 2012 due to lack of funds, since 2012 she has rented out the 5 premises from which she earns Kshs 63,000/-, out of that amount she pays land rates and settles security costs, her net income is around Kshs 48,000/-, the premises also includes a restaurant which she leased out on 1/01/2014 at Kshs 60,000/- per month, she was paid Kshs 1,440,000/- during the commencement of the term but the balance was never settled as the tenant passed away, the rental income could not cover the loan with Ecobank Kenya Limited, to settle the loan, she requested for the release of the property Sergoit/Koiwoptaoi Block 8/24 from Ecobank Kenya Limited for subdivision and sale.
47. Analysing the above responses, I am not fully convinced that the Respondents have sufficiently explained the prior and current status of the estate. They do not seem to be too candid and in fact, sound quite evasive. I am not fully convinced that full disclosure of the estate has been exhaustively disclosed, where disclosure has been made, it appears to be selective. I find it curious that despite being in charge of the estate upon their appointment about 10 years ago, the 1st and 2nd Respondents still allege ignorance of basic matters concerning the estate. It appears that all they have done for all these years is merely to identify the estate properties. With the Respondents' level of education and exposure, as is apparent from the record, I do not believe that this display of apparent "ineptitude" can be linked to the Respondent's lack of understanding of their role during the time that they were Administrators. It is just not possible.
48. Be that as it may, considering this state of affairs, can it be declared that the Respondents have not complied with the Court's directions and are therefore in contempt of Court?
49. As I stated in my Ruling of 28/04/2022, contempt of Court is that conduct or action that defies or disrespects authority of Court and the same was described in Black's Law Dictionary 9th Edition in the following terms:
- “The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.
50. As I also stated, contempt of Court is in the nature of criminal proceedings and therefore, proof of a case against a contemnor is higher than that of balance of probability. Due to the gravity of consequences that ordinarily flow from contempt proceedings, the Court is obligated to employ utmost caution and to cite one as a contemnor only in the clearest of cases.



51. As I again stated in my said earlier Ruling, in order to find a person guilty of contempt there must be proof of wilful and intentional disobedience of a Court order and this point was captured in the Supreme Court of India case of Mahinderjit Singh Bitta – vs Union of India & Others 1A No. 10 of 2010, as follows: -

“In exercise of its contempt jurisdiction the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the order of the court, even to constitute a civil contempt.”

52. Coming back to this matter, according to Counsel for the Applicant, Sheila Murgor, the Affidavits filed by the Respondents raise irrelevant issues and are not in compliance with the Court’s directions. According to him, as regards the 3rd Respondent, Dr. James Murgor, to date no monies have been paid to Court in respect of Eldoret/ Municipality/Block/4/84, and that he also confirms still being in possession of the said parcel of land, in express violation of order (e) which forbade managing it.eg Regarding the 1st Respondent, Francis Murgor, and the 2nd Respondent, Chemutai Murgor, Counsel submitted that, to date, in violation of the orders, no monies have been paid to Court nor a comprehensive financial account for the Administration of the estate provided. As regards the 4th Respondent, Florence Murgor, Counsel submitted that contrary to express wording of the Court orders, to date no monies have been paid to Court in respect of Eldoret/ Municipality/Block/4/84, and that she admits to profiting from the property.

53. On his part, Counsel for the Objector, Enid Cheptanui Murgor Ronoh (now co-Administrator), submitted that the Respondents have filed Affidavits which do not conform to nor comply with any of this Court’s orders.

54. Counsel submitted that the Affidavit filed by the 4th Respondent, Florence Murgor, admits to having generated income from estate property, that the Affidavit is vague on figures and where pertinent figures such as rent received are given, no documents are provided to support the same, that she was ordered to inter alia pay into Court all rental and other income derived from plot number Eldoret Municipality/Block 4/84 including rent paid by Caltex Oil (Kenya) Limited and Total Kenya Limited for the last 20 years, to the extent that no funds/income, whether prior to, or after delivery of the Ruling, have been paid in Court, Florence Murgor is in contempt of Court, that it is admitted by Florence Murgor that she generated income from the use of estate property, which she has never accounted for to date, her activities on estate property amount to intermeddling and any such funds legitimately belong to the estate.

55. Regarding the Affidavit filed by the 1st Respondent, Francis Murgor, Counsel submitted that the 1st Respondent admits failure in carrying out his responsibilities as an Administrator, confirms that estate properties have been leased out yet he has neither collected rent nor instituted proceedings against defaulters, his averments are further contradictory to those of Florence Murgor, who confirms that the estate property generates rental income, he confirms and even provides pictures of the estate property being used as a parking lot, payment is obtained and have not been accounted for, the rent due from Caltex and Total from 1/12/2006 to 1/01/2011 is stated as not having been paid but it is suspect that the same has not been recovered, unless it was recovered and not declared, Eldoret Block 4/83 is stated to have been leased as a car wash yet no account for the income collected from the said lease has been provided, similarly other estate properties are stated to be in use for planting maize from which no income has been accounted for.

56. Regarding the Affidavit filed by the 2nd Respondent, Chemutai Murgor, Counsel submitted that upon being appointed Administrator, the 2nd Respondent was derelict in her duty as an Administrator,



- having intentionally refused and or neglected to secure the estate from plunder and intermeddling, she is in contempt. Regarding the Affidavit filed by the 3rd Respondent, Dr. James Murgor, Counsel submitted that to the extent that no funds/income, whether prior to, or after delivery of the Ruling, have not been paid in Court, he is in contempt of Court for failure to comply with order (f) of the Ruling dated 11/05/2022.
57. I agree that the Applicant and the Objector have raised pertinent issues arising from the Affidavits filed by the Respondents, including some apparent omissions. Most of what the Applicant and the Objector have observed are valid.
58. What I however observe is that apart from the admitted fact that the 4th Respondents is still in occupation of the property known as Eldoret Municipality/Block 4/84 and that some rental income is being received therefrom by her, the rest of the “omissions” alleged against the Respondents are out of mere inferences, conjecture and suspicions and some do not strictly arise from the specific orders made by H. Omondi J on 12/05/2022.
59. In light of this state of affairs and the new evidence that has now come out, I find that although there is no Application before me for Review of the orders of H. Omondi J, to achieve the objectives of justice, portions of the order requiring remittal of rental proceeds earned up to 20 years ago may need to be slightly re-looked at. I say so because the basis of the orders was the belief that there was cash held in estate bank accounts and that there was rent being received from Caltex Oil and/or Total Kenya Limited in respect to Eldoret Municipality/Block 4/84. The 3rd and 4th Respondents have now expressly deponed on oath, and this the Applicant and the Objector have not controverted in any way, that there are no such bank accounts in existence nor is there any rent being presently received from the said companies. In view thereof, and considering the very specific manner in which the orders of 12/05/2022 were couched, can the Respondents be said to be in contempt of Court for not remitting such funds and/or income? I do not think so. Being the parties alleging non-compliance, if the Applicant and the Objector had any evidence indicating otherwise, then I believe that they would have presented it to this Court. In the circumstances, the matters deponed by the Respondents remain uncontroverted. On this aspect therefore, I find no contempt of Court.
60. However, order (e) of H. Omondi J’s Ruling was also very specific that the 3rd and 4th Respondents were restrained from intermeddling or otherwise managing the property Eldoret Municipality/Block 4/84 pending final distribution of the estate. The same is being utilized as a business premises. The Judge had in mind Section 45 of the [Law of Succession Act](#). This order was very express and having not been set aside, the same must be honoured. The 3rd and 4th Respondents must therefore now cede the occupation and management of the said property. However, this can only happen if the new Administrators are themselves ready and willing to take over the management of the property including the financial burden of sustaining the same without jeopardizing or running down the businesses said to be operated thereon. Needless to state therefore and to avoid a situation where the property Eldoret Municipality/Block 4/84 is left unmanaged and in a state of neglect and disrepair, I rule that the 4th Respondent will only cede management of the said property upon formal request by the current Administrators requiring hand-over to them. Until she receives such formal request, the 4th Respondent shall continue managing the property in the same manner that she has been doing.
61. Regarding the rental income that the 4th Respondent admits to have previously received from renting out the property Eldoret Municipality/Block 4/84, she has given a lengthy account of the personal sacrifices and investments that she has made thereon over the years, including at some point, having to give up her other personal property to save the subject property from auction, and in some instances, registering heavy business losses. Again, these matters deponed under oath have not been controverted.



In view of the inability by any party, including the Court, the Applicant and the Objector, at this stage, to ascertain with precision how much the 4th Respondent has received in income over the years and how much she has invested into the property to date, if any, in the absence of an independent financial audit, I do not believe that it will serve any purpose to continue demanding that the 4th Respondent pays or deposits amounts earned dating back to 20 years ago when it would not be possible to ascertain whether indeed what will have been deposited is the correct amount. At a later stage, and if necessary, an independent audit may need to be ordered to unravel the accurate position. In the circumstances, I will not insist that the 4th Respondent remits to Court income received for the property Eldoret Municipality/Block 4/84 over the years as earlier directed in order (f) of the Ruling of H. Omondi J. I will however order that the benefit, profit and/or income derived by the 4th Respondent from her occupation and use of the said property over the years be factored and taken into account when determining her share of the estate inheritance during distribution.

62. I admit this will be a slight variation of order (f) and I am certain the Applicant and the Objector will not be happy about it, but as a matter of basic logic and in the interest of justice, I believe it is the right thing to do at this stage.
63. In conclusion, and as I have persistently commented whenever this matter has come before me, the estate is quite vast and there is adequate share for everyone. It is necessary that each party involved herein “swallows his or her pride” and works towards final distribution of the estate. The constant filing of numerous interlocutory applications after applications, though merited in some circumstances to guide the way forward, are not helping any of the parties. The more each party firmly stands his ground, the more the estate continues getting wasted and getting depleted irreparably. How I wish the Advocates would agree to take the lead and bring the family together rather than “adding more fuel to the fire” by elongating antagonistic litigation which at the end of the day is only detrimental to everyone. It is regrettable that although the family patriarch passed on in the year 2006 and this Cause filed in the year 2012 to date, 17 years later, the parties still prefer “battle and war” instead of putting personal egos aside and working towards finalizing this matter by proceeding to distribution. I shall however leave that to the conscience of the family and their Lawyers.
64. I may however also mention that time is also now ripe for the new Administrators to now assert themselves by firmly collecting the assets of the estate and more importantly, calling for a family meeting to chart the way forward with the hope of bringing this Succession Cause to finality. 17 years is such a long time to remain in perpetual litigation mood. My two cents worth of advice.

Final Orders

65. In view of above, and after agonizing for a considerable period of time over the most appropriate orders to give in the circumstances of this matter, I issue the following declarations and/or orders:
- i. I do not find any deliberate disobedience or non-compliance by the Respondents of the Orders given by H. Ouma J (as she then was) on 12/05/2022. I therefore find that the Respondents have substantially and practically complied with the said orders and also with the subsequent orders given by myself on 28/04/2023.
 - ii. Accordingly, I do not find the Respondents to be in contempt in Court.
 - iii. Regarding compliance with order (d) of the directions given by H. Omondi J (as she then was) on 22/05/2022, requiring the 1st and 2nd Respondents to deposit into Court all rental income received from their date of appointment as Administrators and cash held in the estate bank accounts, this Court finds that it has not been demonstrated that the 1st and 2nd Respondents



have received any such rental income and there has also not been any demonstration of the existence of any estate bank account or that there is any cash or funds held therein. That portion of order (d) is therefore now found to be incapable of being implemented.

- iv. Regarding compliance with order (e) of the directions given by H. Omondi J (as she then was) on 22/05/2022, it is now directed that upon request from the current Administrators conveyed by giving a thirty (30) days' notice, the 4th Respondent – Florence Murgor – shall surrender and hand-over possession and management of the property Eldoret Municipality/Block 4/84 to the present Court appointed Administrators whom, should they choose to assume this responsibility, shall diligently do all that is within their power and ability, to maintain, and not jeopardize, the activities and businesses existing or ongoing thereon, if any, with the least or minimal disturbance and without disrupting the smooth operations thereof.
- v. Regarding compliance with order (f) of the directions given by H. Omondi J (as she then was) on 22/05/2022, requiring the 3rd and 4th Respondents to pay into Court all rental and other income derived from plot number Eldoret Municipality/Block 4/84 including rent paid by Caltex Oil (Kernya) Ltd and Total Kenya Ltd for the last 20 years, pending final distribution of the estate, this Court finds that it has not been demonstrated that there is any rental income presently still being received from the said Caltex Oil (Kernya) Ltd and Total Kenya Ltd. For rental income previously received by the 4th Respondent - Florence Murgor - from any entity or entities, the 4th Respondent shall now not be required to pay or deposit the same into Court but instead, the estimated benefit, profit and/or income derived by the 4th Respondent from her occupation and use of the said property Eldoret Municipality/Block 4/84 over the years shall be factored and taken into account when determining the 4th Respondent's share of the estate inheritance during distribution.
- vi. Save for the marginal areas expressly highlighted above, this Court confirms that the rest of the Orders given herein by H. Omondi J (as she then was) on 22/05/2022 remain valid and in force and must at all times continue to be honoured, respected and observed by all parties.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 15TH DAY OF DECEMBER, 2023.

WANANDA J. R. ANURO

JUDGE

