



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDROET

PROBATE AND ADMINISTRATION CAUSE NO. 243 OF 1999

IN THE MATTER OF THE ESTTE OF KIPKOSGEI

KETER:::::::::::::::::::::::::::::::::DECEASED

AND

TABARNO KOSKEI:::::::::::::::::::::::::::::::::1ST

PETITIONER

DAVID MOSONIK:::::::::::::::::::::::::::::::::2ND

PETITIONER

SABINA JEBORE NGOTE:::::::::::::::::::::::::::::::::3RD

PETITIONER

CHERUIYOT KOSKEI:::::::::::::::::::::::::::::::::4TH

PETITIONER/OBJECTOR

RULING

This is an application by way of a Notice of Motion expressed to be made deceased under section 27, and 47 of the Law of Succession Act and Rules 49, 61, 73 and 62 of the Probate and Administration Rules. Sections 1A, 3 and 3A of the Civil Procedure Act are also invoked. The applicants are **Sabina Jebore Ingote** (hereinafter “**the 1st applicant**”), **David Mosonik** (hereinafter “**the 2nd applicant**”) and **Tabarno Kosgei** (hereinafter “**the 3rd applicant**”). They seek three main orders of the Court namely:-

- 1) *An order directed at the respondent to comply with the distribution orders made on 4th July, 2005 in respect of the deceased’s estate and an order allowing the eviction of the respondent from Land Parcel No. Sergoit/Koiwaptaoi Block 7 (Sergoit) 70 and Koitoror/Tuiyolik Block 1 (Koitoror) 35 to enable the applicants take their portions.*
- 2) *An order that parcel No. Moiben/Moiben Block 9 (Manyatta)68 be partitioned and a portion measuring two acres be exercised and transferred to **Jelaga Taprandich Kosgei alias Sarah Jelagat Koskei** in line with the distribution mode ordered.*
- 3) *An order that the Deputy Registrar be authorized to execute all forms of transfer, applications for consent, mutations to effect the said distribution in place of **Cheruiyot Arap Kosgei**.*

The respondent is the said **Cheruiyot Arap Kosgei** who is alleged to have declined to comply with the orders on distribution. The reasons for the application are that the grant of representation of the deceased estate was confirmed on the application of the applicants and the respondent; that notwithstanding the said confirmation the respondent exclusively holds onto the entire estate thereby denying the applicants access to their portions of the estate.

The application is supported by an affidavit sworn by **Sabina Jebore Ingote**, the 1st applicant. The affidavit is an elaboration of the said grounds. Annexed to the affidavit is a ruling of **Dulu Ag. J**, as he then was, dated 4th July, 2005. That ruling set out how the deceased's estate is to be distributed. This application in reality seeks to enforce that ruling. The application was served upon M/s **Kiplagat J. Misoi & Co.** Advocates who are on record for the respondent. The said firm neither filed Grounds of Opposition nor a replying affidavit. Neither the respondent nor his Counsel attended the Court on the hearing date. The application therefore proceeded ex-parte.

Having carefully considered the application, I am satisfied that the affidavit evidence tendered by the applicants in support of this application particularly the ruling of my brother **Dulu J** conclusively establishes that the estate of the deceased should be distributed as ordered in the said ruling. The evidence has, in any event not been contradicted. The application is accordingly allowed in terms of prayers 2 and 3 thereof save that the portion of two (2) acres given to **Sarah Jelagat Kosgei** at Manyatta farm (Moiben/Moiben Block 9(Manyatta)/68, shall be shared by her surviving children equally in view of her death.

I further order that in default of the respondent executing documents to effect the said distribution, the Deputy Registrar of this court shall do so on his behalf.

As this is a family matter, each party shall bear its own costs of the application.

It is so ordered.

**DATED AND DELIVERED AT ELDORET
THIS 10TH DAY OF AUGUST 2011.**

**F. AZANGALALA
JUDGE**

Read in the presence of:-

Sang holding brief for Ngala for the applicant.

**F. AZANGALALA
JUDGE
10/8/2011**