



**In re Estate of Kipkosgei Mutai (Deceased) (Miscellaneous Application Probate & Administration 19 of 2024) [2025] KEHC 8700 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8700 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS APPLICATION PROBATE & ADMINISTRATION 19 OF 2024  
JRA WANANDA, J  
JUNE 20, 2025  
IN THE MATTER OF THE ESTATE OF KIPKOSGEI MUTAI (DECEASED)**

**BETWEEN**

**RECHO MUTAI ..... APPLICANT**

**AND**

**MARY MUTAI ..... 1<sup>ST</sup> RESPONDENT**

**ELIJAH KOSGEI ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. This Judgment is in respect to the Applicant's Summons dated 29/09/2014 seeking Revocation of a Grant of Letters of Administration issued by the Magistrate's Court. The same is filed through Messrs Chebii & Co. Advocates and prays for orders as follows
  - i. The Grant issued in favour of the Respondents by Senior Resident Magistrate's Court Kapsabet in Succession Cause No. 16 of 2005, having been confirmed on 5<sup>th</sup> July of 2005 be revoked and the grant of administration over parcel LR No. Nandi/Cheptil/2X1 and Nandi/Sigot 2.
  - ii. That the title of the said parcel be retransferred to the name of Kipkosgei Mutai from the name of Mary Mutai and Elijah Kosgei who have appropriated the said property secretly leaving out other beneficiaries.
  - iii. That the Respondents be ordered to give an account of all rents earned over EM/Block 11/5X0.
  - iv. That the Respondents be condemned to pay the costs of the Application.



2. In the Affidavit sworn in support of the Summons, the Applicant deponed that having not been named as a beneficiary in the Petition for Letters of Administration filed in Kapsabet Senior Resident Magistrate's Court Succession Cause No. 16 of 2005, he filed an Affidavit to protest against confirmation of the Grant and that the circumstances under which the same was confirmed when she had filed a Protest are strange to her. She deponed that the deceased was her husband who left behind 11 survivors, including herself, the 1<sup>st</sup> Respondent (her co-wife/widow) and the 2<sup>nd</sup> Respondent (her own son). She deponed that the Magistrate's Court did not have jurisdiction to issue the Grant once she filed the Protest and that she was waiting to be summoned to the High Court after the matter is transferred, which was not done.
3. She deponed that, apart from registering themselves as owners of the parcels of land Nandi/Cheptil/2X1 and Nandi/Sigot/2, the Respondents have also refused to release the proceeds of rent on Eldoret Municipality/Block 11/X0 and that the Respondents should be ordered to give an account of all profits earned therefrom at the rate of Kshs 40,000/- per month to date, since 1996.
4. In response to the Summons, the 1<sup>st</sup> Respondent filed the Replying Affidavit sworn on 12/10/2018 and filed through Messrs Kamau Lagat & Co. Advocates. She deponed that she is the sole widow of the deceased and denied that the Applicant is also a widow or a dependent or beneficiary of the deceased. According to her, the Grant was validly issued and confirmed and the transfer of the parcels of land was also valid. She therefore urged that the Applicant has no locus standi to institute the present proceedings and thus has not established the criteria for revocation of Grant.
5. By the orders made by H. Omondi J (as she then was), the matter was directed to be canvassed by way of viva voce trial, upon which the parties filed Witness Statements. The matter then proceeded for trial in which each side called 2 witnesses. The Applicant's witnesses both testified before H. Omondi J (as she then was) while both the Respondents' witnesses testified before me after I took over the matter, and with the parties' concurrence, proceeded to hear it from where it had reached, upon Omondi J's elevation to the Court of Appeal.
6. Various Witness Statements were filed but I will only recite those made by the witnesses who eventually testified as only those were adopted by their respective makers when giving evidence, and admitted in evidence.

#### **Applicant's Witness Statements.**

7. Kiptabut Tanui, in his Statement dated 15/10/2018, stated that the deceased was his brother who had 2 wives, namely, the Applicant and the 1<sup>st</sup> Respondent and that according to Nandi customary laws, the estate of the deceased ought to be shared equally.
8. The Applicant, Rachel Mutai, in her Statement dated 15/10/2018, simply reiterated the matters contained in her Supporting Affidavit already referred to.

#### **Respondents' Witness Statements.**

9. The 1<sup>st</sup> Respondent, Mary Mutai, in her Statement dated 05/09/2019, too, reiterated the matters contained in her Replying Affidavit, and stated that the deceased had told her that the Applicant had left him with his 2 children.
10. The 2<sup>nd</sup> Respondent, Elijah Tirop Kosgei, in his Statement dated 05/09/2019 stated that he was born in the year 1970 and is the eldest son of the deceased. He stated further that he has known the 1<sup>st</sup> Respondent as her mother since he was born. In conclusion, he insisted that the they (Respondents)



were validly granted the Grant of Letters of Administration and have administered the estate in accordance with the law.

### **Applicant's Witness' Testimonies.**

11. PW1, Kiptabut Tanui testified before H. Omondi J (as she then was) on 30/01/2019. He testified in the Nandi language which was translated into English. Led by the Applicant's Counsel, Dr. Chebii, he testified that the deceased was his elder brother and that the 1<sup>st</sup> wife of the deceased was the Applicant, Rael Mutai, who was married in 1956 under Nandi customary law and they had 2 children who lived with them at Ndalat. As regards the said parcel of land at Ndalat he stated that he is the one who purchased it but which the deceased irregularly took over and occupied with his wife (Applicant) and later secretly sold and purchased a different parcel of land in Gormayet (one of the properties listed in his estate). He then stated that the deceased later married another woman whose name he could not recall as his 2<sup>nd</sup> wife. He stated that he is the one who participated in the engagement of the Applicant during which he accompanied his father and other elders to the Applicant's home in Chepkalet in Nandi to ask for the Applicant's hand. According to him therefore, any one claiming that the Applicant was not the wife of the deceased is lying as they even had children.
12. Under cross-examination by Mr. Kamau, he stated that he had no dispute with the deceased although he (deceased) and his wife (Applicant) illegally deprived him of his said parcel of land into which they moved around 1969 and that he surrendered it to them. He testified that his brother had a disagreement with the Applicant (1<sup>st</sup> wife) when he brought in the 1<sup>st</sup> Respondent (2<sup>nd</sup> wife) and the deceased again sold the Gormayet land and purchased another one where he went to live with the 1<sup>st</sup> Respondent (2<sup>nd</sup> wife). He stated that he did not attend the 1<sup>st</sup> Respondent's (2<sup>nd</sup> wife) marriage ceremony as he was neither informed of the same nor invited. According to him, the deceased only went with neighbours for the ceremony.
13. He stated further that by the time that the deceased married the 1<sup>st</sup> Respondent, the deceased already had many children with the Applicant but the Applicant then left and went to live with her parents. In response to a question from the Court, he identified and pointed out the Applicant in Court. She stated that although her name is Recho Mutai, at home, they call her "Rael".
14. PW2, Rachel Mutai (Applicant) testified before H. Omondi J (as she then was) on 9/12/2019. Led by Dr. Chebii, she stated that she is a widow of the deceased who died in 1996 and that the 1<sup>st</sup> Respondent is her co-wife and the 2<sup>nd</sup> Respondent, Elijah Kosgei, is the Applicant's 2<sup>nd</sup> born son with the deceased. She stated that she got married to the deceased in 1965, that they lived at Ndalat Scheme and that they got 8 children whom she proceeded to list. She stated that they later sold the Ndalat Scheme land (Nandi/Cheptil/2X1) and bought another parcel of land at Sigot and also a plot at Bugcon Estate, known as Block 110/5X0. She also stated that the deceased had 2 other parcels of land in Kormat but whose reference numbers she could not remember. She denied ever divorcing the deceased and insisted that she stayed with the him until his death and stated that his problems with the deceased began when the deceased married a 2<sup>nd</sup> wife and they would quarrel and the deceased would beat her and as a result, she would occasionally go to her parents' home for some time but she would later return to the matrimonial home.
15. She testified that the 1<sup>st</sup> Respondent was married in 1997. She prayed that the Court divides the properties between the 2 houses equally and that the 1<sup>st</sup> Respondent and herself be appointed co-Administrators. Under cross examination by Mr. Lomayan, she stated that she got married to the deceased in 1965 and lived with him until his death and that the 2<sup>nd</sup> Respondent, Elijah Kosgei, was her son, born in 1971. She stated that after the death of the deceased, she remained with the 2<sup>nd</sup> Respondent



but who later started chasing her away from the home. She stated that the deceased paid her dowry by 4 heads of cattle and 1 sheep and that they conducted a Nandi customary law ceremony and she has children. She clarified that the reference in her Statement to 6 children was erroneous as her children are 8. She testified that she is the one who took care of the 2<sup>nd</sup> Respondent, and not the 1<sup>st</sup> Respondent, and denied that she deserted the matrimonial home in 1971. She reiterated that she did not immediately know that the 1<sup>st</sup> Respondent had commenced the Succession Cause. She conceded that she had not produced any birth certificates to prove her children's parentage and also conceded that dowry was also paid for the 1<sup>st</sup> Respondent and a traditional wedding ceremony conducted for her.

16. She also stated that the Nandi parcel of land was purchased in 1973, parcel of land number 11/X0 in the 1980s, and the other one in 1971 and that the deceased died in Ndalat. In re-examination, she stated that she reported to the Chief the incident of her son, the 2<sup>nd</sup> Respondent, chasing her away from the home. In response to a question from the Court, she stated that although the 2<sup>nd</sup> Respondent claims that her mother is the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> Respondent was already born and was in school by the time that the 1<sup>st</sup> Respondent was married. She stated that the 1<sup>st</sup> Respondent has 5 children. She reiterated that the deceased never chased her away from the matrimonial home and stated that although they would occasionally have disagreements and she could leave for some time to go and stay at her parent's home, she always returned and they would reconcile. She stated that her other children purchased for her a parcel of land elsewhere and that it is where she currently lives.

#### **Respondents' Witness' Testimonies.**

17. DW1 was the 1<sup>st</sup> Respondent, Mary Mutai, who testified before me on 4/10/2023. Led by her Counsel, Mr. Kamau, she stated that when she got married to the deceased, he found him with 2 children, the late Hellen Cherotich and the 2<sup>nd</sup> Respondent, Elijah Tirop Kosgey, and that the late Hellen Cherotich left a child who is with the 1<sup>st</sup> Respondent. She stated that she never found the 2 children's mother and she is the one who took care of them and she only turned up when the deceased died. She stated that she did not know whether the Applicant had been married to the deceased and to her knowledge, she was the only wife. She stated that the deceased had told her that the Applicant left when she was pregnant with a 3<sup>rd</sup> child, later born and named Alice Chemeli, who was therefore his child. About the other children listed by the Applicant, she stated that she does not know them and that at no time did the deceased mention them, and that the deceased never lived with the Applicant after he married the 1<sup>st</sup> Respondent and never build any home for the Applicant. Under cross-examination by Dr. Chebii, she stated that she did not know whether the Applicant had been married before to the deceased and that she only found her 2 children as she had stated and which was in 1974. She stated that she did not know when the Applicant left. She also stated that in the Kapsabet Succession No. 16 of 2005, she did not include any of the daughters of the deceased, neither her own, nor the Applicant's 3<sup>rd</sup> child, the said Alice Chemeli, and that she only listed the sons. She stated that she gave 1 acre to one Allan, the son of the Applicant's late daughter, Hellen Cherotich although she conceded that she did not have any evidence to that effect. She stated that she was willing to formally give him a share and that she did not list him among the beneficiaries because he was still young by then.
18. She stated that she registered the parcel of land Nandi/Sigot/2 which is 10 acres wholly in her name, Nandi/Cheptil/2X1 in the name of the 2<sup>nd</sup> Respondent. She stated that the deceased had 5 sons, including the 2<sup>nd</sup> Respondent, that 4 of them are her own and there is also the said Allan Kogo Kemboi, a grandson. She stated that she registered Nandi/Cheptil/2X1 in the name of the 2<sup>nd</sup> Respondent as he was already occupying it. She stated that Nandi/Komanyek/18 is also in the name of the 2<sup>nd</sup> Respondent and that Eldoret/Municipality/11/5X0 gives them rent of Kshs 1,300/- as there are 4 tenants, each paying Kshs 600/- per month, which rent she is the one who has been collecting since



the deceased died in 1996. She conceded that she never served the Applicant with any notice of filing the Kapsabet Succession Cause, she did not serve Hellen Cherotich as she already dead by then, and she also did not also serve Alice Chemeli because she did not know where to locate her. She stated that she had lived in Sigot since 1975. She also conceded that she never heard that the deceased had filed any divorce case against the Applicant. In re-examination, she stated that in distributing the estate, they proceeded in the manner in which the parcels of land were already being utilized. Regarding, Nandi/Sigot/12 measuring 10 acres, she stated that they gave 1 acre to the said Allan and also 1 acre to a sister of the deceased, one Cherubet Barn'getuny whom she gave a share because she was married but came back childless and that the deceased had told them to give her some land. She testified that she distributed the land amongst her 4 sons.

19. DW2 was the 2<sup>nd</sup> Respondent, Elijah Tirop Kosgei, who testified before me on 19/12/2023. He testified that the 1<sup>st</sup> Respondent is the one who raised him as his “mother” and that he never met his biological mother. He stated that they shared the parcels of land in the manner in which the deceased wanted them to, and that he was allocated 6 acres of the parcel of land Nandi/Cheptil/2X1. Regarding his biological mother, he stated that he was told by the deceased that she had died although he has never seen or been shown her grave. In cross-examination, he stated that his father told him that his mother’s name was Rael Mutai. When the Applicant was pointed out to him seated in Court, he stated that he does not know her. About the 1<sup>st</sup> Respondent stating in her Statement that the Applicant had left the deceased with 2 children, he stated that he knew nothing about that statement. He stated that he was born in 1971 and he heard that the 1<sup>st</sup> Respondent was married in 1974. He testified that he has lived on the parcel of land Nandi/Chepti/2X1 all his life and it is home and that it measures 6.4 acres and was wholly given to him. Regarding Nandi/Sigot/2, he stated that it measures 11.5 acres and was shared out amongst about 6 persons, from the 1<sup>st</sup> Respondent’s house. Regarding his other sister, Hellen Cheruiyot, he stated that she is deceased and her son, Brian Cheruiyot Gogo lives with him on Nandi/Cheptil/2X1 and is about 28 years old.
20. He stated further that in the Kapsabet Succession Cause, they had stated that the deceased had left behind an oral will setting out his wishes. Regarding the parcel of land Nandi/Kormaet/18, he stated that it, too, was given to him and that in respect to Eldoret Municipality Block 11/5X0, the deceased directed that it be given to the 1<sup>st</sup> Respondent although he agreed that they did not clearly make such stipulation. He also agreed that there is rent received from the said Eldoret Municipality Block 11/5X0 by the 1<sup>st</sup> Respondent from tenants, but he does not know the amount. He then stated that Nandi/Cheptil/2X3 which was allocated to him measures 6 acres and that it was allocated to him because it was his mother’s.
21. He testified that if it is found that her mother had other children, then they will see how to treat them and that is open to undergoing a DNA test to determine whether the Applicant is his biological mother. He insisted that his mother’s name is “Rael”, not “Recho” and that she only gave birth to 2 children, Hellen Cheruiyot and the late Kiptoo whom, he agreed, they never mentioned in the Kapsabet Succession Cause but he stated that they shall eventually give their children some share. He also testified that he did not know whether his biological mother deserted the home, or whether she left with children and denied that he ever assaulted his brothers or, chased away his mother. In re-examination, he stated that his father never introduced to him to any of his alleged brothers from any other place, that the Applicant has never featured in his life and that it is the 1<sup>st</sup> Respondent who was present for his circumcision ceremony and also his marriage ceremony.
22. At this point, Mr. Kamau asked for time to call other witnesses, including the Executive Officer, Kapsabet Magistrate’s Court, to come and produce the Court file in Kapsabet Senior Resident Magistrate’s Court Succession Cause No. 16 of 2005. However, after several adjournments, he



eventually informed the Court that he had decided to close the Respondents' case without calling any further witnesses.

23. In view thereof, I gave the parties leave to file written Submissions. The Applicant then filed the Submissions dated 20/11/2024. Regarding the Respondents however, until the conclusion of this Judgment, I had not come across any Submissions filed by or on their behalf, whether in the physical Court file or in the Judiciary Case Tracking System (CTS) online portal. Their Counsel, Mr. Kamau, also did not attend Court on the last 3 occasions.

**Applicant's Submissions.**

24. Counsel recounted the background of the case, the pleadings and testimonies of the witnesses and submitted that the testimony of PW1 and DW1 proved that indeed the Applicant is a widow of the deceased and should therefore have been involved in the proceedings to obtain the Grant and confirm it and this not having been done, the Grant should be revoked. He cited the case of *Cosimo Polcino v. Tony Kent* (2014) eKLR. He reiterated that the Respondents did not disclose the names of Recho Mutai, Hellen Mutai and Alice Mutai and the other children of the deceased. He submitted that failure to disclose material facts is a big enough reason to allow for revocation of the Grant. He cited the case of *Re Estate of Augustine Muita Kabare (Deceased)* [2019] eKLR.
25. He urged that upon revocation, the new Administrators made up of the 2 widows should be appointed to administer the estate. He submitted further that in terms of the shares of the estate, it is clear that the deceased was polygamous, a male adult of the Nandi sub-tribe of the Kalenjin community, and that his marriage to 2 wives was in accordance with Nandi customs and traditions. He urged that consequently, Section 40 of the *Law of Succession Act* ought to apply. He submitted further that the Applicant has 8 children and the 1<sup>st</sup> Respondent has 5 and that a bigger part of the estate should go to the Applicant given the number of her children. He proposed that the estate be distributed as follows:

Recho Mutai's house	i)	Nandi Cheptil/2X1	6.4 acres
	ii)	Eldoret Municipality/ Block 11/5X0	
Mary Mutai's house	i)	Nandi/Sigot/2	11 acres
	ii)	Nandi/Kormaet/18 (Centre Plot)	

26. Counsel submitted that although 1<sup>st</sup> Respondent seems to have taken a larger parcel of land, this will take into account the fact that she is already settled on the parcel of land Nandi/Sigot/2.
27. Regarding the prayer for the Respondents to render accounts on their use of the estate and particularly rent obtained from Eldoret Municipality/Block 11/5X0, he urged that the rent is estimated at Kshs 40,000/- per month from 16/2/1996 to date, which aggregates to roughly Kshs 480,000/- per annum, and that the total earned is about Kshs 13,440,000/= for the last 28 years, but the Respondents did not file any records.

**Determination.**

28. The issues that arise for determination in this matter are evidently the following:



- a. Whether the Grant of Letters of Administration issued in Kapsabet Senior Resident Magistrates' Succession Cause No. 16 of 2005 should be revoked, together with its confirmation and the mode distribution of the estate adopted therein.
  - b. Whether the titles for the parcels of land Nandi/Cheptil/2X1 and Nandi/Sigot/2 registered in the names of the Respondents should be re-transferred to the name of the deceased.
  - c. Whether the Respondents should be ordered to account for rent earned over the parcel of land described as Eldoret Municipality/Block 11/X0.
29. On whether this Court can revoke a Grant of Letters of Administration that was issued by the Magistrates' Court, I refer to Section 48(1) of the *Law of Succession Act* which, prior to 2/01/2016, read as follows:

“48(1). Notwithstanding any other written law which limits Jurisdiction, but subject to the provisions of section 49, a resident magistrate shall have Jurisdiction to entertain any Application other than an Application under section 76 and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed one hundred thousand shillings ...”

30. The above provision was however amended, and as from 2/01/2016, it now provides that:

“48. Jurisdiction of Magistrates

- (1) Notwithstanding any other written law which limits Jurisdiction, but subject to the provisions of section 49, a magistrate shall have Jurisdiction to entertain any Application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed under section 7(1) of the *Magistrates' Courts Act*, (Act No. 26 of 2015).
- (2) .....

31. Section 23 of the *Magistrates Courts Act*, 2015, which effected the amendments, reads:

“23. Amendment of section 48 of cap 160

The *Law of Succession Act* (cap 160) is amended, by repealing section 48(1) and substituting therefore the following new subsection

1. Notwithstanding any other written law which limits Jurisdiction, but subject to the provisions of section 49, a magistrate shall have Jurisdiction to entertain any Application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed under section 7(1) of the *Magistrates' Courts Act*, 2015.”

32. It follows therefore that prior to 2016, only the High Court had the jurisdiction to revoke a Grant. That limitation has however, since been removed. As this matter was filed on 29/09/2014, before the said amendment, the Applicant correctly invoked the jurisdiction of the High Court.

33. Having laid the issue of jurisdiction to rest, I now proceed to the substantive matters. The first and major prayer in the Application is for revocation of the Grant issued in Kapsabet Senior Resident



Magistrate's Court Succession Cause No. 16 of 2005. The rest of the prayers flow from or are consequences of this one prayer. However, the Applicant has not supplied to the Court a copy of the said Grant. She solely places reliance on a photocopy of the proceedings which she exhibit to her Replying Affidavit as annexure "RM2" but which proceedings also do not assist much as all it provides is that "Application dated 22/6/2005 is hereby allowed".

34. I have agonised on how to proceed with this matter in the absence of the Grant and also the Certificate of Confirmation. I also do not find any evidence that the Applicant, at any time, sought for orders from the Court to call for the Kapsabet Senior Resident Magistrate's Court Succession Cause No. 16 of 2005 file. Had such an order been sought and obtained, then this Court would have managed to verify the contents of the Grant and the Certificate of Confirmation.
35. It will however be also recalled that after the last witness testified, Mr. Kamau, Counsel for the Respondents sought and obtained orders summoning the Executive Officer, Kapsabet Law Courts to bring and produce the said Court file in evidence. As aforesaid however, he later abandoned the quest to call the Executive Officer and closed the Respondent's case.
36. As aforesaid, I have agonised on how to deal with the issue of absence of copies of the Grant and the Certificate of Confirmation. After painstakingly doing so, I have reached the verdict that although the general proceedings conducted, and orders made by the the Kapsabet Magistrate's Court proceedings are not in dispute, it will be unwise to make full and final determination on distribution of the estate when I have not had sight of the Grant and/or the Certificate of Confirmation whose contents I cannot therefore accurately verify. I do not understand why the Applicant's legal team did not find it necessary, when it filed this Application way back in 2014, to also include the Grant and also the Certificate of Confirmation or to at least then exhibit a copy of the Application that "was allowed" by the Magistrate's Court as aforesaid. For this reason, I would have struck out the Application save that I note that it has taken more than 10 years to conclude this Application and further, witnesses, some quite old by now, gave viva voce evidence and it will be an injustice to send the parties back to square one. The parties need closure and I will not penalize then for the "mistakes" of their Advocates.
37. Doing the best I can, I will only make some general determinations and make declarations which are apparent to me from the from the testimonies given by the witnesses, and the pleadings filed herein. As for the final determinations on such matters as identification of the estate assets and of the beneficiaries, and final distribution of the estate, I will remit the matters back to the Kapsabet Magistrate's Court to conclude the same as the file before that Court is the file that contains all the relevant primary pleadings, Affidavits and extracted orders, including the Petition, Gazette Notice, Grant of Letters of Administration, Application for Confirmation of Grant and the Certificate of Confirmation of Grant.
38. I have also considered that the file before me is merely a Miscellaneous file whose scope should ideally be limited. The general determinations and declarations that I will make herein are also meant to assist the Magistrate's Court to conclude the matter without the necessity of having to call for a fresh viva voce trial and thus save precious judicial time.
39. I therefore make the following findings, declarations, directions and orders:
  - i. A declaration is hereby made that the Applicant, Recho Mutai was a lawful wife (1<sup>st</sup> wife) of the deceased, the late Kipkosgei Mutai, was married to the deceased sometime around 1965 or thereabouts under Nandi customary law, and is therefore a widow of the deceased, entitled to inherit from the estate of the deceased as a beneficiary.
  - ii. That however, the Applicant left the matrimonial home sometime around the years 1971-1973 or thereabouts and left behind her 2 children with the deceased, namely, the late Hellen



Cherotich, and the 2<sup>nd</sup> Respondent, Elijah Tirop Kosgey. The late Hellen Cherotich was herself survived by one child by the name Brian Cheruiyot Gogo (whom the 1<sup>st</sup> Respondent has kept on referring to herein as “Allan”).

- iii. That at the time that she left the matrimonial home as aforesaid, the Applicant was also carrying the pregnancy for a 3<sup>rd</sup> child with the deceased, who was later born and named Alice Chemeli.
- iv. That Although the Applicant and the deceased never formally divorced, the Applicant lived away from the deceased since leaving the matrimonial as aforesaid, and never returned to live with the deceased until his death.
- v. That the 2<sup>nd</sup> Respondent, Elijah Tirop Kosgei, born in 1970, is a biological son of the Applicant with the deceased, but the 2<sup>nd</sup> Respondent has disowned her as her mother and instead recognizes only the 1<sup>st</sup> Respondent as her “mother” being the one who brought him up after the Applicant left the matrimonial home some time about 1971-1973 as aforesaid.
- vi. For avoidance of doubt, it is also declared that the 1<sup>st</sup> Respondent, Mary Mutai, was the 2<sup>nd</sup> wife of the deceased, was married to the deceased sometime about 1974 under Nandi customary law, and is therefore also a widow of the deceased, and also entitled to inherit from the estate of the deceased as a beneficiary.
- vii. Considering the period that has lapsed since the Grant of Letters of Administration was issued in Kapsabet SRM Court Succession Cause No. 16 of 2005, and although this Court finds that the Applicant, being a widow of the deceased, ought to have been involved and/or heard in the Petition before the Grant was issued by the Magistrate’s Court, this Court does not consider it in any way beneficial to the beneficiaries, to revoke the Grant or to change the Administrators.
- viii. The Magistrate’s Court at Kapsabet is therefore directed to conclude and/or finalize the said Kapsabet SRM Court Succession Cause No. 16 of 2005 by identifying the properties comprising the estate of the deceased, identifying the beneficiaries, and distributing the estate, in accordance with the directions given hereinabove.
- ix. The Magistrate’s Court shall be at liberty to make any other of further findings as may be necessary, not already made herein and/or not contradictory to those already made herein.
- x. In distributing the estate, the Magistrate’s Court shall not necessarily need to take fresh evidence from the parties, and shall be at liberty to proceed in accordance with and/or on the basis of the record of this Court, including the pleadings filed in this matter and the *viva voce* witness’ testimonies already taken and recorded in this Cause. The Magistrate’s Court shall however be at liberty to take further Submissions from the parties on any arising issue should it deem it necessary.
- xi. The Magistrate’s Court, in addition to the findings, declarations and/or orders made hereinabove, shall, in distributing the estate, also take into account the following other or further matters/factors which this Court also hereby finds:
  - a. That the deceased having died in 1996, and the Applicant having left the matrimonial home as aforesaid after living with the deceased for only about 6-8 years until about 1971-1973 (more than 20 years before the deceased died), she (Applicant) and her household shall receive a lesser share of the estate than the 2<sup>nd</sup> Respondent and her household.



- b. That the Respondents have been collecting rent from the developments made in Eldoret Municipality Block 11/5X0 since 1996. However, considering that the collection of the rent by the Respondents was lawful being a result of the confirmation of the Grant and distribution of the estate by the Kapsabet Magistrate's Court, there shall be no need to compel the Respondents to account for the same.
  - c. That there is evidence that one Cherubet Barn'getuny whom the 1<sup>st</sup> Respondent stated to be a sister of the deceased, was allocated 1 acre of the parcel of land known as Nandi/Sigot/12 because she was married but returned home childless and that the deceased directed that she be given some land. The said portion allocated to the said Cherubet Barn'getuny shall remain undisturbed but the Magistrate's Court shall be at liberty to determine the person to whom the portion shall devolve, or the manner in which the same shall devolve upon the death of the said Cherubet Barn'getuny.
- xii. Pending the hearing and determination of the said Kapsabet SRM Court Succession Cause No. 16 of 2005, the Respondents and/or any other person are barred, restrained or enjoined from selling, transferring, charging or offering as security for any transaction to any person or third party, any estate property or any portion thereof, including but not limited, to the parcels of land described as LR No. Nandi/Cheptil/2X1, Nandi/Sigot 2 and Eldoret Municipality/Block 11/5X0, or in any other way or manner part with the ownership thereof.
  - xiii. As this is a family matter in which Courts favour reconciliation, each party shall bear his/her own costs of this Cause.

**DELIVERED DATED AND SIGNED AT ELDORET ON THIS 20<sup>TH</sup> DAY OF JUNE 2025**

.....

**WANANDA J. R. ANURO**

**JUDGE**

Delivered in the presence of:

Mr. Kipkoech h/b for Dr. Chebii for the Applicant

Ms. Kesei h/b Kamau for the Petitioner

Court Assistant: Edwin Lotieng

