



REPUBLIC OF KENYA



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In re Estate of the Late Sosing'ot Arap Maina (Deceased) (Succession Cause 216 of 2015) [2023] KEHC 1908 (KLR) (8 March 2023) (Ruling)

Neutral citation: [2023] KEHC 1908 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 216 OF 2015**

RL KORIR, J

MARCH 8, 2023

BETWEEN

HELLEN CHEPKIRUI SOSING'OT PETITIONER

AND

JOHN KIPKEMOI SOSING'OT OBJECTOR

RULING

1. The present Application before the Court is a Notice of Objection to the making of Grant dated 21st December 2015 brought under Rule 17 (1) of the [Law of Succession Act](#). It is premised on the following grounds:
 - i. That the Objector is one of the sons to the deceased Sosing'ot Arap Maina.
 - ii. That the Petitioner/Respondent is not the wife to the deceased but the daughter-in-law.
 - iii. That the Petitioner/Respondent has left out all the deceased's children and falsely presented her own children as those of the deceased which action is fraudulent and intended to mislead this honourable court.
 - iv. That the said Petitioner, Hellen Chepkirui Sosingot has presented herself as the 'son' to the deceased, yet it is her husband Samwel Kimabwa Sosingot (now deceased) who was the son to the deceased.
 - v. That the deceased had nine (9) children whose names are missing in the list of beneficiaries as required by law namely:-Rusi Ruto (deceased)Samwel Kimabwa Sosingot (deceased)Rebecca Koech (deceased)Joseph Kipsiele SosingotElizabeth SitonikJohn Kipkemoi SosingotEsther SoiSofia ChepyosMary Langat



- vi. That the guarantors in the Petition are parties who have encroached into the Estate's parcel number Kericho/Kapkimolwa/92 yet the same has not been distributed nor an administrator appointed.
- vii. That the chief's letter dated 4th November 2015 to the Deputy Registrar is full of falsehoods as all the dependants as alleged in the list are not the deceased's sons and daughters as certified by the said Chief Alfred Orwasa who ought to have told the Court the true position.
- viii. That the Petitioner/Respondent's Petition is incompetent, fatally defective, fraudulent and should be rejected.
- ix. That the deceased's assets and liabilities have been left out for example Kericho/Kapkimolwa/83 and another parcel Songhor which is being held by the Respondent are both missing in the list of assets presented to court.
- x. That the Petitioner filed the Petition for Grant of Letters of Administration secretly and without the knowledge and consent of the Objector.
- xi. That the Petition for issuance of Grant is fraudulent and improper and intended to lock out the objector's and his siblings' interests and hereditary rights.

Background

2. A brief background of this Application is that the deceased, Sosingot Arap Maina passed away on 30th July 2002 and was survived by 9 children, three of whom are now also deceased. The deceased owned two parcels of land Kericho/kapkimolwa/83 and Kericho/kapkimolwa/92 which is the subject matter in this Application. Before he died, the deceased divided the two parcels of land amongst his three sons, Samwel Kimabwai, Joseph Kipsiele and John Kipkemoi so that the first son Samwel would possess and inherit Kericho/kapkimolwa/92 and the other two sons would possess and inherit in equal portion the parcel number Kericho/kapkimolwa/83.
3. The Petitioner/Respondent herein is the wife of Samwel Kimabwai, the first-born son (now deceased). She instituted succession proceedings in respect of the parcel number Kericho/kapkimolwa/92 through a Petition dated 23rd November 2015. The youngest son, John the Objector/Applicant herein proceeded to object to the said proceedings on the basis that that parcel of land belongs to his late father and should be shared equally amongst his surviving children as part of the Estate and not left for the sole distribution of the family of his eldest brother Samwel.
4. The Applicant filed an Application under Certificate of Urgency dated 21st December 2015 and premised on sections 3, 3A, 63 (e) of the Civil Procedure Act, sections 45 and 47 of the Law of Succession Act, Cap 160 Laws of Kenya. It was supported by his Affidavit dated 21st December 2015. The prayers were: -
 - i. Spent
 - ii. That this Honourable Court be pleased to issue orders by way of a temporary injunction against the Respondent, her agents or any other person whatsoever from alienating, disposing, wasting or in any other way, intermeddling with land parcel number Kericho/kapkimolwa/92 pending the hearing of this Application inter partes.
 - iii. That this honourable court be pleased to issue orders by way of a temporary injunction against the Respondent, her agents or any other person whatsoever from alienating, disposing, wasting



or in any other way intermeddling with land parcel number Kericho/kapkimolwa/92 pending the hearing of the Applicant's objection filed herein.

- iv. That costs be in the cause.
5. The above Application was based on the following grounds: -
 - i. That the Respondent intends to sell part of the deceased's land.
 - ii. That no agreement has been reached by the dependants on who is to administer the Estate.
 - iii. That the Applicant is likely to waste the deceased's property in total disregard to the other beneficiaries.
 - iv. That the Respondent's Application/Petition is being used as evidence of a succession cause and a basis to dispose of the property.
 - v. That the Respondent is not entitled to succeed the deceased in any event.
6. This Court issued interim Orders on 4th February 2016 granting a temporary injunction against the Respondent to the effect that she was prohibited from alienating, disposing off or wasting in any other way land parcel number Kericho/kapkimolwa/92 until the determination of the objection Application. A further Order was issued by the Court directing the parties to maintain status quo until the determination of the Objection.
7. In respect of the present Objection, the Respondent filed a Replying Affidavit dated 10th July 2016 where she stated that the Applicant failed to disclose that he had already secured a loan from ICDC using the title for parcel number Kericho/kapkimolwa/83 and defaulted on the same rendering the parcel vulnerable to sale by public auction. That the Objector had no capacity to claim Kericho/kapkimolwa/92 since the Respondent and her family were in occupancy since 1969 to date and that her son had already developed the land and erected a permanent house on it. Further, in 1985, the Applicant had also secured a loan from ICDC using the title in Kericho/kapkimolwa/92, was unable to pay and was assisted by the Respondent's late husband to repay.
8. The Court (Muya J) directed that the matter proceeds by way of oral evidence. The Objector testified and called two other witnesses, his sisters namely Esther Chepkoech and Mercy Langat to testify in support of his case. The Applicant testified that his father had left two parcels of land and that he had also filed a petition to commence succession. He testified that his father had given him the title for Kericho/kapkimolwa/83 to secure a loan and that his prayer was that the two parcels of land be shared equally amongst the beneficiaries.
9. PW2 was Esther Chepkoech and PW3 Mercy Langat the Objector's sisters who testified in support of his case. They stated in their testimonies that the names listed in the Chief's letter were the names of the children of their late brother, Samwel. PW2 stated during cross-examination that her brother John, the Objector herein had taken a loan from ICDC using their late father's title and that a fundraising had been held to offset the loan but that she did not know whether the loan was fully repaid and whether John had collected the title from ICDC. PW3 stated that she was not aware of any loan. It was both their testimonies that their father did not leave a will and that the land in question was being cultivated by the Objector, the Respondent and their other brother Joseph. They also testified that the parcel of land in contention formed part of the Estate of their late father and should be shared equally amongst the beneficiaries.
10. The Petitioner/Respondent Hellen Sosingot testified alongside five other witnesses including the Objector's only surviving brother. She testified that she filed succession proceedings in respect of the



Estate of her father-in-law Arap Sosingot, that her husband Samwel Kimabwa Sosingot was the first-born son and was now deceased and that they had been in occupation of parcel No. 92 since 1969 as allocated by her late father-in-law. She further testified that she has sold off one acre of 92 to a school as a playground and that her prayer was that 92 be allocated to her while 83 be allocated to her two brothers-in-law in line with the wishes of the late Arap Sosingot. In her further testimony, the Respondent stated that her son had built a permanent house, that she listed her children as the beneficiaries of parcel no. 92 and that she did not know it was unlawful to sell a deceased person's property without letters of administration. Lastly, she testified that she contributed Kshs. 45,000/= in support of the fundraising held towards assisting the Objector to offset the loan he had taken against parcel no. 83.

11. Joseph Sosingot (the Objector's brother), Alfred Kipkirui Langat (the Objector's cousin), Patrick Kipng'eno Laingong (the Objector's nephew) Philip Ngerechi and Pauline Mibei testified in support of the Respondent's case. They all testified that they were aware that the late Arap Sosingot owned the two parcels of land and that he had divided them amongst his three sons with the firstborn son being in occupation of parcel 92 measuring 4.6 acres while the second and last born sons were to occupy and share parcel 83 which measured 10.8 acre. Alfred and Patrick testified that they had participated in a fundraising to assist the Objector to offset a loan charged against parcel number 83 by ICDC and that the money was later handed over to his wife.

The Objector/Applicant's Submissions

12. The Applicant's submissions were dated and filed by P. Sang & Company Advocates on 6th July 2022. They submitted on three main issues inter alia: -
 - i. Whether the Petitioner concealed material facts at the filing of the Petition.
 - ii. Whether the Petitioner's actions of applying to administer the Estate of the late Sosingot Arap Maina were legally justified.
 - iii. Whether the Petitioner sought the consent of the persons in priority or equality before filing the Petition.
13. It was their submission that the Respondent concealed the names of the true dependants of the Estate of Arap Sosingot and the true assets. That she indicated the names of her children as the beneficiaries of the Estate, which she admitted in her Replying Affidavit. Learner counsel submitted that section 51 of the *Law of Succession Act* was couched in mandatory terms and cited the case of Eldoret High Court of Kenya P&A Case No. 369 of 2013 in *Re Estate of the Late David Rotich (deceased)* in support of this.
14. Secondly, Counsel for the Objector submitted that the Respondent/Petitioner failed to list all the assets and liabilities of the Estate contrary to section 51 of the *Law of Succession Act*. He cited the same case *Re Estate of the Late David Rotich (supra)*.
15. Counsel submitted that section 66 of the *Law of Succession Act* set out the order of preference for persons who may petition the court for the administration of the Estate of a deceased person. That in the present case, the deceased's spouse was not alive and therefore the legal right remained with his children and not his daughter-in-law. He cited the case of Migori High Court, Succession Cause No. 41 of 2016 in *Re Estate of Magangi Obuki (deceased)*.
16. Learned Counsel further submitted that the Respondent/Petitioner failed to obtain the consent of the other beneficiaries contrary to Rule 26 (1) & (2) of the *Probate and Administration Rules* and petitioned the Court in a secretive and clandestine manner. He relied on the case of Meru High Court Succession Cause No. 227 of 2004, *Basilio M'Mungania M'Mwithimbu & Another vs. Thomas Mburugu M'Mbwi* to this end.



17. Finally, Counsel for the Objector submitted that the costs of the suit should be borne by the Petitioner/ Respondent.

The Respondent's/Petitioner's Submissions

18. The Respondent/Petitioner's submissions are dated 20th July 2022 and filed on 21st July 2022 by J.K. Bosek & Company Advocates. Learned Counsel for the Respondent/Petitioner submitted that the deceased subdivided his property amongst his three sons in 1969 in the presence of the entire family and the villagers, some of whom testified during the hearing of the objection proceedings. He submitted on two issues being whether the Petitioners were beneficiaries of a gift and whether the Objector had a right of claim to a portion of the Estate already given as a gift.
19. Firstly, Counsel defined 'a gift' and submitted that section 42 of the *Law of Succession Act* required that the gift must be awarded during the lifetime of the deceased and settled for the person to whom it has been given and that the donor's intention must be clear in order to establish the passing of the gift to the donee. As such, an asset that was gifted and settled for a beneficiary during the lifetime of the deceased reduces or diminishes any entitlement to the net estate. That such an asset cannot form part of the Estate of a deceased person.
20. Secondly, Counsel for the Petitioner submitted that the Petitioner's late husband and father-in-law lived peacefully together on land parcel number Kericho/kapkimolwa/92 until their demise on 19th January 2000 and 30th July 2002 respectively. That it was the intention of the late Arap Maina to pass the said parcel to Samwel his firstborn son, which gift was established effectively for over 40 years even after the said Samwel had died.
21. The Petitioner through counsel also submitted that there was sufficient evidence to demonstrate that the Objector had used the title in land parcel number Kericho/kapkimolwa/83 to secure a loan from ICDC. That this was a demonstration that each son had been given their parcel and was free to utilize their share in totality. They cited the case of Succession Cause No 259 of 2014 *in the Matter of the Estate of the Late Hon. Simeon Kiptum Choge*.
22. The Petitioner further submit that during the lifetime of the late Arap Maina, he intentionally and deliberately distributed the Estate to his three sons by way of gift and that each party exclusively enjoyed possession and ownership. That each son took full charge of their respective shares of land and even carried out developments with some disposing off portions as the Petitioner had done and some charging theirs to secure financing as the Objector had done. Counsel submitted that any decisions made by the Court should consider innocent third parties whose interests were at stake.
23. It was Counsel's final submission that the wrangles relating to ownership only arose in 2015 and that the Objection was not made in good faith but was maliciously geared towards frustrating a helpless widow for selfish interests. That the Petitioner only instituted succession proceedings for a portion of the Estate which she knew belongs to her husband and not that which belongs to her father-in-law for the benefit of the other beneficiaries. They concluded that it was in the interests of justice that the objection be dismissed with costs to the Objector.

Issues for determination

24. From the pleadings, the oral testimonies of the witnesses, the proceedings and the parties' respective submissions, the issues for determination are:-
 - i. Whether land parcel Kericho/kapkimolwa/92 forms part of the Estate of the late Sosingot Arap Maina and is free for distribution.



- ii. Whether the Petitioner was entitled to bring the succession cause.
- iii. Whether the Petitioner disclosed all material facts.

Whether Land Parcel Number Kericho /kapkimolwa/92 forms part of the Estate of the late Sosingot Arap Maina and is free for distribution.

25. The main contention relates to the land parcel Kericho/kapkimolwa/92 which the Objector claims is still part of the Estate of his late father (the deceased) while the Petitioner claims that it was given to her late husband during the lifetime of the deceased. In her submissions, the Petitioner stated that the parcel was given to her late husband as a gift and therefore should not form part of the Estate of the deceased. It was for this reason that she proceeded to institute succession proceedings in respect of this parcel alone. This Court must therefore determine if the said parcel was a gift as argued by the Petitioner.
26. The *Law of Succession Act* provides for 2 kinds of gifts: Gifts in contemplation of death (donatio mortis causa) as provided for under section 31 of the *Law of Succession Act* and simple lifetime Gift (gift inter vivos). In *Re Estate of the Late Gedion Manthi Nzioka (Deceased)* [2015] eKLR, the court stated: -
- “In law, gifts are of two types. There are the gifts made between living persons (gifts inter vivos), and gifts made in contemplation of death (gifts mortis causa).”
27. While the Law of Succession does not provide for the definition of gift inter vivos as it does for gift in contemplation of death, gift inter vivos is contemplated under Section 42 of the *Law of Succession Act*. This section provides thus: -
- “42. Where-
- a. an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or
 - b. property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”
28. A gift inter vivos must meet specific requirements for it to be considered valid. These principles were outlined in *Halsbury's Laws of England* 4th Edition Volume 20 (1) at paragraph 67 as follows: -
- “Where a gift rests merely in promise, whether written or oral, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it, except in circumstances where the donor's subsequent conduct gives the donee a right to enforce the promise. A promise made by deed is however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do.”



29. The above principle connotes that a person intending to gift another must take the necessary steps to ensure that the gift is complete. In Odunga's Digest on Civil Case Law and Procedure Vol (III) Page 2417 at paragraph 5484 (d) e – 1, he explained the above as follows:-

“Generally speaking the moment in time when the gift takes effect is dependent on the nature of the gift; the statutory provisions governing the steps taken by the donor to effectuate the gift. (See in *Re Fry Deceased* {1946} CH 312 *Rose: and Trustee Company Ltd v Rose* {1949} CL 78 *Re: Rose v Inland Revenue Commissioners* {1952} CH 499 *Pennington v Wavel* {2002} 1WLR 2075 *Maledo v Beatrice Stround* {1922} AC 330 Equity will not come to the aid of volunteer and therefore, if a donee needs to get an order from a Court of equity in order to complete his title, he will not get it. If, on the other hand, the donee has under his control everything necessary to constitute his title completely without any further assistance from the donor, the donee needs no assistance from equity and the gift is complete. It is on that principle that in equity it held that a gift is complete as soon as the donor has done everything that the donor has to do that is to say as soon as the donee has within his control all those things necessary to enable him, complete his title. Where the donor has done all in his power according to the nature of the property given to vest the legal interest in the property in the donee, the gift will not fail even if something remains to be done by the donee or some third person. Likewise, a gift of registered land becomes effective upon execution and delivery of the transfer and cannot be recalled thereafter even though the donee has not yet been registered as a proprietor. (See Shell's Equity 29ED Page 122 paragraph 3)”

30. It was the evidence of the Petitioner's witnesses that during the lifetime of the deceased, he sub-divided his property amongst his sons and that he, the deceased, resided on parcel no. 92 with his eldest son Samwel while the other two sons equally occupied parcel 83. According to the testimony of Joseph Sosingot, the second-born son of the deceased, their father had given each of them their own parcels and that the parcel which he and the Objector occupied was larger than the one occupied by the Petitioner. He testified that they each had 5 acres and that he had no interest in the property occupied by the Petitioner because that was the portion allocated by their father to his older brother before his demise.
31. Nyamweya J in *Re Estate of Gedion Mantbi Nzioka (deceased)* [2015] eKLR held that for gift inter vivos to be valid and effective, they needed to have been granted by a deed or instrument in writing, or by delivery or by way of declaration of trust in writing and that they must be complete.
32. From the above, therefore, when claiming ownership of a deceased's property as a gift, these requirements must be met. Such property would automatically be netted off from the Estate that is set for distribution as was rightfully submitted by the Petitioner. (see *Lucia Karimi Mwamba vs. Chomba Mwamba* [2020] eKLR).
33. From the Record, I noted that Annexure JKS 2 was a Certificate of Official Search dated 23rd November 2015. It indicated that the land parcel number Kericho/kapkimolwa/92 was registered in the name of the deceased Sosingot Arap Maina. It was the evidence of the Petitioner that the deceased allocated the said parcel to her husband in 1969 and together with her family, they had been in occupation since then to the present time. I also noted that the deceased passed away in 2002. There is however no legal documentation or agreement as evidence on Record to demonstrate that the deceased took steps in that period towards having the land legally subdivided amongst his sons in the manner stated by the Petitioner/Respondent's witnesses.
34. What remains clear however, is that each of the sons had their own portions to cultivate, build and settle on but that no further steps were taken by the deceased to transfer the land to each son as may



have been intended. In *Lucia Karimi Mwamba vs. Chomba Mwamba* (supra) eKLR, Gitari J held that the deceased had not given his Estate to his sons during his lifetime and that though he had applied for subdivision, he had never transferred the land to them. Further, that although he had pointed out on the ground where each of the sons could occupy, the property still remained in his name and remained the free estate of the deceased available for distribution at intestacy.

35. Evidently, the intended gift inter vivos in respect of parcel No. 92 was never completed. There is however evidence inferred from the conduct of the deceased which leads this Court to conclude that the deceased intended to have the parcels distributed in the manner testified by the Petitioner's witnesses. This is demonstrated by the fact that he directed his two younger sons to live on parcel 83 while he allowed the Petitioner and her late husband to occupy parcel 92 together with him. During his lifetime, no squabbles arose in respect to this arrangement which makes it clear that the parties were in agreement with the manner in which the late Arap Sosingot had settled his sons.
36. In line with the principles outlined in Halsbury's Laws of England cited earlier, it is already established that a gift will be incomplete and imperfect unless the donor's subsequent conduct gives the donee a right to enforce it. As such, this Court agrees with the assertions by the Petitioner that her father-in-law intended parcel No. 92 for her husband and her family. However, the fact that they each occupied and developed different parcels or portions of the deceased's parcels was not enough evidence that the said parcels constituted a gift inter vivos.
37. Musyoka J in the case of *Re Estate of Chesimbili Sindani (Deceased)* [2021] eKLR stated thus:-
- “...the principle that emerges is that any gift inter vivos should be backed by some memorandum in writing, and the gift would be complete once title to the subject property is transferred to the name of the beneficiary of the gift. Difficulties arise where transfer is not effected to the beneficiaries before the death of the deceased, in which case, such property would remain the free property of the deceased, available for distribution at confirmation, the argument being that such gift was founded on a mere promise which the deceased did not carry through prior to his death. Where some preliminary steps were taken towards effectuating his promise, so that all what remained after the death of the deceased was mere registration of the property in the name of the beneficiary, it would be presumed that that the deceased intended to make a gift inter vivos. The mere fact of being shown a piece of land and given permission to occupy and use it, without more, is not adequate proof for a gift inter vivos. The deceased, as registered proprietor of the land in question, would have the right to licence a person to occupy the land and use it. A child who has been shown a piece of land to build on and to till, is not in the shoes of an owner, but a mere licensee. The death of the deceased would not upgrade the licence to ownership, if anything the death of the proprietor could mean that the license comes to an end, and the licensee continues to occupy and work the land at the mercy of the administrator.”
38. In *Re Estate of Phylis Muthoni M'Inoti (deceased)*, (2019) eKLR, Gikonyo J held that a party claiming to be the recipient of a gift inter vivos had to demonstrate to the court that the conduct of the donor was intended to grant them the right to enforce the gift. This would be by execution of some instruments that would pass the property onto the donee. He further found that there were neither consents nor any evidence adduced to demonstrate that the subdivision of land by the deceased was intended for the benefit of those who claimed gift inter vivos.



39. Similar to this, *Re Estate of Chesimbili Sindani* (supra) Musyoka J held that:-

“...There was no gift inter vivos to any of the children of the deceased, and, therefore, the entire estate of the deceased comprises of free property available for distribution by the court in these confirmation proceedings. I am persuaded that the deceased had only licensed the sons to utilize certain assets, and as a result they had put up structures on those assets, any distribution of the assets ought to take into account those assets, and ensure that the particular sons are allocated shares in the parcels of land where they have put up structures.” (emphasis added)

40. It follows then that land parcel number Kericho/kapkimolwa/92, having never been transferred to the firstborn son, was not his property (Samwel’s) and therefore could not form part of his Estate for administration and distribution by his wife upon his death. This parcel remained the property of the deceased Sosingot Arap Maina. In the absence of any documentation to prove that it was intended to be a gift for the firstborn son, it is free property available for distribution alongside the other assets of the Estate of the late Arap Maina.

41. Having settled the above, it is my finding that despite the existence of a clear mode of occupation amongst the families of the three sons and their subsequent developments on the various portions that they occupied, none of the parcels of land were passed onto them as a gift inter vivos and therefore, none of them legally owned their respective parcels. The intentions of their father the deceased and their respective developments on their parcels can only be taken into account at the time of distribution once the succession cause is properly filed and all the necessary legal steps taken.

ii. Whether the Petitioner was entitled to bring the succession cause.

42. Section 66 of the *Law of Succession Act* enlists the persons who may apply for Succession proceedings. It provides thus: -

66. Preference to be given to certain persons to administer where deceased died intestate

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference -

- a. surviving spouse or spouses, with or without association of other beneficiaries;
- b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- c. the Public Trustee; and
- d. creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

43. Part V provides for the manner in which an Estate is to be distributed at intestacy and includes the spouse and children of the deceased as the legal beneficiaries or parents, siblings, half-siblings or other relatives in case of a deceased who is not survived by a spouse or children.



44. This section lists the order of preference with the surviving spouse and children of the deceased being given preference. In the present case, the Petitioner herein was the daughter-in-law of the deceased Arap Sosingot. Therefore, she was not the first in priority to take out the letters of administration. She could only do so upon citation or agreement by those in priority.
45. It is evident that the Petitioner only applied for grant of letters of administration in respect of land parcel No. Kericho/kapkimolwa/92 which was the parcel she believed was bequeathed to her late husband by the late Arap Sosingot. Clearly, the Petitioner laboured under the mistaken belief that she was dealing with the sole Estate of her husband and no wonder she only listed herself and her children as the sole beneficiaries of the said parcel. However, as already established, this parcel had not yet passed from her father-in-law to her husband and she was therefore barred from taking out letters of administration in respect of the said property which was still part of the late Arap Sosingot's Estate.

iii. Whether the Petitioner disclosed all material facts.

46. I have examined the Affidavit in support of the Petitioner's Application for grant of letters of administration. Under the list of dependants, the Petitioner enlisted herself and all her children and listed parcel No. 92 as the only asset. These facts also became apparent during the trial when the Petitioner herself confirmed that she had only listed her children as the dependants and indicated the said parcel as the only asset because that was where her interests lay.
47. Section 51 of the [Law of Succession Act](#) gives guidance for the Application of Grant Letters of Administration. It states: -

51. Application for grant

1. Every application for a grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner.
2. An application shall include information as to -
 - a. the full names of the deceased;
 - b. the date and place of his death;
 - c. his last known place of residence;
 - d. the relationship (if any) of the applicant to the deceased;
 - e. whether or not the deceased left a valid will;
 - f. the present addresses of any executors appointed by any such valid will;
 - g. in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;
 - h. a full inventory of all the assets and liabilities of the deceased; and
 - i. such other matters as may be prescribed.



48. This section is read together with Rule 7(1) (e) (i) of the *Probate and Administration Rules* which states as follows:-

“...where an applicant seeks a grant of representation to the estate of a deceased person ... the application shall be by a petition... containing... the following particulars-

- (e) in cases of total or partial intestacy –
 - (i) the names, addresses, marital state and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child, like particulars of such person or persons who would succeed in accordance with Section 39(1) of the Act.”

49. In *Re Estate of Mbai Wainaina (Deceased)* [2015] eKLR, Musyoka J held thus: -

Rule 7(1)(e)(i) of the Rules is in conflict with Section 51 (2) (g) of the Act, which envisages that in cases of intestacy, the application for grant of letters of administration intestate should disclose all the survivors of the deceased regardless of whether he or she had a surviving spouse or child.....An applicant for grant of letters of administration intestate ought to comply wholly with Section 51 (2) (g) of the Act.

50. It follows then that an Application for Grant of Letters of Administration which is made in the prescribed form must include all the surviving beneficiaries of a deceased person as well as enlist all their assets and liabilities. In the present case, the Petitioner sought for Grant of Letters of Administration and only listed herself and her children as the beneficiaries. Further, she only listed land parcel No. Kericho/kapkimolwa/92 as the only asset.

51. It was clear that the Petitioner failed to include the actual beneficiaries of the Estate of the late Arap Sosigot and all the assets of the deceased’s Estate because she was under the belief that land parcel No. 92 was the only property that she was entitled to from the Estate of her father-in-law and could therefore take out succession proceedings in respect thereof. However, the legal process is such that the entire Estate of a deceased must be identified, and all beneficiaries listed at the point of taking out Grant of Letters of Administration. Those entitled to specific portions cannot, therefore, divide individual property and proceed to subject those individual assets to succession to the exclusion of other property or other beneficiaries as was the case herein.

52. As such, this Court finds that there was material non-disclosure by the Petitioner in terms of who were the actual beneficiaries of the Estate of the deceased. Further, it is my finding that there were other assets that ought to have been listed in accordance with section 51 (2) (h) and any possible liabilities and this ought to have been done by the persons listed under section 51 (2) (g).

53. While this Court appreciates that the Petitioner had occupied the said parcel with her late husband, the deceased’s first-born son, since 1969 and that together with her sons had since carried out significant development on it, such consideration will only be made at the point of distribution.

54. I make the following findings:

- i. That the Objection dated 21st December 2015 is merited and is hereby allowed.
- ii. That Kericho/kapkimolwa/92 forms part of the Estate of the late Sosigot Arap Maina and is subject to distribution alongside the other assets forming his Estate taking into consideration the intentions of the deceased in settling his three sons and any developments thereon.



55. Further, I hereby direct and order as follows:-

1. That the two surviving sons of the deceased alongside the Petitioner on behalf of her husband, the deceased's firstborn son are hereby directed to commence Succession proceedings in respect of the Estate of the deceased.
2. All the parcels of land alongside other assets should be of the deceased be identified and listed for distribution in accordance with the *Law of Succession Act*.
3. Pending issuance of the Grant of Letters of Administration, there shall be no intermeddling by way of disposal of any part of the Estate.
4. Status quo shall be maintained pending conclusion of the Succession cause and further orders of the Court.

56. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 8TH DAY OF MARCH, 2023.

.....

R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Mr. Mugumya for the Objector, N/A for Mr. Bosek for the Petitioners and Susan (Court Assistant).

