



In re Estate of Komen Cherutich Misoi (Deceased) (Succession Cause 191 of 2011) [2023] KEHC 23182 (KLR) (6 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23182 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 191 OF 2011
JRA WANANDA, J
OCTOBER 6, 2023**

BETWEEN

**SUSAN JEPKORIR KOMEN 1ST OBJECTOR
BETH JEPKOSGEI KOMEN 2ND OBJECTOR
ZIPPORAH JEPKORIR KOMEN 3RD OBJECTOR**

AND

**RICHARD KIBIWOTT KOMEN 1ST PETITIONER
JULIUS KIPTARUS KOMEN 2ND PETITIONER**

RULING

1. This Cause relates to the estate of one Komen Cherutich Misoi (hereinafter referred to as “the deceased”) who died intestate on 6/07/2008.
2. Before Court for determination is the Application dated 30/05/2022 filed by the Objectors and brought by way of Chamber Summons. It seeks the following Orders:
 - i. [Spent]
 - ii. [Spent]
 - iii. That this Honourable Court do order the rectification of the Register in respect of all these properties to reflect the name of the deceased, which title was fraudulently and illegally changed into the names of:
 - a) Uasin Gishu/Kaptagat/162John K. Komen, Rael Ngeno, Richard Kibiwott, Wilfred Kipkoech Komen
 - b) Kapkoi/Forest/135Rael Ngeno, Richard Kibiwott Komen



- c) Irong/Kitany/315.....Julius Kiptarus Komen
- iv. That the grant of letters of administration to the estate of Komen Cherutich Misoi, deceased, made to the Respondents/Petitioners herein on 12th November 2012 and subsequently confirmed on 28th September 2018 be revoked and/or annulled on the grounds:
- a. That the grant was obtained fraudulently by the Petitioners/Respondents who made false statements that they were acting on behalf of the entire family of the deceased in respect of the said estate and in concealing from the Court the fact that they had no such instructions
 - b. That the Petitioners have not administered the estate diligently
 - c. That the proceedings to obtain the grant and its confirmation were defective in substance in view of what is set out in (a) above and also by failing to meet the mandatory requirements regarding the Petition as laid down in the *Law of Succession Act* and the *Probate and Administration Rules*.
 - d. That the grant was obtained without informing all the beneficiaries
 - e. That the consent to administration was not signed by four of the deceased's children
- v. That the Petitioners/Respondents be ordered to account all estate property and more particularly Motor Vehicle Reg. No. KLZ 260, Shares at Standard Bank, 55 cows, money in A/C No. [particulars withheld] at Standard Bank and all other estate properties, compensation funds from Kenya Rural Boards Authority/National Lands Commission Kshs 761,050.70/=.
- vi. That the Eldoret Chief Magistrates Succession Cause No. 255 of 2017 be consolidated with this file for reconciliation and final distribution.
3. The Application is filed through Messrs Chebii & Co. Advocates and is stated to be brought under Section 76 of the *Law of Succession Act* Cap. 160 Laws of Kenya and Rule 44, 49 and 73 of the *Probate and Administration Rules* and all enabling provisions of the law.
 4. The Application is supported by the Affidavit sworn by the 2nd Objector-Applicant, Beth Jepkosgei Komen in which she has deponed that she is a beneficiary of the estate, the deceased was her father and who was survived by John Kimutai Komen, Susan Jepkorir Komen, Beth Jepkosgei Komen, Zipporah Jeruto Komen, Moses Kiplagat Komen, Richard Kibiwott Komen, Wilfred Kipkoech Komen, Julius Kiptarus Komen and Valentine Jepchichir Komen (deceased).
 5. The 2nd Objector deponed further that the deceased left the following properties; Uasin Gishu/Kaptagat/162, Kakoi/Forest/135, Irong/Kitany/315, motor vehicle Registration No. KLZ 260, Shares at Standard Chartered, 55 cows, money at Standard Chartered Bank and unregistered plot at Kapkoi.
 6. She further deponed that on 25/07/2011 the Petitioners, Richard Kibiwott Komen and Julius Kiptarus Komen who are her brothers, filed a Petition in which they sought grant of Letters of Administration of the estate without the consent of all the beneficiaries, that the Petitioners also swore an Affidavit in support of the Petition in which they averred that they were acting on behalf of the entire family, which was not true, in the Affidavit the Petitioners fraudulently informed the Court that the John Komen, Moses Komen, Richard Komen, Wilfred Komen and Julius Komen were the only beneficiaries of the estate, the Petitioners excluded the other beneficiaries from getting their shares in the estate to wit all the four daughters, Susan Jepkorir, Beth Jepkosgei Komen, Zipporah and Valentine Jepchichir Komen.



7. Finally, the 2nd Objector deponed that the Respondents should be called upon to account for the false information, that the grant be annulled, all estate property be accounted for and the estate be shared out fairly and equitably. She added that the Petitioners tricked her into filing Eldoret Chief Magistrates Court Succession Cause No. 255 of 2017 when this Cause was proceeding and thus the two Causes should be consolidated. She then exhibited a copy of a letter dated 1/04/2016 from the local Chief listing the nine (9) survivors and also a copy of the Certificate of death for the deceased.

Petitioners' Response

8. The Application is opposed by the Petitioners vide the Replying Affidavit filed in Court on 28/07/2022. The same is sworn by the 1st Petitioner - Richard Kibiwot Komen - and filed through Messrs J.K. Kiplagat & Co. Advocates. In the Affidavit, the 1st Petitioner deponed that they filed this Cause with full consent from the entire family, surprisingly the Objectors engaged another Advocate and secretly filed Succession Cause No. 255 of 2017 at the Eldoret Chief Magistrates Court with full knowledge that this Cause was proceeding, upon realizing the foregoing, the Petitioners notified the Objectors' Advocates, the Objectors adamantly proceeded and lied on oath that the title deed is lost yet they had full knowledge that the same was in possession of the Petitioners, all efforts at trying to convince the Objectors to accede to a family meeting over the same was in vain, the Objectors are all married and comfortably living with their families, that Eldoret Chief Magistrates Succession Cause No. 255 of 2017 be consolidated with this Cause for final reconciliation and distribution, the Objectors by themselves fraudulently filed the other Succession Cause and that nobody shall be prejudiced if the Application is disallowed.
9. He then exhibited copies of the Grants and the Certificates of Confirmation issued in both this Cause and also in the Magistrates Court Cause, letter dated 16/03/2021 from the Petitioner's Advocates bringing to the Objector's Advocates the existence of two parallel grants issued by the different Courts and copies of minutes of alleged family meetings convened to resolve the said matters.

Hearing of the Application

10. By the agreement of the parties, the Application was canvassed by way of written Submissions. The Objectors filed their Submissions on 17/10/2022 while the Petitioners filed on 2/12/2022.

Objectors' Submissions.

11. Counsel for the Objectors submitted that the Grant of Letters of Administration was issued on 12/11/2012 and the same was confirmed on 2/09/2018. He added that although the Petitioners allege that they filed this Cause with the consent of the Objectors, the alleged consent is not in the file and none has been attached to the Petitioners' Affidavit, that the Petitioners are not telling the truth, they falsely deponed that the only dependents of the deceased were the five that they listed, this was a lie, they left out their sisters, the Chief's letter dated 4/03/2009 mentioned the sons only, it left out the daughters, this was designed to mislead the Court to act in the absence of full material facts, under these circumstances it is only fair that the Grant be revoked and new Administrators be appointed to represent the daughters and the sons, thereafter a fresh understanding on distribution should issue.
12. Counsel added that it is not in dispute that the Objectors and the Petitioners are brothers and sisters, what is in dispute is the mode of distribution of the estate, this has arisen as a result of the false and fraudulent Affidavits sworn by the Objectors and the surreptitious manner in which they processed these proceedings, the Petitioners have discriminated against the daughters of the deceased in the process of distributing the estate, this is not allowed under the law. He cited the Court of Appeal case of Eldoret Civil Appeal No. 66 of 2002 – *Mary Rono v Jane Rono & Another* [2002] eKLR and



submitted that the Petitioners acted unfairly and discriminated against their sisters who are children of the deceased, the Grant should be revoked, a more equitable distribution should be embraced which should distribute the estate fairly. He then proposed that the estate be distributed as follows:

Irong/Kitany/315 measuring 1.8 Ha	1.8 Ha whole	Julius Komen
Kapkoi/Forest/135 measuring 4 Ha	2 Ha	Richard Komen
	1 Ha	Clarence Jebichii and Michelle Cheruto, children of the late Moses Kiplagat Komen
Uasin Gishu/Kaptagat Scheme/162 measuring 30 acres	5 Acres	John Komen
	5 Acres	Susan Komen
	5 Acres	Beth Komen
	5 Acres	Zipporah Komen
	5 Acres	Wilfred Komen
2 ½ Acres	Michelle Chebet and Halima Kipkoech the children of the late Valentine Jepchichir Komen to be held in trust by the Administrators till maturity	
Funds from the Kenya Roads Board	Kshs 761,050.70	To be shared equally among John Komen, Susan Komen, Beth Komen, Zipporah Komen, Wilfred Komen and Valentine Komen's children

13. Counsel added that the Petitioners should be called upon to account for the deceased's 55 cows and other estate assets for the purposes of distribution.

Petitioners' Submissions

14. On his part, the Petitioners' Counsel submitted that the documents filed in Court prove that the Objectors are recognized as beneficiaries of the estate, this Succession Cause was filed lawfully with full consent of the Objectors who had no objection at all, the Application before Court comes as an afterthought in that there was no complaint up to confirmation stage, the change of mind by the Objectors can only be dealt with fully during hearing by way of viva voce evidence for truth and justice to prevail thereafter, the Court is empowered to give proper directions in such an Application where the Objectors have done an illegality by unprocedurally filing another Succession Cause in respect to



the same estate, they have come to Court with unclean hands and with full knowledge that they are all happily married.

15. On the issue of the parallel Succession Cause filed at the Chief Magistrates Court in 2017 by the Objectors, Counsel submitted that the same was filed with full knowledge of the present proceedings filed in 2011, all efforts to convince the Objectors not to do an illegality were in vain, the Court should not entertain such, the Confirmation of Grant issued by this Court on 28/09/2018 is proper and the one issued later in the lower Court on 16/04/2019 is null and void, this Court has jurisdiction to hear and determine this Cause on merit vide viva voce evidence compared with the Chief Magistrates Court, the present Application is filed in bad faith to delay justice, the Objectors have failed to prove the existence of properties allegedly omitted by the Petitioners.
16. Without elaborating on what exact point he wished to put across, Counsel cited Section 26(1) and 24 of the Land Registration Act which codify the principle of indefeasibility of a certificate of title save for instances of fraud or misrepresentation or where the title has been acquired illegally, unprocedurally or through a corrupt scheme. Finally, Counsel submitted that the Application lacks merit and ought not to be entertained since it shall set a bad precedent in law

Analysis of Issues for Determination

17. Upon examination of the Application, the pleadings filed, including the Affidavits and respective parties' Submissions, I find that the issue that arise for determination to be as follows:
 - i. Whether the Grant issued herein and subsequently confirmed should be revoked.
 - ii. Whether Eldoret Chief Magistrates Succession Cause No. 255 of 2017 should be consolidated with this Cause.
18. I now proceed to analyse and determine the said issues.

i. Whether the Grant issued herein and subsequently confirmed should be revoked.

19. Section 76 of the Law of Succession Act provides as follows:

“Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any Interested Party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or



(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.”

20. Section 76 was expounded upon by Hon. Justice W. Musyoka in the case of *Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where he stated as follows:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

21. The Objectors have invited this Court to revoke the Grant of Letters of Administration issued herein. The grounds alleged are that the Petitioners fraudulently obtained the Grant because the Petitioners falsely misled the Court that they were acting on behalf of the family and that all members of the family had consented to the Petitioners applying for the Grant and the mode of distribution proposed. According to the Objectors therefore, the proceedings to obtain the Grant and its confirmation were defective in substance.

22. It is not disputed that the deceased had 9 children, comprising of 5 sons and 4 daughters. 1 son and 1 daughter are since deceased. I have looked at the Petition leading to issuance of the Grant, together with the Affidavits filed therewith and note that the Petitioners listed only 5 persons as the survivors/beneficiaries. This was also the position advanced in the letter dated 4/03/2009 from the Chief which was relied upon by the Court. Coincidentally, all the 5 declared persons were the 5 sons, to the exclusion of all the 4 daughters. The beneficiaries named were John Komen, Moses Komen (deceased and therefore represented by his widow, Rael Ngeno), Wilfred Komen and Julius Komen.

23. I also note that at the time of confirmation of the Grant, 3 properties listed as comprising the estate were then distributed among the said 5 declared heirs. The properties are Uasin Gishu/162, Kapkoi/



Forest/135 and Irong/Kitany/315. There was also mention, in the Petition, of a bank account held at Standard Chartered Bank Limited but the same does not appear in the subsequent Certificate of Confirmation.

24. From the Objectors' Submissions and their proposed mode of re-distribution, I gather that the late daughter, Valentine Jepchichir Komen, also left behind dependents. As already aforesaid, all the daughters were excluded from the inheritance and thus the children of Valentine Jepchichir Komen were also not factored.
25. The Petitioners' argument is that they were excluded from inheritance simply because they are daughters. The implication is therefore that they were discriminated on account of their gender. I have looked at the record and confirmed that indeed, there are no consents in the Court file from the daughters and neither were they present when the Grant was confirmed. This is not surprising since they were never even mentioned as survivors or beneficiaries in the first place.
26. The Petitioners have offered no express explanation as to why they excluded the daughters. All they have stated is that the daughters were aware of the Succession Proceedings and never objected. They have therefore neither confirmed nor denied the allegation that they excluded the daughters on account of their gender. In the circumstances, the Court cannot speculate or assume that the exclusion of the daughters was on the basis of their gender. However, I note that at paragraph 8 of their Replying Affidavit, the Petitioners deponed that "the Applicants are all married and comfortably living with their families". If therefore perchance they mean that the Objectors should not inherit because they are married, then I draw the Petitioners' attention to Hon. Justice A.C. Mrima's self-explanatory observations that he made in the case of *Thomas Tito Nyachawo v Judith Akinyi Ndege* [2016] eKLR as follows:

" 11. In this cause the Petitioner holds that the Protestor, as a daughter to the deceased, is not entitled to inherit the property which comprises of the estate of the deceased on the ground that she is married. But upholding such a position will be tantamount to discrimination of the Protestor which in itself will be contrary to Article 27 of *the Constitution* which prohibits any form of discrimination based on race, sex, marital status or culture. Indeed Article 27(3) of *the Constitution* specifically provides that 'women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres'.

12. Section 29(a) of the *Act* in recognizing 'children' of the deceased as dependants does not classify those children as sons, daughters, married or unmarried. However, that distinction happens to be in the Luo Customary Law on inheritance. To that extent therefore the Luo Customary Law on inheritance discriminates between the male and female children of a deceased person and as such it is a retrogressive custom which cannot supersede *the Constitution* and the law. This Court hence concurs with the holding of Makhandia, J. (as he then was) in *In Re Estate of Solomon Ngatia Kariuki (deceased)* (2008) eKLR at page 8 where he stated that:

'The *Law of Succession Act* does not discriminate between the female and male children or married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased's estate. In seeking to disinherit the protestor under the guise that



the protestor was married, her father, brothers and sisters were purportedly invoking a facet of an old Kikuyu Customary Law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father's estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father's inheritance because they are likely to enjoy inheritance of their husband's side of the family.'

13. I am in further agreement with Kimaru, J. when His Lordship addressed the alleged justification under the customary laws as to why married daughters ought not to inherit from their parents in the case of *Peter Karumbi Keingati & 4 others vs. Dr. Ann Nyokabi Nguthi & 3 others* (2014) eKLR in stating as follows:

'As regards to the argument by the Applicants that married daughters ought not to inherit their parent's property because to do so would amount to discrimination to the sons on account on the fact that the married daughters would also inherit property from their parent's in-laws, this court takes the view that the argument as advanced is disingenuous. This is because if a married daughter would benefit by inheriting property from her parents, her husband too would benefit from such inheritance. In a similar fashion, sons who are married, would benefit from property that their wives would have inherited from their parents. In the circumstances therefore, there would be no discrimination. In any event, the decision by a daughter or a son to get married has no bearing at all to whether or not such son or daughter is entitled to inherit the property that comprise the estate of their deceased parents. The issues that courts would grapple with during distribution are the issues anticipated by Section 28 of the *Law of Succession Act*. This court is of the view that the time has come for the ghost of retrogressive customary practices that discriminate against women, which have a tendency of once in a while rearing its ugly head to be forever buried. The ghost has long cast its shadow in our legal system despite of numerous court decisions that have declared such customs to be backward and repugnant to justice and morality. With the promulgation of *the Constitution* 2010, particularly Article 27 that prohibits discrimination of persons on the basis of their sex, marital status or social status, among others, the time has now come for those discriminative cultural practices against women be buried in history.

27. The foregoing quote correctly captures the position of the law in Kenya as regards daughters' equal rights with sons insofar as inheritance of their parents' estate is concerned. Whether or not one agrees with that position is irrelevant. As long as the law stipulates that position, the Courts must religiously apply it. The Petitioners must therefore disabuse themselves of the archaic and outdated view that their sisters are not entitled to inherit simply because the sisters are married.
28. I therefore find that in failing to disclose the true, full and accurate list of the survivors and/or beneficiaries to the Court, the grant issued to the Petitioners was obtained by the making of a false statement and/or by the concealment from the Court of something material to the case and thus rendering the Grant liable to revocation.
29. I am however alive to the contents of the minutes of the two alleged family meetings chaired by clan elders and which minutes were exhibited in the Petitioner's Replying Affidavit. The two meetings were held two years apart, the 1st meeting in 2008 and the 2nd one in 2019 and were convened to



discuss various matters arising in the estate including distribution of the assets. The minutes indicate that the deceased had, before his death, verbally distributed his estate among only the sons, to the exclusion of the daughters and that this distribution was fully adopted. While no objection or challenge is recorded to have been received in the 1st meeting from any of the daughters over the distribution, some objections are recorded to have been received in the 2nd meeting from the 2nd Objector. I also note that the Objectors have not challenged the authenticity of the minutes. The minutes may therefore become relevant if the Court determines that the estate be re-distributed and that the daughters be given a share.

30. Regarding the issue of the absence of consents signed by the Objectors acceding to the filing of the Petition, I have already found that there was none. On this point, I associate myself fully with the holding of Hon. Lady Justice Njuguna which she made in the case of *In re Estate of Eston Nyaga Ndirangu (Deceased)* [2021] eKLR as follows:

- “ 18. . Rule 7 of the *Probate and Administration Rules* 1980 provides that application for grant of representation in relation to an estate of a deceased person to whose estate no grant or no grant other than one under section 49 or a limited grant under section 67 of the Act has been made, the application shall be by petition supported by an affidavit. The said affidavit must contain amongst other details, the names, addresses, marital status 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* {Rule 17(e)(i)}.
19. Rule 26 provides that letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant. Further that in an application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.
20. The effect of the above provisions is that where a person is applying for a grant of letters of administration intestate, he must get consent from persons of equal or lower priority than him. The 1st and 2nd respondents having been brothers to the applicant and other beneficiaries, it therefore means that all the remaining beneficiaries ought to have consented to them being given the grant of letters of administration in relation to the estate herein. I have perused the court record and I note that consent to the making of a grant of letters of administration intestate which was filed contemporaneously with the petition was only made by two beneficiaries (being Joyce Ngithi Nyaga and Julius Kinyu) and wherein they were giving the consent to one John Ndii Nyaga, Kennedy Nyaga and Lucy Wanjiku Nyaga (3rd respondent). There is no consent as to the other brothers and sisters having consented to the grant being given to the 1st and 2nd respondent. It is my view therefore that the said grant was obtained pursuant to proceedings which were defective in substance. The respondents ought to have obtained consent from all the other brothers and sisters. In *Antony Karukenya Njeru –vs- Thomas M. Njeru* [2014] eKLR, a grant of letters of administration was revoked as persons with equal priority did not consent to the petitioners therein applying for grant of letters of



administration. (See also In the Matter of the Estate of Muriranja Mboro Njiri, Nairobi H.C. Succ. Cause No. 890 of 2003).

21. It is my considered view therefore that the failure by the respondents more so the 1st and 2nd respondents to obtain the consents from the other siblings makes the proceedings of obtaining the same to be defective in substance and the said grant ought to be revoked and a new grant issued to the applicants.”
31. It is therefore clear that Rule 26(1)(2) of the *Probate & Administration Rules* applies where representation is applied for by a person with equal or lesser right to others. In such case, the Petitioner is expected to notify these other persons of the filing of the Petition. These other persons would then be at liberty to participate in the proceedings or renounce their rights to administration or sign consents in Forms 38 or 39 acceding to the filing of the Petition. Where such consent or renunciation has not been filed, the Petitioner is required to file an Affidavit confirming that he duly notified these other persons.
32. Having determined that the Petitioners did not supply the Court with consents from the Objectors yet the latter had equal priority to apply for the Grant, I also find that the proceedings to obtain the grant were defective in substance.
33. Having made the above findings, the question now is whether the transgressions committed by the Petitioners in the process leading to issuance of the Grant are by themselves sufficient to justify revocation of the Grant and order for re-distribution of the estate. This question arises because Section 76 of the *Law of Succession Act* is discretionary in that it gives the Court discretion whether to revoke or annul a grant. It is not therefore the position that any breach or violation must always or automatically lead to revocation of a Grant.
34. I would have proceeded to forthwith determine this issue save that there are pertinent matters that the parties have not addressed and which may be material to a conclusive determination of the matter. This may be perhaps because the parties opted to canvass the matter by way of Affidavits rather than by viva voce evidence. Some of the matters left unaddressed include the extent to which the estate has been distributed to date, whether for instance, the parcels of land have been transferred and if so, to whom, disclosure or explanation by the Petitioners on whether the other properties alleged by the Objectors to have been part of the estate exist and if so, the fate and current status thereof.
35. The Objectors have also in their Submissions presented their proposed mode of re-distribution should the Court eventually decide to re-distribute the estate. On their part, the Petitioners have not presented any such mode of re-distribution.
36. I also observe that among the three Objectors, only the 2nd Objector seems to be actively participating in this matter. Even in the 2nd family meeting referred to herein earlier, only the 2nd Objector is recorded to have raised an objection against the exclusion of the daughters from inheritance. In fact, the 1st Objector is indicated to have dissociated herself from the objections. Even the Affidavit filed in support of the present Application is sworn only by the 2nd Objector and she does not state that she is swearing the Affidavit on behalf of the 1st and 3rd Objectors. It is therefore not clear whether the 1st and 3rd Objectors are really part of or support this Application.
37. The Grant was confirmed on 5/09/2018, about 5 years ago. Considering the time that has lapsed since then, I find it necessary to give the parties an opportunity to address the Court, via further Affidavits, on the said matters before I makes conclusive and final determinations. Once the Court has heard the parties on the said matters, I will also determine the issue of whether or not Eldoret Chief Magistrate’s Court Succession Cause No. 255 of 2017 should be consolidated with this High Court Succession Cause.



Orders

38. In light of the above findings, at this stage, and before the Court makes a final determination on the Chamber Summons dated 30/05/2022, I issue or make the following interim orders and/or directions:
- i. The Petitioners shall, within 30 days from the date herein, file in Court and serve an Affidavit clearly detailing the manner, nature and extent to which the estate has been distributed so far, complete with copies of supporting documentation, including any current land ownership or title documents if, and where, the estate properties have been transferred.
 - ii. The Affidavit referred to above, to be filed by the Petitioners, shall also include disclosure and clear explanation on whether the properties alleged and/or referred to by the Objectors in the Chamber Summons, namely, motor vehicle registration number KLZ 260, shares at Standard Chartered Bank Limited, funds held in an account at the same bank, 55 cows, compensation funds from Kenya Rural Boards Authority/National Lands Commission at Kshs 761,050.70 and a plot at Kapkoi Centre exist or existed and if so, the fate and current status thereof. The same applies to any other or further estate property that exists or existed but was not included or captured in the Certificate of Confirmation of Grant.
 - iii. In the Affidavit referred to above, the Petitioners shall be at liberty, should they find it necessary, to also respond to the mode of re-distribution of the estate proposed by the Objectors in their Submissions filed herein, and/or present their own.
 - iv. In the Affidavit, the Petitioners shall also exhibit a full and complete copy of the Certificate of Confirmation of Grant issued in Eldoret Chief Magistrates' Court Succession Cause No. 255 of 2017 since the one they exhibited is incomplete.
 - v. Upon being served with the above Affidavit, the Objectors shall be at liberty, within 21 days after such service, to file and serve a response Affidavit but limited to the matters stated above.
 - vi. The 1st and 3rd Objectors - Susan Jepkorir Komen and Zipporah Jeruto Komen, respectively - shall also within the same period file their own Affidavit(s) confirming whether or not they are part of or whether they are in support of the Objection filed herein.
 - vii. All the Affidavits referred to above shall be strictly limited to the matters stated above.
 - viii. At the time of reading this Ruling, the Court shall fix a date for Mention for confirmation of compliance with the above orders/directions and for issuing of further directions.
 - ix. In the meantime, the status quo prevailing is to be maintained.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 6TH DAY OF OCTOBER 2023

WANANDA J. R. ANURO

JUDGE

