



In re Estate of Komen Cherutich Misoi (Deceased) (Succession Cause 191 of 2011) [2024] KEHC 13477 (KLR) (6 November 2024) (Ruling)

Neutral citation: [2024] KEHC 13477 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 191 OF 2011
JRA WANANDA, J
NOVEMBER 6, 2024**

IN THE MATTER OF THE ESTATE OF KOMEN CHERUTICH MISOI (DECEASED)

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 Ruling is a follow-up to the earlier one that I delivered herein on 6/10/2023.
2. This Cause relates to the estate of one Komen Cherutich Misoi (deceased) who died intestate on 6/07/2008 and who, during his lifetime, had 5 sons and 4 daughters. It appears that one son, Moses Kiplagat Komen and one daughter, Valentine Jepchichir Komen, predeceased the deceased. On 25/06/2011, the Petitioners, in their capacity as his two sons, applied to be issued with a Grant of Letters of Administration over the estate, which Grant was then given to them by the Court on 12/11/2012. The same was subsequently confirmed on 5/09/2018.
3. The curious fact is that none of the 4 daughters was mentioned at all in the Petition as children of the deceased and there was also no indication that they were involved in or notified of the filing of this Succession Cause. One of the sons, Moses Kiplagat Komen, having also died, his wife, Rael Ngeno, was the one listed, strangely, not as a “daughter-in-law” as she was, but as “a daughter” of the deceased. It is under these circumstances therefore that the estate was then distributed only among the 4 surviving sons and the said Rael Ngeno, as follows:



Uasin Gishu/Kaptagat/162 measuring about 14.8 hectares (approx. 36.5 acres)	10 acres	John Komen
	5 acres	Rael Ngeno
	10 acres	Wilfred Kipkoech Komen
Irong/Kitany/315 measuring about 1.8 Ha (approx. 4.45 acres)	Whole	Julius Kiptarus Komen
Kapkoi/Forest/135 measuring 4.0 Ha (approx. 9.9 acres)	5 acres	Rael Ngeno
	5 acres	Richard Kibiwott Komen

4. It also transpired that the Objectors had separately filed their own Succession proceedings, namely, Eldoret Chief Magistrates Court Succession Cause No. 255 of 2017 in which they subsequently also obtained the Certificate of Confirmation given on 4/04/2019 in which the estate was distributed as follows:

Uasin Gishu/Kaptagat/162 (14.8 Ha - approx. 36.5 acres)	1 share	John Komen
	1 share	Susan Komen
	1 share	Beth Komen
	1 share	Zipporah Komen
	1 share	Wilfred Komen
	½ share each	2 children of the late Valentine Jepchichir Komen, to be held in trust
Irong/Kitany/315 (1.8 Ha - approx. 4.45 acres)	1.8 Ha whole	Julius Komen
Kapkoi/Forest/135 (4 Ha - approx. 9.9 acres)	1 share	Richard Komen
	½ share each	2 children of the late Moses Kiplagat Komen

5. There are therefore, presently, two parallel Grants of Letters of Administration and Certificates of Confirmation of Grant issued by two different Courts.
6. It therefore did not come as a surprise when on 13/06/2022, through Messrs Chebii & Co. Advocates, the Application dated 30/05/2022, the subject of this Ruling, was filed on behalf of the daughters, as Objectors seeking 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/162
John K. Komen, Rael Ngeno, Richard Kibiwott, Wilfred Kipkoech Komen
 - b. Kapkoi/Forest/135
Rael 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.
7. In their Submissions, the Objectors proposed the following mode of distribution:



<i>Uasin Gishu/Kaptagat/162</i> measuring 14.8 (approx. 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 each	Michelle Chebet and Halima Kipkoech (children of the late Valentine Jepchichir Komen, to be held in trust by the Administrators till maturity)
	1 Ha	Children of the late Moses Kiplagat Komen
<i>Irong/Kitany/315</i> measuring 1.8 Ha (approx. 4.45 acres)	1.8 Ha (whole)	Julius Komen
Kapkoi/Forest/135 measuring 4 Ha (approx. 9.9 acres)	2 Ha	Richard Komen
	1 Ha each	Clarence Jebichii and Michelle Cheruto (children of the Moses Kiplagat Komen)
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

8. It is the said Application that culminated into my said earlier Ruling delivered on 6/10/2023 as aforesaid. Upon examination of the matter, I identified the following as the issues arising for determination:
- 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.
9. It is the above Application that culminated into my said earlier Ruling delivered on 6/10/2023 as aforesaid. In the Ruling, I made findings and directions as follows:

“

- “22. It is not disputed that the deceased had 9 children, comprising of 5 sons and 4 daughters. 1 son and are 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:
"....."
"....."
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:
“
.....”
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 make 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.”

10. Pursuant to my said directions, after some significant delay and grant of extension of time on several occasions, the parties eventually filed the Affidavits as required. The 1st Petitioner, through Messrs J.K. Kiplagat & Co. Advocates, filed his Further Affidavit on 23/01/2024 while the Objectors, through Messrs Chebii & Co. Advocates, filed their respective Affidavits on 5/03/2024.

11. The 1st Petitioner, Richard Kibiwott Komen, in his Affidavit, deponed that the property Uasin Gishu/ Kaptagat/162 is currently registered in the names of the 2nd and 3rd Objectors (Beth Jepkosgei Komen and Zipporah Jeruto Komen) as the Administrators appointed in the said Eldoret Chief Magistrates Court Succession Cause No. 255 of 2017, that Kapkoi Forest/135 and Irong/Kitany/315 are still registered in the name of the deceased. He deponed further that the motor vehicle registration number KLZ 260 is obsolete, that the funds at Standard Chartered Bank Limited amounting to Kshs 150,000/-



was shared out between the Petitioners (Richard Kibiwott Komen and Julius Kiptarus Komen) after issuance of the Certificate of Confirmation of Grant herein, that the alleged 55 cows were sold by the deceased prior to his death, that the unregistered centre plot at Kapkoi is not in the name of the deceased and hence not capable of being subjected to the process of Succession. He also deponed that the compensation from the National Land Commission is yet to be processed or paid and therefore, has not been distributed.

12. In her Affidavit, the 1st Objector, Susan Jepkorir Komen, deponed that she is not interested in the estate to the extent of detailed in the Affidavit of the 2nd Objector save that she seeks a share in the sum of Kshs 761,050/- due from the Kenya Roads Board.
13. On her part, the 2nd Objector, Beth Jepkosgei Jepkorir Komen deponed that her brothers (Petitioners) have failed to explain the manner, nature and extent to which the estate has been distributed and pointed out that however, they have not disputed the Objectors' proposed mode of distribution. She then deponed that in view of reluctance by her brothers to answer to the orders of the Court of 6/10/2023, she would respond to the same. She then proposed distribution and added that her sister, the 2nd Objector, Susan Jepkorir Komen, has opted not to take her land inheritance but will take part in getting her share of money from the Kenya Rural Roads Authority.
14. She deponed further that the motor vehicle registration number registration number KLZ 260 was taken by John Kimutai Komen and is already scrap and that they do not wish to pursue it anymore. She deponed further that the funds held at Standard Chartered Bank was approximately Kshs 189,000/- and was taken by the Petitioners and that the money from the Kenya Rural Roads Authority/National Land Commission is Kshs 761,050/- due to be released and that they have agreed as a family that a joint Account be opened in the name of the 2nd Objector, Beth Jepkosgei Komen and the 1st Petitioner, Richard Kibiwott Komen, in trust for the entire family to be shared out equally upon release.
15. In conclusion, the 2nd Objector presented the following mode of distribution:



Uasin Gishu/Kaptagat/162 measuring 14.8 (approx. 36.5 acres)	7.5 acres	John Kimutai Komen
	6 acres	Beth Jepkosgei Komen
	6 acres	Zipporah Jeruto Komen
	7.5 acres	Wilfred Kipkoech Komen
	3 acres 3 acres	Michelle Chebet Komen & Halima Jepkoech (children of the late Valentine Jepchichir Komen to be held by trust by Beth Jepkosgei Komen)
	1 acre	Julius Kiptarus Komen
	1 acre	Children of the late Moses Kiplagat Komen to be held in trust by their mother, Rael Ngeno
1 acre	Richard Kibiwott Komen	
Irong/Kitany/315 measuring 1.8 Ha (approx. 4.45 acres)	whole	Julius Kiptarus Komen
Kapkoi/Forest/135 measuring 4 Ha (approx. 9.9 acres)	5 acres	Richard Kibiwott Komen
	2 ½ acres 2 ½ acres	Charlene Jebichii Michelle Ruto (children of the late Moses Kiplagat Komen)
<i>Kapkoi Centre Plot</i> (50 ft by 100 ft)	whole	John Kimutai Komen, Richard Kibiwott Komen, Wilfred Kipkoech Komen, Julius Kiptarus Komen and Moses Komen
Funds from the Kenya Rural Roads Authority/ National Land Commission	Kshs 761,050/-	To be equally shared

16. As aforesaid, the Objectors had in their Submissions filed on 17/10/2022, prior to the Ruling delivered on 16/10/2023, presented their mode of distribution. The Petitioners did not expressly challenge the same. This time, the Objectors have once more presented their mode of distribution, albeit with slight alterations. Again, the Petitioners have not expressly opposed the same. Under these circumstances, I presume that the Petitioners have no objection to the mode of distribution presented by the Objectors, particularly since in my said earlier Ruling, I found and declared that the manner in which the estate



had been distributed by the Petitioners as captured in the Certificate of Confirmation of Grant given herein on 5/09/2018 was discriminatory as it left out the Objectors, whom the Petitioners never even mentioned as survivors of the deceased. Whether left out because of their female gender or otherwise, the unexplained omission of the Objectors from inheritance was clearly not supported by any law.

17. I also notice that while the rest of the properties, in all the modes of distribution, whether confirmed or proposed (by both parties), have always been shared out amongst various beneficiaries, the property Irong/Kitany/315 measuring 1.8 hectares, has always been wholly allocated to and/or left exclusively for Julius Kiptarus Komen. This therefore appears to be an agreed unanimous decision within the family.
18. In view of the foregoing, I accept and adopt the mode of distribution submitted and/or proposed by the Objectors.

Final Orders

19. In the circumstances, I order as follows:
 - i. The Certificate of Confirmation of Grant given herein on 5/09/2018 is hereby revoked and/or annulled and replaced and/or substituted with a fresh Certificate of Confirmation of Grant to be issued as shall be directed hereinbelow.
 - ii. The estate of the deceased herein, the late Komen Cherutich Misoi, shall now be re-distributed in accordance with and/or as proposed at paragraph 15 of the Affidavit sworn by the 2nd Objector, Beth Jepkosgei Komen, on 5/03/2024 and filed in Court on the same date.
 - iii. However, regarding the sum of Kshs 761,050/- due for payment from the Kenya Rural Roads Authority/National Land Commission which is described as “to be equally shared”, the Objectors shall provide a list of the specific beneficiaries to so “equally share” before the fresh Certificate of Confirmation of Grant is issued.
 - iv. Regarding the property described as “Kapkoi Centre Plot”, insofar as no evidence of its existence or that it is owned by the deceased has been availed, the same cannot be accepted for distribution herein. The parties shall however be at liberty, at any future date, to apply to the Court for inclusion and distribution thereof, if and when the said evidence is obtained and produced.
 - v. Since I had also found that the Objectors had been unjustly omitted from the process of applying for and obtaining the Grant of Letters of Administration, I hereby appoint the 2nd and 3rd Objectors as co-Administrators to the 1st and 2nd Petitioner to enable all of them fully and jointly participate in the process of transmission of the estate as now re-distributed hereinabove. For avoidance of doubt therefore, the 4 joint Administrators are now Richard Kibiwott Komen, Julius Kiptarus Komen, Beth Jepkosgei Komen and Zipporah Jeruto Komen.
 - vi. A fresh Grant of Letters of Administration and a fresh Certificate of Confirmation of Grant shall now be issued upon compliance with (iii) above.
 - vii. In view of the above orders, the issue of the consolidation of Eldoret Chief Magistrates Court Succession Cause No. 255 of 2017 with this Cause no longer arises. Similarly, the Grant of Letters of Administration given on an unspecified date and the Certificate of Confirmation of Grant given on 4/04/2019, both in the said Eldoret Chief Magistrates Court Succession



Cause No. 255 of 2017 can no longer remain in force and are consequently both revoked and/or annulled.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 6TH DAY OF NOVEMBER 2024.

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WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Ms Cherop h/b for Kiplagat for Petitioners

Mr. Oduor h/b for Dr. Chebii for Objectors

Court Assistant: Brian Kimathi

