



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER 500 OF 1997

IN THE MATTER OF THE ESTATE OF THE LATE KIBOWEN KOMEN (DECEASED)

RULING

- 1. This matter raises the question of the roles of an administrator or personal representative in the execution of the confirmed grant. It also brings to sharp focus, the difficulties that parties bring themselves to when they delay the execution of court orders.**
2. In this instance, the dispute surrounds the import of this court's judgment delivered on 30th July 2010 (Hon. Lady Justice Martha Koome) (as she then was) in **Succession Cause Number 500 of 1997** distributing the estate of the late Kibowen Komen.
3. At item paragraph 36 (i) it states as follows;

Administration of the estate

?66 acres to be excised from LR. No. 10684

?Njoro Keringet Farm 100 acres,

?Shares at Nairobi Stock Exchange,

?KLZ 213 Peugeot,

?KAB 227 Fiat,

?Shares East African Breweries Limited.

*The whereabouts of some of the above assets is not certain but the administrators can sell and distribute the proceeds among the beneficiaries, that is, the widows and children of the deceased in equal shares **after paying the debt due to AGRISUP and other just debts (emphasis mine)**.*

4. The debt to Agrisup was determined at Ksh. 1,295,000/=.
5. On 9th May, 2019 Grace Samson Komen (applicant) one of the beneficiaries of the deceased estate brought summons under **Article 10, 40** as read with **260** of the **Constitution of Kenya, Section 83(e), (g) and (h)** of the **Law of Succession Act Chapter 160 Laws of Kenya** and all enabling provisions of the High Court. She sought the following orders;
 1. *THAT for reasons to be recorded, this application be certified as urgent and be heard ex parte for purposes of prayer 2, 3 and 4 hereof;*
 2. *THAT pending hearing and determination of this application inter partes or until further orders of the Court there be and is hereby issued an order restraining the administrators of the estate of the late Kibowen Komen, from subdividing, excising, offering for sale, selling, transferring 66 acres from L.R No. 10684 Njoro or any part of it, to settle debts of the estate or at all;*
 - 3.. *THAT pending hearing and determination of this application inter partes or until further orders of the Court, there be and is hereby issued an order restraining the administrators of the estate of the late Kibowen Komen, from proceeding with the process of subdivision and excising of 150 acres from L.R No.10684 Njoro using a private surveyor, as such is in contravention of the order of court on 22nd July 2016, that directed the subdivision to be done by the County Government Surveyor;*

4. THAT pending hearing and determination of this application inter partes or until further orders of the Court, there be and is hereby issued an order restraining the administrators of the estate of late Kibowen Komen from settling any debts of the estate from the property of the estate, until an inventory of all debts of the estate has been first furnished to the Court and beneficiaries, and particular payments approved by the Court;

5. THAT an order be and is hereby issued cancelling and rendering as of no effect all subdivision any and all proceedings of purported subdivision of L.R. No. 10684 Njoro to excise off 66 acres and or 150 acres, undertaken by the administrators of the estate of the late Kibowen Komen, and declaring them nullities for being acts in contravention of the Court Order of 22nd July, 2016, in accordance with principle in **Clarke and others vs Chadburn & Others [1985]1 All E.R. (PC) 211, adopted in Kenya in Kenya Tea Growers Association v Francis Atwoli & 5 Others [2012] eKLR.**

6. THAT the administrators of the Estate of the late Kibowen Komen be and are hereby ordered to furnish in court within 30 days an inventory of the following assets of the estate and full account of how the said properties have been dealt with, to say:

- a. Keringet Farm 100 acres;
- b. Shares at Nairobi Stock Exchange;
- c. Motor vehicle KLZ 213 – Peugeot;
- d. Motor vehicle KAB 556A – Massey Ferguson;
- e. KQZ 227 – Fiat
- f. Shares East Africa Breweries limited

7. THAT the administrators of the Estate of the late Kibowen Komen be and are hereby ordered to furnish in court within 30 days an inventory of all debts of the estate, and the sale of the 66 acres of land from L.R. No. 10684 Njoro be only conducted after the ascertainment and confirmation of the debts of the estate;

8. THAT in the interests of justice the Decree of Court of 30th July 2010 be and hereby varied to the limited extent providing for excision of 66 acres from L.R. No. 10684 Njoro for payment of debts of the estate to provide that the excision of land from L.R. No. 10684 Njoro shall only be to the extent sufficient to settle all ascertained debts of the estate, and that the debts be first ascertained by Court and a valuation be undertaken on the portion of land not exceeding 66 acres of L.R. No. 10684 Njoro for disposal to settle the ascertained debts of the estate;

9. THAT the Honourable Court be at liberty to issue such further directions and orders for purposes of meeting the ends of justice;

10. The costs of the application be provided for.

The application is based on the grounds on the face of the application including;

a. In a gross violation of the duty of administrators under section 83(e) and (g) of the Law of Succession Act (Chapter 160 Laws of the Laws of Kenya), the administrators of the estate of the late Kibowen Komen have neglected to render an inventory of the liabilities/debts of the estate, and to render an account of the dealings of the estate;

b. As it stands today, neither the Court nor the beneficiaries, particularly the applicant is aware of the accurate inventory with particulars of the debts of the estates, a situation that is in contravention to section 83(e) of the Law of Succession Act;

c. Whilst the Court vide judgment of 30th July 2010 decreed that 66 acres of land from L.R. No. 10684 Njoro be excised and sold to offset the debts of the estates, the said order of court was in consonance with the Law of Succession Act, that the debts of the estate be debts that the administrators have disclosed and particularized for the knowledge of the Court and beneficiaries, under section 83(e) and (g) of the Act.

d.

e. The administrators have already commenced the process of the excision of the 66 acres of land from L.R. No. 10684 Njoro, to settle purported debts before compliance with section 83(e) and (g) of the Law of Succession Act, to great prejudice of the estate;

f.

g. Further, even as the administrators purport to excise 66 acres from L.R. No. 10684 Njoro, to settle debts of the estate, the administrators have failed to provide an account of how the following assets ordered by the Court to be sold divided amongst the beneficiaries and used to settle just debts of the estate, were applied, to say:

- i. Keringet Farm 100 acres;

- ii. Shares at Nairobi Stock Exchange;
- iii. Motor vehicle KLZ 213 – Peugeot;
- iv. Motor vehicle KAB 556A – Massey Ferguson;
- v. KQZ 227 – Fiat
- vi. Shares East Africa Breweries limited

- h.
- i.
- j.
- k.
- l.

6. It is also supported by the affidavit of Grace Samson Kibowen sworn on 5th May, 2019 reiterating the grounds for the application, contents of the Certificate of Urgency of Stephen Kibungei Advocates.

7. On the same date the applicant was granted interim orders prayers (1), (2), (3) and (4) by the *Hon. Mulwa (J)*.

8. On 14th May, 2019 Stephen Kiptui Kibowen filed a replying affidavit sworn on 14th May, 2019 to the application dated 9th May, 2019.

9. In his replying affidavit he deponed that he was only appointed as administrator on 31st July, 2018 and could only be held accountable for the estate from the said date. He denied using the contentious suit property in the company of a private surveyor stating that it was the Regional Surveyor Nakuru County. That the applicant was well aware of the debts of the estate and in particular a creditor was claiming over one (1) million 23,320,000/= and who was holding the original title for LR 10684 and its discharge pending the settlement of the debt in full. He conceded that he was bound by the law to render just and true account of the affairs of the estate and that the sale of the 66 acres would be accounted for in full. That he had already completed the excising of the 66 acres, and was looking for buyers, whose proceeds will be distributed among the beneficiaries upon payment of the debts of the estate. He annexed the order of court dated 12th October, 2018 where beneficiaries had consented to “meet at L.R. No. 10684 on 19th October, 2018 in the presence of the Regional Surveyor Nakuru County for the purposes of subdividing the said land as from the judgment of the Court delivered on 30th July, 2010, a letter from **W. G. Wambugu & Company Advocates dated 8th April, 2014 reference WGW/AN/CONV/2014 addressed to S. W. Waiganjo & Company Advocates, Gate House, 3rd Floor, Room 311, P.O. Box 14775 – 20100, Nakuru.** Advance copy by email. The letter states;

“RE: REFUND OF THE MONIES DUE AND OWING TO OUR CLIENT ANNE NAANYU KILELE AND IN THE MATTER OF THE SALE OF 185 ACRES BEING A PORTION OF L.R. NO. 10684

We refer to the above matter and to the judgment delivered by the Court on 30th July 2010.

Kindly note that the monies due and owing to our client is Kshs. 23.320,000/= made up as follows:-

<i>Principal sum</i>	-	Kshs. 5,000,000/=
<i>Legal fees</i>	-	Kshs. 300,000/=
<i>Add interest at the rate of</i>		
<i>18% per annum for 18 years</i>	-	<u>Kshs. 17,820,000/=</u>
		TOTAL <u>Kshs. 23,320,000/=</u>

We confirm that we are in the possession of all the original documents to wit, Title document, Discharge of charge, deed plan, sale agreements, further discharge et al and shall release the same upon receipt of the sum set out above.

Yours faithfully,

W. G. WAMBUGU & CO. ADVOCATES

WANJA G. WAMBUGU (MRS)

He also averred that he was aware that the applicant did not want one Sote Komen to access her 150 acres of land from LR 10684. He urged the court to dismiss the summons.

10. Counsel for the parties made oral submissions on 17th September, 2019. Mr. Waiganjo for the respondent administrator, and Mr. Oduor and Mr. Makori for the applicant/beneficiary.

11. Mr. Oduor and Mr. Makori based their arguments on the responsibility of an administrator as set out by **Section 83 of the Laws of Succession Act** – they juxtaposed these with the provisions of **Article 10 of the Constitution of Kenya 2010**, the national values in particular the duty to be transparent and accountable; that these values and the provisions of Section 83 of the Laws of Succession Act were being abrogated by the administrator; that there was no way that the judge would have intended that the properties laid out at (i) be sold without the proper ascertainment of the just debts of the estate; that the approach taken by the administrator was neither transparent nor accountable as these debts had not been ascertained; that even the alleged debt of over Ksh23 million by unknown person sought through the letter relied on by the administrator was suspect. How could they be claiming a debt after eighteen (18) years while when the estate was being distributed they said nothing? What evidence was there that the estate had for the last eighteen (18) years (upto 2014) owed the alleged debt over Kshs. 23 million? They also urged this court to have the 66 acres of land valued so that the current market value would be known in the spirit of transparency; finally that the intention of the judge was not that the land be sold, it was that the land be sold if there were just debts to be paid and any balance be shared among the beneficiaries.

12. In his response, Mr. Waiganjo submitted that the two (2) counsel had recently come into the Succession Cause merely six (6) months before. That the applicant Grace Samson was fond of hiring and firing advocates only for the purpose of scuttling and finalization of the cause. That the estate had had four (4) administrators. That LR 10684 was 666 acres large. Out of it, Grace Samson was awarded 450 acres and the administrators mother 150 acres. The applicant had ensured that the administrator's mother cannot access her 150 acres. That they abandoned their application of 14th May, 2019 in which they had demonstrated that the Regional Surveyor had faced 70 goons when he went to carry out his work. With regard to the 66 acres, he expressed his concerns that Mr. Oduor's submissions were distorting the judgment of 30th July, 2010. That the only thing that the court intended with the 66 acres was for the payment of debts. He strongly opposed any submissions suggesting review of the judgment. That the 66 acres were to be sold, the known debts be paid, and the balance be shared among the beneficiaries. He argued that the letter demanding over Kshs. 23,000,00/= had not been challenged by the applicants, that the issue of this debt was settled before *Ndung'u J*. He conceded that the law required the administrator to account for assets and liabilities of the estate six (6) months after distribution. Ms Rop for one of the beneficiaries, William Komen agreed with Mr. Waiganjo's submissions.

13. In response Mr. Oduor emphasized we need to deal with the distribution of LR. 10684 once and for all.

14. The only issues for determination here are ***whether the this court can stay the excision of 66 acres and 150 acres from LR 10684, whether the 66 acres can be sold without the ascertainment of the value of the just debts of the deceased, and whether the present administrator is excused from giving a full account of the distribution of the estate.***

15. The powers and duties of personal representatives are set out at **Section 82 and 83 of the Law of Succession Act.**

“S.82. Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers -

(a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arise out of his death for his estate;

(b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best;

Provided that -

(i) the purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and

(ii) no immovable property shall be sold before confirmation of the grant;

(c) to assent, at any time after confirmation of the grant, to the vesting of a specific legacy in the legatee thereof;

(d) to appropriate, at any time after confirmation of the grant, any of the assets vested in them in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased or any other interest or share in his estate, whether or not the subject of a continuing trust, as may seem just and reasonable to them according to the respective rights of the persons interested in the estate of the deceased, and for that purpose to ascertain and fix (with the assistance of a duly qualified valuer, where necessary) the value of the respective assets and liabilities of the estate, and to make any transfer which may be requisite for giving effect to the appropriation:

Provided that, except so far as otherwise expressly provided by any will -

(i) no application shall be made so as to affect adversely any specific legacy;

(ii) no appropriation shall be made for the benefit of a person absolutely and beneficially entitled in possession without his consent, nor for the purpose of a continuing trust without the consent of either the trustees thereof (not being the

personal representatives themselves) or the person for the time being entitled to the income thereof, unless the person whose consent is so required is a minor or of unsound mind, in which case consent on his behalf by his parent or guardian (if any) or by the manager of his estate (if any) or by the court shall be required.

S.83. Personal representatives shall have the following duties -

- (a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;
- (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
- (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
- (d) to ascertain and pay, out of the estate of the deceased, all his debts;
- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”

16. The applicant herein is a beneficiary to the estate, the respondent the administrator.

17. The estate was distributed vide judgment of this court (Kooome J (as she then was), which was confirmed by the Court of Appeal, in Grace Samson Komen Vs William Kiprop Komen & 2 Others [2015] eKLR.

33. *The next issue is whether the learned judge erred in distributing LR 10684 in the manner that she did or whether it should have been allocated exclusively to the appellant.*

34. *The appellant argued that during his lifetime the deceased gave the property LR 10684 to her and her sons and that the deceased had even embarked on subdividing it into four portions for each of her sons. However, the appellant accepted that after the deceased allegedly gave the property to her and her children, he continued to cultivate that property. It is also instructive, we think, that the deceased intended to sell 185 acres of that very property that measures 666 acres and hardly two years before his death entered into an agreement for sale under which he agreed to sell 185 acres to Agrisup Ltd. 35. Those actions on the part of the deceased are, in our view, inconsistent with the contention by the appellant that the deceased gave the entire property to her and her children. Indeed, the order by the High Court for 66 acres to be excised from the property and sold off to cater for the liabilities of the estate respected and are consistent with the wishes of the deceased.*

36. *We think the learned judge was also right in making provision for Sote Komen from the same property. Guided by S. 40 Law of Succession Act, Koome J determined that though some of the beneficiaries had already settled on some of the properties, it was in the interest of justice to make some adjustments to the allocations of free properties of the deceased's estate since some beneficiaries had disproportionately big shares, in order to accommodate all the beneficiaries.*

37. *The learned judge carefully undertook a delicate exercise of balancing the competing interests and claims of all the beneficiaries respecting as much as possible, the wishes of the deceased to the extent that they were discernible from his actions during his lifetime. The learned judge took into account that the 3rd respondent contributed in management and acquisition of the deceased's properties; that the property LR No 10684 measures 666 acres in total; that after allocating 150 acres of that land to Sote Komen and 66 acres to the administrators to dispose for purposes of paying the creditors, the appellant would still be left with 450 acres.*

38. *The appellant suggested that the 66 acres that the judge directed to be sold to cater for liabilities or at least part of it should have been hived off LR 10013/4 that was allocated by the court to Mohammed Komen the 3rd respondent. In making provision for three of the 3rd respondents sons, who the court found to be dependants of the deceased, the court allocated 100 acres of LR 10013/4 to them with the result that the 3rd respondent is left with 318 acres of that property compared to 450 acres retained by the appellant. 39. The upshot of the foregoing is that we consider that the learned trial judge struck a fair and just balance*

between the competing claims by the beneficiaries and we see no basis for interfering with the decision reached by the court below. We accordingly reject the appeal.

18. The Court of Appeal specifically found that the Judge was right and fair in allocating Sote Komen 150 acres and 66 acres to the payment of the debts of the estate.

19. From the judgment of 30th July, 2010 the only known creditors as at 30th July, 2010 were Agrisup Limited, the judgment states:

“Agrisup the named creditor was able to prove a sum of Kshs. 1,295,000/=. There was no documentation to support the contention that an additional sum of Kshs. 1,795,000/= was paid to the deceased. Accordingly the administrators are ordered to settle the sum of Kshs. 1,295,000/= with interest at court rates from the date when the amount was paid to the deceased.”

20. That paragraph 37 set the standard for the ascertained of the debts to the estate. One could not just throw a figure from the air and voila! The estate would be made accountable. No way. There had to be proof of the existence of the debt, proof that the debt was incurred by the deceased, proof of the actual amount of the debt the deceased had incurred, proof of the time the deceased incurred the debt and documentation to support the whole gamut of the claim and only at that point would the court have the powers to order the settlement of that debt.

21. That is why the person seeking to be the administrator of the estate of the deceased is required by law to set out the known assets and liabilities of the estate upfront, and those that become known as the case may be as the matter progresses before court. This is what is said by **Rule 7(1) (d)** of the P&A rules that the application for the grant shall be by petition supported by the affidavit setting out *inter alia*:

“A full inventory of all his assets and liabilities at the date of his death (including such, if any, as may have arisen or become known since that date) together with an estimate of the value of his assets movable and immovable and his liabilities.”

22. The space for all this is to be found in the form P & A 5 where all the information required by **rule 7** is filed out by the petitioner/administrator.

23. This **rule 7** is supported by **Section 51 (2)** of the **Law of Succession Act** which states that every application for grant shall include *inter alia* **“a full inventory of all the assets and liabilities of the deceased.”**

24. The **value** of the deceased’s estate is key in succession matters and cannot be wished away, the value of both **assets** and **liabilities**, **“net intestate estate”** is defined at **Section 2** of the **Law of Succession Act** as the

“estate of a deceased person in respect of which he has died intestate after payment of the expenses, debts, liabilities and estate duty set out under the definition of “net estate”, so far as the expenses, debts, liabilities and estate duty are chargeable against that estate”

25. There is no doubt in my mind that the intent and purport of paragraph 36 of the judgment was that **the debts of the estate be ascertained first** before the assets would be sold. There is no possibility that the assets would have been sold without a valuation. That is what **Section 82** of the **Law of Succession Act** expects from a personal representative(administrator)

“ (b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:”

and there is proviso.

(d) to appropriate, at any time after confirmation of the grant, any of the assets vested in them in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased or any other interest or share in his estate, whether or not the subject of a continuing trust, as may seem just and reasonable to them according to the respective rights of the persons interested in the estate of the deceased, and for that purpose to ascertain and fix (with the assistance of a duly qualified valuer, where necessary) the value of the respective assets and liabilities of the estate, and to make any transfer which may be requisite for giving effect to the appropriation:

26. There sits the requirement to value the asset before appropriating to satisfy whatever interest there may be in the estate, in this case, the interest is the alleged liabilities of the estate, these must be known, to satisfy them, the assets intended to satisfy the same must be valued. **Section 83(d)** says as much, that the administrator must **“ascertain and pay out of the estate of the deceased, all his debts.”**

27. At this juncture I must pause and look at the administrator who says he was only appointed last year. That fact is undisputed. However, after taking up the appointment all his actions must be guided and tempered by the word, spirit and power of the law. He may have taken over a burning house. He cannot add fuel to the fire. It is his place to put out the fire. Sort out the salvage and deal with it in accordance with the law.

The provisions of **Section 82 and 83** of the **Law of Succession Act** apply to him just as they would apply to his predecessor administrators. He ought not to be sidetracked the tantrums of of beneficiaries but stay in the straight and narrow of the law.

28. Paragraph 36 of the judgment did not give any administrator a free hand to do whatever they wanted with those assets. The judgement

set the standard for dealing with the at paragraph 37.

29. For this relatively new administrator to do his work well, he must begin at the beginning with paragraph 36, ascertain the value of the assets set out there, ascertain the debts, sell the assets, satisfy the debts, share the balance to the beneficiaries.

30. With regard to the 150 acres given to Sote Kibowen, there is no issue. The protests of Grace Samson Kibowen were rejected by the Court of Appeal. Any manner of resistance to the demarcation of this parcel from LR 10684 amounts to disobedience of court orders. Court orders must be obeyed. The applicant herein has no power at all to deny Sote Kibowen that 150 acres. This Court spoke and so did the Court of Appeal. For the avoidance of doubt and emphasis I place here the citation from **Clarke and Others vs Chadburn & Others [1985] 1 All E.R. (PC) 211** by the court in **Kenya Tea Growers Association v Francis Atwoli & 5 others [2012] eKLR**, that

“An act done in willful disobedience of an injunction or Court Order was not only a contempt of Court but also an illegal and invalid act which could not, therefore, effect any change in the rights and liabilities of others.”

“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed. Willful disobedience to an order of the Court is punishable as a contempt of Court, and I feel no doubt that such disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some change in the rights and liabilities of others, I cannot see why it should be said that although they are liable to penalties for contempt of Court for doing what they did, nevertheless those acts were validly done ... but the legal consequences of what has been done in breach of the Law may plainly be very much affected by illegality. It seems to me on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted with illegality that produced them ... even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”

31. In the same vein the issue of the excision of the 66 acres out of L. R. No. is also unstoppable. It is only the sale of the same that cannot happen without compliance with the law.

32. Having said the foregoing I allow the application and grant the following **orders**:

1. The Regional Surveyor Nakuru County, with security from Regional Police Commander Nakuru to proceed to the LR 10684 and complete the demarcate the 66 acres and 150 acres out of the said parcel of land in accordance with the judgment of this court and the Court of Appeal, within 60 days from the date hereof. Only the beneficiaries and members of their families to attend the exercise: A list of those to attend the exercise to be provided in advance to the police through counsel herein.

2. The administrator to avail before this court and to the beneficiaries of the estate an inventory of the known liabilities/debts of the estate as required by law within 60 days hereof.

3. The administrator to obtain a valuation of all the properties listed under paragraph 36 item (i) in the judgment / those whose whereabouts have been traced including the valuation of the 66 acres.

4. Pending (1), (2), (3) the administrator is restrained from settling any liabilities/debts of the estate of the deceased.

5. Costs in the cause

Dated and signed at Nakuru this 13th day of December, 2019.

Mumbua T. Matheka

Judge

Delivered, dated and signed this 13th day of December, 2019.

Judge

In the presence of :

Court Assistants: Edna/Martin

Mr. Waiganjo for the administrator and Sote Kome

Mr. Nyagaka present for and holding brief for Mr. Oduor for Grace Samson

Mr. Geke for Peter Komen

Ms. Githae for Willy Komen (deceased)

Judge

13th December 2019

Mr. Waiganjo: We propose that the court gives us a date for the surveyor to go to the ground; I propose 17th January, 2020.

Mr. Nyagaka: I agree. It is convenient.

Court

Order: By Consent the parties whose names will have been supplied to the police in advance to meet at the suit property on **17th January, 2020** for the Regional Surveyor Nakuru County to demarcate the 66 acres and the 150 acres.

Further Order: The Administrator's advocate to obtain the order and serve it the Surveyor for compliance.
Mention on the 17th February, 2020 for the Surveyors Report.

Judge

Mr. Waiganjo: We seek summons for W.G. Wambugu Mrs. to appear in court and brief the court on the issue of the Title Deed.

Court.

Order: Summons to issue as prayed.

Judge

13th December 2019

Judge