

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAPSABET
FAMILY DIVISION
PROBATE AND ADMINISTRATION CAUSE NO. 55 OF 2021
IN THE MATTER OF THE ESTATE OF PAULO KIMETO
MURSOI:::::DECEASED

RULING

1. This matter, as shown in the entire record has a long history having in the first instance commenced in the year 1999 with the filing of succession cause no. 309 of 1999, five years or so after the death of the late **Paulo Kimetto Mursoi** [deceased] on the 8th March 1994 at the age of seventy-nine [79] years. He was survived by his widow **Sicilia Jerop Mursoi** together with her sons and daughters-in-law including **John Kipkosgei Metto, Elizabeth Jebet Barngetuny, Salina Chepketer Sambu, Christopher Kiplimo, David Kipchirchir Kosgei** and **Paul Kuko Korir**, all of whom petitioned for grant of letters of administration respecting the estate of the deceased comprising of three parcels of land Viz **Nandi/Ndalat/274,** **Nandi/Ndalat/276** and **Nandi/Ndalat/283.**
2. An alleged son of the deceased, **Kipkorir Barnaba Metto**, filed a separate **Succession Cause No. 227 Of**

2000 also seeking grant of letters of administration for which the former Petitioner's filed an objection dated 12th March 2001, for reasons that the deceased had executed a written will dated 12th November 1988 on how his estate was to be shared amongst the beneficiaries. In response, the later Petitioner **[Barnaba]** vide the summons dated 30th June 2005 applied for determination of the validity or otherwise of the will aforementioned, but it would appear that the application was ignored.

3. However, on the 25th May 2009, the parties entered a consent withdrawing both petitions for grant of letters of administration in **Succession Cause No. 309 of 1999** and **Succession Cause No. 227 of 2000**. But, there was another **Succession Cause No. 210 of 2007** for letter of administration with will annexed filed by the Petitioner's widow **Sicilia Jerop Mursoi** vide the application dated 26th June 2007.

Apparently, on the basis of the **Gazette Notice No. 9122** issued on 28th August 2009, the court issued the Grant of Probate of written Will on 15th December 2009 notwithstanding that the gazette notice was specific in that the petition was for grant of letters of administration intestate.

4. Be that as it may, an objection to the making of a grant dated 14th June 2010 was purportedly made by **Barnaba Kipkorir** [Objector] and it was allowed by consent of the

parties on 26th July 2010, even though no grant of letters of administration intestate had been issued.

Seemingly, as a way of correcting the apparent error the Objector [Barnaba] vide the summons for revocation of grant dated 15th April 2011 applied for revocation of the Grant of Probate issued on 15th December 2009. Later, on the 6th March 2012, the Objector ironically filed an answer to petition for grant and cross-petition for grant of letters of administration intestate vide gazette notice No. 9122 aforementioned.

5. The court did on the 28th November 2011 give directions on the hearing of the objection dated 15th December 2009 to the effect that it shall be heard by oral or viva-voce evidence. Further similar direction were given on 18th March 2013 after the attempt by the parties to settle the matter failed. The hearing of the objection commenced on 5th March 2015 and continued on several occasions before several judges at the High Court in Eldoret before it was transferred to this court.

6. At the time of the transfer, the Objector **Barnaba Kipkorir Metto** and a witness **David Kirwa Arap Singoei** had testified as PW1 and PW2 respectively. The last witness for the Objector/ Plaintiff was a court assistant, **Kariuki Nyamu [PW3]**. He testified before this court and so did the Petitioner/ Defendants witnesses i.e. **Mary Jepkemei Sang [DW1], Lydia Chepchirchir**

Mursoi [DW2], Salina Sambu [DW3], Eusilah Jepchumba [DW4], Paul Murei Tei [DW5], John Kipkosgei Metto [DW6], Christopher Kiplimo [DW7] and Philemon Willis Songok [DW8].

7. In between the hearing, the Objector/ Plaintiff **Barnaba Kipkorir Metto** sadly passed away on the 1st September 2018, and was substituted in this matter with **Christopher Kemei**. The Petitioner/Defendant widow of the deceased, passed on earlier on the 3rd May 2017 and was substituted in the matter with **Christopher Kiplimo** and **David Kipchirchir Kosgei**.

At the conclusion of the trial both side filed their respective final submissions through **Messrs. Isiaho Sawe and Company Advocates for the Objector/ Plaintiffs** and **Messrs. Joseph C.K. Cheptarus & Company Advocates for the Petitioners/Defendants** together with **Messrs. Rotich Langat and Partners Advocates**.

8. After due consideration of the court's record, the evidence by both sides and the rival submissions it became apparent to this court that what was litigated or the subject of the litigation was the validity of the Will allegedly executed by the deceased on distribution of his estate.

The parties lost sight of the actual contentious issue subject of the litigation i.e. revocation and/or annulment of

the impugned grant of probate dated 15th December 2009 and dwelt on the issue of the Will and its validity or lack of it. This was demonstrated more by the Petitioner/ Defendant in opposing the summons for revocation of grant filed by the Objector/ Plaintiff pursuant to the provisions of **Section 76 of the Law of Succession Act.**

9. In itself, the objection as well as the grant of probate were both a misconception regard being given to the fact that although the issuance of the grant of probate presupposed or proceeded as if this succession cause was a testate succession, the enabling **Gazette Notice No. 9122 of 28th August 2009**, presupposed an intestate succession in as much as it showed that the petition was actually for grant of letters of administration intestate, meaning that this was an intestate, succession.

10. It therefore followed that the issuance of the grant for probate and the proceedings in relation thereto were erroneous and a nullity and so to were the proceedings in relation to the summons for revocation of the grant of probate. It is unfortunate that the parties took an inordinate period of time in chasing what was not legally tenable. As it were, they were chasing the wind when engaging on the matter with a view to recording a consent and when litigating on a non-existent issue.

11. Clearly, the filing of the application for grant of probate and for the revocation of the grant was a product of a flawed and defective process which can only be rightened or undone by revocation of the impugned grant of probate and dismissal of the impugned summons for revocation of grant so as to allow the parties to restart a fresh process for obtaining grant of representation either as a testate succession or an intestate succession.

12. Given the inordinate length of time that this matter has been in the court corridors it would be prudent and less stressing if the parties would agree to re-engage on the matter with a view to arriving at an amicable settlement. They should in that regard consider a process under the **Alternative Justice System [AJS]**. Otherwise, with the revocation of the subject grant of probate and dismissal of the summons for revocation of grant all because of defective proceedings this file be closed after the expiry of thirty [30] days from this date hereof regard being given to the right of either party to appeal this ruling and/or judgment.

13. In any event, Under **Section 76 [a] of the Succession Act**, a grant of representation whether or not confirmed may at any time be revoked or annulled if the court decides, either on application by an interested party or its own motion that the proceedings to obtain the grant were defective in substance. Ultimately, none of the

parties could gain on account of a flawed process that has led them to where they find themselves at this juncture. In sum, the application vide the summons for revocation of grant dated 15th April 2011 is hereby dismissed and the grant of probate issued on 15th December 2009 is hereby revoked.

Dated and Delivered this 2nd day of April, 2026

**HON. J. R. KARANJAH,
JUDGE**