

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
SUCCESSION CAUSE NO. 328 OF 2013

IN THE MATTER OF THE ESTATE OF SAMUEL KIPLAGAT TERER

ESTHER JEPKERING TERER.....1ST
PETITIONER
LAWRENCE LIMOH TERER.....2ND PETITIONER

VERSUS

HELLEN JEBICHY TERER.....OBJECTOR

JUDGMENT

1. I am called upon in this case, to determine an Application seeking revocation or amendment of a Grant of Letters of Administration Intestate, which Application was filed in response to an earlier Application seeking confirmation of the Grant and thus, distribution of the estate of the deceased herein.
2. The background of the matter is that the deceased, **Samuel Kiplagat Terer**, died on 4/04/2009 at the age of 79 years old. By the Petition dated 30/10/2013 filed through **Messrs Ngala & Co. Advocates**, the Petitioners, **Esther Jepkering Terer** and **Lawrence Limoh Kirwa**, describing themselves as widow and son of the deceased, respectively, applied for the Grant of Letters of Administration to manage the estate of the deceased. In the Chief's letter attached to the Petition, it was disclosed that the deceased left behind two widows, namely, the 1st Petitioner as the 2nd wife, and one **Hellen Jebichy Keter (Objector)**, as the 1st wife, and 17 children. The Petitioners also listed one property, namely, the parcel of land described as **Uasin Gishu/Sosian Settlement Scheme/8** measuring 24.0 hectares (**hereinafter referred to as "the property"**) as the only asset comprising the estate.
3. The Grant dated 18/03/2014 was then issued to the Petitioners as joint Administrators, who by the subsequent Summons dated 19/02/2015 then applied for confirmation thereof and proposed distribution of the parcel of land equally between the 1st and the 2nd house. The Summons was however opposed by the said **Hellen Jebichy Keter (Objector)**, the 2nd widow, by way of the Replying Affidavit she swore on 12/01/2016, filed through **Messrs Arap Mitei & Co. Advocates**. She deponed that although she was not involved in the filing of this Succession Cause, she would, nonetheless, allow it to proceed subject to necessary adjustments. She however opposed the mode of distribution proposed by the Petitioners, and claimed that she had, during the subsistence of her marriage to the deceased, contributed

funds for purchase of the said property, from proceeds of her work at an hotel. She thus proposed that she should be allocated 50 acres of the property, and the 2 houses then share the remaining portion equally. She also proposed that her 2 sons be added as co-Administrators.

4. Fortunately, the parties recorded the consent dated 26/02/2016 whereof they agreed that a land survey of the property be conducted to establish the true acreage thereof, and that thereafter, the 1st house (1st Petitioner's) be awarded 5 acres more than the 2nd house (**Objector-Hellen Jebichy Terer's**).
5. The parties later proceeded to Court Annexed Mediation which process, I gather, culminated into the Settlement Agreement indicated to be dated 26/07/2019, which indicates that the family now entered into the varied agreement to the effect that the property be shared out equally between the 2 houses. This Agreement was then adopted by the Court on 29/07/2019. The order issued by the Court was subsequently amended to correct the acreage erroneously indicated therein as 60 Hectares instead of 60 Acres.
6. By the further consent dated 22/06/2021 adopted by the Court on the same date, the parties are indicated to have further agreed that the equal sharing of the property be in terms that each house be allocated 35 acres of arable land and 25 acres of rocky/hilly land thereof.
7. The above consents however do not seem to have been implemented as the parties appear to have further disagreed on the implementation mechanisms. I say so because by the Summons dated 6/03/2023 the subject hereof, the Objector, this time through **Messrs Wabomba Masinde & Associates Advocates**, applied for the following substantive orders:

“.....

(d) The Grant of Letters of Administration intestate issued on 8th March 2014 to **Esther Jepkering Terer** and **Lawrence Limoh Kirwa** both from the 2nd house be and is hereby revoked or annulled.

(e) In the alternative to prayer (d) above, the Grant of Letters of Administration intestate issued on 18th March 2014 be rectified or amended to include; **Hellen Jebichy Terer, James Kimutai Lagat** and **Jemesunde Elizabeth Kemei** from the

1st house. Also the name of the deceased be to read **Samuel Kiplagat Terer *alias* Samuel Tiongik.**

.....

(g) The consent dated 22nd June 2021 and filed in Court on 25th June 2021 plus all proceedings thereof be set aside.

(h) Costs of this Application be provided for.

.....”

8. The Objector also deponed that the Petitioners had sub-divided the property without the Objector’s consent, and also fenced off the sub-divided portions. She therefore also sought interim injunctive orders in terms of prayers (b), (c) and (f), which prayers are now spent.

9. In opposing the Summons, the 1st Petitioner filed the Replying she swore on 3/05/2023 in which she reiterated matters already set out hereinabove and deponed that before filing these Cause, she attempted to reach out to the Objector to participate in the same but all was in vain. Regarding the claim that she had unilaterally sub-divided the property, she responded that the same was conducted in accordance with the consents recorded herein, at her cost and that the process was attended by the local police, the area Chief, and also the Objector and her sons. She deponed thereafter, the Mutation Form was registered and new parcel numbers issued prior to issuance of any injunctive orders by this Court. According to her therefore, such orders were overtaken by events but that the Objector’s sons proceeded to destroy the fence erected in respect thereto. She also denied concealing any material fact at the time of filing this Cause. She also contended that the Objector ought to have applied for setting aside of the impugned consent dated 22/06/2021, if aggrieved.

10. The matter was then directed to be canvassed by way of **viva voce** trial upon which the parties were given liberty to file Witness Statements and documents, but only the Objector filed such Statements. As for the Petitioners, I note that the 1st Petitioner, at the hearing, opted to adopt her Affidavits filed herein.

Objector’s Witnesses’ Statements

11. The Objector, **Hellen Jebichy Terer**, adopted the contents of her Affidavits set out above, and reiterated that a family meeting was held on 1/04/2011 prior to commencement of this Succession Cause during which matters concerning distribution of the estate were discussed.

She then disowned the Court Annexed Mediation allegedly conducted in this matter, and/or any Mediation Settlement Agreement adopted, which allegedly culminated into the further consent dated 22/06/2021, the one that indicated that the 2 houses had agreed to equally share the property. She denied receiving any of the letters allegedly sent to her concerning the consent. She thus only confirmed the earlier consent dated 26/02/2016 whereof the 2 houses agreed that a land survey of the property be conducted to establish its true acreage. She however reiterated her criticism of the manner in which the land survey was conducted claiming that she was never involved in the process. She also stated that the 1st Petitioner was married long after the Objector had worked in a hotel at Kapsabet and financially assisted the deceased in acquiring the property.

12. James Kimutai Langat, who introduced himself as one of the Objector's sons, too, stated that a family meeting was held on 1/04/2011 prior to commencement of this Succession Cause, which meeting was also attended by the area acting Chief, and during which matters concerning distribution of the estate were discussed. He thus wondered how they could have refused to participate in the Succession Cause had they been involved. He then basically reiterated the matters already stated by the Objector, including disowning the Court Annexed Mediation allegedly conducted in this matter, and/or the Mediation Settlement Agreement culminating into the further consent dated 22/06/2021, and also the letters allegedly issued to that effect. He further challenged the 1st Petitioner's claims that the property had already been sub-divided and new number s issued yet she had not produced any green cards to that effect.

13. Robert Too, who introduced himself as a paternal uncle of the deceased, stated that he attended the family meeting held on 1/04/2011 prior to commencement of this Succession Cause, which meeting was also attended by the area acting Chief, and during which matters concerning distribution of the estate were discussed. He, too, thus wondered how the 1st house could have refused to co-operate or participate in the Succession Cause had they been involved. He stated that at the said meeting, the 2 houses agreed on the mode of distributing the estate, and urged that the said agreement is the one that the Court should adopt.

14. Sabina Jerobon Ruto, who introduced herself as a sister to the deceased, too, stated that she attended the family meeting held on 1/04/2011 and, too, thus wondered how the 1st house could have refused to co-operate or participate in the Succession Cause had they been involved. He stated that at the said meeting, the 2 houses agreed on the mode of distributing the estate and urged that the said agreement is the one that the Court should adopt. She, too,

stated that the Objector was employed in a hotel at Kapsabet and financially assisted the deceased in acquiring the property. She, too, stated that at the said meeting held on 1/04/2011, the 2 houses agreed on the mode of distributing the estate, and urged that the said agreement is the one that the Court should adopt.

15. The trial eventually took off on 30/10/2023 before me. The Objector called 4 witnesses while only the 1st Petitioner testified for the defence. I will now, in summary, recite the witness testimonies.

Objectors' Witness Testimonies

16. **PW1** was the Objector, **Hellen Jebichy Terer**, led by **Mr. Wabomba**, adopted her Witness Statement contents whereof I have already set out above. Under cross-examination by **Ms. Ngala**, she agreed that the parties went for the Court Annexed Mediation process but denied that any agreement on 50:50 sharing was reached. She again disowned the consent signed by her former Advocate, **Mr. Arap Mitei**, and also denied participating in any land survey for the property. She stated that she had 8 children, and reiterated that she should get a bigger share of the property as she is the one who bought it. In re-examination, she claimed that at the Mediation, her children were chased away, and she never got to know what transpired thereafter. She reiterated that she is the one who bought the property as she used to earn more income in her hotel work than what the deceased (her husband) used to earn in his work as a cattle dip operator. She thus insisted that she should get 10 acres out of the 60 acres comprising the property, and also share in the remainder.

17. **PW2** was the said **James Kimutai Lagat**, the Objector's son, who, too, adopted his Statement. In cross-examination, he reiterated the matters already recounted in his Statement, including disowning the Mediation process or the consent on equal sharing the property between the two houses, and denying participating in any land survey process. He also denied any knowledge that in polygamous families, property is divided in accordance with the number of children. In re-examination, he stated the deceased (his father) had, before he died, informally divided the property between the two houses by planting sisal within it, and that to date, the two houses live in accordance with that arrangement. He, too, insisted that at the family meeting, the elders resolved that the Objector (her mother) should get 10 acres out of the 60 acres comprising the property due to her contribution, and also share in the remainder since the property had already been acquired by the time that the 1st Petitioner was married.

18. PW3 was the said **Robert Too**, who adopted his Statement. In cross-examination, he confirmed his knowledge that in polygamous families, property is divided in accordance with the number of children. In re-examination, he too, reiterated that that at the family meeting, the elders resolved that the Objector, due to her contribution, should first get 10 acres out of the 60 acres comprising the property, and also share in the remainder since the property had already been acquired by the time that the 1st Petitioner got married.

19. PW4 was the said **Sabina Jepkering Terer**, who adopted her Statement. She testified that the Objector was married around 1952, and that the 1st Petitioner (2nd wife) had not been married by the time that the property was acquired. In cross-examination, she stated that although she is aware that the parties proceeded to Court Annexed Mediation, she is not aware whether reached any settlement therein. She also agreed that although she had, in her Statement, stated that the Objector used to work in a hotel, she had not produced any evidence to that effect. She then denied any knowledge that in polygamous families, property is divided in accordance with the number of children.

Petitioners' Witness Testimony

20. DW1 was the 1st Petitioner, **Esther Jepkering Terer**. As aforesaid, she did not file any Statement but opted, instead, to adopt her Affidavits already recited hereinabove. Regarding the said family meeting, she testified that she is the one who convened it and insisted that in the meeting, the two houses agreed to share the property at 50:50. In cross-examination, she agreed that the Chief attended the last meeting, but denied any agreement that a portion of 1.5 acres was to be set aside to pay off a debt owed by a sister-in-law to a third party. She agreed that she would not know whether the letter dated 12/07/2013 was received by the Objector as she conceded that the same was addressed to **James Kimutai (PW2)**, the Objector's son, "*care of Leseru Primary School*", although she stated that **PW2** was a teacher at the school. Regarding the alleged statement in her Affidavit that the Mediation session turned chaotic, she denied the statement, and stated that only one session was convened and the parties agreed in that one session. She then insisted that all parties signed the Mediation Settlement Agreement, including the 1st Petitioners, the Objector, and all their children. She agreed that she was married in 1968, long after the Objector had already been married, but insisted that to her knowledge, it is the deceased, who, alone, purchased the property, but claimed that she indirectly contributed thereto. She then claimed that the full purchase price had not been paid to the Settlement Scheme (vendor) by the time that she got married

Written Submissions

21. Upon close of the trial, the parties filed Written Submissions. The Objector filed the Submissions dated 26/09/2025, while the Petitioners' is dated 7/11/2025.

Objector's Submissions

22. Regarding the correction of the name of the deceased to include the *alias* "**Samuel Tiongik**", the name by which the property is registered, Counsel for the Objector, **Mr. Wabomba**, prayed that the same be allowed otherwise the Grant would be rendered an exercise in futility. Regarding the prayer for revocation of the Grant, he reiterated that the 2nd house, mischievously, without involving the 1st house, moved to file these Succession proceedings and caused only members of the 2nd house to be appointed as Administrators. He also contended that the Petitioners have failed to faithfully administer the estate and filed the forged consent dated 22/06/2021 which was in conflict with the earlier consent dated 26/02/2016. On distribution of the estate, he submitted that both houses now remain with 8 children. Going back to the alleged consent dated 22/06/2021, he pointed out that there is no copy of the Mediation Settlement Agreement in the Court file. He also doubted the authenticity of the signature allegedly made by the Objector's Advocate, **Mr. Arap Mitei** on the alleged consent dated 22/06/2021, when compared with the signature made on the earlier consent dated 26/02/2016. He thus insisted that the Objector only recognizes the agreement made in the resolution of the family meeting held on 1/04/2011 which is what culminated into the consent dated 26/02/2016. He reiterated further that the Objector contributed to acquisition of the property through her income made from running a hotel. Counsel submitted further that Courts have held that 1st wives merit a special consideration in distribution of the estate in a polygamous family, and that this the reason that **Section 26** of the **Law of Succession Act** was introduced to cure the injustice brought about by strict application of the provisions of **Section 40**. He cited various authorities to this effect. In the end, he urged the Court to award costs of these proceedings to the Objector, and also that the consent order dated 22/06/2021 be set aside.

Petitioners' Submissions

23. Counsel for the Petitioner, **Ms. Ngala**, in her brief Submissions reiterated that the Objector ought to have first applied for setting aside of the consent order dated 22/06/2021. She asserted that in any event, the Objector and her former Advocate fully participated in the

Mediation process. She also pointed out that the Objector, despite her claims that she contributed financially to acquisition of the property, did not produce any evidence to that effect. According to her, the consent order dated 22/06/2021 was fair as it was in accordance with the provisions of **Section 40** of the **Law of Succession Act** as it catered equally for the needs of the two houses

Determination

24. The issues that call for determination in this matter can be broadly summarised as follows:

- i) Whether the consent order dated 22/06/2021 should be set aside, and if not, whether the Grant issued herein should be revoked and new Administrators be appointed.**
- ii) If the said consent order is affirmed, how then should the estate be distributed, and whether the Grant should be rectified or amended to include the *alias* name “*Samuel Tiongik*”, to the name of the deceased.**

25. Regarding the first issue, namely, whether the consent order dated 22/06/2021 should be set aside, as already stated, the record reflects that the initial consent order recorded by the parties was the one dated 26/02/2016 whereof they agreed that a land survey of the property be conducted to establish the true acreage thereof, and that thereafter, the 1st house (Petitioners’) be allocated 5 acres more than the 2nd house (Objector’s). The record reflects that the parties later proceeded to Court Annexed Mediation which process, is captured to have culminated into the Settlement Agreement indicated to be dated 26/07/2019, which indicates that the family now entered into the varied agreement to the effect that the property be shared out equally between the 2 houses. As aforesaid, this Agreement was then adopted by the Court on 29/07/2019. As further stated, by the further consent dated 22/06/2021 adopted by the Court on the same date, the parties are indicated to have further agreed that the equal sharing of the property be in terms that each house do take up 35 acres of arable land and 25 acres of rocky/hilly land thereof.

26. I note that although the parties have proceeded on the premise that the consent dated 22/06/2021 was a result of Court Annexed Mediation process, from the record, that is not the case. The order that emanated from the Court Annexed Mediation is the earlier one dated 29/07/2019 whereof the 2 houses agreed that a land survey of the property be conducted to establish its true acreage, and which consent is not in dispute. There is no indication that the parties returned for a second round of Court Annexed Mediation, and there is therefore no

indication that the impugned subsequent order dated 22/06/2021 also emanated from any such Court Annexed Mediation process.

27. Proceeding on the above premise therefore, I note that the very first time that the Objector made the express prayer that the consent dated 22/06/2021 be set aside is in the instant Summons dated 6/03/2023, filed almost 2 years later.

28. Regarding the impugned consent dated 22/06/2021, it is not in dispute that there is on record, the letter dated 22/06/2021 authored under the letter-head of the Petitioners' Advocates, **Messrs Ngala & Co.**, and indicated to have been signed by both the Petitioners' Advocates and the Objector's then Advocates, **Messrs Arap Mitei & Co.** From the record, this consent letter was adopted by the Deputy Registrar on 17/01/2022 and a formal order then issued. The Objector has not even bothered to offer any explanation for the 2 years delay in challenging the consent order. Under these circumstances, I find that entertaining the prayer for setting aside the consent order at this late stage will be wholly improper.

29. In any event, it is not in dispute that at all material times, the law firm of **Messrs Arap Mitei & Co.** had been acting for the Objector, and by extension, the entire 1st house in this matter. It is not disputed that the said law firm was properly on record and as such, was wholly mandated to generally act for the Objector (1st house). Can the Objector, under these circumstances, now turn around and disown the consent signed by the same law firm ostensibly on her behalf?

30. To answer the above question, it is imperative to appreciate the extent of the mandate held by an Advocate lawfully appointed to represent and act on the client's behalf, and the extent to which such Advocates' actions will bind the client. In the case of **Kenya Commercial Bank Ltd –vs- Specialised Engineering Company (supra)**, Harris J, stated further as follows:

“A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.”

31. In **Kenya Commercial Bank Limited vs Benjoh Amalgamated Limited & Another [1998] eKLR** the Court cited the passage in the Supreme Court Practice 1976 (Vol. 2) to the following effect:

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“Authority of Solicitor – a solicitor has a general authority to compromise on behalf of his client, if he acts *bona fide* and not contrary to express negative direction; and it would seem that a solicitor acting as agent for the principal solicitor has the same power.... No limitation of the implied authority avails the client as against the other side unless such limitation has been brought to their notice.”

32. Further, in the case of **Board of Trustees of NSSF Vs. Michael Mwalo (2015) eKLR**, the Court of Appeal held as follows:

“1.

2. A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.”

33. However, in the case of **Republic v District Land Registrar Nandi & another Ex-parte Kiprono Tegerei & another [2005] eKLR**, Musinga J (as he then was), stated as follows:

“Although an advocate has ostensible authority to compromise his client’s case, employment of such authority cannot be upheld where counsel consents to orders which are diametrically opposed to the express instructions which he has been given by a client in a matter. It is not easy to prove that there was fraud or collusion in recording of any consent orders between advocates in the absence of their instructing clients but where such orders completely negate the interests of an instructing client and it is shown to the satisfaction of the court that the client was not even aware of the application that gave rise to those consent orders leave alone having consented to the recording of the orders, in the absence of any satisfactory explanation by the counsel who is accused of entering into the consent orders in question, a court of law would be entitled to conclude that there was fraud or collusion involved and will not uphold the consent orders issued.

34. The general position that can be derived from the above authorities, read together, is that an Advocate properly on record has the general authority to compromise an action on behalf of his client provided he acts *bona fide*, not contrary to express negative direction or reasonably, and not in defiance on the client’s direct and positive instructions. For this Court to therefore set aside the consent order, the Objector must demonstrate that the law firm of

Messrs Arap Mitei & Co. in recording the consent dated 22/06/2021, did not act *bona fide*, but contrary to her express instructions.

35. In this case, as aforesaid, despite the consent being made in June 2021, the Objector never made any effort to seek the setting aside thereof until after lapse of about 2 years. Considering the nature of the consent, I would have expected the Objector to have moved swiftly to seek setting aside thereof, as soon as she became aware of it. There is also no subsequent correspondence or any other communication authored by the Objector protesting to the said law firm about the “unauthorized” recording of the consent. There is also no report or any kind of communication made to the **Law Society of Kenya** or the **Advocates Disciplinary Committee** complaining about the Advocates alleged “misconduct”. What I am saying is that the Objector has not provided any material that may persuade this Court have a re-think on whether the Advocate really acted with authority. My impression is that the Objector has handled that aspect of her case too casually since she has made no effort to satisfy the Court that the Advocate, in recording the consent, acted contrary to her instructions. Simply replacing the Advocates with another law firm is not sufficient. The burden of proof to demonstrate that the consent was improperly entered into lay on the Objector but in this case, I am not satisfied that she has done enough to discharged that burden.

36. It is indeed settled that a consent, once adopted as an order of the Court, becomes a binding agreement as between the parties, and cannot be set aside unless the party challenging it proves that there are justifiable grounds to warrant its setting aside. Such vitiating factors are similar to those applicable in setting aside of a contract and would basically be limited to fraud, misrepresentation, mistake, and coercion/undue influence, and if the agreement is found to be contrary to the policy of the Court. In reiterating this principle, the Court of Appeal, in the case of **Board of Trustees National Social Security Fund versus Micheal Mwalo [2015] eKLR**, stated as follows:

“The judgment arose from a Consent of the parties to the suit. The law pertaining to setting aside of Consent judgments or Consent orders has been clearly stated. A Court of law will not interfere with a Consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties. To impeach a Consent order or a Consent judgment, it must be shown that

it was obtained by fraud, or collusion or by an agreement contrary to the policy of Court.” (emphasis mine).

37. The above principle was also restated in the case of **Flora N. Wasike v Destimo Wamboko [1988] eKLR** in which, in which **Hancox, JA**, observed that:

“It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside or certain conditions remained to be fulfilled which are not carried out”

38. The same was also affirmed by Court of Appeal, in the case of **S M N vs. Z M S & 3 others [2017] eKLR**, in the following terms:

“Generally, a court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties. The factors touted for impeaching the consent in this matter were fraud and collusion. It is also alleged that counsel had no authority to enter into the consent. The onus of proving those assertions to the required standard was on the appellant. They are serious imputations bordering on crime and therefore the burden of proof is of necessity slightly higher than on a balance of probability but perhaps not beyond reasonable doubt.”

39. Generally, therefore, a consent order is binding and the Court may only be persuaded to set it aside if there is evidence that some material fact not in a party’s possession was invariably withheld or misrepresented from him, or he was mistaken about its import, none of which has been demonstrated in this case. I therefore find no justification to set aside the consent order.

40. Since the consent fully addresses the issue of distribution of the only one property comprising the estate, this matter has to end here.

41. Regarding the issue of the choice of Administrators and/or revocation of the Grant, that one, too, the Objector has never made any serious effort to apply for addition or substitution of Administrators or revocation of the Grant. In fact, she had, by the Replying Affidavit she swore on 12/01/2016, in opposing the Summons for Confirmation of Grant stated as follows:

“3. THAT the Applicant never involved me in the process.

4. THAT nonetheless the Succession proceedings should go on with the necessary adjustments”

4. THAT the necessary adjustments should be:

(i) Ten (10) acres be registered in my name.

(ii) The remaining fifty (50) acres be divided into 2: 25 acres each house.

(iii) That my two sons be included as joint administrators of the estate”

42. The Objector therefore only opposed the mode of distribution proposed by the Petitioners, not the validity of the Grant. Having deponed as above, what has now changed? I find that the Objector is now estopped from belatedly reviving the issue of validity of the Grant.

43. In any event, there is evidence that the Objector and her children have consistently and actively frustrated the implementation of the consent recorded on distribution. Under these circumstances, can the Objector and her children be trusted to implement the same consent that they have been strenuously frustrating? Is their current belated intention to be included in the Administration really genuine? I do not think so. The Objector cannot be allowed keep shifting goal-posts at will. Including them in the Grant is, in my view, a sure recipe for another round of chaos.

44. This is therefore one of those exceptional cases where I find that, although the estate comprises of two widows (thus two houses), to ensure smooth implementation of the consent order on distribution without any conflicts, and considering that this matter has been in Court for the last 13 years now, only one house be permitted to continue administering the estate. With the mode of distribution already spelled in the consent dated 22/06/2021 now upheld by this Court, I believe there is no serious risk that the 2nd house may act contrary to the interests of the 1st house. In any event, should that happen, the 1st house will be at liberty to move the Court for the appropriate orders.

45. Regarding the prayer that the name of the deceased be rectified to include the *alias* “**Samuel Tiongik**”, the same has not been supported by any supporting evidence and it may not be easy to ascertain that “**Samuel Terer**” and “**Samuel Tiongik**” is one and the same person.

Nonetheless, since the Petitioners have not opposed the same, I presume that there is no dispute about the rectification. The explanation by the Objector that the amendment will also facilitate implementation of the orders herein as the estate property is registered under the name “**Samuel Tiongik**” is reasonable, and I accept it.

Final Orders

46. In the end, I rule and order as follows:

- i)** The prayer by the Objector seeking for setting aside of the consent order dated 22/06/2021 is disallowed. The consent is therefore hereby upheld as valid and in force.
- ii)** The estate of the late **Samuel Terer** shall therefore, in accordance with the said consent dated 22/06/2021, be distributed in the following terms:
 - a)** The County Surveyor, Uasin Gishu County do cause a land survey to be conducted on the parcel of land known as **L.R. No. No. Uasin Gishu/Sosiani Settlement Scheme/8** measuring 60 acres, which is to be divided and title deeds issued as follows:
 - Approximately 35 acres of arable land be distributed equally between the Petitioner’s house (2nd house) and Objector’s house (1st house).
 - Approximately 25 acres of rocky/hilly land be distributed equally between the Petitioner’s house (2nd house) and the Objector’s house (1st house).
 - iii)** The Grant of Letters of Administration issued herein, dated 18/03/2014, be and is hereby rectified to the extent that the name of the deceased is to now read therein as “**Samuel Terer *alias* Samuel Tiongik**”
 - iv)** Any party aggrieved by the decision hereinabove has leave to appeal, and there shall be a stay of execution of implementation of this Judgment for a period of **forty-five (45) days** to allow the aggrieved party time to file the appeal.
 - v)** Upon expiry and/or lapse of the period above-stated, the parties shall be at liberty to extract the Rectified Grant of Letters of Administration Intestate, and also the Certificate of Confirmation of Grant.

vi) As there is evidence that the survey of the said parcel of land in accordance with the consent dated 22/06/2021 has since been undertaken, the same shall now be implemented and transmission of the estate concluded.

vii) As this is a family matter, I order that each party bear his/her own costs.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF APRIL 2026

.....
WANANDA JOHN R. ANURO
JUDGE

Delivered in the presence of:

Mr. Wabomba for the Objector

Ms. Ngala for the Petitioners

Court Assistant: Brian Kimathi