



REPUBLIC OF KENYA



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**In re Estate of the Late Kiiru Chomba (Deceased) (Succession Cause
9 of 2014) [2025] KEHC 282 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 282 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE 9 OF 2014

JRA WANANDA, J

JANUARY 24, 2025

IN THE MATTER OF THE ESTATE OF THE LATE KIIRU CHOMBA (DECEASED)

BETWEEN

JULIUS MUNGIRI KIIRU PETITIONER

AND

LEONARD GICHORA KIIRU PETITIONER

RULING

1. The deceased, Kiiru Chomba, died on 19/01/2013 aged 99 years old. He was stated to have died testate having left behind the Will dated 25/02/2008, and was survived by 10 children. On 14/01/2014, his 2 sons, the 1st Petitioner and the 2nd Petitioner herein, as the executors appointed in the Will, and as joint Petitioners, filed an Application for Probate in respect to the estate of the deceased and which Petition was filed through Messrs Ngigi Mbugua & Co. Advocates. However, before the Application could be processed, the Petitioner's siblings (Objectors), through Messrs Kimaru Kiplagat & Co. Advocates, filed an Objection on 14/04/2014 challenging the same on the grounds that, inter alia, the Will cited was forged and that the same was read and acted upon prematurely, before the time appointed by the deceased. Fortunately, by a consent recorded in Court, the matter was compromised and amicably settled whereof the Petition was allowed as prayed and the Grant then issued to the Petitioners on 26/05/2015. The Objectors however reserved their right to renew their challenge at any time.
2. The Petitioners then applied for confirmation of the Grant. However, the Objectors, through their new Advocates, Magare Musundi & Co., opposed the same and also separately applied for Revocation of the Grant. It was then directed that the Objection be heard by way of viva voce trial. After a series of interlocutory Applications filed in the intervening period, the matter eventually proceeded to trial. The record shows that before the trial commenced on 6/06/2019, a consent was recorded in Court before Githinji J, whereof some of the properties were "allocated" amongst the beneficiaries. It was also agreed that one property, Eldoret Municipality Block 21(Kingongo)/3128 which was not mentioned



in the Will and which was reported to be registered in the name of the 2nd Petitioner, Leonard Gichora Kiiru, would form part of the estate and would be divided into 4 equal shares which would be distributed to amongst 4 beneficiaries. It was then agreed that the rest of the issues would proceed to trial and which finally commenced on 6/06/2019 as aforesaid. The trial was however regularly stalled by several interlocutory Applications and later, by the subsequent transfer of Githinji J. Fortunately, by permission granted by the Hon. Chief Justice vide the letter dated 4/03/2022, Githinji J continued with and concluded the matter from his new Malindi station which he did virtually, culminating into his Judgment dated and delivered on 15/05//2022. By the said Judgment, he upheld the Will as drawn and dismissed the Objection. Regrettably, a number of the beneficiaries had already died by this time. Be that as it may, pursuant to the Judgment, a Certificate of Confirmation of Grant was given on 26/05/2023 and the estate duly distributed in accordance with the Will. There was however no mention whatsoever in the Certificate, of the consent recorded on 6/06/2019 as aforesaid.

3. It is on the above background therefore that the 1st Petitioner, Julius Mungiri Kiiru, has returned to Court with the instant Application, namely, the Summons dated 28/05/2024, filed through Messrs Angu Kitgin & Co. Advocates. The same prays for orders as follows:

1. [.....] Spent
 2. That this Honourable Court do review and amend the Certificate of Confirmation of Grant issued on 31st May 2023 herein on the discovery and exclusion of a key asset being Eldoret Municipality Block 21(Kingongo)/3128 subdivided into four portions, namely:
 - i. Eldoret Municipality Block 21(Kingongo)/5254
 - ii. Eldoret Municipality Block 21(Kingongo)/5255
 - iii. Eldoret Municipality Block 21(Kingongo)/5256, and
 - iv. Eldoret Municipality Block 21(Kingongo)/5257
 3. That the Grant of Letters of Administration issued and confirmed on 31st May 2023 be hereby reviewed and amended to include the discovered assets forming part of the estate of Kiiru Chumba deceased in line with the consent order.
 4. That this Honourable Court do compel the 2nd Petitioner/Respondent to execute his mandate according to Consent Order given on 10th June 2019 to execute completion/transfer documents vesting the properties on transmission within 30 days of the issuance of Amended Certificate of Confirmation of Grant herein.
 5. That in default the Honourable Court do excuse the 2nd Administrator as an executor of documents on behalf of the estate of Kiiru Chomba deceased.
 6. That the 2nd Petitioner/Respondent meet the costs of this Application.
4. The Application is premised on the grounds set out on the face thereof and the Supporting Affidavit sworn by the 1st Petitioner, Julius Mungiri Kiiru.
5. In the Affidavit, the 1st Petitioner deponed that he swore the same on his own behalf and on behalf of other beneficiaries whom he did not however name. He urged that this Court issued the Certificate of Grant on 31/05/2023 appointing him and the 2nd Petitioner as Administrators in accordance with the Will of the deceased, and that the estate has been successfully distributed according the Certificate except the consent order given on 10/06/2019. He deponed further that the 2nd Petitioner swore an Affidavit in the presence of the Advocate of the family, Mr. Allan Ngigi Mbugua, confirming



that Eldoret Municipality Block 21(Kingongo)/3128 was part of the estate of the deceased, that on 10/06/2019, this Court adopted the Affidavit as a consent and that the resultant plots created as a result of dividing the said land parcel were to be transferred to beneficiaries in accordance with the consent. He contended that the consent was not fortified into the confirmed Grant thus necessitating the filing of the instant Application and listed 6 beneficiaries who were present in Court during the exercise of confirmation of the Grant and who confirmed the consent. He deponed that it was agreed that the resultant parcels of land were to be shared as follows:

Land parcel	Beneficiary
Eldoret Municipality Block 21(Kingongo)/5254	Leonard Gachora Kiiru
Eldoret Municipality Block 21(Kingongo)/5255	Julius Kiiru
Eldoret Municipality Block 21(Kingongo)/5256	Kariuki Kiiru
Eldoret Municipality Block 21(Kingongo)/5257	Joseph Njuguna Kiiru

6. He then deponed that the 2nd Petitioner fully participated in the process of effecting the Certificate of Confirmation of Grant and signed the Mutation Form and transfer documents but that after completing the process of registration of the shares, refused to collect his title deeds. He urged that the 2nd Petitioner should surrender the 4 title deeds in his possession

Replying Affidavit

7. The 2nd Petitioner opposed the Application vide his Replying Affidavit sworn on 20/06/2024 through Messrs Buluma & Co. Advocates. He deponed that the parcel of land known as Eldoret Municipality Block 21(Kingongo)/3128 belonged to him both before and after sub-division and that therefore, there was nothing to capable of being “discovered” after confirmation of the Grant. According to him, it is a falsehood for the 1st Petitioner to allege that he is swearing the Supporting Affidavit on behalf of other beneficiaries, and deponed that contrary to what was expected, the 1st Petitioner has gone ahead to distribute the estate to the exclusion of the 2nd Petitioner and all the other beneficiaries. He denied that any meeting was called to confirm the distribution of the estate and deponed that the 1st Petitioner has clandestinely allocated himself the prime assets of the estate after fraudulently obtaining title documents from their previous Lawyers. He then categorically denied ever swearing the alleged Affidavit and deponed that on 23/10/2019, he was away in Mombasa and thus could not have appeared before Advocate Joseph Cheptarus at Eldoret to swear the Affidavit, and that an inquiry about the Affidavit from Advocate Cheptarus has yielded no response. He further deponed that the Affidavit allegedly sworn on 23/10/2019 could not have been adopted by the Court almost 4 months earlier on 10/06/2019, that a perusal of the Court proceedings of 10/06/2019 does not disclose any such order by the Court, that he was personally present and participated in the proceedings of 10/06/2019 and no consent was recorded, and that any order purportedly extracted as having been made on 10/06/2019 is a forgery.



8. He urged further that he could not have sub-divided his own property as their late father died testate and whose property was clearly distributed, and that at no time was any Affidavit read out in Court and there was no arbitration as all the parties agreed that the issues herein would be resolved by way of oral evidence. He also contended that this Cause having proceeded by way of trial, no further orders can be made without reviewing and/or setting aside the Judgment herein. Further, he pointed out that a perusal of the Court file confirms that the contested Affidavit was filed in Court on 23/10/2019 meaning that the date indicated in the alleged order of 10/06/2019, namely, 18/10/2016 is misleading. He deponed further that the 1st Petitioner has kept him in the dark and that at one time, while admitted in hospital, brought to him documents which he (2nd Petitioner) signed without question because of the trust that he had in the 1st Petitioner but that he (2nd Petitioner) declined to sign any further documents unless the other beneficiaries were involved and consensus attained.
9. A separate Affidavit in opposition to the Application was also sworn by Joseph Njuguna Kiiru, another sibling/beneficiary, and who stated that he had the authority of 2 other beneficiaries, namely, Kariuki Kiiru and Margaret Murage, to swear the Affidavit. He supported the 2nd Petitioner's contention that Eldoret Municipality Block 21 (Kingongo)3128 did not form part of the estate of their late father and that this is why it was not included in the Will, that if it had formed part of the estate, then their late father had the opportunity to include it in his Will and that the Cause having been concluded after adducing evidence, should not be re-opened. He deponed further that the 1st Petitioner fraudulently collected title documents from their Lawyers and has been distributing the estate without involving other beneficiaries, and that the 1st Petitioner is meddling in the estate by unilaterally sub-dividing the parcels of land and allocating himself portions that are prime to the disadvantage of other beneficiaries

Supplementary Affidavit

10. The 1st Petitioner then swore the Supplementary Affidavit filed on 10/06/2024 and to which he exhibited typed proceedings for this Cause for the period 17/11/2014 - 9/12/2019.

Hearing of the Application

11. It was then agreed, and directed, that the Application be canvassed by way of written Submissions. Pursuant thereto, the 1st Petitioner filed his Submissions on 17/07/2024 while the 2nd Petitioner filed his on 24/07/2024.

1st Petitioner's Submissions

12. The 1st Petitioner's Counsel opened his Submissions by making factual statements which however, were never deponed in the Affidavits. For this reason of irregular introduction of new facts, I will not recount or consider such portion of the Submissions.
13. On matters properly deponed, Counsel insisted that the consent referred to was indeed entered into before Githinji J on 6/06/2019, that he has now re-extracted the consent order for clarity of content, that by the consent, the said Eldoret Municipality Block 21 (Kingongo)3128 was incorporated as part of the estate of the deceased and that having been registered in the name of the 2nd Petitioner's name, the 2nd Petitioner assumed the place of trustee for the benefit of other family members. He submitted that 60 months after adoption of the consent order, no application has been made to set aside or review the same and also that the Replying Affidavit only denies the process of extracting the Affidavit and the consent order but not the substance of what transpired in Court on 6/06/2019. On rectification, review or amendment of the confirmed Grant, he cited the case of Re Estate of Charles Kibe Karanja (Deceased) [2015] eKLR and the case of John Mundia Njoroge & 9 Another



[2016] eKLR. On the issue of the Deputy Registrar executing the transfer documents on behalf of an unwilling Administrator, he cited the case of *Re Estate of the late Kubuta Kamara Nguuro alias Pharis Njegegu (Deceased)* [2021] eKLR and submitted that Court orders are not made in vain. On an Administrator's duty to complete distribution, and to do so within 6 months after confirmation of a Grant, he cited Section 83(i) of the *Law of Succession Act* and also the case of *Re Estate of Gitere Kahura (Deceased)* [2020] eKLR. He also cited further authorities on the consequences of an Administrator's failure to sign documents.

2nd Petitioners' Submissions

14. On his part, Counsel for the 2nd Petitioner submitted that the purported Court order relied on by the 1st Petitioner and which was allegedly given on 10/06/2019 is indicated as having been issued on 5/07/2023 by the Deputy Registrar, that whereas this matter was indeed before Githinji J on 10/06/2019, the same was for hearing and in fact, started and ended without any orders as alleged by the 1st Petitioner. According to him therefore, the only conclusion is that the alleged order is a forgery. He pointed out further that on its face, the order purports to show that it is based on an Affidavit sworn by Leonard Gichora and filed on 18/10/2016 yet there is no such Affidavit on record. He reiterated that the 2nd Petitioner denies swearing an Affidavit on that date and that it was therefore incumbent upon the 1st Petitioner to prove the same.
15. He pointed out further that the alleged Affidavit exhibited by the 1st Petitioner purports that it was sworn on 23/10/2019 and cannot therefore have given rise to an order already made on 10/06/2019. According to him therefore, the two documents are unrelated. He also reiterated the 2nd Petitioners contention that on 23/10/2019, he was away in Mombasa whereas the Affidavit is alleged to have been sworn in Eldoret on the same date. He averred that this being an uncontroverted issue of fact, the Court should believe it. Counsel also pointed out that both the Advocates who are purported to have drawn and/or commissioned the same, respectively, were unable to authenticate the Affidavit even after being prompted by the 1st Petitioner as per his Supporting Affidavit, and that "he who alleges must prove". Counsel also submitted that this matter had already proceeded to full hearing by 23/10/2019 when he is alleged to have sworn the purported Affidavit, that it would thus not make sense to swear such an Affidavit without the knowledge and involvement of all the beneficiaries and that amendment of the Certificate of Confirmation cannot be done without the involvement of all the beneficiaries. He also observed that the Application seeks review and amendment of the Certificate of Confirmation of Grant issued on 31/05/2023 yet the final decision that resulted in the confirmed Grant was rendered by Githinji J on 15/05/2022. According to him, what ought to be reviewed is the Judgment of Githinji J and not the resultant confirmed Grant.
16. He contended further that the deceased died testate with a Will made on 25/02/2008, that at the time of his death on 19/01/2013, the said Eldoret Municipality Block 21 (Kingongo)3128 had been registered in the name of and occupied by the 2nd Petitioner for a period of 13 years, that this not therefore property that has been "discovered" as all the parties have always been aware of the status thereof. Counsel also took issue with the 1st Petitioner for introducing new matters in his Submissions. Regarding the 1st Petitioner's statement that he has "re-extracted the consent order for clarity", he submitted that by this statement or act, the 1st Petitioner is conceding that there is an issue with the order that he was relying on and that the best option was to withdraw the Application. Regarding authorities, Counsel embraced the case of *Re Estate of Charles Kibe Karanja (Deceased)* [2015] eKLR and the case of *John Mundia Njoroge & 9 Another* [2016] eKLR cited by the 1st Petitioner, and which he submitted, in fact support the 2nd Petitioner's argument that rectification of the confirmed Grant



cannot be done without touching the orders made at the distribution and which action must then involve all other beneficiaries

Determination

17. The broad issue that arises for determination herein may, in view, be summarized as follows:

“Whether a consent order was recorded in this matter before S. Githinji J, on 6/06/2019 and, if so, whether such consent should be implemented through amendment and/or Rectification of the confirmed Grant.”

18. The bone of contention herein is the property known as Eldoret Municipality Block 21(Kingongo)/3128 which, it is agreed, has since been subdivided into 4 portions, namely, Eldoret Municipality Block 21(Kingongo)/5254, Eldoret Municipality Block 21(Kingongo)/5255, Eldoret Municipality Block 21(Kingongo)/5256, and Eldoret Municipality Block 21(Kingongo)/5257

19. As already recounted hereinabove, the record shows that before the trial commenced on 6/06/2019, a consent was recorded in Court before Githinji J on that date. Quoted verbatim, the consent and the proceedings leading thereto were recorded as follows:

“6.6.2019

Before Hon. S.M. Githinji

C/A Sarah

Mr. Magare for the Objector

Mr. Ngigi Mbugua is for the Petitioners.

Mr. Magare: The 3 Petitioners are here

I am ready to proceed

Mr. Ngigi: I have the Petitioners present (both). I am ready to proceed.

Later

Mr. Magare: We had a lengthy discussion. We have agreed on various aspects but others will need to go to trial. The agreement was that Eldoret Municipality Block 21 King'ong'o 3128 forms part of the Estate though it is in the name of Leonard Gichora Kiiru. It will be divided in 4 shares a ¼ each. Beneficiaries of the 3 portions are

(1) Leonard Gichora Kiiru

(2) Kariuki Kiiru, and

(3) Joseph Njuguna Kiiru.

There was a dispute as to whether the 4th portion should go to

1. Julius Mungiri Kiiru or Peter Kiiru Chomba

2. The late Jane Mukami Ngungi and Margaret Nyambura Murage are daughters of the deceased.

3. Land parcel No. Eldoret Municipality Block 16 Kamukunji 306 be bequeathed on Leonard Gichora Kiiru.



4. Properties that were due to Kamau Geoffrey Kiiru (deceased) except Eldoret Municipality Block 21/69 and Eldoret Municipality Block 1/50 be shared equally among the beneficiaries. The Court to determine issue related to his share in Eldoret Municipality Block 21/69 and Block 1/50.
5. There are two accounts, one Barclays Bank and Post Bank of which the A/C numbers will be ascertained, the Bank and statements be supplied to the 2nd Petitioner and 1st Objector – Leonard Gichora Kiiru and Peter Kiiru Chomba.

All income of the Estate comprising of rent, lease and royalties be deposited in an estate account in the name of the deceased, Kiiru Chomba to be operated by Leonard Gichora Kiiru and Peter Kiiru Chomba, until the case is determined and the monies apportioned.

The Court is to apportion the proceeds. The amount in the stated two accounts once ascertained be also channelled to the estate account.

On the disputed parcels, the objection to proceed and the Court to determine, pending issues be determined based on the evidence.

Court

The record consent has been read back to all the beneficiaries who are present in Court who ascertain that is what they have agreed or consented to.

It is therefore adopted as an order of the Court.

Present beneficiaries are:-

1. Julius Mungiri Kiiru
2. Leonard Gichora Kiiru
3. Joseph Njuguna Kiiru
4. Peter Kiiru Chomba
5. Margaret Nyambura Murage
6. Pauline Wanjiru (under one Estate of Jane Mukami Ngugi)

S.M. Githinji

Judge”

20. The 1st Petitioner-Applicant is therefore right, as the record reflects, that such consent was indeed recorded in Court on 6/06/2019 and that some of the properties comprising the estate were indeed “distributed” amongst the beneficiaries under the consent. As correctly argued by the 1st Petitioner, one of the matters recorded was that the property, Eldoret Municipality Block 21(Kingongo)/3128, which was not mentioned in the deceased’s Will and which was reported to be registered in the name of the 2nd Petitioner, Leonard Gichora Kiiru, would form part of the estate of the deceased and would be divided into 4 portions which would then be distributed amongst 4 beneficiaries. However, while beneficiaries of the first 3 portions were expressly identified, regarding the beneficiary of the 4th portion, it was simply stated that there was a dispute on who between Julius Mungiri Kiiru (1st Petitioner) and Peter Kiiru Chomba, should get the same and the issue and was left at that. As already also stated, with these issues compromised and settled by consent, it was then agreed that the rest of the issues still in dispute would proceed to trial for determination by the Court.



21. The next question now is whether the said consent should be honoured and implemented.

22. As recounted above, by the said consent, the property, Eldoret Municipality Block 21(Kingongo)/3128, was to be divided into 4 equal shares. The beneficiaries of the first 3 portions were identified as Leonard Gichora Kiiru (2nd Petitioner), Kariuki Kiiru and Joseph Njuguna Kiiru. As regards the 4th portion, it was stated that there was a dispute as to whether it should be taken up by Julius Mungiri Kiiru (1st Petitioner) or Peter Kiiru Chomba, and this issue was therefore left unresolved. The record reflects that all these 5 family members/beneficiaries named in the consent as beneficiaries of Eldoret Municipality Block 21(Kingongo)/3128 were present in Court, that the consent was read out to them and that they all expressly confirmed their acceptance of the consent. Only then did the trial commence. It is therefore strange that the said Leonard Gichora Kiiru and Joseph Njuguna Kiiru would now swear Affidavits purporting to disown or denying any knowledge of the same consent that they are recorded to have approved and sanctioned in the presence of Githinji J and in the presence of their Counsel, Mr. Magare (now Hon. Justice Magare, Judge of the High Court of Kenya). This being a Court of record, I have no alternative but to go by what S. Githinji J, recorded.

23. Further, while perusing the Court file, I have come across an Affidavit sworn by the 2nd Petitioner on 21/01/2021 and, referred to as “Affidavit of Protest”. The same seems to have been sworn in respect to an order referring the remaining matters to Mediation and which order he challenged. In the Affidavit, he deponed as follows:

“.....

That I have seen the order and the request to have this Cause mediated through the court assisted mediation.

That at the beginning of the hearing and with the assistance of the counsels on record, we negotiated what we could and recorded a settlement with a rider that the balance of the estate goes to trial.

That it was therefore an error to have an order for further mediation issue when there was nothing to mediate.

That the purpose of the mention on 7/12/2020 was to take a further hearing date as the case is substantially part heard.

.....”

24. The above express statements by the 2nd Petitioner confirm, without a shadow of doubt, that the consent the subject herein was indeed recorded prior to the trial commencing before the Court and that the 2nd Petitioner fully participated in it. In fact it is because of this contention that the Mediation was withdrawn and the trial continued. The 2nd Petitioner’s denial of the same therefore exposes him as being blatantly dishonest.

25. From the above chronology of events, I have no reason to find any justification for any objection to implementation of the consent. Granted, the 1st Petitioner-Applicant, made some errors in his Application, such as wrongly referring to a non-existent consent recorded on 10/06/2019, instead of 6/06/2019. The extracted order that he exhibited also contained obvious errors. However, he later by his Supplementary Affidavit, clarified the correct date and through his Advocates, prompted issuance of a corrected extracted order which now accurately captures the proceedings of 6/06/2019. In any event, those very slight errors, such as citing of the wrong date cannot be used to shut out the 1st



Petitioner as no prejudice suffered by virtue of such errors has been demonstrated, and it also does not in any way affect the substance of the matter before Court.

26. The fact that the parties confirm that indeed, said property Eldoret Municipality Block 21(Kingongo)/3128, was subsequent to the consent actually sub-divided into 4 portions as agreed in the consent lends credence to the authenticity of the consent. That sub-division into 4 portions being exactly what was agreed to be done under the consent, I believe it was done in preparation of implementing the consent.
27. The 2nd Petitioner also disowned the Affidavit alleged to have been sworn by him on 23/10/2019, filed in Court on the same date, drawn by Messrs Ngigi Mbugua & Co. Advocates and witnessed by Joseph Cheptarus Advocate as Commissioner of Oaths. The same was exhibited by the 1st Petitioner in his Supporting Affidavit. The salient portions of the Affidavit are premised as follows:

“.....

That I attended the preliminary hearing where it was mediated by our advocates on record Mr. Ngigi Mbugiua and Dennis Magare and agreed that title No. Eldoret Municipality Block 21 (Kingongo) 3128 though not registered in the deceased estate be treated as such.

That my deceased father to whom this proceedings relate had expressed the wish that the said property be shared out by four (4) of his sons to wit Leonard Gichora Kiiru, Kariuki Kiiru, Joseph Njuguna Kiiru and Julius Mungiri Kiiru.

That in pursuance to that wish of the deceased, I had commissioned a sub-division of that plot into 4 sub plots.

That for the record, I shall transfer the resultant subplots in accordance with my father’s wishes as follows:

Eldoret Municipality Block 21(Kingongo)/5254 Leonard Gachora Kiiru

Eldoret Municipality Block 21(Kingongo)/5255 Julius Kiiru

Eldoret Municipality Block 21(Kingongo)/5256 Kariuki Kiiru

Eldoret Municipality Block 21(Kingongo)/5257 Joseph Njuguna Kiiru”

28. Although the 2nd Petitioner has disowned the above Affidavit and even termed it a forgery, deponing that he was away in Mombasa on the date that he is alleged to have signed it in Eldoret, I note that at paragraph 26 of his Replying Affidavit, he has deponed as follows:

“That the 1st Petitioner has kept me in the dark and at one time while admitted in hospital he brought me documents which I signed without question because of the trust I had in him.”

29. The above statement does not at all sound convincing to me. I find it most unlikely that the 2nd Petitioner, who has not alleged any illiteracy or naivety on his part, and being an adult of sound mind, would sign documents without bothering to know their contents. It is also telling that the contents of the Affidavit are the same as what was recorded in Court by consent before Githinji J on 6/06/2019. He does not even disclose what then, according to him, the 1st Petitioner informed him that the documents were, and what he therefore believed he was signing. Despite alleging that the Affidavit was a forgery, he does not even allege that he has lodged a complaint with the police for investigations. Under these circumstances, I am not convinced that the 2nd Petitioner is being honest or truthful. On a balance of probabilities, I disbelieve him.



30. It is also clear that the 2nd Petitioner, both in his Affidavit and in his Counsel’s Submissions, has conveniently avoided making any comments or submissions on the proceedings of 6/06/2019. The 2nd Petitioner spent much time and space pointing out errors in the dates cited and other technicalities which do not affect the substance of the matter before Court, but did not at all submit on the proceedings of 6/06/2019 in which the consent was recorded. He has not therefore expressly opposed the contention that indeed the consent was recorded in Court in Court on 6/06/2019 in the presence of the beneficiaries, including himself, and in the presence of their Advocates. The presumption therefore is that the 2nd Petitioner has nothing to say regarding the proceedings of 6/06/2019 and leaves it to the Court to determine the same from the record.
31. In the circumstances, I find that the consent recorded in Court on 6/06/2019 is legitimate and there is no reason why the same should not be honoured and implemented. I however note that Joseph Njuguna Kiiru, having sworn the Affidavit herein disowning the consent, he would therefore be presumed to have no intention of or interest in claiming his portion of the property Eldoret Municipality Block 21(Kingongo)/3128 given to him under the consent. The other beneficiaries of Eldoret Municipality Block 21(Kingongo)/3128, under the consent, namely, Kariuki Kiiru and Peter Kiiru Chomba (whom there is indication that he passed on) and/or their estates, where applicable, have also not come forward to claim their shares. In view thereof, I therefore presume that they, too, are not interested in the same. In fact, for Kariuki Kiiru, the said Joseph Njuguna Kiiru deponed that he was swearing his Affidavit on his behalf which then, if true, means that he, too, is not interested in claiming the portion allocated to him under the consent. In the circumstances, the 1st Petitioner being the only one who has come out to pursue his claim for one of the 4 portions “allocated” under the consent, I find no reason to deny him the claim.

Final Orders

32. The upshot of my findings is that the Summons dated 28/05/2024 succeeds, and I rule and order as follows:
- i. Pursuant to the consent order recorded in Court on 6/06/2019, the property described or known as Eldoret Municipality Block 21(Kingongo)/3128, is hereby declared to form a part of the estate of the deceased herein – the late Kiiru Chomba.
 - ii. Further, pursuant to the said consent order recorded in Court on 6/06/2019, the property described or known as Eldoret Municipality Block 21(Kingongo)/3128, having since been sub-divided into 4 equal portions, as follows:

(1)	Eldoret Municipality Block 21(Kingongo)/5254
(2)	Eldoret Municipality Block 21(Kingongo)/5255
(3)	Eldoret Municipality Block 21(Kingongo)/5256
(4)	Eldoret Municipality Block 21(Kingongo)/5257



it is declared that the 1st Petitioner – Julius Mungiri Kiiru - is entitled to one of the 4 portions, namely, Eldoret Municipality Block 21(Kingongo)/5255.

- iii. That consequently, the Certificate of Confirmation of Grant dated 31/05/2023 and issued herein, is hereby reviewed and amended to include the following properties and which are hereby distributed among the beneficiaries as follows:

(1)	Eldoret Municipality Block 21(Kingongo)/5254	Leonard Gachora Kiiru
(2)	Eldoret Municipality Block 21(Kingongo)/5255	Julius Mungiri Kiiru
(3)	Eldoret Municipality Block 21(Kingongo)/5256	Leonard Gachora Kiiru
(4)	Eldoret Municipality Block 21(Kingongo)/5257	Leonard Gachora Kiiru

- iv. That the 2nd Petitioner – Leonard Gichora Kiiru – as co-Administrator of the estate of the late Kiiru Chomba, the deceased herein, is hereby directed to, within thirty (30) days from the date that he shall be served with the Amended Certificate of Confirmation of Grant that shall be issued pursuant to the orders herein, execute his mandate according to the said consent order, by executing or signing completion/transfer documents vesting or transmitting the said property Eldoret Municipality Block 21(Kingongo)/5255, to the 1st Petitioner – Julius Mungiri Kiiru.
- v. That in default of (iv) above, the Deputy Registrar of this Court is directed to execute the said documents on behalf of the estate of the late Kiiru Chomba, in place of the 2nd Petitioner as co-Administrator, and the Lands Office shall in that event, accept the documents as duly and validly executed.
- vi. Each party shall bear his own costs of the Application herein.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 24TH DAY OF JANUARY 2025

.....

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Mr. Angu for the Applicant

Mr. Buluma for the 2nd Petitioner/2nd Administrator

Court Assistant: Mr. Kuto

