



**In re Estate of Andrew Kabera Gachini alias Kabera s/o Andrea alias Kabera Andrea alias Kabera Andrea Gachini (Deceased) (Succession Cause 107 of 2017) [2024] KEHC 9524 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9524 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
SUCCESSION CAUSE 107 OF 2017  
CM KARIUKI, J  
JULY 26, 2024**

**IN THE MATTER OF THE ESTATE OF ANDREW KABERA GACHINI ALIAS KABERA S/  
O ANDREA ALIAS KABERA ANDREA ALIAS KABERA ANDREA GACHINI (DECEASED)**

**BETWEEN**

**JOHN MAINA KABERA ..... 1<sup>ST</sup> EXECUTOR  
EVAN NDERITU KABERA ..... 2<sup>ND</sup> EXECUTOR  
DAMARIS NJERI KABERA ..... 3<sup>RD</sup> EXECUTOR**

**AND**

**JAMES MUTTA KABERA ..... 1<sup>ST</sup> OBJECTOR  
JOSEPH MATHENGE KABERA ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. The executors of the will of the late Andrew Kabera Gachini alias Kabera s/o Andrea alias Kabera Andrea alias Kabera Andrea Gachini (deceased) filed a petition of probate of the written will supported by an affidavit dated 17/9/2013 and filed on 19/9/2013 petitioning the court for a grant of the last will of the deceased's estate. The grant of probate was made to the said executors on 13/3/2014.
2. Afterwards, the executors filed summons for confirmation of probate of written will dated 9.2.2015 and filed on 10.12.2015 and all the beneficiaries except the objectors gave their consent to confirmation of grant of probate of written will.
3. The objectors filed an objection of making of grant dated 7/ 3/2016 and filed on 8/3/2016. the executors filed their replying affidavit dated 9/8/2016 and filed on 17/8/2016. The matter proceeded for hearing with the executors calling 4 witnesses and the objectors calling 2 witnesses.



4. PW1 James Mwangi Wachira testified that the deceased called him in January 2008 informing him that he wanted to write a will. He stated that he had known him for over 10 years. On 10<sup>th</sup> January 2008, the deceased called him to go to Kariuki Mwangi Advocate to sign a will. He found the deceased at advocate office together with an advocate by the name Nderitu Komu.
5. It was his testimony that he was also with William Ngotho Mwangi . they witnessed the deceased signing the will, then they signed. The will had 5 pages. He stated that he later died and his funeral was held on 28/1/2008. He also adopted his statement dated 12/10/2020. PW1 asserted that when the deceased signed will he was fine. By then he was about 80 year of age but mentally he was fine.
6. PW2 William Ngotho Mwangi corroborated PW1's testimony. He stated that he witnessed the deceased's will on 10/1/2018 alongside PW1. He stated that he knew the deceased for more than 10 years and that he saw the deceased signing the will which was read to him while they waited at the reception but he never witnessed the preparation of the will. PW2 asserted that by then the deceased was about 80 years of age and he appeared well health wise. That he used to communicate with him and for the over 10 years that he knew him he appeared mentally well. He also adopted his statement in evidence.
7. PW3 John Maina Kabera, one of the executors and the deceased's son testified that the deceased had four wives; Emma Wangui and Esther Nariapa who were dead and Tabitha Watetu and Damaris Njeri. He stated that the deceased called a family meeting at Karampton farm including his children and wives early January 2008 and informed them that he had written a will. He also called some of his cousins Ndirangu and the late James Mwangi.
8. It was his testimony that the purposes of meeting was to disclose there was a will and that he wanted peace at home as he did not have many days to live. He was going to hospital for treatment and was suffering from diabetic and was anemic. He also said he wanted to leave family in peace and that the will was at Kariuki Mwangi Advocate offices. He stated that he did not know about the firm before and neither had he seen a copy of the will which he first saw when his father died.
9. PW3 averred that his step mother knew the advocates offices. That the will was read later after the deceased died. The advocate gave them a date for reading of the will and members of the family attended. It was unsealed in our presence and he witnessed that. He asserted that the 2 objectors attended the reading of will and after it was read, all of them were given copies of the will. He stated that some people had been appointed as executors including himself. The will has 5 pages and it was signed. He saw his father's signature as he knew it from signed cheques. The advocate explained the process of executing the will and they filed for probate.
10. It was stated that the will makes provisions of surviving spouses and children. The deceased died in March 2008. They have executed the will and beneficiaries have taken their shares. PW3 also pointed out that:-
11. See paragraph 14. Page 2 Plot 68 Uns. Industrial Maralal produces rent and same is shared between 3 wives and I distributed after collection. No issue over rent.
12. See paragraph 21 – Nyahururu Block 4/109 developed and rented out. Rent is Kshs. 70,000 per month it was given to 4 families. It is distributed once rent is collected. There is a manager of same and once rent is collected, it is divided into 4 then each family shares amongst themselves. No issues over same.
13. He asserted that the 2 objectors are his brothers from Emma house ( 1<sup>st</sup> house). And he is younger than them but his father said age was not a factor in selecting him to lead but ability to lead. He stated that the objectors declined to sign the consent.



14. PW3 testified that LR Nakuru/Olongai/phase 2/211 was left out of the will but the family agreed to sell it off and the objectors were involved. The property was sold at Kshs. 1.4 million and the money was distributed equally. They gave the 1<sup>st</sup> and 2<sup>nd</sup> objector 103,000/=, a fact he disclosed in his evidence affidavit. He also stated that There is no denial to receipt of the money. In regards to the browser lorry it was also not in the will but after family discussion, it was disclosed that It was not in use but was grounded not operational and had a water tank. They sold the water tank at Kshs. 100,000/- and Kshs. 25,000 was given to each family. He confirmed that each objector hot Kshs. 8,300 via mpesa and they did not deny receiving the payment.
15. PW3 disclosed that he was not aware of any other omitted properties in the will or schedule of asset. That they got the bank statement lodged in court and there is no evidence for withdrawal for money therein. Additionally, they filed accounts for the period January 2008-december 2017 in court and provided a copy to the objector. He also stated that he never withdrew any money from the accounts and he was aware that he could only withdraw after confirmation of grant and that only the objectors have failed to sign.
16. He divulged that all contents of the consent are genuine and It is not true that most of the beneficiaries did not consent. That they have not intermeddled or wasted any estate properties nor taken or sold any estate properties nor hidden any money or property of estate. Further, that The property /building Nyahururu generates rent which is distributed according to the will of the deceased. He stated that the children's education it taken care of by the rent distribution. The rent from Maralal plot is also distributed to 3 houses excluding house no. 4 as per will.
17. He concluded by stating that the will was the deceased's wish who died on 28/3/2008, 13 years ago and that the 3 executors have executed the will to the best of their ability without excluding any of the beneficiaries.
18. PW4 Nderitu Komu Advocate testified that in 2007 he was working as an associate with Kariuki Mwangi & Company. He confirmed that the deceased came to his chambers in 2007 and instructed him to write a will. He had a diary with 4 pages containing what he wanted to be included in his will. The contents were in Kikuyu language and he wanted him to convert them into will under the law. He stated that he had the original diary and showed it to the court. Inside the diary there were notes covering 4 pages with the date 4/8/2007 and Andrew Kabera Gachini had signed last page of the diary will notes. PW4 asked the deceased to provide documents of ownership in respect to the parcels he has in his will and he left the diary and brought the copies of ownership for the parcels of land.
19. It was his testimony that he converted the contents of diary the called him and read the will in Kikuyu language. The content was in accordance with the diary. He then advised the deceased to bring at least 2 witnesses to witness him executing will. He came with them on 10/1/2008. He was in chambers alone with the witnesses' IDs and PW4 read the will to him once more and he confirmed the contents. He then added the witnesses' names and addresses i.e. James Mwangi Wachira and William Ngotho Mwangi and the two together with the deceased executed the will in his presence.
20. PW4 asked the deceased where he wanted the will to be kept and he responded in the firm of Kariuki Mwangi & Co. Advocate. He left and will was kept in law firm for safe keeping. He produced the diary and also the original will as p. exhibit 1 and 2. He stated that the deceased was in a good state of mind and that he had attended to him before and after the will execution and he was in a good state of mind and had a very good memory. He stated that he did not know of any other will of the deceased and that he did not know whether some beneficiaries has allocated themselves some of properties of the estate.



21. DW1 Joseph Mathenge Kabera stated that the deceased had four wives and he died on 28/3/2008. He adopted his recorded statement on 10/9/2018 as his evidence in chief. My father died 28/3/2008. He stated that the will dated 10/1/2008 was drawn while he was sick and that the deceased's sickness started in 2007. He was admitted on 17/7/2007 in Nyahururu Later on 30/10/2007 he was admitted and in 16<sup>th</sup> January he was admitted in hospital Nakuru then in St. Mary Hospital near Gilgil on 1/3/2008. On 26/3/2008 he was admitted in a private hospital Nyahururu. DW1 asserted that the will was drawn under suspicious circumstances as his father was ill and not in a position to write the will and that Damaris Njeri procured the advocate who drew the will. He averred that from the contents of the will, Damaris who is the 4<sup>th</sup> wife got 80% of the estate
22. He stated thus: -See will page 2 paragraph 6- Damaris got Nyahururu – Leshau Block 197 – 5 acres Paragraph 7 - Nyahururu – Leshau 199 –5 acres Clause paragraph 9 LR 462 – 5 acres-Clause 17 LR Nakuru Block 4/264 (1/4) acres – Nakuru Town Development (student hostels, shops)-Clause 22/ Paragraph - plot 16 Karampton commercial plot shopping center Paragraph 24/-Clause Damaris KAH 9515Y Clause 11 Sugut/130-100 A/150 (40 acres) with others-Clause 12 with others Daiga -2/1403 Aguthii 625-Clause 14 plot 68 Maralal with others Clause No. 21 Nyahururu Block 4/109. Next Barclays Bank developed.
23. In sum, Damaris has 80% of the estate She is the one who procured the advocate to do the will.
24. It was his testimony that there was land which is 8 acres in Olonguroni LR 11/2011 next to Kabarak University which is it not mentioned in the will and it was disposed by 3 executors. Further, the motor vehicle KAH 961 Pajero and KLX 641 have been disposed and there is a plot 161 Maralal not mentioned in the will which Damaris collects rent for. That there is a residential property of 3 acres in Salama Nyahururu that is not in the will and a plot at Salama. He averred that the will is not valid in the circumstances and Damaris ensured she got the lion's share. He testified that PW3 is his brother from the 1<sup>st</sup> House and he supported the will as he was allocated a commercial plot Afraha Stadium Nakuru.
25. DW2 James Muita Kabera adopted his statement filed on 8/2/2023. He stated that the deceased was his father who had 4 wives and his mother was Emma Wangui, the 1<sup>st</sup> first wife. She was married in 1946 and died in 2003 so the lived together for 57 years. Further, that Damaris Njeri was the 4<sup>th</sup> wife and was married in 1993. His father died in 2008 and they had cohabited for 15 years. He pointed out that the will dated 10/1/2008 will is not genuine as the deceased had said that his will was to be kept in the bank before his death. He stated that by 10/1/2008 his father was sick though he did not know the ailment, he was admitted in hospital severally and that when he was said to have written the will he was admitted in hospital. That on 7/1/2008 he had come from Charity Hospital and will is said to have been written 2 days later. That it is said Damaris Njeri sourced Advocate Mwangi Kariuki to write a will in which she got the lion's share which is about 80%. He reiterated DW1's testimony on what the said Damaris Njeri had gotten and what had allegedly been excluded from the will and sold.
26. Executors' Written Submissions
27. The executors submitted that the burden of proof lies on the objectors to proof that at the time of death, the deceased did not have testamentary capacity to make a valid will. That the deceased was of sound mind at the time of making the said will and he had never suffered from any mental illness. Reliance was placed on Section 5(3), 5(4) of the Law of Succession Act and Re Estate of Gatuthu Njuguna (deceased) [1998] eKLR.
28. It was contended that the deceased was fully aware of the contents of the will since the same was read to him in a language he could understand and as such it is clear that the deceased understood he



- was executing a will for which he has earlier give instructions and evidence by the testimony of PW4. Reliance was placed on the case of the Estate of Margaret Njambi Thuo (deceased) [2019] eKLR
29. The executors asserted that PW4 is not a beneficiary of the estate of the deceased and it is the deceased who sought for the services from the firm of Kariuki Mwangi & Co. Advocates for purposes of making the said will. It is further submitted that there is nothing on record to show that the said will was prepared in suspicious circumstances or procured under undue influence furthermore, the will was executed before two independent witnesses. Reliance was placed on Section 11 of the [Law of Succession Act](#).
30. It was averred that the will dated 10.1.2008 has met the statutory threshold of a valid will since the testator had testamentary capacity, the testator executed it in the presence of two competent witnesses who signed the said will in the presence of the deceased and the advocate who prepared it. Further, that the court should confirm the application for summons for confirmation of grant in order for the estate which has been wasting away for the last 15 years to be distributed and the beneficiaries get their shares. Finally, the deceased was at liberty to dispose of his property as he desired.
31. Objectors' Written Submissions
32. The objectors stated that the deceased did not in fact have the requisite capacity to make the will in question and even so the said will is marred with outright doubt and suspicion which can only mean that either the free will of the testator was overborne by acts of coercion or fraud or the will is a product of fraudulent fabrication. Reliance was placed on In re Estate of Gatuthu Njuguna (deceased) [1998] eKLR, In re Estate of Murimi Kennedy Njogu- deceased [2016] eKLR
33. It was submitted that in seven months preceding his death, the deceased was admitted six time in various hospitals. He was feeble and sick and his eulogy is a testament to this fact. At his state, he called a family meeting on 5<sup>th</sup> January 2008 where he informed everyone that the will has already been prepared even before 5<sup>th</sup> January 2008. It was asserted that this is an uncontroverted narration of facts by the children of the deceased who were present at the meeting. It beats logic and further lends credence to the existent suspicion that the executors could go on to produce a will that is dated 10<sup>th</sup> January 2008.
34. The objectors averred that the witnesses called to give evidence in support of the executors' case provided hugely contradictory testimony. Further, that PW1 gave evidence completely at variance with the deceased's health and stated that he signed the will on 10<sup>th</sup> February 2008 which is different with the fate of the will before the court. Additionally, PW2 who hired the advocates who prepared the purported will stands to gain the biggest share of all. It was also stated that the accountant's report produced by the executors show that it is the executors who have all along been financially gaining from revenue of rental properties left by the deceased to the exclusion of the other beneficiaries.
35. The objectors contended that PW3 was allocated a valuable and pricey property which influenced his mind in favour of PW2. Further, 8 acres of land being L.R Nakuru/Olongai Phase 11/211 belonging to the deceased was conveniently left out of the purported will and was hurriedly sold without the knowledge of the other family members. The proceeds thereof were exclusively shared amongst the executioners.
36. The Objectors argued that Damaris Njeri Kabera's intention by presenting a sham will is to mislead the court into overlooking the rights of the other beneficiaries and as it stands she has already acquired over 80% of the deceased's estate at the expense of the objectors who will be severely prejudiced. That the objectors' mother was married to the deceased for 57 years and worked hard to acquire the estate for her children to be dispossessed of their rightful entitlement.



37. Reliance was placed on *In re Estate of Julius Mimano (deceased)* [2019] eKLR, *Vijay Chandrakant Shah vs The Public Trustee Civil Appeal No. 63 of 1984*, *Mwathi vs Mwathi and Another* [1985-1998] EA 229, *Wanjau Wanyoike & 4 Others vs. Ernest Wanyoike Njuki & Another High Court Civil Case Number 147 of 1980*, Section 5 of the *Law of Succession Act*, *Banks vs Goodfellow* [1870] LR 5 QB 549, etc.
38. It was asserted that the deceased an 82-year-old man was so sick and weakened by illness and therefore easily amenable to manipulation and if at all he made the will he was unduly influenced by Damaris Njeri Kabera. That up to his death she was in control of him and hired a lawyer to draft the will which made grand provisions for herself and her family excluding some properties which she sold for her benefit, procured her friends to witness the fraudulent will and waited for his demise to approach the court with the sham document asking the court to give effect to her intention to dispossess the rest of the beneficiaries.
39. The objectors stated that the testator was incapacitated through sickness and people in control of the situation took advantage to prepare a will that seeks to enrich them making it void. Reliance was placed on Section 7 of the *Law of Succession Act*, *Zorbas Sidivo Poolous* [2009] NSW 197 quoted in *In re Estate of Lusila Waweru (deceased)* [2020] eKLR, *In re Estate of Mbogo Njue (deceased)* [2018] eKLR etc.
40. In conclusion, the objectors urged the court to declare the purported will as being invalid and void for reasons that it failed to appreciate and state the deceased's intention and was prepared in a cloud of suspicion. That the deceased was sick and easily manipulated and there are suspicions as to the circumstances of the making of the will.
41. Analysis and Determination
42. Having looked at the pleadings, the recorded evidence and the written submissions and annexures thereto lodged by both sides, the main issue that emerges for determination centers around the validity of the will on record; the resolution of which shall determine the outcome of the rest of the issues.
43. The objectors herein objected to the summons of confirmation of grant by the executors in respect of the deceased' estate asserting that the will annexed to the petition, the impugned will hereinafter is unauthentic and the deceased was incapable of making a will in his state of mind at the time of making the purported will. They stated that there was non-disclosure regarding some of the deceased property including LR. Nakuru/Olangai Phase 11/211 and a bowser lorry and other assets not included in the will and/or schedule of the deceased's assets.
44. The Objectors argued that Damaris Njeri Kabera's intention by presenting a sham will is to mislead the court into overlooking the rights of the other beneficiaries and as it stands she has already acquired over 80% of the deceased's estate at the expense of the objectors who will be severely prejudiced. The objectors stated that the testator was incapacitated through sickness and people in control of the situation took advantage to prepare a will that seeks to enrich them making it void.
45. On the other hand, the executors submitted that the burden of proof lies on the objectors to prove that at the time of death, the deceased did not have testamentary capacity to make a valid will. They asserted that at the deceased was of sound mind at the time of making the said will and he had never suffered from any mental illness. It was contended that the deceased was fully aware of the contents of the will since the same was read to him in a language he could understand and as such it is clear that the deceased understood he was executing a will for which he has earlier give instructions and evidence by the testimony of PW4.



46. The executors reiterated that the will dated 10.1.2008 has met the statutory threshold of a valid will since the testator had testamentary capacity, the testator executed it in the presence of two competent witnesses who signed the said will in the presence of the deceased and the advocate who prepared it.
47. Section 5 of the *Law of Succession Act*, deals with capacity to make a will, and of testation. The relevant provisions state as follows -
- ‘5(1). ... any person who is sound of mind and not a minor may dispose of his free property by will ...
- (2) ...
- (3) Any person making or purporting to make a will shall be deemed to be of sound mind for the purpose of this section unless he is, at the time of executing the will, in such a state of mind, whether arising from mental or physical illness, drunkenness, or from any other cause, as not to know what he is doing.
- (4). The burden of proof that a testator was, at the time he made any will, not of sound mind, shall be upon the person who so alleges.’
48. Accordingly, the validity of a will is dependent on two principal factors, namely the capacity of the testator to make a will at the material time and compliance with the formal requirements of making of a will. Section 5 states that the maker of a will ought to be a person of sound mind, who is not a minor and that the soundness of mind of the maker shall be presumed unless at the time of executing the will he was not in a state of mind as not to know what he was doing, on account of either mental or physical illness, or drunkenness, or any other cause.
49. The essentials of testamentary capacity were laid out in *Banks vs. Goodfellow* (1870) LR 5 QB 549, where the court stated that -
- ‘A testator shall understand the nature of the act and its effects, shall understand the extent of property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties-that no insane delusion shall influence his will in disposing property and bring about a disposal of it which if the mind had been sound, would not have been made.’
50. The person(s) alleging that the deceased lacked testamentary capacity in this case the objectors on account of sound mind is casted with the burden of proving the same.
51. Furthermore, in the instant case the objectors contended that the deceased lacked testamentary capacity to make the impugned will because he was feeble and sick at the time the will was made. The objectors were required to prove to this court that the deceased did not have the requisite soundness of mind for the purpose of making the impugned will. In my considered view, they did not provide any evidence that the deceased was in no state of mind to make or instruct his advocate to make the impugned will. They did not prove that the illness he was suffering from impaired his state of mind.
52. I have thoroughly examined the evidence of the petitioner and I have noted that there is nothing to indicate that the deceased’s illness had caused any mental incapacitation. Although it is indicated that he has been admitted severally and that he had been in hospital two days before he wrote his will, there is nothing on record to suggest that the deceased’s illnesses affected his mental capacity or that he wrote the will while he was admitted in hospital as was asserted by the objectors. DW2 even admitted that he did not know what the deceased’s illness was. On the other hand, PW4 testified that the deceased was in a good state of mind and had good memory at the time. In view of the above, it is my conclusion



that there is no material before me upon which I can hold that the deceased did not have the requisite testamentary capacity at the time he wrote his will.

53. The objectors also stated that the will is marred with outright doubt and suspicion which can only mean that either the free will of the testator was overborne by acts of coercion or fraud or the will is a product of fraudulent fabrication. That the deceased an 82-year-old man was so sick and weakened by illness and therefore easily amenable to manipulation and if at all he made the will he was unduly influenced by Damaris Njeri Kabera.. The objectors stated that the testator was incapacitated through sickness and people in control of the situation took advantage to prepare a will that seeks to enrich them making it void
54. The objectors urged the court to declare the purported will as being invalid and void for reasons that it failed to appreciate and state the deceased's intention and was prepared in a cloud of suspicion. That the deceased was sick and easily manipulated and there are suspicions as to the circumstances of the making of the will. In testimony DW1 and DW2 averred that the will was drawn under suspicious circumstances as his father was ill and not in a position to write the will and that Damaris Njeri procured the advocate who drew the will and that from the contents of the will, Damaris who is the 4<sup>th</sup> wife got 80% of the estate
55. Section 7 of the [Law of Succession Act](#) addresses wills caused by fraud or coercion or importunity or mistake. Such wills are stated to be void.
56. Section 7 of the [Law of Succession Act](#) states –

‘A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, or has been induced by mistake, is void.’
57. In regards to Section 7, the court In re Estate of Julius Mimano (Deceased) [2019] eKLR stated as follows:-

“Section 7 covers situations where the testator at the time of making the will is of the requisite testamentary capacity. That would be to say that the testator was of age and of sound mind at the material time, but the circumstances of the making of the will detract from or undermine its validity. Fraud would arise in cases where the making of the will is procured by deceit or similar underhand methods. Coercion would refer to circumstances where a person is literally forced to make a will in a certain way, either under duress or threats to life or limb. The will, though made by the deceased himself, in terms of the same being executed by him, would not reflect his will or wishes or intentions in the circumstances, but those of the person driving him to make it in that particular way. Importunity refers to what is often described as undue influence. In such cases there would be no coercion or force or duress as such, but pressure would be brought on the testator of such nature that he cannot resist. He would bend to the pressure, not so much because he is persuaded or convinced that he should make his will in such manner, but because he would be tempted to rid himself of the pressure by capitulating to it. Mistake would refer to cases where the testator signed the wrote document, such as that meant for someone else believing it to be meant for him.”
58. The allegation that the will was made under a cloud of suspicion raises the question of fraud. The fact that the circumstances of the making of a will were suspicious would suggest that the making of the will was procured by fraud or fraudulent means as asserted by the objectors. They insisted that Damaris was the one who procured the advocate to write the will for the purposes of allocating herself the lion's share of the estate but no evidence was provided to prove the same. PW4 stated that the deceased went



- to his office alone and that he already had a diary that had details of his wishes appertaining his estate that PW4 simply translated to English and prepared the will. He confirmed that he was not introduced to the deceased by Damaris.
59. PW4 stated that the deceased then went afterwards alongside his two witnesses and the will was read to him and he approved after which they all signed it and it was left for safekeeping at the advocates' office.
60. I have perused the evidence of the Petitioner and the material placed on record, and I am convinced that the deceased knew the contents of the document that he signed as his will and has also approved of its contents. The same was a translation of what was in his diary that he presented to PW4 for purposes of making the will indicating that it reflected his wishes and intention. Further, having gone through the will made provisions for all the deceased's beneficiaries and I do not agree with the assertion that Damaris had been allocated 80% of the estate. It is important to state that the deceased had a freedom to dispose of his estate in a manner that was suitable to him and the same cannot form grounds to invalidate the will.
61. In the instant case, the objectors did not adduce any evidence that the deceased was in a weakened or feeble condition, and therefore easily amenable to manipulation. They did not even have any records of the deceased's illness. The objectors did not establish that the deceased was in a weak position on account of his old age or sickness while making his will or that he was in the control of Damaris. I have already stated that there is no evidence on record to show that the deceased's health has deteriorated to a stage where he was mentally incapacitated. More so, I believe that the deceased procured his own advocate and approached him alone to write his will. In my considered view, the existence of suspicious circumstances in the writing of the impugned will were not proved by the objectors in the instant case.
62. Section 11 of the *Law of Succession Act* on the formal requirements of validity of a will states that:-
11. No written will shall be valid unless-
    - (a) The testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;
    - (b) The signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;
    - (c) The will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.
63. In summation of the totality of evidence before court, I find that the deceased's will met all the formal requirements outlined in Section 11 of the *Law of Succession Act*.
64. In the premise, the objection dated 7/ 3/2016 is found to lack merit and is hereby dismissed. The Petition for Probate of the deceased's written will dated April 26, 2018 is found to have merit and is allowed with the following orders: -
- i. That the Will executed by the deceased herein dated 10<sup>th</sup> January 2008 be and is hereby declared to be a valid will of the deceased.



- ii. That distribution of the deceased's estate be and is hereby ordered to in terms of the deceased will dated 10<sup>th</sup> January 2008.
- iii. No orders as costs

**RULING DATED AND SIGNED AT NYANDARUA THIS 26TH DAY OF JULY, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

.....  
**CHARLES KARIUKI**  
**JUDGE**

