In re Estate of Jebuigut Cheruiyot Kerich (Deceased) (Succession Cause 104 of 2012) [2024] KEHC 10269 (KLR) (19 August 2024) (Ruling)

Neutral citation: [2024] KEHC 10269 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE 104 OF 2012

RN NYAKUNDI, J

AUGUST 19, 2024

IN THE MATTER OF THE ESTATE OF JEBUIGUT CHERUIYOT KERICH (DECEASED)

BETWEEN

IN THE MATTER OF EVANS CHUMBA ..... 1ST APPLICANT

IN THE MATTER OF ELIAS KIMUTAI ..... 2ND APPLICANT

AND

PIUS KIPKOSGEI ..... RESPONDENT

RULING

Representation:

M/s Birech, Ruto & Co. Advocates

Ms. Nyaundi Tuiyott & Co. Advocates

1. Before me are Summons for revocation dated 3rd March, 2015 for determination in which the applicants seek reliefs as follows:

    a. That the grant of letters of administration to the estate of the above named Jebuigut Cheruiyot Kerich made to Pius Kipkosgei on 20th May, 2013 and confirmed on 5th December, 2013 in the name of Pius Kipkosgei be revoked or annulled on grounds that:

        i. The Grant was obtained fraudulently by making of a false statement or by cancellation from count of something material to the count or that proceedings to obtain the grant were defective in substance.

        ii. The changes effected to the aforesaid Grant in the register to Nandi/Chemuswa/108 measuring 7.6 Ha

b. Costs be provided for.

2. In support of the summons, Evans Chumba relied on his affidavit dated 17th August, 2015 and filed on 16th September, 2015 which formed the basis of his oral evidence on oath. The highlights in examination in chief were basically around the following statements:

   a. That I am the grandson of Jebuigut Cheruiyot Kerich who is now deceased.

   b. That the deceased could not bear any children so she married Rael Jepkurgat Kerich through Toloita Kalenjin Customary Marriage.

   c. That Rael Jepkurgat bore three children Pius Kipkosgei, Rachel Jeruto and Jenipher Jepkemboi.

   d. That Rael Jepkurgat died on 27th September, 1990.

   e. That the deceased married my mother Selly Jelimo in order to get more children.

   f. That my mother bore two (2) children Elias Kimutai and myself.

   g. That my mother died on 23/8/1996.

   h. That the deceased has been taking care of us since our mother passed on, and we have known her as the only parent since then.

   i. That the deceased died on 8th December, 2004.

   j. That on her death, she (deceased) was the owner of Nandi Chemuswo Scheme/108 measuring 7.6 Ha.

   k. That Pius Kipkosgei applied for letters of administration without involving my brother and myself.

   l. That Pius Kipkosgei misled the court that:

      i. He had priority to Petition for letters of administration to the deceased estate.

      ii. Him and his two sisters were the only heirs apparent to the deceased's estate.

   m. That Pius Kipkosgei did not seek my brother or my consent to Petition.

   n. That I am further advised by my counsel, which advice I verily believe to be true, that it was fraudulent to grant Pius Kipkosgei grant of letters of administration without our Consent.

3. In response to the summons, Pius Kipkosgei, the Petitioner/Administrator filed a replying affidavit sworn on 5th June, 2015. He averred that a certificate of confirmation of Grant was issued on 5th December 2013 in his favor having been successfully prosecuted. He stated that their late mother Rachael Jepkurgat did not pass on, on 27th September, 1990 as alleged by the applicant. That she passed on, on 16th September, 1989 and the certificate produced by the Applicant is forgery.

4. The Petitioner/Administrator averred that the applicants herein are strangers and have not interest whatsoever in the Estate of the deceased. That the deceased was the registered owner of Land Parcel Nandi/Chemuswa/108 measuring 7.6 Ha. That they lived on the said parcel since and the Applicants who are strangers have never lived on the parcel.

5. It was the Respondent's Petitioner's position that he properly acquired the subject parcel having followed the proper procedures of transfer in regard to succession proceeding carried out in the High

Court. He stated that his late mother never married the said late Selly Jelimo and the Applicants are total strangers to him. According to him, he never misled the court in any manner and that the applicants are fraudsters.

6. The matter came up for mention on 18th April, 2016 before Hon. Justice C. W Githua and upon hearing both counsel, the court directed that the document filed by the Plaintiff on 22nd January, 2016, being Sally Jelimo's engagement agreement of 29th September, 1990 and the two certificates of Death in respect of Rael Jepkurgat issued on 19th June, be investigated by the Directorate of Criminal Investigation (DCI) Nandi County.

7. The report was later filed on 9th November, 2016 and the findings were that the two certificates of death in this matter belong to two different people. As for the engagement agreement, the report concluded that the alleged finger print was not appended by the said Jebuigut Kerich.

8. On cross examination by learned Counsel Ms. Tum for the Petitioner, the witness told the court that he knows as a fact that one Pius is a son is the son of Jebuigut Kerich and she has daughters called Emily Jeruto and Jenifer Jepkmoi. It was also his evidence that Jebuigut died on 8th December, 2004 and before her death he married the mother of Pius called Rael Jepkurgat. However, the witness confirmed that he does not know whether she was married in a woman to woman marriage. Further in his evidence, he told the court his mother Selly Jelimo was married to Jebuigut Cheruiyot under Kalenjin Customary law of marriage which took place on 29th September, 1990. That is how he came to live with Jebuigut Cheruiyot since 2004. The witness also relied on photographic evidence to support his claim as between his mother and the deceased Jebuigut Cheruiyot. That is when he witnessed the deceased signing with Selly Jelimo and Francis Chepkwony being present at that ceremony. The written engagement agreement and photographs were produced as documentary evidence in support of the objection against the petitioners.

9. Next in line was the evidence of Simon Kiptoo Talam who told the court on oath that he is an uncle to Evans Chumba and he did adopt his witness statement dated 8th September, 2015 as evidence in chief. In his testimony, he told this court that Evan's mother is called Selly Jelimo who also happened to be his sister. According to Simon Kiptoo, Selly Jelimo was engaged by Jebuigut Kerich to be a second wife which event took place on 29th September, 1990. He was able to identify the engagement agreement which apparently he endorsed to be his own handwriting as a secretary to the ceremony. In addition, the witness further told this court that during the engagement four cows were given, one bull, and a white sheep to commemorate the engagement in conformity with Kalenjin Customs. The witness invited the court to conceive the version of the engagement agreement and also the photographs taken on the material day. He was also to acknowledge that he took Pius to school and when Evans was born they all lived in the farm of Jebuigut Cheruiyot the deceased. In cross examination by learned Counsel Ms. Tum, the witness confirmed that he is an uncle to Evans Chumba, the Objector and that the ceremony called Koitoo in Nandi traditions between Jebuigut Cheruiyot and Selly Jelimo did take place in what is referred to as woman to woman marriage. It was his evidence that this was allowed under customary law since Jebuigut Cheruiyot could not bear children in the generational precreation within the lineage of the deceased. He denied that the engagement agreement was a forgery as alleged by the petitioner's counsel.

10. The other witness summoned for purposes of this trial was Lazarus Kirwa who introduced himself as a retired Senior chief since 1st July, 2015. It was his evidence that Evans Chumba is a resident of his location and he was aware of the relationship he had with Jebuigut Kerich until 2nd June, 2011. The witness also remembered that during his service as a senior chief, he was sent to resolve the conflict over a parcel of land between Evans Chumba and Kipkosgei. That is when he came to learn that Evans

had been chased away by Kipkosgei without taking notice that Jebuigut had married his mother on a woman to woman marriage. He denied ever meeting Jebuigut in her lifetime. He also told the court that on the ground were conflicting versions of the existence of this marriage between Jebuigut and Selly Jelimo which he could not be able to verify in court. On cross examination by learned counsel for the Petitioners, he denied knowing the parties including Jebuigut. He was also not aware of the marriage between the Objector's mother and the deceased.

11. The other witness in these proceedings was Charles Kibiwott also a retired assistant chief whose evidence was to the effect that Rael Jepkurgat was the first wife of Jebuigut Kerich and later Selly Jelimo was married by the same Jebuigut in 1990 following the death of Rael. He also confirmed that Selly Jelimo is the mother of Evans Chumba and during her marriage she had her own house and Jebuigut the 'husband' had her own home. He was able to identify some Photographic evidence showing when the marriage between Jebuigut and Selly Jelimo took place. That therefore goes without saying according to the witness that Evans Chumba is a child of Selly Jelimo. In cross examination by learned counsel for the Petitioners he confirmed that he was related to Jebuigut Kerich and during the engagement ceremony, he was present having confirmed that it went well within the Nandi customary law.

12. The other witness in this proceedings was Mercy Jepchirchir who told the court that the deceased married her aunt though he did not witness the marriage ceremony. She also confirmed that she took care of the deceased during her lifetime when she was ailing.

13. At the close of the Objector's case, it was now the turn of the petitioner to counter the evidence on predominant issue of woman to woman marriage between Jebuigut and Selly Jelimo. To lead the evidence in defence of the issues raised by the Objectors was Pius Kipkosgei who told the court that his mother Rael was married to Jebuigut on a woman to woman marriage. It was out of that union that two other children were born. He denied that the existence of a second marriage as between Selly Jelimo and Jebuigut. He countered the alleged marriage agreement as a forgery as established by the DCI investigative agency who returned a verdict of it being a forgery.

14. The second witness who testified on behalf of the Petitioner was Dinah Kendagor Rugut who told the court that Jebuigut herein the deceased stayed for some time without bearing any children and an arrangement was made for her to get married to Rael Jepkurgat under the woman to woman marriage. They lived together and bore three children namely Jeruto, Jennifer and Kipkosgei. She denied that Jebuigut after the death of Rael married another woman as stated by the Objectors. On cross examination by learned Counsel Mr. Songok, she denied any knowledge of knowing Selly Jelimo who was alleged to be married to Jebuigut. It was also her evidence that there was no marriage engagement between Jebuigut and Selly which she knew of or participated in as fronted by the Objectors.

15. The Petitioner also in support of his case summoned the evidence of Francis Chumba who told the court that the only marriage he knows of was that of Jebuigut Kerich and Rael Jepkurgat under woman to woman marriage. They lived together until when Rael's demise in 1989. Therefore, the lady Jebuigut remained with the children who were born out of that union namely; Jeruto, Jennifer and Pius Kipkosgei. The late Jebuigut passed on 2004 but before that she called a meeting and asked him to take care of the children who would survive her in the event of death. He refuted the claim of a woman to woman marriage between Jebuigut and the deceased Selly Jelimo.

16. The other witness was David Kipkurgat who also on oath told the court that the only marriage recognized is that of Jebuigut Kerich and Rael Jepkurgat, which was celebrated in the year 1975. He denied of any other engagement of woman to woman marriage as claimed by the Objectors.

17. It was also the case for the Petitioner by the testimony of Joseph Kibiwott who gave an explanation on the characteristics of a woman to woman marriage under Nandi Customary law. This was what the Petitioner presented to court as an expert witness on what to look for a legally celebrated Nandi customary marriage, which is one of the contentious issues in the proceedings.

18. Philip Kipkoech Biwott equally gave evidence in support of the Petitioner's case. He stated that the late Jebuigut Kerich was his grandmother. That the late Jebuigut Kerich never got married to Selly Jelimo and during her demise the late Jebuigut was still under Nandi Customary Laws and that when a person dies you ought to but bury her in your own parcel of land which never happened and instead the late Sally Jelimo was buried in her home. He testified that before the demise of the late Jebuigut she called her and informed her together with other people that the whole parcel of land should be given to Pius Kipkosgei and be registered in his name and all other activities should be carried on by her.

19. The Petitioner/Respondent filed submissions in support of his case. The Petitioner couched two issued for determination. First, whether the issue of the alleged marriage under the Customary woman to woman meets the criteria. Secondly, whether the Grant of letters of Administration ought to be revoked.

20. On the first issue, it was submitted for the Petitioner that the summons for revocation dated 3rd March, 2015 did not specifically plead the issue of customary marriage and there were no grounds in support of the application. He called upon the court to take note of the existence of customary marriages, which ought to be proved. He cited the provisions of Section 60 of the *Evidence Act* and the decision in Hortensia Wanjiku Yawe vs The Public Trustee Civil Appeal No. 13 of August, 1976 and the case of Sakina Sote Keitany & another vs Mary Wamaitha (1995) eKLR.

21. The Petitioner made submissions to the effect that the most possessive publication/document on customary marriage is the "Restatement of African Law, Kenya, Volume 1 The Law of Marriage and Divorce by Eugene Cotran Sweet & Maxwell 1968". He stated that the publication has documented the validity, formation and all the necessities of customary marriage of various sub-tribes.

22. At page 116 to 117 of the said publication for "special types of marriage" among the Kipsigis and Nandi provides as follows:

    a. Woman to woman marriage "Kitun Chi Toloch" – A woman past the age of child bearing and who has no sons, may enter into a form of marriage with another woman. This may be done during the lifetime of her husband but is more used after his death.

       Marriage consideration is paid, as in regular marriage, and a man from the woman's husband's clan has sexual intercourse with the girl in respect of whom marriage consideration has been paid. Any children born to the girl are regarded as the children of the woman who paid marriage consideration and her husband.

    b. Forcible marriage of youngest daughter to "Toloita" when a man and wife have no sons but daughters only, the youngest may be obliged by her parents not to get married, but to have intercourse with any man of her choosing in order to have male children. Such male children will belong to the girl's father. When this form of marriage takes place a special ceremony by which the girl is said to be married to a pillar "toloita" takes place."

23. It was submitted for the Petitioner that the aforementioned publication provides for the essentials of a valid marriage among the Kipsigis and Nandi to include: Capacity, consent, Ratet, Kinyiuk and commencement of cohabitation. The Petitioner stated that the applicants did not plead and proof the said elements and therefore there was no valid marriage.

24. The Petitioner concluded on this issue by submitting that the applicant has not discharged the burden of proof of customary marriage. That the applicant has not made any attempts to call any assessor (s) as their witness to proof the existence of customary marriage and therefore are not dependants/ beneficiaries/creditors of the Estate. In any case, they stated they are grand children of the deceased, but also, did not prove allegations.

25. As to whether the grant ought to be revoked, the petitioner/respondent submitted that the same was obtained through a proper procedure. That there was no fraud or concealment of any material fact. The Petitioner and all the beneficiaries were stated and supported by the Chief's Letter and other requisite documents.

26. The Petitioner stated that the property forming all the assets of the Estate and being parcel number Nandi/Chemuswa/108 has been distributed, transmitted and transferred to the beneficiary of the Estate. The transfer was pursuant to the registration of Grant and all the transactions are evidenced by the certified copy of the register/green card produced by the respondent. That the title and registration cannot therefore be cancelled as it was not procured through fraud or fraudulent scheme.

Determination

27. This is a claim whose standard of proof is on a balance of probabilities vested with the Objectors as instructive in Section 107, 108 and 109 of the *Evidence Act*. The burden of proof in civil cases on the balance of probability was defined in the case of Kanyungu Njogu Vs Daniel Kimani Maingi [2000] Eklr that when the court is faced with two probabilities, it can only decide the case on a balance of probability, if there is evidence to show that one probability was more probable than the other.

28. In Miller vs. Minister of Pensions 1947 ALL E.R 372, Lord Denning puts this standard in the following terms: -

> " That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in criminal cases. If the evidence is such that the tribunal can say: We think it more probable than not; the burden is discharged, but, if the probabilities are equal, it is not. Thus, proof on a balance or preponderance of probabilities means a win, however narrow. A draw is not enough. So, in any case is which the tribunal cannot decide one way or the other which evidence to accept, where both parties' explanations are equally (un) convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained."

29. Additionally, in *James Muniu Mucheru V. National Bank of Kenya Ltd C.A Civil App No 365 of 2017* [2019 eKLR], the Court stated as follows: -

> " Indeed, it is settled law that in civil cases the standard of proof is on a balance of probability. This is in effect to say that the Courts will make a finding based on which party's version of the story is more believable."

30. Turning to the instant case, I have considered the summons for revocation, the evidence and submissions. In determining whether to revoke the grant in question or not, it will be important to first establish whether there exited a valid customary woman to woman marriage and if it did, whether it met the attendant criteria. In this regard, the starting point would be the decision in Hortensia Wanjiku Yawe vs The Public Trustee Civil Appeal No. 13 of August, 1976 as cited by the Petitioner/ Respondent. The court in the said case laid down three important and statutory principles regarding proof of Customary marriage, which are:

a. The onus of proving customary law marriage is generally in the party who claims it.

b. The standard of proof is the used one after civil action namely on the balance of probabilities.

c. Evidence as to the formalities of a customary law marriage must be proved to be of evidential standard.

31. In this regard the Petitioner/Respondent reasoned that the applicants did not plead which tribal custom their mother got married under, the Applicants witnesses did not corroborate the allegations of the alleged customary marriage.

32. The applicant on the other hand in his summons for revocation stated that after the death of Rael Jepkurgat, the deceased married the applicant's mother, Selly Jelimo in order to get more children but she unfortunately died on 23.8.1996 and since then the deceased person was the one taking care of the applicant together with his brother.

33. Eugene Cotran a renowned author on the customs of various tribes in Kenya in his book "The Law of Marriage & Divorce Vol. 1 (London; Sweet and Maxwell 1968) at Page 117 says;

> Woman – to – Woman Marriage.
>
> (Kitum Chi toloch). A woman past the age of (among the Nandi & Kipsigis) child – bearing and who has no sons, may enter into a form of marriage with another woman. This may be done during the lifetime of her husband, but is more usual after his death. Marriage consideration is paid, as in regular marriage and a man from woman's husband's clan has sexual intercourse with the girl in respect of whom marriage consideration has been paid. Any children born to the girl are regarded as the children of the woman who paid marriage consideration and her husband".

34. The validity of such marriages was endorsed in Monica Jesang Katam v Jackson Chepkwony & Another (supra) by Hon. Ojwang, J. (as he then was) thus:

> " I have concluded that the consistency in the testimonies of the petitioner's witnesses shows the evidence to be truthful. The research-material referred to shows this to have been the typical condition in which a woman-to-woman marriage takes place; and the testimonies show such a marriage to have taken place on 16th October, 2006. It is therefore, not true as the objectors say, that the petitioner was only a servant; on the contrary, she was a "wife", and, by the operative customary law, she and her sons belonged to the household of the deceased, and were entitled to inheritance rights, prior to anyone else. This custom, I hold, is to be read into the scheme of s. 29 of the *Law of Succession Act* (Cap 160), placing the petitioner and her children in the first line of inheritance; the petitioner herself being "wife of the deceased", and her children for being the children of the deceased. The conclusion to be drawn is that the petitioner is entitled to the grant of letters of representation."

35. The issue of woman to marriage has been recognized in various communities in Kenya. For such a marriage to be proved there must be evidence adduced to show its existence. In the present case, the applicant produced an engagement agreement dated 29th September, 1990, on which basis he averred that there existed a valid woman to woman marriage between the deceased person and Sally Jelimo, his mother. Besides that, the petitioners also raised doubt as to the authenticity of the document produced by the Objectors as regards to the content and the signatures appended as an evidential material to prove existence of a fact or non-existence of it as a requirement of the law. Furthermore, the Petitioner and his evidence asserted that there was no proof of execution of documents by the

Objectors as stipulated under Section 67 of the *Evidence Act* which provides that if a document is alleged to be signed by any person, the signature or the handwriting of the document as is alleged to be that person's handwriting shall be proved to be in his/her handwriting. In explaining the proof of signature and handwriting, any omission or defects to the signature is fatal to the admission that the person alleged in the document is the one who signed it. As stated in the primary evidence tendered by the Objectors, Jebuigut and Selly Jelimo thumb printed the impugned engagement agreement justifying the admissibility of the secondary evidence from the witnesses. This primary evidence being the engagement agreement itself was produced for inspection of the court and the same subjected to the document examiner for analysis. This is a document where the signatories to the document have both since passed on by an act of God. Interestingly, one of the Objectors' witnesses namely Simon Kiptoo Talam claimed to be the author of the engagement agreement. As such, the Petitioners thought that there was insufficiency of the mode of proof of the document within the context of the *Evidence Act*. The Petitioners challenged the legality and admission of the document before court as marked as an exhibit, rendering it to be subjected to a document examiner analysis to establish the authenticity of the thumb prints appended therein. This Novel approach taken by the petitioners necessitated the Director of Criminal Investigations, Document Examiner department to observe the necessary steps to proof the authenticity of execution of the documents by Jebuigut Kerich, Selly Jelimo and the witnesses who appended their signatures on the document. On this basis, the document examiner made the following findings in a report dated 7th November, 2016:

> "On the Plaintiff/Applicant's supplementary list of docents (document marked 'B' – Sally Jelimo's engagement agreement of 29th September, 1990), the findings were that the finger print pointed by the red arrow and marked as 'B1' alleged to have been made by or belong to the late Jebuigut Cheruiyot (Kerich) is not identical to either of the finger print – outs of Jebuigut Kerich as obtained from the National Registration Bureau."

36. The crux for the resolution of the issue pertaining to the admissibility of the documentary evidence herein being the engagement agreement as asserted by the objectors is always to be tested against the best evidence rule. It is undisputed that only the best documentary evidence can be admitted in evidence unless it is otherwise provided by the law. It is also understandable that by failure to comply with the best evidence rule or procedural requirements in the making documentary evidence set up by the statute, such evidence shall be fatal due to his inadmissibility notwithstanding how much parole evidence is adduced to assert its authenticity. This is the criteria which was pursued by the objectors in a choreographed chain of evidence which on the face of it appears to be truthful, convincing, authentic and admissible until it was deconstructed by the document examiners report dated 7th November, 2016. It is therefore clear that hearsay evidence nonetheless must be inadmissible in proving the contests of the so called marriage agreement between Jebuigut Kerich and Sally Jelimo.

37. It must be noted that the Objectors also prepared and exhibited photographic impressions specifically for the purposes of demonstrating the marriage engagement between Jebuigut and Sally Jelimo as the test of that ceremony having taken place in the ordinary cause of business of that day. However, an integrity based safeguard by the DCIO, document examiner department operating to legitimize the authenticity of the engagement agreement and the circumstances surrounding the document's preparation in their report seems to indicate a lack of trustworthiness, genuineness and authenticity of the so called agreement. Assuming the Objector's evidence is true, then the legalization procedures which had been streamed by the Document examiner, like any other prospective piece of evidence, it failed the integrity and authenticity test. The integrity of the document of this nature which is the basis of claiming inheritance rights ought to be established from the point at which the information was first generated in its final form as a documentary piece of real evidence.

38. In addressing the question of forgery, the objectors had a duty to demonstrate that the signatures and information in the impugned engagement agreement, has been maintained complete and unaltered as against the authentication by the document examiner. This means the objectors were at liberty to establish that the document being relied on was not fraudulent obtained by seeking a second document examiner's report to display a different a different mapping on the questionable thumb print. This was to ensure the evidential validity and maximize the value of the marriage engagement agreement which was introduced in evidence in support of the Objection proceedings. I don't think that this document meets the test of admissibility going by the document examiner's report.

39. It is interesting that the so called author of the document and his signature could not even be authenticated by the document examiner. So who is the maker of the document before court? If the evidence adduced by the aforesaid witness as proof of the contents has been discredited by the document examiner. In respect of this category, the objectors never produced any supplementary evidence to vouch for the integrity of the document before court.

40. These questions as to the accuracy of documentary considerations against the marriage engagement is equally applicable to the death certificates obtained and generated in support of these succession proceedings. There cannot be doubt that it was discernable without that the two death certificates do not refer to one and the same person covered by the succession proceedings in this cause of action. An attempt to qualify these two death certificates when it comes to the process of admitting each one of them in evidence, it fell under the exclusionary rules of evidence. This demonstrates how far the conspirators of this legal process were bent to go to operate in conjunction to meet the threshold of being a beneficiary with a locus standi of being considered an heir to the intestate estate of the deceased. The function of the court in such matters is confined to addressing a foundation threshold question as to whether the evidence presented maintains sufficient probative weight which would sustain a finding that the evidence is in fact what the proponent claims it to be to proof existence of a fact to secure judgment in his/her favor.

41. According to the findings of the DCI report, the death certificate No. 164072 as adduced by the Respondent indicated that the deceased, Rael Jepkurgat died on 16th September, 1989 at Kapsabet District Hospital and the cause of death was Cardiac Arrest due to severe Anemia due to severe Malaria. The report noted that in order for the Civil Registrar to issue the said death certificate, reliance was placed on Chepkoiyo sub location Assistant chief's letter and a filled in surrender of National identity card form for the identity card of the late Chepkurgat, surrendered by one Pius Kipkosgei, who was also the applicant.

42. The report further highlighted that according to the second death certificate No. 0172986 as adduced by the Applicant, the deceased died on 27th September, 1990 at Chepkoiyo and that the cause of death was sudden due to stroke. In order to issue the above certificate, the report indicated that the Civil Registrar relied on an affidavit sworn by the applicant one Evan Kimeli Chumba, Kabisaga location senior chief's letter, filled in form GP 139A – an application for a registration of late death, form A3 – main register form, Authority form – D4 and payment form No. 6. The conclusion of the findings from investigating the two death certificates were that they belonged to two different people. Curiously though, I take note that the applicant.

43. In the context of these proceedings, I am bound to conclude that the formalities themselves of making the subject document, certification of signatures, thumb prints were all open to the possibility of deception and are arguably vulnerable to fraud given the high stakes on inheritance litigation.

44. It is clear from the above discussion that witnesses and parties to these proceedings for purposes of adducing evidence on behalf of the objector either documentary or oral appeared to be on the same

footing but with critical areas of contradiction which were fatal to the sustenance of their case. Matters were made worse by the key document of this marital union being impeached by the document examiner and it was proved to be unworthy of this pen and paper it was written as a documentary evidence of the marriage engagement.

45. To conclude the issue at hand and the Objectors having been unable to put forth the complete veracity of their claim renders it fatally compromised as against inheritance rights against the estate of Jebuigut Cheruiyot Kerich.

46. In the upshot I disallow the summons for revocation dated 3rd March, 2015.

DELIVERED VIA EMAIL DATED AND SIGNED AT ELDORET ON THIS 19TH DAY OF AUGUST 2024

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R. NYAKUNDI

JUDGE