



**In re Estate of Isaac Kiplagat Chesire (Deceased) (Succession Cause 23 of 2011) [2024] KEHC 10393 (KLR) (15 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10393 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 23 OF 2011  
SM MOHOCHI, J  
AUGUST 15, 2024**

**BETWEEN**

**CHANG'MASA KIPLAGAT SOGOMO (DECEASED) ..... 1<sup>ST</sup> PETITIONER**

**KIPROTICH A.K. CHESIRE ..... 2<sup>ND</sup> PETITIONER**

**AND**

**EVERLINE JERONO KANDIE ..... 1<sup>ST</sup> OBJECTOR**

**GRACE WAMBUI NJENGA ..... 2<sup>ND</sup> OBJECTOR**

**JUDGMENT**

**Introduction and Brief Facts**

1. The deceased Isaac Kiplagat Chesire died on the 20<sup>th</sup> October 2011. Shortly thereafter, the Petitioners herein Petitioned this Honorable Court for a Grant of Letters of Administration with Will annexed on the basis of a will purportedly made by the deceased on the 11<sup>th</sup> October 2011. A mere 9 days before he succumbed to cancer.
2. Subsequently, this court issued the Petitioners with a Grant of Probate of Written Will on the 30<sup>th</sup> March 2011. Having gotten wind of these proceeding and the grant in question, the 1<sup>st</sup> Objector, Everline Jerono Kandie, filed Summons for Revocation of Grant dated the 17<sup>th</sup> May 2011 as well as a Further Supporting Affidavit sworn by herself on the 7<sup>th</sup> July 2011. She sought to revoke the grant in her capacity as the deceased's widow on grounds that can be summarized as follows;
  - a. The Grant was obtained fraudulently by making false statements Le by the use of a forged will.
  - b. The Grant was obtained fraudulently by concealment of material facts i.e. failing to disclose all the deceased's assets and failing to disclose that she is the deceased's widow and thus a dependant.



3. In response thereto, the Petitioners filed a Replying Affidavit sworn on the 27<sup>th</sup> June 2011 by the late Changmasa Kiplagat Sogomo, the 1<sup>st</sup> Petitioner who died in the course of these proceedings. It thus became necessary for the 2<sup>nd</sup> Petitioner, Mr. Kiprotich A. K. Chesire, to file a Replying Affidavit sworn on the 29<sup>th</sup> June 2023 wherein he refuted the 1<sup>st</sup> Objector's allegations and only admitted to the fact that the 1<sup>st</sup> Objector cohabited with the deceased prior to his death and had two children. He annexed minutes of various family meetings that demonstrated the said cohabitation and the existence of the two children who are minors.
4. The 2<sup>nd</sup> Objector rejected by the 2<sup>nd</sup> Petitioner as a person who was in a relationship of convenience and not a spouse.
5. That in the instant matter, both Objectors claim to have been the deceased's widows and neither of them acknowledges each other's claim.
6. This on the 22<sup>nd</sup> February 2024, issued directions on filing of written submissions.

### **1<sup>st</sup> Objector's Case & Submissions**

7. To begin with, it is worth noting that it is common ground among the 1<sup>st</sup> Petitioner Mr. Chang masa Kiplagat Sogomo passed on. This is confirmed by the 2<sup>nd</sup> Petitioner at paragraph 2 of his Replying Affidavit sworn on the 29<sup>th</sup> June 2023 where he annexed a Certificate of Death as KAKC 1'. By this fact alone, the Grant in question has become useless and inoperative through subsequent circumstances as contemplated in Section 76(e) of the [Law of Succession Act](#). Secondly, we draw the courts attention to the highly contested will dated the 11<sup>th</sup> October 2010. As per the testimony of the first Objector's witness, Inspector Gideon Osundwa, a Forensic Document Examiner with the Directorate of Criminal Investigations, the said will was subjected to a forensic document examination and a report dated the 22<sup>nd</sup> September 2017 was produced as 1<sup>st</sup> Objector's Exhibit 1A.
8. The conclusion of the said report was that the signature alleged to have been appended by the deceased on the Will was indeed a forgery. This finding is sufficient to invalidate the will and once and in turn proves that the Grant in question was obtained fraudulently by making of false statements and by untrue allegation thus ought to be set aside as contemplated in Section 76(b) and (c) of the [Law of Succession Act](#).
9. In her Affidavit in support of summons for the revocation of grant, the 1<sup>st</sup> Objector stated that she was the wife to the deceased and that in their marriage they were blessed with two issues namely: Benedict Kiplagat and Francisca Jemeli. That the petitioners were not dependent and have never been dependent on the deceased and that both are working. The 1<sup>st</sup> Petitioner (now deceased) was working with Baringo Teachers and the 2<sup>nd</sup> Petitioner worked as a tutor at the Ministry of Livestock. She averred further that the Petitioners omitted her name in the obituary and that when she went to take letter of Administration and visiting the register of birth and death to pick the deceased death certificate is when she was informed that the Petitioners had collected the death certificate.
10. She averred that the Petitioners obtained the grant dated 30<sup>th</sup> March 2011 fraudulently and that the particulars of fraud are that: The purported WILL dated 11<sup>th</sup> October 2010 which was purportedly annexed to the petition was never made and or executed by the deceased. The purported WILL is a forgery. The purported WILL was never witnessed by one William K. Arusel, advocate who is based in Nairobi, That the deceased was bedridden and never left the house when the purported WILL was allegedly executed.



11. She averred that the Petitioners obtained letters of Administration and fraudulently failed to disclose to the court material facts and more specifically that the deceased was married and had a family. That she fears that if the grant is not revoked and she be allowed to be the petitioner, the deceased children and her as the only dependents of the deceased, stand to suffer irreparably as the petitioner's intention is to dis-inherit them.
12. The 1<sup>st</sup> Objector submit that, from the evidence adduced in this Court, the grant obtained by the petitioners ought to be revoked. In this case, they annexed a will that was not written by the deceased.
13. As to who are the dependants? the 1<sup>st</sup> Objector submit that, the Law of Succession Act (Cap 160) under Section 29(a) states that the dependants as follows;
  - (a) The wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
14. She testified in support of her case by adopting the contents of her Summons for revocation of Grant dated the 17<sup>th</sup> May 2011, her Affidavit in Support of the said Summons sworn on the 17<sup>th</sup> May 2011 as well as her Further Supporting Affidavit sworn on the 8<sup>th</sup> July 2011. She equally produced the documents annexed therein as exhibits.
15. She pleaded that she met and got married to the deceased in the year 2007 and that their marriage was solemnized through Kalenjin Customary law and in particular the Tugen Traditional Culture. She gave an account of the various rites that they underwent including the payment of dowry. She went on to state that they resided at the deceased's farm in Emining as husband and wife and on the 2<sup>nd</sup> December 2008, they were blessed with two children who were twins, Benedict Kiplabat and Francisca Jemeli. They are minors and their children who were write de la and EJK 1b.
16. She testified to the effect that their marriage subsisted until the deceased's demise and that she still resides within their matrimonial home. Her account was in part admitted by the 2<sup>nd</sup> Petitioner who adopted the contents of his Replying Affidavit and produced the annexures as exhibits. He stated that he deceased was his brother and that during his lifetime, he cohabited with the 1<sup>st</sup> Objector and they had two children.
17. Secondly, he produced numerous minutes with respect to family meeting, all of which the 1<sup>st</sup> Objector and the deceased attended and even discussed their relationship with the rest of the family. He further stated that as a family and more so as Administrators, they opened up bank accounts and deposited funds that would assist the 1<sup>st</sup> Objector to maintain and educate the deceased's children and even provided her with a vehicle that is at her disposal to use as and when necessary. This conduct lends credibility to the 1<sup>st</sup> Objector's claim that she was indeed a widow.
18. Though he also stated that, the 1<sup>st</sup> Objector was not married to the deceased under customary law, he did not have any evidence in support of the same. In fact, the minutes produced depict a serious, long term and well-known union between the deceased and the 1<sup>st</sup> Objector.
19. The 1<sup>st</sup> Objector submit that, based on the material placed before this court as well as the Testimonies, the 1<sup>st</sup> Objector has sufficiently discharged her burden of proof as to her status as a widow, her children as those of the deceased and thus are indeed dependants.
20. The 1<sup>st</sup> Objector does not acknowledge the 2<sup>nd</sup> Objector as having been married to the deceased and further, that there were several inconsistencies with the 2<sup>nd</sup> Objector case as follows;



- i. To begin with, the 1<sup>st</sup> Petitioner testified that she had approached him and proposed that in exchange for his support in this case, she would share with him the vast assets making up the estate of the deceased. This revelation taints her case with dishonesty and proves that she has approached this Honourable court in bad faith and with unclean hands.
  - ii. That, the 2<sup>nd</sup> Petitioner refuted her claim to be a widow and only termed her as a friend to the deceased. He clarified that she never attended and family meetings, and that neither her nor her children were ever introduced to the deceased's family.
  - iii. That at no point in time did she establish a matrimonial home with the deceased as would be expected of a married couple.
  - iv. That, at the point of filing her Affidavit of Protest she stated that both children had attained the age of majority. However, they failed to participate in these proceedings in any way and further, the 2<sup>nd</sup> Objector did not have their authority to plead, act and testify on their behalf. Further it is notable that in the consent order recorded on the 20<sup>th</sup> May 2021, the 2<sup>nd</sup> Objector only offered to have only one of her children participate in a DNA test to prove paternity and left out the other.
  - v. She was not able to explain the reason behind the fact that despite the deceased passing on in the year 2011, she only surfaced and filed her protest in the year 2019 to claim inheritance.
21. The 1<sup>st</sup> Objector submit that, all the foregoing points to an individual (2<sup>nd</sup> Objector) who is motivated by a need for unjust enrichment. She dismally failed to discharge her burden of proof as to the contents of her Affidavit of Protest.
22. As for what are the assets of the deceased? the 1<sup>st</sup> Objector submit that, the assets of the deceased are as per the pleadings are as follows;
- a. KAB 387E Land Rover (Pick-up)
  - b. KAB 390 E tractor (international)
  - c. Commercial Plot B Marigat Township file No. 211296
  - d. Eming Farm known as L.R. NO. POKOR/KEBEN/KURES/200/C
  - e. Land L.R. No. Kampi ya moto Block 2/85-Cobat Farm (1.92 Ha.)
  - f. Land L.R. NO. Kampi ya moto Block 2/76 (7.93 Ha.)
  - g. Plot No. 1120-Commercial Plot- (Mogotio)
  - h. Plot No. 96- Eming trading centre
  - i. KAW 131J Toyota Saloon
  - j. EX GK W699 Suzuki
  - k. EX GK 356 Tractor (International)
  - l. EX GK 117Y Tractor (International)
  - m. EX GK J759 Tractor (International)
  - n. Two (2) Tractor trailers and Two (2) disk ploughs



- o. Two (2) Power Take of (P.T.O.) driven hammer mills
  - p. One (1) Power Take of (P.T.O) driven maize sheller
23. That, from further pleadings in the suit, the property of the deceased that is pending transfer thus would add up to his estate is;
- i. Land approximately 6 acres held by James Tallam
  - ii. Land approximately 8 acres held by Esther Walter
  - iii. Land approximately 2.7 acres held by Kap Abdalla
  - iv. Land approximately 4 acres that the deceased purchased jointly with Haron Kiplagat (deceased) Land approximately 3 acres,
  - v. LR. NO. Pokor/Kebe/Kures/405, the deceased bought from the late Haron Kiplagat Chesire.
  - vi. KSHS. 83,000 that David Kipchumba Kiluge owed the deceased Land allotted to the deceased at Mochongoi Settlement Scheme by the Commissioner of Lands measuring 5 acres
  - vii. Fundraising collections held by;
    - a. Changmasa K. Sogomo of KSHS. 106,000/-
    - b. Esau Kiplagat of KSHS.100, 000/-
    - c. Kiprotich A.K. Kiplagat of KSHS. 102,000/-
  - viii. Motor Vehicle Pajero KYY 920
  - ix. Motor Vehicle Chevrolet Pick-up EX GK
  - x. Two motorbike EX GK
  - xi. One water bowser of 2000 litres
  - xii. All animals (cattle and poultry) and all the farm developments and improvement including houses, water tanks among others
24. The 1<sup>st</sup> Objector urges the court to order the 2<sup>nd</sup> Petitioner ought to render an account of all the foregoing assets.
25. The 1<sup>st</sup> Objector submits that the assets making up the Estate of the deceased ought to be held by herself and in trust for her children as the surviving spouse.

### **2nd Objector's Case & Submissions**

26. She gave an oral testimony and opted not to adopt the contents of her Affidavit of Protest, which she swore on the 18<sup>th</sup> July 2019. It was her allegation that she met the deceased and had a romantic relationship with him that culminated in a marriage on the 4<sup>th</sup> May 1991.
27. In an attempt to prove this, she produced an affidavit allegedly sworn by herself on the 7<sup>th</sup> May 1991 wherein she stated that she was married to the deceased. This however, cannot be taken as proof of marriage without the input of the deceased.



28. She also sought to produce a data sheet from the ministry of livestock where the Deceased was employed wherein he allegedly indicated that the 2<sup>nd</sup> Objector was his wife. The same was incomplete and could not be produced by her as she was neither the author nor the custodian of the said document. It therefore did not have any probative value the abandoned production of the same.
29. She went on to produce copied of her children's Birth Certificates to prove her relationship with the deceased.
30. The 2<sup>nd</sup> Objector filed an affidavit of protest dated 18<sup>th</sup> July 2019. In opposition to the two protests the 2<sup>nd</sup> Petitioner filed a replying affidavit sworn on 29<sup>th</sup> June 2023.
31. The 2<sup>nd</sup> Objector averred that as per her advocate's advice she do believe that the will was fatally defective and forgery and cannot be relied upon as a valid will. That the Petitioners in taking out the said grant of probate deliberately misinformed and or misadvised the court for purposes of their own gains notwithstanding the fact that they are not in any way beneficiaries or dependents of the deceased estate.
32. She averred that it is clear that the Petitioners approached the court with unclean hands by dint of material non-disclosure and further seeks to abuse the court process to deny the objector's legal rights as beneficiaries. That in the interest of justice the court should stay or revoke any issuance of grant to the Respondents until the issue of liability by the estate is dealt with.

### **2<sup>nd</sup> Petitioner's Case & Submissions**

33. In reply to the summons by the 2<sup>nd</sup> Objector, the Petitioner averred that the 2<sup>nd</sup> Objector cohabited with the deceased on and off and that, there are two issues out of the said cohabitation but that the deceased and the Applicant were never married under any system of marriage. The Petitioner averred that the grant was never obtained fraudulently and that they applied for the letters of Administration for the grant, the grant was gazetted and no objection was filed within the stipulated timeline (30 days) as required by law.
34. The Petitioners averred that, it is not true that they omitted any properties belonging to the deceased as alleged, and the Objector has not listed the alleged properties that have been omitted. That the Objector is of questionable character and is out to get access to the estate of the deceased for her own Interests and is not the right person to administer the estate in line with the wishes of the deceased.
35. In addition to the averments in their affidavits, the matter proceeded to hearing where the objectors and the 2<sup>nd</sup> petitioner testified through viva voce evidence.
36. The 2<sup>nd</sup> petitioner isolates the following Issues for determination as follows: -
  - i. Whether the Letters of Administration was obtained fraudulently as alleged by the Objectors.
  - ii. Whether the Objectors have beneficial interests in the estate of the deceased and whether they have legal standing to apply for revocation.
37. On the issue as to whether the Letters of Administration was obtained fraudulently as alleged by the Objectors, the 2<sup>nd</sup> petitioner submits that, the law on revocation or annulment of letters of administration is provided for under section 76 of the *law of Succession Act* which provides as follows:
  76. Revocation or annulment of grant A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-
    - (a) that the proceedings to obtain the grant were defective in substance;



- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

that the person to whom the grant was made has failed, after due notice and without reasonable cause either- (d)

- (1) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
    - (ii) to proceed diligently with the administration of the estate; or
    - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
  - (e) that the grant has become useless and inoperative through subsequent circumstances.
38. The Petitioner Submits that the deceased died testate and there was a will that was left behind. The will elaborately demonstrated how the deceased wished to have his estate distributed, All the above elements of a valid written will were present in the will. The objectors were not present when the said will was drawn, therefore they cannot allege that failure of their inclusion or presence during the will can invalidate the will.
39. That, the executors who were appointed by the deceased applied for the letters of administration properly as stipulated by the law. They followed the due procedure before this court and the court was duly satisfied of their suitability and creditability to be issued the said letters of administration. The objectors have only alleged that the letters of administration were obtained fraudulently but they have not provided any evidence in support of the said allegation. The petitioners never committed any fraud, they never concealed any material facts in relation to the estate of the deceased and all they presented before this court were the true wishes of the deceased as provided for in his will.
40. That, the 1<sup>st</sup> Objector also alleged that the will was a forgery and presented a forensic examination report dated 22<sup>nd</sup> September 2017 and supported by the oral testimony of inspector Gideon Osundwa. The allegations that the will was a forgery are unsubstituted. The said report is also defective in nature and its opinion cannot be relied by this court. Its trite law that expert report or evidence is not binding before this court. The expert witness failed to adduce his credentials, it should also be noted that he was producing a report that had been done by a fellow colleague and not his own report. This was contrary to the holding of the court in *Kagina v Kagina & 2 others (Civil Appeal 21 of 2017)* [2021] KECA 242 (KLR) where the court disregarded an expert report in the matter. The signatures that were evaluated by the expert witness were signatures of the deceased that were collected from documents that were signed over a period of time. The report did not factor in the variations that occur with time and also the fact that the deceased was sickly when signing the will. Hence the expert report cannot stand as evidence and we urge this honourable court to dismiss it.
41. The 1<sup>st</sup> objector has also submitted that the grant issued to the petitioners herein has become inoperative due to change of subsequent circumstances and we wish to notify this court that even though the letters of administration were granted to the two petitioners and the 1<sup>st</sup> petitioner is deceased, that alone has not rendered the letters of administration in operational. The 2<sup>nd</sup> Petitioner is



alive and he is managing the estate of the deceased and no objection or concern has been raised regarding to his suitability to manage the estate. Therefore, this allegation ought to be dismissed by this court.

42. As to whether the Objectors have beneficial interests in the estate of the deceased and whether they have legal standing to apply for revocation? The 2<sup>nd</sup> Petitioner submits that, Section 29(a) of the Law of Succession Act stipulates who are dependents of the estate of a deceased person stipulates as follows:-

29. Meaning of dependant.

For the purposes of this Part, "dependant" means-

a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death:

43. That, the Deceased died testate therefore, the order of priority under section 66 of the Law of Succession Act do not apply in these circumstances, what comes to question is the objector's position in regard to the relation they had with the deceased. The Objectors claim to have been married to the deceased whereby they had children with the deceased and that they were legally married to the deceased. The 1<sup>st</sup> Objector in her testimony stated that she and the deceased had a customary wedding done under the Tugen customary tradition and that there were minutes taken and elders in attendance, she did not avail any documentary evidence to proof any of the said allegations. She never called any of the alleged elders or any person in attendance as witness to proof or testify to have witnessed the marriage take place.

44. That, the 1<sup>st</sup> Objector claims to have been a wife to the deceased yet she has no documents or any shred of material evidence to proof her union to the deceased. Therefore, nothing is before this court to proof the alleged marriage if any. The 2<sup>nd</sup> Petitioner submit that, the 1<sup>st</sup> objector was not a wife to the deceased as she alleges.

45. That, the 2<sup>nd</sup> Objector testified that she was married to the deceased and that there is an affidavit to that effect. The subject Affidavit relied by the 2<sup>nd</sup> Objector is questionable in that there were two copies, the deceased signed a separate copy to that of the objector and the objector signed another copy. The Affidavit cannot be taken to be proof of their marriage since the input of the deceased cannot be accounted for. Secondly an affidavit of marriage is not proof of marriage and in any event customary marriage is evidenced through registration upon which a certificate of marriage is issued. The Objectors were in a relationship of convenience with the Deceased and not in a marriage.

46. That this court and superior courts have severally held when faced with similar issues of alleged customary marriages. In re Estate of Wallace Nderu Kamau [2017] eKLR the court was of the view that-

'In the absence of oral evidence by any family member on either side of the family. I find that the evidence does not disclose a customary marriage between the deceased and the objector'.

47. Reference is made to the case of Hellen Tum vs. Jepkoech Tapkili Metto & another [2018] eKLR the Court of Appeal stated that;-

“One of the most crucial evidence in proof of a customary marriage is the evidence of the customary rites required to establish a customary marriage and proof that these rites were indeed fulfilled... it was clear that one of the crucial ceremonies, in a Nandi Customary marriage is the "Koito" ceremony that signifies a formal engagement ceremony, and also signifies that the couple is now a married couple.



48. It is the Petitioners submissions that the 1st and 2nd Objector were in a relationship of convenience with the deceased and not married to the deceased, they did not avail any proof to this court of the purported customary marriage neither did they avail any witness in support of their allegations. The Objectors as per their pleadings and their testimony in court clearly that the objectors do not have legal standing to apply for letters of administration or the revocation of the grant. They do not have beneficial interest in the deceased estate. We therefore submit that the objectors are not wives as per section 29(a) of Succession Act (Cap 160), and are not beneficiaries and as such their objections should be dismissed with costs.

### **Analysis and Determination**

49. Section 8 of the *Law of Succession Act* provides for forms of wills. It stipulates that a will may be made either orally or in writing. From the pleadings, it is in dispute that on 11<sup>th</sup> October 2010 the deceased bequeathed his property to his beneficiaries by way of a written will. The Objectors contends that the Executors in a bid to fraudulently disinherit them individually as surviving spouses of the deceased and the deceased children. That the deceased was bedridden and could not have left the house to go and execute the document under probate as a written will dated 11<sup>th</sup> October 2010 and that Mr. William Arusei Advocate never witnessed the purported execution.

50. It is noteworthy that the 1<sup>st</sup> Objector alleges to be a wife of the deceased, they were blessed with two issues, she has and continues to reside on a property belonging to the deceased, she is unaware of the 2<sup>nd</sup> Objector having ever been a wife to the deceased.

51. The 2<sup>nd</sup> Objector on her part maintains they were married under Kalenjii Customary Law, they were blessed with one (1) issue and that, she had sworn an affidavit dated 7<sup>th</sup> May 1991 before the Resident Magistrate at Voi evidencing that she was married by the deceased under Kalenjii customary laws on the 4<sup>th</sup> May 1991, I however note that the affidavit does not disclose where the purported marriage took place or who else was in attendance.

52. The formal requirements of validity of a written will are stipulated in section 11 of the *Law of Succession Act*. It states -

‘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.’

53. The document under probate as a written will was allegedly executed by the deceased and attested by two witnesses. The contents, form of the written will and the capacity of the deceased to bequeath his



property as he wished has been challenged by the Objectors. Therefore, for all intents and purposes the document under probate as a written will of the deceased dated 11<sup>th</sup> October 2010 considered to be his valid last will and testament at that particular time must be proved, the requirement of proving a will is a legal formality, and is usually satisfied by an executor's demonstration that the will was signed and dated by the deceased person and that the signing and dating of the will was witnessed by at least two other persons.

54. The Circumstances giving rise to the document under probate as a written will dated 11<sup>th</sup> October 2010, remain foggy scanty and suspicious and the 2<sup>nd</sup> Petitioner did not find it necessary to call the witnesses who witnessed its execution.
55. This Court is persuaded by the expert forensic document examination report dated 22<sup>nd</sup> July 2017, by Chief Inspector Chania and its finding that, the signatures samples Marked as "B1" and "B2" Are forgeries. It thus follows that the Signature on the document under probate as a written will dated 11<sup>th</sup> October 2010 is not by the deceased.
56. The Court is further Persuaded circumstantially that at the time it is alleged that the Deceased he had been bedridden of cancer and the state of his leg was such that he could not freely move out of the house to go and execute a will and that the 1<sup>st</sup> Petitioner (Deceased) and the 2<sup>nd</sup> Petitioner had an obligation to account presenting evidence where the document under probate as a written will was allegedly executed by the deceased and if possible to present all the witnesses to the same.
57. Accordingly, the document under probate as a written will dated 11<sup>th</sup> October 2010 is a forgery and is thus invalid and void contravening Section 11 of the Law of Succession Act and shall not probated by this court. The estate of the deceased shall be distributed to the beneficiaries under the intestacy provisions of the Law of Succession Act.
58. Consequently, I find merit in and allow the Summons for Revocation and Annulment of grant dated 17<sup>th</sup> May 2011 and revoke the grant of probate (with a written will) made on the 30<sup>th</sup> March 2011 to Chang Masa Kiplagat Sogomo (deceased) and Kiprotich A. K. Chesire.
59. With regards to the 1<sup>st</sup> and 2<sup>nd</sup> Objector's claim under section 29 of the Law of succession Act, it is my consideration that the Evidence by the 1<sup>st</sup> Objector that she was married under the Kalenjin-Tugen customary law is unsupported or corroborated and this court is thus persuaded that the 1<sup>st</sup> Objector was not married to the deceased. As for the 2<sup>nd</sup> Objector, no evidence of marriage has been tendered I am thus not persuaded that the 2<sup>nd</sup> Objector was married to the deceased.
60. Having found that, the deceased was not married to either the 1<sup>st</sup> or the 2<sup>nd</sup> Objectors at the time of his demise, this court is persuaded that the deceased was survived by the following children as evidenced in their respective birth certificates thus entitled to his estate as beneficiaries;
  - i. Valentine Wanjiru
  - ii. Esther Jeruto
  - iii. Benedict Kiplabat
  - iv. Fransisca Jemeli
61. I accordingly appoint Valentine Wanjiru and Esther Jeruto, to be Personal representatives of the estate of the deceased, Benedict and Fransisca are still minors. A grant of Letters of Administration intestate shall issue.



62. Valentine Wanjiru and Esther Jeruto shall forthwith gather all the assets of the deceased and present summons for confirmation of grant within the next six (6) months from the date of this judgment.
63. The 2<sup>nd</sup> Objector is Ordered to cooperate with the Personal representatives in the transition.
64. There shall be no Order as to costs, this being a family matter.

It is so ordered.

**SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 15<sup>TH</sup> DAY OF AUGUST 2024.**

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Mohochi S. M.

Judge

