



REPUBLIC OF KENYA



In re Estate of the Late Vincent Komurgor - Deceased (Succession Cause 193 of 2003) [2024] KEHC 16407 (KLR) (23 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16407 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 193 OF 2003
RN NYAKUNDI, J
DECEMBER 23, 2024**

IN THE MATTER OF THE ESTATE OF THE LATE VINCENT KOMURGOR - DECEASED

BETWEEN

**GRACE CHEPKOSGEI KIPROTICH 1ST OBJECTOR
BEN KIMUTAI ROTICH 2ND OBJECTOR
DAVID KIBET ROTICH 3RD OBJECTOR**

AND

**IGNATIUS KIPKEMEI ROTICH 1ST PETITIONER
LOUIS M. KIPRUGUT ROTICH 2ND PETITIONER
MARK KIPLAGAT ROTICH 3RD PETITIONER**

RULING

1. Before me for determination are summons for revocation expressed to be brought under the provisions of Section 76 of the [Law of Succession Act](#) and Rule 44 of the Probate and Administration Rules. The Objector seeks reliefs to wit: -
 - a. The grant of letters of administration to the late Anna Chepchirchir Kiprotich made on 14th March, 2005 and confirmed on the 7th April, 2005 by Hon. Justice George Dulu in Eldoret High Court Succession Cause No. 193 of 2003 in relation to the estate of Vincent Komurgor Kiprotich be revoked and/or annulled by this Honorable Court.
 - b. The court be pleased to declare that all the resultant titles sourced from the said grant are null and void and be pleased to cancel the same.
 - c. In the interim, the orders granted on 20th February, 2018 by G.W. Ngenye Macharia remain in force pending the hearing and determination of the suit.



2. The instant application draws its foundation from the grounds enumerated therein, substantiated by the sworn affidavits of Grace Chepkosgei Kiprotich and David Kibet Rotich filed in support thereof. For clarity and comprehensive understanding, the pertinent grounds are reproduced verbatim as follows:
 - a. That the late Vincent Komurgor died intestate on 25th May, 2003.
 - b. That the late Anna Chepchirchir Kiprotich, who survived him as the first wife secretly instituted Succession No. 193 of 2003 to the estate in which the letters of administration were granted to her and later confirmed.
 - c. That the later Anna Chepchirchir Kiprotich whose administrators of her estate are the Respondents herein, obtained the grant fraudulently by misrepresenting to this Honourable court that her children (the Respondents herein) were the only dependants/beneficiaries who survived the deceased which statement was false thus concealing from the court information material to the case.
 - d. That the late Anna Chepchirchir Kiprotich and her children who are the Respondents herein and the legal representatives of the estate of Anna Chepchirchir Kiprotich knew fully well that the deceased was also survived, apart from themselves, by the applicants herein.
 - e. That the late Anna Chepchirchir Kiprotich whose administrators of her estate are the respondents herein, did not inform the applicants who are part of the deceased's dependants of the Succession Cause nor did she have their consent to institute the said proceedings or to be appointed as the administrator/administratrix of the deceased's estate.
3. The Petitioners/Respondents having opposed the application for revocation, they were directed to proceed by way of viva voce evidence. One Peter Kipchirchir Birech deposed as follows:
 - a. That I am nephew to the late Vincent Komurgor and also a cousin to the Respondents.
 - b. That I have been a neighbour of the late Vincent Komurgor since the year 1985 when together with his late wife and the Respondents moved to racecourse
 - c. That I have maintained a very close relationship with the said family even after the demise of my uncle and aunt.
 - d. That I have never seen the applicant living in the said premises save for when they illegally took over the property using falsified documents
 - e. That the late Dr. Vincent Kiprotich and Mrs. Anna Kiprotich did their wedding on 12th August, 1961 at St. Augustine University Chapel in Uganda.
 - f. That the late Esther Cheboi was not a wife to my uncle because we never attended any ceremony regarding the two of them.
 - g. That I similarly never saw the said Esther Cheboi whom we later realized was married to one John Cheserek.
 - h. That we also never attended the burial of the said Esther whom was buried in TOT in her husband parcel as we later came to realize.
 - i. That during the burial of my uncle and aunt we never saw the applicants herein.



4. The parties submitted their respective arguments in support of and in opposition to the summons for revocation, which are summarized as follows:

Petitioners' submissions

5. The Petitioners opposed the Objectors' application dated 12th April 2024, which sought revocation of the grant of letters of administration made on 14th March 2005 and confirmed on 7th April 2005 in relation to the Estate of Vincent Komurgor Kiprotich. The Petitioners contended that this matter paralleled a situation where the Objectors had essentially dug their own trap, using fraudulent documents in their application for revocation, with each questioning of their documents leading to the production of more contradictory evidence.
6. In addressing the issue of whether material facts existed to warrant revocation of the grant, the Petitioners argued that upon thorough interrogation of this question, the Objectors had failed to provide anything relevant to warrant such revocation. They relied on Rule 44(i) of the Probate Administration Rules and Section 76 of the *Law of Succession Act*, which provide specific grounds for revocation that the Objectors had not met.
7. On the question of locus standi, the Petitioners invoked the case of *Mercy Njoki Irungu vs. Lucy Wamuyu Maruru* [2016] eKLR, emphasizing that having an "interest" in the estate is fundamental to maintaining any probate action. They submitted that the Objectors lacked the requisite standing as they failed to demonstrate any legitimate connection to the estate. This position was reinforced by *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa Succession Cause No. 158 of 2000*, where the court held that the power to revoke must be exercised judiciously and only on sound grounds.
8. The Petitioners argued that they presented compelling evidence revealing numerous inconsistencies in the Objectors' documentation. They pointed out that the 3rd Objector's identity card number 25242316 actually belonged to one Nahashon Kipsaga Akoya, and his claim of being a ground engineer with Kenya Power and Lighting Company was refuted by the company itself. Similarly, they highlighted discrepancies in the 1st Objector's timeline, noting that she claimed to have married in 2004 but only applied for a birth certificate in 2007 and received her identity card in 2014.
9. Regarding the DNA evidence, the Petitioners challenged its reliability through Dr. Eva Aluvala's testimony. During cross-examination, Dr. Aluvala admitted that the Combined Siblingship Index (CSI) calculations returned a value of 0, scientifically indicating no relation between the parties. She was unable to justify how she arrived at her conclusions despite this fundamental contradiction.
10. The Petitioners further relied on *RNM vs RMN* [2017] eKLR and *In RE Joshua Orewa Odeh* (deceased) to emphasize that under Section 29 of the *Law of Succession Act*, proof of dependency is a condition precedent that the Objectors had failed to establish. They highlighted that the Directorate of Criminal Investigations had confirmed the Objectors were not who they claimed to be, noting particularly that their mother's employment records showed her husband as John Cheserek, not Vincent Komurgor.
11. Drawing on *D.T. Dobie & Company (kenya) Limited vs Joseph Mbaria Muchina and Geminia Insurance Co Limited vs Kennedy Otieno Onyango* [2005] eKLR, the Petitioners argued that the application was hopeless and beyond redemption, having been based on falsified documents. They submitted that this amounted to an abuse of court process under Order 2, Rule 15 of Civil Procedure Rules (2014), warranting dismissal with costs.



12. In conclusion, the Petitioners maintained that the Objectors were complete strangers to the estate who had orchestrated a plan to disinherit the rightful beneficiaries through the use of falsified documents. They therefore prayed for dismissal of the application with costs awarded to the Petitioners.

Objectors/Applicants' submissions

13. Learned counsel for the Applicants submitted that the centrepiece of the dispute concerned whether the Applicants were indeed children of the deceased, Vincent Komurgor. The Applicants relied heavily on scientific evidence to establish their relationship with the deceased, citing the case of *Wilfred Koinange Gathomi v Joyce Wambui Mutura & Another* [2016], where the court emphasized DNA testing as the conclusive method for determining paternity.
14. It was submitted for the Applicants that the DNA tests conducted by the Kenya Medical Research Institute (KEMRI), a government institution, conclusively established their relationship with the Respondents. Counsel pointed to specific test results showing a 99.9% probability of siblingship between the 1st and 2nd Applicants, and confirmation of sibling relationships between the 1st and 3rd Applicants. Notably, DNA test 2 demonstrated a 98.89% probability of siblingship between the 1st Applicant and 1st Respondent.
15. The Applicants' counsel vigorously challenged the credibility of the Respondents' expert witness, Dr. Edward J. Heist, highlighting that he was primarily a fish genetics expert who had never conducted human DNA tests. During cross-examination, it was revealed that Dr. Heist lacked proof of relevant academic qualifications and had no experience in human genetic testing.
16. On the issue of grant revocation, learned counsel cited *In re Estate of Julius Ndubi Javan (Deceased)* [2018] eKLR, emphasizing that non-disclosure of material facts undermines justice. The Applicants argued that the late Anna Chepchirchir failed to disclose their existence as beneficiaries despite being acutely aware of their relationship to the deceased. Reference was made to *In re Estate of Alphonse Liyayi (Deceased) (Succession Cause E085 of 2022)* [2024] KEHC 6889, where the court stressed the administrator's duty of full disclosure.
17. The Applicants presented compelling evidence of their relationship with the deceased, including the 1st Applicant's testimony about her 2004 wedding where the deceased participated according to Nandi customs. Furthermore, counsel submitted that the Applicants' physical occupation of the deceased's properties, including Eldoret Municipality Block 14/73, substantiated their claim as legitimate beneficiaries.
18. Regarding the 3rd Applicant's position, counsel argued alternatively that even if the court found him not to be a biological child of the deceased, he should be provided for under Section 26 of the *Law of Succession Act* as a dependent, having been taken into the deceased's family as his own under section 29(b) of the Act.
19. On costs, the Applicants relied on *Joseph Oduor Anode vs. Kenya Red Cross Society*, Nairobi High Court Civil Suit No. 66 of 2009 [2012] eKLR, submitting that costs should follow the event of revoking the grant issued to the late Anna Chepchirchir.
20. In conclusion, counsel submitted that the grant was fatally defective and ought to be revoked under Section 76(b) of the *Law of Succession Act*, with any resultant titles declared null and void based on the principle that no one should benefit from an unjust cause.



Analysis and determination

21. When death visits a homestead, it often leaves behind not just grief but also questions about succession that test both family bonds and the law's ability to deliver justice. The death of Vincent Komurgor on 25th May 2003 has birthed such questions, bringing to the fore complex issues of biological relationships, competing claims, and allegations of fraudulent conduct in obtaining letters of administration. The matter before me presents a unique intersection of traditional family structures, modern scientific evidence, and the delicate balance that succession law seeks to maintain in protecting genuine beneficiaries while guarding against fraudulent claims.
22. According to the KEMRI DNA report dated 19th August 2022, four distinct DNA tests were conducted to establish biological relationships among the parties. Grace Chepkosgei Kiprotich, Ben Kimutai Rotich, David Kibet Rotich, Ignatius Kipkemoi Rotich, and Louis M. Kiprugut Rotich presented themselves for DNA testing at KEMRI on 5th August 2022. Mark Kiplagat Rotich's sample was collected by DDC Alliance screening and occupational services USA and shipped to KEMRI, with proper chain of custody documentation maintained. The results are significant and there is need to have them reproduced as capture as hereunder:
23. DNA test 1 was conducted to establish if the objectors Grace Chepkosgei Kiprotich, Ben Kimutai Rotich and David Kibet Rotich are siblings. The Objectors Grace Chepkosgei Kiprotich, Ben Kimutai Rotich and David Kibet Rotich were found to be siblings. Analysis of the Y chromosome loci DYS391, DYS570 infers that Ben Kimutai Rotich and David Kibet Rotich do not share a common paternal lineage.
24. DNA test 2 was conducted to establish if the 1st Objector Grace Chepkosgei Kiprotich and Petitioners Ignatius Kipkemoi Rotich, Louis M. Kiprugut Rotich and Mark Kiplagat Rotich are siblings. The test determined that they are siblings.
25. DNA test 3 was conducted to establish if the 2nd Objector Ben Kimutai Rotich and the Petitioners Ignatius Kipkemoi Rotich, Louis M. Kiprugut Rotich and Mark Kiplagat Rotich are siblings. The test determined that they are siblings. Analysis of the Y chromosome loci DYS391, DYS576 and DYS570 infers that Ben Kimutai Rotich and the Petitioners Ignatius Kipkemoi Rotich, Louis M. Kiprugut Rotich and Mark Kiplagat Rotich share the same paternal lineage.
26. DNA test 4 was conducted to establish if the 3rd Objector David Kibet Rotich and the Petitioners Ignatius Kipkemoi Rotich, Louis M. Kiprugut Rotich and Mark Kiplagat Rotich are siblings. David Kibet Rotich and Ignatius Kipkemoi Rotich, tested negative for siblingship. DNA siblingship test between David Kibet Rotich, Louis M. Kiprugut and Mark Kiplagat Rotich was positive. That from the family tree provided we are unable to explain the positive siblingship test result between David Kibet Rotich, Louis M. Kiprugut and Mark Kiplagat Rotich given that they do not share a common paternal lineage and maternal lineage. The positive test could be as a result of other family relationship that are not apparent.

Ignatius Kipkemoi Rotich, Louis M. Kiprugut Rotich and Mark Kiplagat Rotich were positive for siblingship.

Analysis of the Y chromosome loci DYS391, DYS576 and DYS570 infers that David Kibet Rotich does not share a common paternal lineage with the three petitioners Ignatius Kipkemoi Rotich, Louis M. Kiprugut Rotich and Mark Kiplagat Rotich. However, Ben Kimutai Rotich shares a common paternal lineage with the three petitioners Ignatius Kipkemoi Rotich, Louis M. Kiprugut Rotich and Mark Kiplagat Rotich



27. The report made two crucial conclusions:
- a. That David Kibet Kiprotich does not share a common paternal lineage with Ben Kimutai Rotich and the 3 petitioners Ignatius Kipkemoi Rotich, Louis M. Kiprugut Rotich and Mark Kiplagat Rotich.
 - b. David Kibet Kiprotich is not a sibling to Ignatius Kipkemoi Rotich who is paternally and maternally related to Louis M. Kiprugut Rotich and Mark Kiplagat Rotich.
28. The genesis of this dispute traces back to the grant of letters of administration made to Anna Chepchirchir Kiprotich on 14th March 2005 and confirmed on 7th April 2005. This grant, which the Objectors now seek to revoke, has become the subject of intense scrutiny following the emergence of DNA evidence that fundamentally challenges the very foundations upon which it was obtained. The court must navigate through competing narratives: one presented by the Petitioners, who assert their legitimate claim to the estate based on both biological connection and historical family ties, and another by the Objectors, who have mounted a challenge based on their own assertions of familial relationships.
29. What makes this case even more compelling is the stark contrast between documentary evidence and biological reality, as revealed through scientific testing. The court must reconcile these divergences while remaining faithful to the principles of succession law and the interests of justice. The matter transcends mere distribution of property; it touches on fundamental questions of identity, family relationships, and the duty of the court to protect the integrity of succession proceedings.
30. At the heart of this revocation application lies Section 76 of the *Law of Succession Act*, which the Supreme Court of India, while interpreting their equivalent of Section 76, held in *Anil Behari Ghosh v SMT. Latika Bla Dassi & Others* [1955] that "defective in substance" means the defect was of such character as to substantially affect the regularity and correctness of the previous proceedings. This interpretation illuminates this court's path as I examine the evidence before me.
31. Section 76 of the *Law of Succession Act* provides the foundational framework for revocation of grants. As expounded in *Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR, a court may revoke a grant where specific grounds are disclosed. The court elucidated this principle stating:
- "A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems... The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration... The third general ground is where the grant has become useless and inoperative following subsequent circumstances."
32. The DNA evidence from KEMRI merits primary consideration. The testing, conducted in August 2022, reveals intricate biological relationships that fundamentally challenge the representations made during the initial grant application. Of particular significance is the finding that Grace Chepkosgei Kiprotich shares siblingship with the Petitioners with a probability exceeding 99.89%, while simultaneously establishing that David Kibet Rotich, though testing positive for siblingship with Louis and Mark, does not share their paternal lineage. This scientific evidence suggests a more complex family structure than was initially presented to the court.
33. The testimony of Peter Kipchirchir Birech provides crucial historical context that cannot be ignored. As a nephew to the late Vincent Komurgor and a neighbour since 1985, his evidence that he "never saw the applicant living in the said premises save for when they illegally took over the property using falsified documents" carries significant weight. His attendance at the deceased's marriage to Anna Chepchirchir



at St. Augustine University Chapel in Uganda in 1961 adds credibility to his testimony about family relationships.

34. The court in *Re Estate of Moses Wachira Kimotho (Deceased)* [2009] emphasized that:

“where any person interferes with the free property of the deceased or deals with an estate of a deceased person contrary to the provisions of section 45 and 82 of the Act that is intermeddling, is unlawful and cannot be protected by the court. The transaction is subject to be nullified and set aside at the instance of innocent beneficiaries who may have been affected by the act but were not involved in the same.”
35. The DNA testing conducted by KEMRI yielded four distinct sets of results that require careful examination. DNA Test 1 established that Grace Chepkosgei Kiprotich, Ben Kimutai Rotich, and David Kibet Rotich are indeed siblings, with a probability of siblingship of 99.9%. However, crucially, the Y chromosome analysis revealed that Ben Kimutai Rotich and David Kibet Rotich do not share a common paternal lineage, indicating they have different fathers despite being maternal siblings.
36. DNA Test 2 demonstrated that Grace Chepkosgei Kiprotich shares siblingship with all three Petitioners; Ignatius Kipkemoi Rotich, Louis M. Kiprugut Rotich, and Mark Kiplagat Rotich. The probability of siblingship between Grace and the Petitioners was established at 99.89%, providing strong scientific evidence of their shared parentage.
37. DNA Test 3 produced particularly significant results, showing that Ben Kimutai Rotich and the three Petitioners; Ignatius, Louis, and Mark share the same paternal lineage. This was confirmed through analysis of the Y chromosome loci DYS391, DYS576, and DYS570, which are passed unchanged from father to son. This evidence conclusively establishes that Ben Kimutai Rotich and the Petitioners have the same biological father.
38. The most complex findings emerged from DNA Test 4, which examined the relationship between David Kibet Rotich and the Petitioners. While initial siblingship testing between David Kibet Rotich and the Petitioners returned positive results, the Y chromosome analysis revealed they do not share a common paternal lineage. As noted in the KEMRI report, "From the family tree provided we are unable to explain the positive siblingship test result between David Kibet Rotich, Louis M. Kiprugut and Mark Kiplagat Rotich given that they do not share a common paternal lineage and maternal lineage." This anomaly suggests a more complex family relationship than initially presented to the court.
39. The impact of these DNA findings on the succession dispute cannot be understated. When considered against the testimony of Peter Kipchirchir Birech who stated that the deceased had only Anna Chepchirchir as his wife, performing their wedding at St. Augustine University Chapel in Uganda in 1961, the DNA results reveal a more intricate family structure that was deliberately concealed from the court during the initial grant application.
40. The scientific evidence undermines the Objectors' narrative in several crucial ways. First, while Grace Chepkosgei Kiprotich can establish biological relationships with both groups (the Objectors and Petitioners), the paternal lineage discrepancy between David Kibet Rotich and the other male siblings raises serious questions about the truthfulness of claims regarding a second marriage to Esther Cheboi. This is particularly significant when considered alongside evidence from the Directorate of Criminal Investigations showing that Esther Cheboi was actually married to one John Cheserek, not the deceased.



41. The use of scientific evidence although not new presents a unique problem because it involves technical information that is not usually well understood by lay persons, other professionals outside the medical skill set, the legislature and its admission covers wide range of theories, procedures and tests. This unique characteristic of evidence cannot be presented without touching on data that is beyond first hand observation of the facts of a particular case and indeed requires the inclusion and examination of opinions not permitted under normal rules of evidence. Unlike an observer witness, the expert witness has the power to draw inferences from facts that a court will not be competent to draw. To warrant the use of expert testimony like the one in the instant case on the DNA profile, it is expected under Section 48 that two elements satisfy the criteria of admission:
 - a. The subject of the inference must be distinctively related to some science, profession, business or occupation as to be beyond the ken of an average lay person.
 - b. The expert must have sufficient skill, knowledge or experience in that field or calling so that the opinion or inference will probably assist the judge in the search for truth.
42. DNA testing is especially useful in crimes of violence and also now trending in establishing paternity or kinship in succession disputed. This scientific evidence saves court's time and money by focusing on the real issues which can drag the court over and over again especially when it comes to inheritance. DNA forensic testing produces reliable results unless there is evidence of human interference or not analysing the samples by using the correct reagents or well-known international standards on DNA profiling. The evidence by the analyst Dr. Aluvala is uncontroverted unlike Dr. Heist's trajectory which was more of weighing in on issues to do with genetics, configuration of the DNA etc. In the instant case, Dr. Heist never extracted samples for DNA testing from any of the nominees who are the disputants in this succession cause. The weight to be accorded his testimony though an expert in this area of science cannot be in the same measure with that of Dr. Aluvala.
43. Furthermore, the DNA results directly contradict the representation made to the court during the grant application that Anna Chepchirchir's children were the only dependants/beneficiaries who survived the deceased. The scientific evidence proves conclusively that there are other legitimate biological descendants who were deliberately excluded from the succession process. As established in *Re Estate of Jamin Inyanda Kadambi (Deceased) [2021]*, such material non-disclosure forms a sufficient basis for revocation of grant.
44. The complexity revealed by DNA Test 4, where David Kibet Rotich shows siblingship with some parties but lacks their paternal lineage, suggests a degree of biological relationships that cannot be explained by the simple family structure presented during the grant application. This scientific anomaly, when viewed alongside the documented irregularities in the 3rd Objector's identity card and employment claims, points to a deliberate attempt to construct a false narrative of family relationships to gain access to the deceased's estate.
45. The question then becomes whether the DNA evidence alone would justify revocation of the grant. The court in *Wilfred Koinange Gathomi v Joyce Wambui Mutura & another [2016]* emphasized that DNA evidence provides the most reliable scientific method for determining biological relationships. In this case, the DNA results do more than just establish biological connections, they expose a pattern of deliberate concealment and misrepresentation that goes to the heart of the grant's validity.
46. In reaching its determination, this court is guided not only by the DNA evidence but by the totality of circumstances surrounding the grant's procurement. The principle established in *Re Estate of Philis Wairuri Maina-deceased [2021]* eKLR that DNA evidence stands as the true test of paternity becomes particularly pertinent. Here, the DNA results have done more than establish paternity, they



have unravelled what appears to be a carefully constructed narrative designed to exclude legitimate beneficiaries from their rightful inheritance.

47. The criteria on admissibility of expert evidence is as pronounced in the cases of Stephen Kinini Wang'ondou v. The Ark Limited [2016] eKLR where the court (Mativo J. as he then was) expressed itself as follows with regard to expert evidence:

“The fundamental characteristic of expert evidence is that it is opinion evidence. Generally speaking, lay witnesses may give only one form of evidence, namely evidence of fact. To be practically of assistance to a court, however, expert evidence must also provide as much detail as is necessary to allow the court to determine whether the expert's opinions are well founded.

While the test for admissibility of expert evidence differs from jurisdiction to jurisdiction, judges in all jurisdictions face the common responsibility of weighing expert evidence and determining its probative value.

While there are numerous authorities asserting that expert evidence can only be challenged by another expert, little has been said regarding the criteria a court should use to weigh the probative value of expert evidence. This is because, while expert evidence is important evidence, it is nevertheless merely part of the evidence which a court has to take into account. Four consequences flow from this.

Firstly, expert evidence does not “trump all other evidence”. It is axiomatic that judges are entitled to disagree with an expert witness. Expert evidence should be tested against known facts, as it is the primary factual evidence which is of the greatest importance. It is therefore necessary to ensure that expert evidence is not elevated into a fixed framework or formula, against which actions are then to be rigidly judged with a mathematical precision.

48. Additionally, in the Court of Appeal in Dhalay v. Republic (1995 – 1998) EA 29 held as follows with regards to expert evidence:

“Where the expert who is properly qualified in his field gives an opinion and gives reasons upon which his opinion is based and there is no other evidence in conflict with such opinion, we cannot see any basis upon which such opinion could ever be rejected. But if a court is satisfied on good and cogent ground(s) that the opinion though it be that of an expert, is not soundly based, then a court is not only entitled but would be under a duty, to reject it.”

49. In the adjudication of this succession cause underpinned in the controversy of the legitimate heirs to the estate, the essentials of it was not able to be precisely unpackaged without the assistance of scientific medical evidence. That is how the disputants agreed to seek refuge in medical science by consenting to submit DNA samples to KEMRI for purposes of analysis to establish the DNA match between the objectors and the other known siblings on the same bloodline from the lineage of the deceased. The essence of expert evidence of this nature as adduced by Dr. Aluvala is to testify about matters that are beyond the ordinary understanding of lay people on certain issues which are only a preserve of men and women with knowledge on this area of expertise. This area of DNA testing and profiling can only be alluded to by a person with knowledge, human experience, expertise, capable of forming a sound judgment to assist the court in arriving at a just decision. The challenge often experienced by the trial courts is how to engage with expert evidence in such areas of high expertise and knowledge without surrendering their adjudicative responsibilities to the experts giving such evidence on complex matters and High voltage controversies between the parties before the court. However, notwithstanding that



position of judges not possessing high level literacy on scientific evidence, they have the legal intellect to measure and correctly so, apply expert evidence to answer to the issues at stake bedevilling both parties to the dispute. The key point to note in the adjudicatory process, justice is a shared endeavour or enterprise for judges have their responsibilities in this area likewise expert witnesses have a role to play significantly which resource the judges in making an informed decision.

50. The conduct of the administrators of the late Anna Chepchirchir's estate raises serious concerns. When confronted with the DNA evidence showing biological relationships they had previously denied, they attempted to discredit the scientific findings through Dr. Eva Aluvala's testimony. However, under cross-examination, Dr. Aluvala's admission regarding the Combined Siblingship Index calculations returning a value of 0 yet reaching contrary conclusions severely undermines the credibility of their opposition to the DNA findings.

51. The law is settled on the consequences of obtaining a grant through misrepresentation or concealment of material facts. In *Re Estate of Moses Wachira Kimotho (Deceased)* [2009] eKLR, the court observed:

“I am certain that had the Applicants been made aware of the application for the confirmation of grant by being served they would have brought to the fore their aforesaid interest in the estate of the deceased and the resultant grant would have taken care of those interests. Further had the Respondent been forthright and candid and included the Applicants as beneficiaries of a portion of the estate of the deceased as purchasers for value, the court in confirming the grant would have taken into account their interest in the estate of the deceased. As it is therefore the grant was obtained fraudulently by making of a false statement and or concealment from court of something material to the cause. The Respondent knew of the Applicants' interest in the estate of the deceased yet she chose to ignore them completely in her petition of letters of administration intestate. She also ignored them completely when she applied for the confirmation of the grant.”

52. The attempt to challenge the authenticity of the DNA testing process through Dr. Heist's testimony is particularly troubling. As revealed during cross-examination, Dr. Heist's primary expertise lies in fish genetics, and he has never conducted human DNA tests. His lack of relevant qualifications and experience in human genetic testing renders his challenge to the KEMRI findings unreliable and appears calculated to create confusion rather than clarity. In my view, the expert evidence given by Dr. Heist is inherently an opinion and not based on facts peculiar to the instant succession dispute. A fair expert evidence must be based on a fair rating of the evidence like the samples which were analysed by Dr. Aluvala from the Kenya Medical Research institute. It is trite law that evaluating expert evidence sometimes can be problematic to the courts because they are required to master the unknown field in terms of knowledge and skills and prevail upon it to determine the existence or non-existence of a fact to rule for and against the dispute before it. In arriving at a decision the court is mandated to take into consideration the evidence as a whole and to evaluate all the material evidence on the issues that have to be determined. In the instant case, the dispute between the petitioners and the objectors can be generally described as revolving around the question of kinship, consanguinity and affinity in connection with the deceased. The role of expert evidence in matters of this nature can be both powerful and precise in settling the controversy on inheritance, which is the first point of concern in every intestate or estate administration. The expert evidence depending on the nature and source of it can also be quite misleading because of the difficulty the court might have in evaluating it. It can also be so persuasive that the danger exists of its incorrect use that could lead to a miscarriage of justice. So the scrutiny of the evidence by the court in equal measure must be considered alongside all other forms of evidence. The *Evidence Act* in Section 48 stipulates a limited number of subjects in which expert opinion can be admitted into evidence.



53. In so far as David Kibet is concerned, there must be evidence led to bring himself within the definition and meaning section 29 of the Succession Act or on the other hand, within the amendment within Section 3(2) and (3) of the Succession Act. The Objector David Kibet has not proved dependency to be included as one of the sons of the deceased. That is in contrast to the DNA profile match on the Y chromosome test denoting non-responsiveness to paternity as against David Kibet.
54. The pattern that emerges is one of systematic attempts to exclude legitimate beneficiaries through concealment of material facts. This conduct falls squarely within the ambit of Section 76(b) of the *Law of Succession Act*, which provides for revocation where "the grant was obtained fraudulently by the making of false statement or by the concealment from the court of something material to the case."
55. In any event, independent of the foregoing analysis, this court notes that the grant has already become inoperative by operation of law following the death of Anna Chepchirchir Kiprotich. Section 76(e) of the *Law of Succession Act* explicitly provides for revocation where "the grant has become useless and inoperative through subsequent circumstances." The death of a sole administrator constitutes such a circumstance, as it creates an administrative vacuum that can only be remedied through the appointment of new administrators. The court in *Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR emphasized this principle, noting that when a sole administrator dies leaving behind no administrator to carry on the exercise, the grant becomes inoperative by operation of law. Therefore, even absent the DNA evidence and other matters analysed above, this court would still be compelled to declare the grant inoperative and make appropriate orders for fresh administration of the estate.
56. In light of the foregoing analysis, and being guided by the principles established in *Morris Mwiti Mburungu vs Denis Kimathi M'Mburungu* [2016] that any transaction based on misrepresentation cannot be protected by the court, this court hereby makes the following orders:
- a. The grant of letters of administration issued to the late Anna Chepchirchir Kiprotich on 14th March 2005 and confirmed on 7th April 2005 is hereby declared inoperative by reason of her death, as such the invocation of Section 76 of the *Law of Succession Act* is of necessity.
 - b. Answering one of the most contested issues on kinship, the court finds the DNA forensic testing placed Grace Chepkoosgei Kiprotich and Ben Kimutai Rotich at 99.9% as against the Petitioners.
 - c. The Chief Land Registrar and the Land Registrar, Uasin Gishu County shall within thirty (30) days of this order file a comprehensive report detailing the status of all immovable properties registered as part of the estate of Vincent Komurgor, including any encumbrances, charges, or transfers effected pursuant to the Certificate of confirmation of Grant.
 - d. The beneficiaries are hereby directed to file, within thirty (30) days of this order, their proposals for appointment of administrators who shall represent their interests in this succession. The proposals shall identify not more than four (4) and not less than two (2) persons to serve as joint administrators under Section 66 of the *Law of Succession Act*.
 - e. Upon appointment, the newly appointed administrators shall, within forty-five (45) days of this order: File a full and accurate probate account detailing all movable and immovable properties comprising the estate of the deceased,



including any proceeds, income, or benefits derived therefrom since the date of death.

- f. Any person claiming interest in or control over any asset of the estate is hereby restrained pursuant to section 40 of the Civil Procedure Rules as read with Rule 73(1) of the Probate and Administration Rules from dealing with such asset pending confirmation of the fresh grant.
- g. Each party shall bear its own costs.

57. It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 23RD DAY OF DECEMBER 2024

.....

R. NYAKUNDI

JUDGE

In the Presence of:

Mr. Warigi, Advocate for the Petitioners

Mr. Githaiga, Advocate for the Objectors.

