



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Kiplangat Chumo (Deceased) (Succession Cause  
841 of 2014) [2023] KEHC 22701 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22701 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 841 OF 2014  
TA ODERA, J  
SEPTEMBER 27, 2023**

**BETWEEN**

**CHRISTOPHER CHEPKWONY ..... APPLICANT**

**AND**

**MARY CHEROTICH TINGA ..... RESPONDENT**

**RULING**

1. Before Court is a Summons dated 5<sup>th</sup> November, 2019 and filed on the even date, expressed to be brought under sections 47 & 74 of the Law of Succession Act, Rules 43, 63(1) and 73 of the Probate and Administration Rules and Order 45 of the Civil Procedure Rules.
2. The Applicants seek the following orders: -
  - a. Spent
  - b. Spent
  - c. That the Consent order dated 4<sup>th</sup> February, 2019 and filed in Court on the 26<sup>th</sup> February, 2019 by then Advocates for the Parties M/S Mongeri & Co. Advocates and M/S Wangare & Co. Advocates be reviewed and/or set aside.
  - d. That this Honourable Court be pleased to order that the certificate of confirmation of Grant issued by this Honourable Court on the 26<sup>th</sup> day of February, 2019 be rectified and/or be amended to reflect the wishes of all the beneficiaries of the estate of Kiplangat Chumo (Deceased) as contained in the consent to confirmation of Grant dated the 11<sup>th</sup> day of April, 2016.
  - e. That costs of this Application be provided for.



3. The Application is predicated on the grounds on its face and supported by an Affidavit of Christopher Kiprotich Chepkwony, the first Applicant herein, sworn on 5<sup>th</sup> November, 2019.
4. He deposed that his late brothers John K. Chepkwony and Philip K. Chepkwony prior to their demise had appointed the firm of M/S Mongeri & Co Advocates to act for them in this matter and the said firm later ended up acting for them.
5. He averred that the firm of M/s Wangare & Co. Advocates has been representing his Co administrator in this matter and out of ignorance they had trusted her to represent the interest of all the parties involved in the petition fairly.
6. He deposed that he realized that his Co- Administrator had become dodgy and was acting dishonestly pursuant of which they sought the services of the current advocates with instructions to peruse the court proceedings and advise them.
7. That upon perusal of the Court file they discovered several anomalies such as the consent they signed for confirmation of grant at their previous Advocates office was disregarded and a Certificate of Confirmation of Grant issued using misrepresentation of facts and without their participation and attendance in court.
8. He averred that he and other beneficiaries did not instruct their then advocates to file the Consent dated 4<sup>th</sup> February, 2019 and filed in court on 26<sup>th</sup> February, 2019.
9. He stated that the consent does not reflect the Family's and beneficiaries' agreed mode of Distribution of the Estate of Kiplangat Chumo (Deceased) and none of the beneficiaries was present in court to confirm the contents of the said Consent before the court went ahead to adopt it during confirmation.
10. He averred that one William Cheruiyot Rotich was left out yet he is a beneficiary by virtue of the fact that he purchased 0.5 acres excised from Miti/Mingi Mbaruk Block 3/94 (Barut) from Kiplangat Chumo(deceased) while he was still alive.
11. He stated that the 2<sup>nd</sup> Administrator Mary Cherotich Tinga has intermeddled with the Estate by purporting to sell portions of it specifically Miti Mingi Mbaruk Block 3/94 (Barut) to 3<sup>rd</sup> Parties before confirmation of the Grant and therefore making it difficult to distribute the same amongst the beneficiaries.
12. He further stated that some of the purported purchasers of the above property are Francis Kangi, Samuel Kariuki, Tobias Otundo and Lawrence Kioo Nzioki
13. It was his deposition that in the confirmed Grant, the 2<sup>nd</sup> Administrator has purportedly allocated herself more land than the rest of the beneficiaries who are sons of the deceased without the consent of other beneficiaries who, under the Law rank in priority as the sons of the Deceased as opposed to her who is the wife of the deceased's sons.
14. He deposed the confirmed grant has several errors which require amendments e.g.Philip Chepkwony (deceased) was allocated land instead of his wife one Rosa Chelangat.The total acreage indicated in the Certificate of Confirmation of Grant for parcel Number L.R Miti Mingi Mbaruk Block 3/94 (Barut) is 3 acres instead of 3.6 acres.The total acreage for parcel Number Kericho Chemagel/56 has been erroneously indicated as 8 acres instead of 6.8 acresHe had been erroneously referred to in the Certificate of Confirmation as "Estate of Christopher Chepkwony" yet he is alive.The properties have not been distributed as per the Consent signed on the 11<sup>th</sup> Day of April, 2016.



15. He thus averred that owing to the errors stipulated above it has become difficult to distribute the Estate and their efforts to convince his Co-Administrator to rectify the errors have fallen on deaf ears pursuant of which she had threatened other beneficiaries with eviction and in fact sought this Honourable Court assistance to punish them for refusing to release the Title Deeds.
16. He deposed that their physical attendance in court during confirmation of grant was mandatory apart from executing consent of confirmation.
17. That he and other beneficiaries of the Estate of the Deceased were not asked to attend court on the date the consent was recorded and neither was he as a co-administrator advised so.
18. He further averred that it is apparent the substance of the consent cannot be implemented due to the errors and prayed that the orders sought be granted.
19. Elizabeth Chepkwony, Rosa Chelangat, Samuel Kiprono Chepkwony, Jane Chepngetich Chepkwony And William Cheruiyot Rotich (hereinafter for ease of reference to be referred to as beneficiaries) *vide* a consent to act dated 5<sup>th</sup> November, 2019 consented that the 1<sup>st</sup> Applicant do file the application herein and reiterated the 1<sup>st</sup> Applicant's above averments.
20. The Respondent Mary Cherotich Tinga swore a Replying Affidavit in opposition to the Application on 18<sup>th</sup> December, 2019. She deposed that the Application is baseless, bad in law, misplaced, inept, frivolous, malicious, vexatious and gross abuse of the Court's process.
21. She averred that the Applicant having deponed that the firm of M/s Mongeri & Co. Advocates, have Been acting for them in this matter, a claim for ignorance is unfounded and cannot offer them a platform to disown a consent order they voluntary entered into.
22. She deponed that it is on record that the applicants' late brother John K.Chepkwony and Philip K. Chepkwony fraudulently petitioned and were issued with a Grant of Letters of Administration for the estate of the deceased.
23. That despite glaring irregularities and illegalities in the said petition, the applicant herein gave his consent authorizing the late John K. Chepkwony and Philip K. Chepkwony to proceed with the petition.
24. She stated that she filed an Affidavit of protest against Confirmation of the said Grant dated 19<sup>th</sup> May,2017 and on 12<sup>th</sup> December,2019, they held a family meeting wherein they amicably settled the prolonged dispute on the parcel of land L.R No. Miti Mingi Mbarut/Block 3/94.
25. She deponed that *vide* a letter dated 13<sup>th</sup> December, 2018 Mr. David K. Kering, Chief Barut Location confirmed the same to be the agreement of the family and the Applicant herein never raised any complaint.
26. She deponed that it is on court's record that on 16<sup>th</sup> October,2018 the Applicant's advocates on record did confirm to the Honourable Court that he had been adequately provided for in the consent and proceeded to request the court that parties should attempt an out of court settlement.
27. She averred that through a letter dated 17<sup>th</sup> December, 2018, her advocates on record asked the Applicant's Advocates to confirm the terms of the agreement dated 12<sup>th</sup> December, 2018 and 13<sup>th</sup> December, 2018 to enable them record a consent compromising the summons for confirmation of grant and their protest.



28. That *vide* a letter dated 19<sup>th</sup> December, 2018, the Applicants' advocates advised her advocate to urgently prepare consent to that effect for their signature and that upon preparation of the consent, the Advocates for the Applicant together with his advocate duly executed the said consent.
29. She deposed that the said consent was a reflection of their agreement dated 12<sup>th</sup> December, 2018 and 13<sup>th</sup> December, 2018, which agreement was voluntarily executed by the Applicant herein together with other family members that were in attendance.
30. She further deposed that on the 26<sup>th</sup> February, 2019 the advocates for the Applicant together with her advocate presented the said consent before this honourable court for adoption and the same was adopted as an order of the court and the matter marked as settled.
31. She stated that subsequently a certificate of confirmation of Grant dated 26<sup>th</sup> February, 2019 was issued to him and the Applicant herein as the Administrators of the estate of the late Kiplangat Chumo.
32. It was her deposition that it is evident that during the entire process, the Applicant herein actively participated and was adequately represented by duly qualified advocates and that the Applicant's attempt to distance himself from the said consent which he wilfully executed is not only dishonest but also a ploy to defeat justice.
33. She deposed that it is the Applicant's advocate that it is best suited to respond to the allegations levelled against him by his own client and that the same does not fall within her purview.
34. She averred that one William Cheruiyot Rotich is not a beneficiary of the estate of the Kiplangat Chumo within the meaning of Section 29 of the Law of Succession Act and as such the mode of distribution proposed by the applicant in support of the summons is bad in law.
35. It was her deposition that the Applicant has not met the legal threshold required for setting aside a consent order.
36. She averred that the Applicant has not explained why the alleged consent dated 11<sup>th</sup> April, 2016 was not executed by all the intended beneficiaries, and prayed that the summons be dismissed with costs.
37. The Applicant filed a supplementary affidavit on 5<sup>th</sup> of March, 2020. He averred that the advocates for the parties or beneficiaries are precluded by the Law from signing consent for confirmation of Grant of letters of Administration and therefore the consent signed by the Advocates for the parties dated 4<sup>th</sup> February, 2019 is incurably defective.
38. He denied that there was a family meeting allegedly held on 12<sup>th</sup> December, 2018 and stated that the letter dated 13<sup>th</sup> December, 2018 purporting to be by the Chief Barut location is a forgery.
39. Rosa Chelangat, Elizabeth Chemutai Chepkwony, Jane Chepngeno & Samwel Kiprono Chepkwony also swore their affidavits on 10<sup>th</sup> February, 2020 in support of the Applicant's averment that no meeting was held on 12<sup>th</sup> December, 2018. They all stated that they never attended such meeting and that the signatures appearing on the consent as theirs are a forgery.
40. The Respondent swore a further Replying Affidavit in response to the Applicant's supplementary affidavit on 10<sup>th</sup> March, 2020.
41. She deposed that the supplementary affidavit is replete with falsehood, bad in law, misplaced, inept, malicious, frivolous, vexatious and a gross abuse of the Honourable Court's process.
42. She stated that the errors referred to by the Applicant raise a point of law that can only be addressed on Appeal.



43. She averred that the Applicant has no instructions to prosecute the matter herein on behalf of the alleged beneficiaries and he thus lacks capacity to swear an affidavit on their behalf, and that the claim by the alleged deponents that their signatures or thumb-prints were forged can only be substantiated by them.
44. She urged the court to dismiss/strike out the supplementary affidavit with costs.
45. The Application was canvassed through *viva voce* evidence.
46. No witness testified in support of the Applicant's case. The Applicant chose to rely on his affidavits on record and the affidavits of the beneficiaries and submissions in support of his case.
47. The following witnesses testified in support of the Respondent's case.
48. DW1 Davi Kering, was the area chief Baruk Sub location. He testified that on 12<sup>th</sup> December, 2018 he was invited to go for a meeting at the 2<sup>nd</sup> Respondent's house at Baruk. He sent some village elders to represent him and later he went there at around 4 pm and he found they had already finished the meeting. He said he found 14 attendees out of 17. He said those who had already left were Michael Chepkwony, Elizabeth Chepkwony and Rose Chelangat Chepkwony. He confirmed he found the Applicant and the Respondent herein.
49. He told court that he asked for the minutes and attendance list and found the aforesaid persons who had already left had written an agreement and signed it. He then wrote a letter explaining what had been agreed on at the meeting.
50. In cross examination, he stated that the family meeting was called for by the Administrators herein. He, village elders and neighbours were invited. He said as per the attendance list beneficiaries were also invited to the meeting. He confirmed he was absent when the agreement was written. He said the agreement indicates that it was written by the secretary and not by John Kombo. He told the court he did not see anyone append their signature on the agreement and that he did not sign on the agreement. His signature was on the letter dated 13<sup>th</sup> December, 2020 attached to the agreement. He said his letter dated 12<sup>th</sup> December, 2020 did not indicate that the meeting was held at the Respondent's house. He confirmed he did not find out from Rose Chepkwony, Elizabeth Chepkwony or Samuel Chepkwony whether they had attended the meeting.
51. In re-examination, he stated that the village elders attended the meeting and were present when the agreement was written. He said he was told the aforesaid person whom he did not find had left early because they were travelling to Bomet. He stated that he did not sign the agreement because he was not present during the meeting.
52. PW2, John Kombo Nandwa, a village elder of Barut. He recalled that on 12<sup>th</sup> December, 2018 he and other village elders namely; Joseph K.Sigira, David Koros, Stephen Arap Koech, George Gethumbi, Jane Nyambura (deceased), Patrick Musembi, Marcella Orang, Sammy Koech, Hillary Sitonik, Naomi Wambui Mirigo and Benson Kipkwony Kosgei were invited by two groups to discuss land dispute at the Respondent's house. He said the family members who were present were Elizabeth Chepkwony, Mary Cherotich Tinga, Rosa Chepkwony, Samwel Chepkwony and Christopher Chepkwony. He stated that the dispute was between the family of the Respondent who was residing on the land at Nakuru and the family that had travelled from Bomet. He testified that the land in dispute belonged to the deceased. It was his testimony that the dispute was resolved amicably and it was agreed that the Respondent should stay at Nakuru with her family because that is where she buried the deceased, that 2.5 acres and 0.5 acres at Barut be given to Christopher Chepkwony and that the Bomet family should not claim any land at Barut while the Respondent should also not claim any land at Bomet. He said



that he was the one who took the minutes and that all the people mentioned signed the agreement. He produced the original copy of minutes of 12<sup>th</sup> December, 2018 as exhibit no. two.

53. In cross examination he confirmed he did not have evidence that he had been sent by the chief to attend the meeting. He also confirmed that the minutes of the meeting did not reflect the name of Jane Chepkwony. He did not know whether Elizabeth Chepkwony was a daughter or daughter in law of the deceased. He stated that the respondent is a daughter in law of the deceased. Regarding the ID number of Rosa indicated in the agreement; he stated that he recorded what Rosa stated as her ID number. He said he was not told that Mary had 1.1 acres in Kericho Chemagel/56 and as such he did not capture it in the minutes. It was his testimony that the said minutes indicated that Rosa Chepkwony thumb printed on the agreement. When he was shown the affidavit sworn by Rosa Chepkwony on 10<sup>th</sup> February, 2020, he stated that he was not aware that she signed her documents. He stated that Mary got 2.5 acres which was more than what the sons and daughters of the deceased got. He did not know of any justification for the same.

### **Applicant's Submissions**

54. The Applicant submitted that the consent order dated 4<sup>th</sup> February, 2019 is incurably defective and ought to be struck out because it was signed by advocates for the beneficiaries and not the beneficiaries themselves as contemplated under Rule 40(8) of the *Probate and administration rules*; advocates for the parties are not dependants of the estate of the deceased in the context of Section 29 of the *Law of Succession Act*; and that the said consent was not witnessed as per the requirements of form Number 37.
55. To support his submissions reliance was placed on the cases of *Charles Mutua M'anyoro v Maria Gatiria* [2009] eKLR and *Ahmed Salat Abdille v Mohamed Salat Abdille* [2016] eKLR
56. The Applicant urged the court to rectify the grant in view of the aforementioned errors.

### **Respondents Submissions**

57. With respect to whether the Consent Order dated 4<sup>th</sup> February, 2019 should be set aside, the Respondent submitted the Applicant having failed to challenge the validity of the agreement dated 12<sup>th</sup> December, 2018 and confirmed on the 13<sup>th</sup> December, 2018, cannot purport to challenge the consent order dated 4<sup>th</sup> February 2019 which is a product of the said agreement.
58. She submitted that the applicant has failed to prove to the satisfaction of the Honourable Court that the consent order in question was either obtained by fraud or collusion or by an agreement contrary to the policy of the court or that it was given without sufficient material facts or in misapprehension or ignorance of such facts. In support of this position reliance was placed on the cases of *Patriotic Guards Ltd v James Kipchirchir Sambu* [2018] eKLR; *S M N v Z M S & 3 others* [2017] eKLR cited with approval in the case of *Kenya Commercial Bank Ltd -vs- Specialised Engineering Co. Ltd* [1982] KLR 485; & *Lenina Kemigisha Mbabazi Star Fish Limited v Jing Jeng International Trading Ltd* [HCT-00-MA-344-2012]
59. In regards to whether the certificate of grant issued on 26<sup>th</sup> February, 2019 should be rectified, the Respondent referred this court to the Provisions of Section 29 of the *Law of Succession Act* and submitted that this section does not recognize purchasers as beneficiaries. She submitted that the consent dated 11<sup>th</sup> April, 2016 is bad in law as it purports to include one William Cheruiyot Rotich as a beneficiary contrary to Section 29 of the *Law of Succession Act*.
60. To further buttress her submissions, the Respondent referred this court to the Provisions of Section 74 of the *Law of Succession Act*, the cases of In *re Estate of Njau Kanyoria (Deceased)* [2019] eKLR;



In *re Estate of Patrick Wagura Kabuga (Deceased)* [2019] eKLR; *In re estate of Charles Kibe Karanja (Deceased)* [2015] eKLR; & *In re estate of Charles Kibe Karanja (Deceased)* [2015] eKLR

61. The Respondent prayed to be awarded costs in line with the provisions of Section 27 of the *Civil Procedure Rules* 2010.

### **Analysis & determination**

62. Having considered the application, the affidavits both in support of and in opposition to the application as well as the submissions filed and authorities cited, I find that the following issues emerge for determination: -
1. Whether the Applicant has met the threshold for review and/ or set aside of the consent order dated 4<sup>th</sup> February, 2019 and revocation of the consequential confirmed grant dated 26<sup>th</sup> February 2019.
  2. Whether Certificate of confirmation of grant issued on 26<sup>th</sup> February 2019 should be rectified.

### **Issue No.1**

63. On whether the Applicant has met the threshold for review and/ or set aside of the consent order dated 4<sup>th</sup> February, 2019 and revocation of the consequential confirmed grant dated 26<sup>th</sup> February 2019, the Court of Appeal in *Isaac Kinyanjui Njoroge v National Industrial Credit Bank Limited* [2018] eKLR reiterated the principles for setting aside a consent order as set out in *Flora N Wasike v Destimo Wamboko* [1982-88] 1 KAR 625 when it held that:

“The principles upon which an application for review is considered are well settled. As the Judge correctly stated, this Court held in *Flora N Wasike v Destimo Wamboko* [1982-88] 1 KAR 625 that a consent judgment can only be set aside on the same grounds as would justify the setting aside of a contract, for example fraud, mistake or misrepresentation. In that case, the Court affirmed the principle in *Hirani v Kassam* (1952) 19 EACA 131 that:

“Prima facie, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them..... and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court.....; or if the consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable the court to set aside an agreement.”

64. The Applicant has urged this court to set aside the consent in issue on grounds that it was entered into by their previous advocate without their instructions and or knowledge and that the same do not reflect the family/beneficiaries mode of distribution. The Applicant and the aforesaid beneficiaries vehemently denied that there was a family meeting held on 12<sup>th</sup> December, 2019 and that the signatures appearing on the family minutes as theirs were forged.
65. The respondent on her part contended that a family meeting was held on 12<sup>th</sup> December, 2019 wherein a prolonged dispute on the parcel of Land L. R NO. Miti Mingi Mbarut/Block 3/94 was amicably resolved and vide a letter dated 13<sup>th</sup> December, 2018 the chief Mbarut location confirmed the same to be the agreement of the family and that subsequently her advocate and the Applicant's advocate on the strength of the said family meeting duly executed the consent in issue.



66. The chief testified before this court and confirmed that he was not present when the meeting was held and did not see any of the beneficiaries append their signatures on the minutes. He said he had delegated the secretarial duties at the family meeting to the village elder (Pw2) as he was attending Jamuhuri day celebrations and later requested for the minutes and confirmed all beneficiaries were in attendance including the applicant herein and that they had appended their signatures on the minutes . He thereafter wrote his letter dated 13<sup>th</sup> December,2018 confirming the agreement reached on the previous day at the family meeting.
67. PW2 was the village elder. He stated that he attended the meeting and the parties herein together with the other beneficiaries were present. He said he took the family minutes and disputed that the signatures on the attendance sheet were forgeries. On cross-examination, he admitted that Jane Chepngeno was not present in the meeting.
68. As regards the Applicant and beneficiaries consent and participation during the confirmation, Rule 40(8) of the *Probate and Administration Rules* provides that;
- Where no affidavit of protest has been filed the summons and affidavit shall without delay be placed by the registrar before the court by which the grant was issued which may, on receipt of the consent in writing in Form 37 of all dependants or other persons who may be beneficially entitled, allow the application without the attendance of any person; but where an affidavit of protest has been filed or any of the persons beneficially entitled has not consented in writing the court shall order that the matter be set down as soon as may be for directions in chambers on notice in Form 74 to the applicant, the protester and to such other persons as the court thinks fit.
69. This provision was dealt with in the case of *Charles Mutua M'anyoro vs. Maria Gatiria* (*supra*) where it was held that:
- “...in mandatory language, the proviso to section 71 of the *Law of Succession Act* enjoins the court, in case of intestacy, to confirm the grant only if it is satisfied as to the respective identities and shares of all persons beneficially entitled to the estate. Another safeguard in ensuring that only the deceased person’s dependants benefit from the estate is in Rule 40(3) of the Probate and Administration Rules which requires that before a grant can be confirmed the particulars of the dependants must be disclosed...It is imperative under the rules that all the dependants be in attendance during the hearing of the application for confirmation save where the dependants have signed a consent in writing. See Rule 40(8).”
70. The same position was restated *In re Estate of Abdulkarim Chatur Popat (Deceased)* [2019] eKLR where the Court pronounced itself as follows:
- “Having found that the applicants therein were beneficiaries of the estate of the deceased, their consent was necessary as was their participation in the confirmation proceedings.”
71. The issue of whether the parties to the consent participated in the confirmation proceedings is not for this court to decide but the appellate court as the Honourable Judge recorded that all parties were present during confirmation of grant.
72. It is thus clear that a consent order can only be set aside on grounds of duress, coercion, undue influence, misrepresentation or mistake.



73. I have perused the family meeting minutes dated 12th December, 2018 and it is clear the applicant and the respondent together with Elizabeth Chepkwony, Rosa Chepkwony and Samuel Kiprono Chepkwony were present. However the name of Jane Chepkeno who is described as a survivor of the deceased in the chief's letter dated 11.11.12 is conspicuously missing. There is no evidence of fraud in my view but that of non-disclosure of material fact and misrepresentation as when the advocates recorded the consent, it was not brought to the attention of the court that one of the beneficiaries was not present during the family meeting. I therefore proceed to set aside the consent dated 4.2.19.
74. On whether the grant should be revoked, Section 76 of the *Law of Succession Act* provides for instances when a grant can be revoked specifically that:
- “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; .....

In the case of *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa* Succession Cause No. 158 of 2000 it was held that -

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”

75. In this case, the administrators did not inform the court that the said Jane a survivor of the deceased did not sign the agreement arrived at during the family meeting which is the basis of the consent dated 4.2.18. This was a fact material to the case under Section 76 of the *Law of succession Act* and having set aside the consent, it follows that the confirmed grant also cannot stand. I therefore proceed to revoke the confirmed grant dated 4.2.18 for the aforesaid reasons.

## **Issue no. 2**

76. Since the grant has now been revoked hereinabove, the issue of amendment or rectification of the grant to correct errors on it does not arise as it no longer exists.
77. In the upshot allow the application dated 5.11.19 in terms of prayer 3 and I make the following orders;
- a. The consent herein 4.2.19 dated is hereby set aside.
  - b. The confirmed grant dated 26.2.19 is hereby revoked.
  - c. The administrators do return the original confirmed grant dated 26.2.19 which is in their possession within 14 days from today.
  - d. This being a family matter, each party shall bear his own costs.



e. Mention on 22.11. 2023 for further orders/directions.

**T.A. ODERA - JUDGE**

**27.9.2023**

Delivered Virtually via Microsoft teams platform in the presence of;

No appearance for Petitioners.

Mr Olonyi for the Beneficiaries/Objectors.

Court Assistant; Lorainne Njiru.

