



REPUBLIC OF KENYA



**KENYA LAW**

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**In re Estate of Henry Okello Ayot (Deceased) (Succession Cause  
5 of 2020) [2023] KEHC 27041 (KLR) (19 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27041 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
SUCCESSION CAUSE 5 OF 2020  
RPV WENDOH, J  
DECEMBER 19, 2023**

**IN THE MATTER OF THE ESTATE OF: PROFESSOR HENRY OKELLO AYOT  
(DECEASED)**

**BETWEEN**

**ELAINE OGALO AYOT ..... OBJECTOR**

**AND**

**OMONDE KISERA ..... PETITIONER**

**AND**

**GLADYS KADUYU AGOI ..... RESPONDENT**

**JUDGMENT**

1. This cause relates to the estate of Professor Henry Okello Ayot (Deceased) who died testate on 24/4/2019. The deceased had a written Will dated 22/11/2016 and attested on 4/5/2018. Mr. Omonde Kisera (the petitioner) one of the named executors in the Will, filed a petition for probate of the written Will on 19/2/2020. The petitioner represents himself.
2. On 20/3/2020, Elaine Ogalo Ayot, a daughter and beneficiary of the deceased's estate (objector) filed an objection to making of grant. In addition, the objector filed a petition by way of cross petition for Grant of Probate dated 1/7/2020. The objector is represented by the firm of Ngeri, Omiti & Bush Advocates LLP.
3. The objection proceeded via viva voce evidence. Before delving into the testimonies of the parties herein, this court will first give the background leading upto the objection proceedings.
4. The objection is premised on the grounds on its face and the supporting affidavit of Alfred Munywele Anyanga, a friend to the objector. It was deposed that the petitioner, who was appointed as an executor of the Will should be barred from propounding the deceased's Will due to conflict of interest; that the



- petitioner should not be allowed to appear as an advocate of the family and/or for the executors as he is likely to be a potential witness on contentious matters of facts in these proceedings; that the petitioner has a concealed interest in the estate of the deceased and therefore cannot be entrusted to represent the family of the deceased as an advocate or as an executor of the deceased's Will.
5. It was further deposed that the petitioner has never approached the family upon the demise of the deceased to inform them that he was in possession of the Will of the deceased; that after the deceased died, the objector and deceased's sister, one Ereena Ayot asked Orpha their aunty, who is a relative to the petitioner, whether she has a copy of the Will, which she answered in the affirmative; that Orpha handed over an unsealed envelop with a photo of the Will to the family of the deceased; that the petitioner never made endeavors to read the Will to the family of the deceased the Will and he only made himself available to read the Will a day before some of the family members were leaving for the USA and this shows bad faith on the part of the petitioner.
  6. Mr. Alfred Munywele further deposed that the family of the deceased asked the petitioner not to perform any duties touching on the estate of the deceased, which he ignored; that the petitioner failed to inform the other executors of the instant petition; that the petitioner informed the family members and other executors of this petition of the publication in the Kenya Gazette on 17/3/2020 barely 3 days before the expiry of the 30 days statutory notice; that the death certificate used by the petitioner was fraudulently obtained since the death certificate was never issued to the petitioner; that the entire family has never seen or known the true contents of the Will and the objector has reason to believe that it is the petitioner who drafted the Will and refused to avail a copy thereof to the family.
  7. It was contended that the objector is aware that the deceased had revised his Will prior to his death and therefore the Will presented to court may not be the deceased's last Will and testament. Mr. Munywele further contented that even if this court finds that the Will is authentic, the objector objects to the grant of probate being granted to the petitioner and the petitioner being named as one of the executors of the Will.
  8. The petitioner filed a replying affidavit dated 5/10/2020 to the objection and the petition by way of cross petition by Elaine Ayot dated 1/7/2020. The petitioner contended that he is one of the named executors of the deceased's Will dated 4/5/2018 together with Tom Kwanga (Advocate), Philip Ayot (son), Steve Ayot (son) and Elaine Ayot (daughter, objector and cross petitioner); that of all the family members named in the Will, it is petitioner and Tom Kwanga who are not family members; that he did not know he was appointed as one of the executors until after the demise of the deceased; that it is true that during the lifetime of the deceased, he engaged the petitioner and Tom Kwanga on legal issues.
  9. It was further stated that the objector has on different occasions appreciated that the Will herein is the valid Will; that the Will has listed many beneficiaries none of whom have raised any objection or filed cross petitions; that when it became apparent that none of the persons named as executors was willing to petition for probate of the Will, the petitioner together with the other co - executors Tom Kwanga and Steve Ayot cited the objector and Philip Ayot vide Migori Succession Cause No. 11 of 2019; that the citation proceedings were heard and determined granting leave for the petitioner to file a petition.
  10. The petitioner further deposed that the petition for grant of probate has not excluded the other persons named as executors to be made executors of the Will; that this court should give effect to the Will of the deceased person which has been appreciated by the objector as valid. The petitioner deposed that he has not breached any duty as executor of the Will whose probate has not been granted and administration thereof is yet to arise.
  11. Mr. Alfred Munywele filed a further affidavit dated 10/11/2020. It was deposed that the petitioner has shown biasness towards the objector and her brother Philip Ayot; that the only reason that the



- objector has not disputed the Will filed herewith but she is only concerned with the manner in which the petitioner instituted these proceedings; that the manner in which the Will was given to the family of the deceased has made the family and particularly the objector to doubt the integrity of the Will itself.
12. Mr. Munywele stated that it was the objector who applied for the death certificate which was issued to her and it has a unique entry number 0263799821 whereas the one used by the petitioner to file the petition has the entry number 0263805915. Mr. Munywele urged that the petitioner has ulterior motives in the process of obtaining the grant.
  13. Mr. Kwanga Mboya - Advocate, Steve Ayot and Gladys Kaduyu Ayot the named executors in the Will, all filed a notice of no objection to grant of probate of written Will dated 19/5/2023.
  14. Elaine Ogalo Ayot is PW1. She testified that she is an accountant by profession. She adopted her witness statement dated 29/3/2022 and produced the bundle of documents dated 22/9/2022 as PEXH1. The objector testified that she is a beneficiary of the estate of the deceased and she is named in the deceased's Will as an executor; that the petitioner should not be allowed to appear as an advocate for the family and/or as an executor appointed in the Will as it is apparent that he will be required to give evidence on contentious matters; that the petitioner has always hidden and/or concealed his personal interest in the estate of the deceased; that after the deceased died, they got to know from their aunty that there is a Will and she handed them an unsealed envelop with a photocopy of the Will of the deceased; that the petitioner told the family that it was not important to read the Will and only informed the family of his readiness to read the Will when some of the family members were leaving for the USA.
  15. It was her further testimony that the petitioner failed to consult with the family and other executors before taking out a grant of probate; that the deceased had revised his Will prior to his death and therefore she has reason to believe that the Will presented to court may not be the deceased's last Will and testament.
  16. On cross examination by the petitioner, PW1 stated that she is not disputing the Will but she is objecting to the petitioner being one of the executors. PW1 accused the petitioner of being non-objective but she agreed that there are 5 executors including herself; that they have not received a copy of the Will from the petitioner but they got it from their aunty who is a friend of the petitioner on 19/6/2019; that the petitioner did not read the Will in front of the whole family; that the petitioner and Kwanga Mboya are not relatives of the deceased neither are they beneficiaries of the estate; that she did not witness Orpha give the petitioner the Will.
  17. PW1 was shown her application by way of cross application dated 1/7/2020 and at page 28 at paragraph (2) it stated that the Will attached, was supplied by Omonde Kiseru to her and the family; that it was supplied to Philip Ayot who was in Kenya at that time; that at page 26, paragraph 4 of the petition, it was stated on oath by Alfred Anyanga that the deceased died leaving a valid written Will dated 4/5/2018. PW1 further confirmed that at page 3 of Alfred Anyanga's affidavit dated 1/7/2020, it was deposed that the deceased left a valid Will; that she knows that the estate of a deceased should be administered speedily and that is why they want the petitioner to step aside so that they can proceed. PW1 denied filing a petition as an executor since she was waiting for probate of this suit; that she was not aware that this court gave the petitioner an order on 14/10/2019 permitting him to file the petition; that she is aware that 3 of the executors are not objecting to grant of probate; that it was the choice of the deceased to choose the executor but the petitioner has been biased; that she is not aware that her step mother has filed a notice of no objection; that in the cross petition, the petitioner gazetted the Will in February and gave them in March. PW1 stated that the petitioner should honour the wishes of the deceased's children.



18. On re-examination, PW1 testified that she received a copy of the Will from Oprah, a cousin; that she never received a copy from Omonde Kisera; that she has never seen the original Will though they asked Mr. Omonde Kisera severally; that they were to meet on 19/6/2020 but the petitioner did not attend; that the entire family was present and the petitioner ended up sending the Will to her brother via WhatsApp. PW1 stated she is not aware if the original exists; that some sugarcane was burnt and others sold; that they have been following up on their own with no assistance of Steve, Omondi or anybody else; that Steve has never followed up on preservation of the properties; that Mr. Kisera is dividing the family; that he is not communicating to both families or anyone and it is hard to move on as administrators.
19. On the filing of the citation proceedings, PW1 stated that she did not see the court order referred to; that she came across the Gazette Notice because it was issued to her Advocate's office in March; that she has not seen a notice of no objection filed by Kwanga Mboya, Gladys Ayot or Steve Ayot; that the families are for both Theodora and Gladys's families; that Theodora's family is the one solely preserving the estate of the deceased.
20. Ereena Ayot is PW2. She testified that she is a Manager in Medical Economics and she adopted her witness statement dated 29/3/2022. She reiterated that the petitioner did not inform the family of the written Will despite being present at the funeral; that the petitioner refused to read the Will to the family; that the petitioner has secretly, maliciously and cunningly plotted to take out grant of probate without the knowledge, consent or participation of the executors named in the Will and that of all members of the deceased's family; that the petitioner informed them of the petition and publication in the Kenya Gazette on 17/3/2020 barely three days before expiry of the notice; that in the event the court finds that the Will presented by the petitioner is authentic, she objects to the grant of probate being granted to the petitioner or the petitioner being named as one of the executors in the Will.
21. On cross - examination by the petitioner, PW2 testified that she associates herself with the documents filed by PW1; that the petitioner has not been honest; that she was aware that the petitioner filed a citation before the petition; that the petitioner was called severally to read the Will to the family but he refused to pick her calls and instead of reading it, he sent it via WhatsApp; that the petitioner limited himself to reading of the Will to the family in Migori and he told them that he was reading the Will a week after they had left; that she was aware her father left one Will dated 4/5/2018.
22. PW2 stated that her concern was that the petitioner was not available to them like he was to Steve and his mother; that in the Will, they are equal executors; that right now, there is no executor till probate is granted; that the petitioner together with Kwanga Mboya are not beneficiaries; that the other executors are children of the deceased; that the reason her father appointed outsiders as executors was for fairness; that the executors are proposed and cannot do anything in the estate until they are appointed; that the petitioner was to honour her father's wishes and he has to ensure the estate is preserved.
23. On re-examination, she testified that everybody has a copy of the Will yet it's a private document; that it is now forwarded to so many people; that the timing for reading the Will was off when they were leaving the country; that it was communicated when they were not available; that she does not know if the Will was ever read; that they are not fighting over the Will but the petitioner is only available to one side of the family; that she is uncomfortable with petitioner being the executor because of non-communication.
24. Mr. Omonde Kisera, the petitioner testified as DW1. He stated that he is an Advocate of the High Court and one of the persons named in the last Will of the deceased dated 4/5/2018 as an exhibits; that upon learning that he was one of the executors of the Will and while considering the relationship he



- had engaged with the deceased in his lifetime, he took the initiative to get the Will in its original form and availed it to all family members of deceased.
25. He further testified that as confirmed in the objector's own cross petition, he supplied her and the other family of the deceased with the Will; that upon realizing that none of the executors were taking any initiative, he started the process of filing Succession as required by law; that he filed a citation before this court in Succession Cause Number 11 of 2019 filed on 22/8/2019 and served on all the executors who had not agreed to become citors. The citation proceedings were filed by three (3) executors: himself, Kwanga Mboya and Steve Ayot; that they cited the objector, her brother Philip Ayot, the other executors.
26. It was further stated that the citees filed a replying affidavit to the citation through the firm of W. G. Wambugu & Co Advocates; that this court concluded proceedings in the citation on 14/11/2019 when it ordered that leave be granted to him to file the petition. Counsel produced the following documents and marked them as DEXH Nos. 1 - 9 (a) & (b).
1. Citation and verifying affidavit - DEX No. 1
  2. Death certificate - DEX No. 2
  3. Notice of appointment from Wambugu - DEX No. 3
  4. Replying Affidavit of Elaine - DEX No. 4
  5. Letter to Omiti & Co Advocate - DEX No. 5
  6. Order of court in Succession No. 11/2020 - DEX No. 6
  7. S/Affidavit of Anyanga - DEX No. 7 dated 1/7/2020.
  8. Affidavit of Anyanga - DEX NO. 8 dated 21/8/2020
  9. Original and 2 copies of the Will deposited in court on 19/2/2020 - DEX No. 9 (a) & (b) respectively.
27. Counsel testified that he made the requisite payments for deposit of the Will vide receipt No. 0697532 which covered fees for filing the petition; that the Will was entered as No. 189 in the security book in Succession Cause No. 5 of 2020 Prof. Henry O. Ayot; that the depositor/ executor is Omonde Kisera and signed for it on 20/2/2020; that the Will was gazetted in Gazette Notice No. 1439 and the Notice; was produced in Kenya Gazette of 21/2/2020. Counsel stated that he also notified the firm of Omiti of the Gazette Notice; that the Petition attracted objection by one of the executors.
28. The objector lodged a cross petition for grant of probate on same Will; that in the cross petition, the parties are in agreement that the Will dated 4/5/2018 is the authentic Will of the deceased. Counsel stated that the only outstanding issue was his suitability as an executor; that it is the duty of a deceased person to choose his executor during his lifetime which he discharged that duty; that the deceased chose him out of his relationship with the deceased in his lifetime. More so as his advocate in cases he had with some third parties; that of the named executors, its only himself and Kwanga Mboya who are not family members; that in his estimation, their inclusion to execute, was to create soberness in the process because the deceased was polygamous.
29. Counsel further testified that one of the wives, the mother of the objector and Philip Ayot is now deceased; that the other wife is Gladys Ayot; that the two families are not in good terms and that is why there is need for soberness; that probate administration are matters of law and an executor is held responsible by the law; that it cannot be said that the petitioner was secretive or malicious where no



- probate has been granted to him; that he acted in good faith to share the Will with all family members as per the cross petition. Counsel asked this court to take judicial notice that the family is spread all over the continents; that he invited them to come to Migori for reading of the Will but by the time he did that they were leaving for America; that he tried to call for physical meetings but he failed despite using all possible means.
30. Counsel testified that if the court grants probate to the five of them, he cannot manipulate the others; that the fear of his participation is neither here nor there; that he cannot do anything without consent of the court; that the fear of the objector is that under his instruction, nothing will go wrong in the inter house wars; that there is law to guard on rogue executors.
  31. On cross examination, by Learned Counsel Mr. Omiti, the petitioner stated that he first shared the Will with the objector and the entire family; that he served the citation and the petition; that the petition is filed on 19/2/2020 and he served the parties: Philip Ayot was served via email on 23/8/2019 and he had an email report to that effect; that the petition is served through gazette; that the Security Book entry number is to confirm all things were done above board.
  32. Counsel was referred to Death Certificate PEX No. 2. He testified that the serial number of death certificate is 03667211; that the entry number on the death certificate far left is 0263805915; that in the death certificate given to him by Gladys Ayot the serial number is 0724931 and the entry number is 0263799821; that at page 3, the serial number is 0724932 and the entry no is 026379821; that at page 4, the serial number is 0724933 and the entry number is 0263799821; that the entry numbers of page 4 are same; that the entry numbers they are not same as on DEXH No. 2.
  33. Further, that at page 21, it is a letter dated 22/10/2019 from the Ministry of Interior and Coordination; that the subject of the letter is authenticities of death certificates serial numbers 0724931, 0724933 and 0724923 in respect of Prof Ayot; that at paragraph 3, it stated that they were issued from the office and they were authentic; that the serial numbers may be different but the entry numbers remain the same for one person; that the death certificate he used is authentic; that he got a letter from the Chief but he was not bound by law to file it since it is not a requirement.
  34. On cross examination by Ms. Mugo holding brief for Mr. Wambugu, the petitioner testified that he learnt of his appointment as an executor upon demise of the deceased; that he was informed by a close relative of the deceased called Ms Orpha Ogutu; that he shared the Will and there can only be only one original Will; that the objector confirmed it was her father's Will; that he was present in the funeral; that he will suffer prejudice if he steps down because of the deceased's sake; that the citation was filed by three (3) executors; that he communicates with all the executors and they filed documents; that Philip is in the USA and he has been corresponding with Philip; that he has many mails from Philip and since the firm of Wambugu is acting for him, he does not need to reach him personally.
  35. Both parties filed submissions. The objector filed in court written submission dated 23/6/2023 on 4/7/2023. The objector submitted that the objection is brought pursuant to the provisions of Section 68 of the *Law of Succession Act*; that Rule 17 (1) (2) of the Probate and Administration Rules is clear on how objections and answers should be initiated before court; that this being a testate succession, an objector should be a person appointed by the deceased as an executor in his Will and the objector herein was appointed as an executor and therefore she has the required *locus standi* to commence these objection proceedings.
  36. The objector submitted that the petitioner failed to act in good faith when he obtained the death certificate to file the petition fraudulently, when he failed to share the original Will with the objector and her brother Philip Ayot and informed the family members of his readiness to read the Will when all the family members had left for the USA. The objector relied on several cases that is, Moses Wachira



Wamunyu vs Fredrick Kagio Kinuyua & 4 Others HCCC 254 of 2001, Board of Trustees of National Social Security Fund vs Michael Mwalo (2015) eKLR and In the Matter of Estate of Mulei Mutisya Mbua (Deceased) Miscellaneous Succession Cause No. 727 of 2009 where the courts held inter alia, that the court needs to be satisfied on the genuineness of the death certificate and the court cannot sanction an illegality once brought to the attention of the court.

37. The objector further submitted that when she applied for the deceased's death certificate, she was issued with three death certificates bearing three different serial numbers; that whereas a death certificate can be issued bearing different serial numbers, all copies must bear the same death entry number and, in this case, the entry number is 0263799821 which is a unique number and it cannot be shared with any other person. It was submitted that the death certificate bearing the entry no. 0263805915 is fake and it was fraudulently obtained. It was further submitted that the petitioner failed to inform the objector and his brother of the petition and he sent the Gazette Notice to Ereena Ayot on 17 /3/2020 after filing the petition.
38. The objector submitted that the petitioner did not offer any explanation on the prejudice he would suffer if he stepped down as an executor; that the only barrier to the family having peace is the petitioner who is causing division between the two houses. The objector submitted that is in the interest of justice, fairness and peace that the petitioner steps down or resigns from his role as an executor of the deceased's estate.
39. The petitioner filed in court his written submissions dated 4/7/2023 on 5/7/2023. The petitioner submitted that the Will left by the deceased dated 22/11/2016 is undisputed; that the deceased appointed 5 persons as executors; that since the Will is not disputed, probate should be done immediately and the court should proceed with the grant of probate of the Will.
40. The petitioner further submitted that the grounds advanced by the objectors do not to have him as one of the executors is not merited and valid; that he took initiative to invite all the parties to the reading of the Will but they could not be available and he sent the Will electronically; that of the three executors, it is only 2 who objected and in compliance with the law, the petitioner filed the appropriate citation proceedings and this court granted the petitioner consent to file the petition herein.
41. The petitioner submitted that it is himself and Tom Kwanga who are not beneficiaries in the estate of the deceased and therefore he cannot have an undisclosed interest in the estate of the deceased; that the terms of the probate shall be granted in accordance with the Will and the Will does not confer any interest to the petitioner.
42. The petitioner submitted that the death certificate is a non-issue since the date when the deceased died is not contested; that the death certificates are similar apart from the serial numbers and the makers were not called to explain any such difference hence it amounts to a speculation. The petitioner denied that he was the one who drew the Will, or that he acts for other executors or beneficiaries or that he should not be allowed to propound the Will as this is the function of the court or that he maliciously plotted to take out a grant. The petitioner asked this court to dismiss the objection with costs.
43. I have carefully considered and understood the objection, *viva voce* evidence, the written submissions and arguments of both parties. The contention between the parties is on the legitimacy of the death certificate used to file the petition for the grant of probate and suitability of the petitioner as an executor.
44. The undisputed fact is that the deceased died on 24/5/2019. There are different death certificates which were produced before this court. Their particulars are as follows:-
  - a. PEXH 1 serial number - 0724XX1



- b. PEXH 2 serial number - 0724XX2
  - c. PEXH 3 serial number - 0724XX3
  - d. DEXH 2 serial number - 0366XX1
45. The letter from the Director Civil Registration Services dated 22/10/2019 stated that a death certificate can have different serial numbers but the entry number cannot change since it is a unique identifier number. In this case, the unique identifier number is 02637XXX21.
46. I have considered all the four death certificates on record. The death certificate used by the petitioner to file the petition for grant of probate has an entry number 0263XXX915 which is different from the entry number of the other three death certificates. The petitioner testified that he was given the death certificate by Gladys Ayot the second wife of the deceased and since it is not disputed when the deceased died, the issue of the death certificate is neither here nor there.
47. The Birth and Deaths Registration Act and its Rules are not explicit on what constitutes an authentic or fraudulent death certificate. In the letter dated 5/7/2019, Counsel for the objector only asked the Registrar of Civil Registration Services to confirm the authenticity of the death certificates which they held with the serial numbers 0724XX1, 0724XX2 and 0724XX3. Counsel did not ask the Registrar of Civil Registration Services to also confirm the authenticity of the death certificate bearing the serial number 0366XX1 (DEXH 2).
48. Furthermore, the objector did not call the Registrar from the Civil Registration Services to come and explain in further details the contents of the letter dated 22/10/2019 and also explain the authenticity of the death certificate with the serial number 0366721. Therefore, it cannot be conclusively said that the death certificate used to file the petition for grant of probate was obtained fraudulently or it is not an authentic document. The claims by the objector on the authenticity of the death certificate is hereby dismissed.
49. The other undisputed fact is that the Will is the valid last testament of the deceased. The only issue is whether the petitioner is fit and proper to be an executor. The objector is not contesting any clause in the Will or alleging that adequate provision has not been made. Philip Ayot has been adversely mentioned as one of the persons who would wish to have the petitioner step down from his role as an executor. The said Philip has not filed any affidavit before this court neither did he testify. Instead, Ereena Ayot a sister to the objector testified.
50. I have thoroughly read and appreciated Part II of the *Law of Succession Act* which provides for Wills. There is no particular provision under the law which requires that the family of the deceased should be called and the Will read to them. However, for good order it is expected that at one time, the family of the deceased person will be informed of the Will and in so far as it is possible, the family members gather and the Will read to them.
51. In my view, I do not see why the petitioner should be blamed for not reading the Will to the family. There is no particular clause in the Will which stated that it was the sole responsibility of the petitioner to gather all the family members and read the Will to them. The petitioner just did what any reasonable person would do once he found out that he was one of the executors, attempt to let the family members know of the Will.
52. In any event, the deceased having died 25/4/2019 and the citation proceedings having been filed on 23/8/2019, the objector has not demonstrated what steps she took in the intervening period to commence succession proceedings of the estate of the deceased as one of the executors.



53. Section 3 of the *Law of Succession Act* defines a “personal representative” to mean the executor or administrator, as the case may be, of a deceased person.
54. Section 80 of the *Law of Succession Act* provides: -
- (1). A grant of probate shall establish the Will as from the date of death and shall render valid all intermediate acts of the executor or executors to whom the grant is made consistent with his or their duties as such.
  - (2). A grant of letters of administration, with or without the Will annexed, shall take effect only as from the date of the grant.”
55. I have intentionally referred to the above provision of the law which allows an executor to start performing his role even before the grant of probate is finalized in testate succession. The contention of the objector that the petitioner as an executor is biased is not founded. If the petitioner had an ulterior motive, he would have started to administer the estate of the deceased because the law allows him to. Instead, the petitioner decided to choose the less contested path of filing for the petition of grant of probate. Further, the powers and duties of the personal representatives are well outlined under Section 82 and 83 of the *Law of Succession Act* and the executors are bound by the law.
56. The petitioner first took out citation proceedings and made the objector and Philip Ayot know of his intention to commence the grant of probate proceedings. This court is not convinced and has no reason to believe that the petitioner has ulterior motives in executing his role as an executor. There are no allegations that the petitioner intends to disinherit any of the beneficiaries and/or skew the mode of distribution of the estate of the deceased as outlined in the Will.
57. The trajectory the objector wants to take in discrediting one executor, will soon spill over to the other executors, the objector feels unhappy with and thus the Will of the deceased might amount to nothing. The role of all the executors will flow from the Will and none is expected to act contrary to the wishes of the deceased. It is the finding of this court that the objection of the suitability of the petitioner as an executor is unfounded.
58. The objection proceedings are hereby dismissed. The same fate befalls the petition by way of cross petition filed by the objector dated 1/7/2020 which basically raises the same issues as the ones in the objection proceedings. This now paves way for the petition for grant of probate dated 19/2/2020 to proceed to its logical conclusion.
59. As I come to the end of this judgement, I wish to remind and/or echo to all the parties involved herein including their respective Advocates to bear in mind the most profound of all wishes the deceased had in paragraph 7 of the Will:-
60. I hereby make a request that none of my wives or children challenge this Will in court or anywhere else. I beg for love and understanding among you all. I love you all.”
61. Each party will bear their own costs. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MIGORI THIS 19<sup>TH</sup> DAY OF DECEMBER 2023**

**R. WENDOH**

**JUDGE**

Judgment delivered in the presence of

Elaine Ayot the Objector.



Mr. Kiseru the Petitioner.

