



REPUBLIC OF KENYA



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**Makau v Kasoni (Probate & Administration 635 of 2011)
[2021] KEHC 9764 (KLR) (31 May 2021) (Ruling)**

Neutral citation: [2021] KEHC 9764 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
PROBATE & ADMINISTRATION 635 OF 2011**

MW MUIGAI, J

MAY 31, 2021

IN THE MATTER OF THE ESTATE OF ALICE MBATHA DAUDI

– DECEASED

BETWEEN

JANE MBULA MAKAU APPLICANT

AND

MARIA PATRICK KASONI RESPONDENT

RULING

Background

1. The deceased herein Alice Mbatha Daudi died intestate on 21st September, 2007 as per Death Certificate No 11xxxx.
2. The Chief's letter of October 28, 2010 from Eastleigh Sub Location indicates the Deceased was married to Daudi Maliti Nzioki. She left behind six (6) children.
3. John Makau Daudi petitioned for grant of letters of administration intestate on 29/7/2011 and annexed the following documents:
 - a. The Death Certificate of Death Certificate No 11xxxx- Alice Mbatha Daudi who died on 21st September, 2007 aged 78 years old and it was issued at Machakos District.
 - b. The Chief's letter dated October 28, 2010 confirming the list of beneficiaries left behind by the deceased namely:
 - i. Ndamani Kiilu Daudi (deceased) - married
 - ii. Joseph Wambua Daudi (deceased)- married



- iii. Dickson Mutiso Daudi
 - iv. Benjamin Mutuku Daudi (deceased)
 - v. Richard Musyoka Daudi
 - vi. John Makau Daudi
4. The Petition listed as beneficiaries of the estate of the deceased the following;
- i. Dickson Mutiso Daudi
 - ii. Jonah Makau Daudi
 - iii. Richard Musyoka Daudi
 - iv. Flora Nduku Daman (daughter in law)
 - v. Margaret Nthambi Wambua (daughter in law)
5. The Deceased left property known as Land Parcel No. Machakos/Kiandani/32xx measuring 0.419 Ha.
6. After gazettelement of 12/8/2011, the Grant of letters of Administration was issued at Machakos on 11th October, 2011 to John Makau Daudi.

Affidavit of Protest:

7. Maria Patrick Kasoni (the protestor herein) filed an affidavit of protest dated January 17, 2012 filed on January 18, 2012 and stated as follows:
- a. That the deceased Alice Mbatha Daudi had 7 children namely Patrick Kasoni Daudi (deceased), Ndamani Kiilu Daudi (deceased), Joseph Wambua Daudi (deceased), Dickson Mutiso Daudi, Benjamin Mutuku Daudi (deceased) Richard Musyoka Daudi and John Makau Daudi;
 - b. That the Protestor is the wife of Patrick Kasoni Daudi who died on 05/01/2006;
 - c. That before the demise of Alice Mbatha Daudi she had allocated Patrick Kasoni Daudi and his wife parcel of land being Makueni/Kimundi/32xx which was registered in the name of Alice Mbatha Daudi (deceased) and they have settled on the said land since then;
 - d. That the Petitioner herein John Makau Daudi did not include the said property Makueni/Kimundi/32xx in the list of assets and has not included the Protestor as a beneficiary of the estate of the deceased;
 - e. That the Chief's letter concealed material facts as the name of the Protestor's husband was excluded as a beneficiary of the estate;
 - f. That the Protestor is entitled to a transfer of the said property Makueni/Kimundi/32xx upon confirmation of the grant.

Replying Affidavit:

8. The Petitioner, John Makau Daudi, herein filed a Replying Affidavit sworn on 12th September, 2012, filed on 13th September, 2012 and stated as follows:



- a. That the deceased, their mother had seven children – 3 brothers who are deceased, two had married and one had not married;
 - b. That Patrick Kasoni Daudi had two wives – Esther Ndululu Kasoni and Maria Patrick Kasoni, that Ndamani Kiilu Daudi had married one Flora Nduku Ndamani and Benjamin Mutuku Daudi was unmarried;
 - c. Before the death of their late father, Maria Patrick Kasoni had separated with her husband – Patrick Kasoni Daudi and she left the matrimonial home. Patrick Kasoni Daudi married the second wife by the name Esther Ndululu Kasoni.
 - d. That when their father died the two parcels of land namely Machakos/Kiandani/3228 and Makueni /Kimundi/3266 were registered in the name of Alice Mbatha Daudi.
 - e. The Deceased apportioned Machakos/Kiandani/32xx to each of the children as they each got married. Each child was given a portion of Machakos/Kiandani/32xx measuring 0.065 Ha.
 - f. Patrick Kasoni Daudi sold his portion of land and bought another portion of land at Matuu where he relocated with his second wife; Esther Ndululu Kasoni.
 - g. The Protestor, Maria Patrick Kasoni separated from their late brother and left with 2 children namely; Minza Kasoni and Ndeto Kasoni(deceased) and they lived with their grandfather while their mother lived in Mombasa.
 - h. Later, Minza Kasoni, one of the children of the protestor and Patrick Kasoni Daudi, returned and requested the Petitioner to talk to the grandmother (deceased herein) to be given a portion of land to stay as the Protestor deserted them.
 - i. The deceased gave them a portion on Makueni/Kimundi/32xx on condition that the whole parcel of land was still to be sub-divided among the children of the deceased herein.
 - j. Later, the Protestor came on the said parcel of land and she was in the process of selling the land before she was stopped by the matter being referred to Chairman of Atwii Clan Mr. Ndolo to stop the sale of land and he summoned her.
 - k. The Proposed mode of distribution of Makueni/Kimundi/32xx is to give the child of the Protestor and their late brother (Patrick Kasoni Daudi) – Minza Kasoni a portion of land; 0.932Ha.
 - l. That the Petitioner omitted to include the land parcel No. Makueni/Kimundi/32xx in the list of assets as they had not acquired the parcel number.
 - m. For these reasons, the Petitioner sought the Protest be dismissed and Summons for confirmation granted.
9. The Summons for Confirmation of Grant was filed on 13th September, 2012 with the list of beneficiaries that included the Protestor, Maria Patrick Kasoni and the proposed mode of distribution of the 2 properties that comprise the estate of the deceased Machakos/ Kiandani/ 32xx divided equally amongst the children of the deceased and Makueni/ Kimundi/32xx was distributed amongst the children of the deceased. Of importance the share for Patrick Kasoni Daudi was allotted to the child of the deceased's son Patrick Kasoni Daudi and Protestor, Maria Kasoni Daudi - Minza Kasoni 0.932Ha equal portion to other children of the deceased.



10. The Chamber Summons dated 23rd September, 2013 filed on 24th September, 2013 sought orders that the grant made on 9th November, 2011 to one John Makau Daudi be rectified and the Petitioner be substituted with Jane Mbula Makau who is his widow as the Petitioner died on 9th July 2013.
11. The 2nd Prayer was that the proposed mode of distribution as outlined in the Summons for confirmation of grant of the 2 suit properties and that the two parcels of land Machakos/ Kiandani/ 32xx & Makueni/ Kimundi/32xx be distributed as per the list of beneficiaries and the proposed mode of distribution and the shares previously given to the Petitioner be substituted with his widow Jane Mbula Makau.
12. Consents by beneficiaries to substitution/rectification of confirmation of grant were signed to substitute John Makau Daudi with his widow one Jane Mbula Makau as the new Administrator of the estate of Alice Mbatha Daudi was attached.
13. Summons for confirmation of grant was filed on 8th December, 2016 praying that the grant of letters of administration issued to the said Jane Mbula Makau on 30th May, 2016 be confirmed.
14. Maria Patrick Kasoni, Protestor filed Replying Affidavit on 12th March 2014 and contested the appointment of the Petitioner's substitution with his widow due to his demise as he had refused to acknowledge her as a beneficiary of the deceased's estate.
15. Summons for Confirmation of Grant was filed on 8/12/2016 with the substituted Petitioner widow of the deceased Petitioner Alice Mbatha Daudi in place of John Makau Daudi. The List of Beneficiaries excluded the Protestor, Maria Patrick Kasoni and instead allotted equal share of Makueni /Kimundi/32xx to each of the children of the deceased; Patrick Kasoni Daudi and Maria Patrick Kasoni's share to their child Minza Kasoni 0.932Ha equal share as the other children of the deceased.

Affidavit of Protest Filed on 25th January, 2017

16. The Affidavit of protest sworn by Maria Patrick Kasoni the protestor herein sworn on 25th January stating as follows:-
 - a. That she is a beneficiary of the estate of Alice Mbatha Daudi(deceased) as she was the wife to her first son Patrick Kasoni Daudi (deceased);
 - b. That she objected to the proposed confirmation in relation to the parcel of land Makueni/ Kimundi/32xx.
 - c. That before the demise of the late Alice Mbatha Daudi had allocated the protestors deceased husband land parcel Makueni/Kimundi/32xx.
 - d. That the application for confirmation of grant filed on 8/12/2016 left her out as beneficiary of the estate of the deceased.
 - e. That the parcel of land Makueni/Kimundi/32xx is wholly hers.
17. On 15th December 2020, this matter came up for hearing of the protest filed on 25th January, 2017. The Protestor did not appear in Court though served with the hearing notice. The Protest was dismissed for want of prosecution. The summons for confirmation filed by the Petitioner on 8/12/2016 was fixed for hearing on the 11/02/2021. The beneficiaries consented to the mode of distribution. The Grant was confirmed on 11th February, 2021.



Notice of Motion

18. The protestor filed a Notice of Motion dated 17th December, 2020 filed on 11th March 2021 seeking the following orders:-
- i. That this Court reinstate the protest filed on January 25, 2017 after it was dismissed on December 15, 2020 for want of prosecution.
 - ii. That the costs be provided for.
19. The application was based on the following grounds inter alia: that the notice of the Hearing Notice was too short hence received under protest; that the matter was not on the list of December 15, 2020; that the protestor is ready to prosecute her protest; that there has not been delay nor reluctance on the part in prosecuting the suit and that the orders sought in this application are not prejudicial to the Respondent whatsoever.

Replying Affidavit by the Administrator

20. That the Protestor has never been ready to prosecute the protest as the same was filed back in the year 2017 and whenever the matter came up for hearing the protestor adjourned the matter for one reason or another including but not limited to May 23, 2017, November 11, 2017, December 18, 2018, 8/05/2019, 7/11/2019 and December 15, 2020; that on December 18, 2018 and 7/11/2019 the Court had granted the Protestor the last adjournment; that the protestor was ordered by the Court to pay the petitioner travelling expenses on November 11, 2017 and December 18, 2018 which costs have never been paid by the Applicant; that since the filing of the protest in 2017 it is now 5 years and litigation has come to an end and that the Protestor is using the application to frustrate the beneficiaries from administering the estate of the deceased.

Further Affidavit by the Protestor

21. That the Protestor/applicant has been prosecuting the protest diligently over the years and is still keen on doing so until conclusion; that the adjournment sought have been caused by circumstances beyond the protestor's or advocates control being sickness; that the delay to file and serve was not intentional; that it is not proper for the Applicant to be denied an opportunity to prosecute their suit and that the orders sought are not prejudicial to the respondents as the same can be compensated by way of costs in any event.

Protestor/applicants Submissions - dated 17/01/2021

22. It was submitted that Petitioner's advocate served the Protestor's advocate on 9th December, 2020 and the same was received under protest as the notice was too short and that this matter was not listed in the cause list availed for matters before this Court on December 15, 2020.
23. That the Protestor/Applicant stands to be disinherited of her husband's share of the estate since she has stated that she is equally entitled to the estate of the deceased and has therefore been unable to state her case.
24. It was further submitted that the delay in filing the current application together with the said adjournments were mainly based on illness which is a natural occurrence and that the fact that the estate has been distributed is not a bar to setting aside the orders since the Court has unfettered discretion to set aside order given *ex parte*. Reliance was made in the cases of *CMC Holdings limited v Nzioka* HCCA No. 329/2001 [2004] KLR and *David Livingstone Oyioko v Simon Kipron Seile* Nakuru HCCC No.



521 of 1999 [2005] eKLR where the Court held that it has inherent powers and discretion to set aside orders dismissing a suit because of the plaintiff.

25. It was finally submitted that the orders sought are not prejudicial to the Respondent in any way hence the application should be allowed.

Petitioner/Respondent Submissions – dated 18/02/2022

26. On the issue of whether the protestor/applicant is desirous to prosecute her case it was submitted that the Applicant adjourned this matter on numerous occasions hence causing this matter to drag for the last four years therefore the protest is used as a delaying tactic. Reliance was made in the case of *Mathews Sankok Shompa v Kenya Commercial Bank Limited and others* HCCA no. 559/2004 where the court held that:-

“I have considered the reason that the plaintiff gave for failure to prosecute his case. It is clear that the plaintiff was indolent. It is trite that a case does not belong to the advocate but to the litigant. It is the duty of the litigant to pursue his advocate so that his case may be prosecuted. A litigant cannot blame his advocate when his suit is dismissed if he cannot give an explanation of the effort that he made to move his advocate to prosecute his case. In the present application, the plaintiff is asking the court to excuse his delay in prosecuting the case and set aside the orders of dismissal.”

27. On the issue of receiving hearing notice under protest, in *Sarfraz Motors & Another v Kisii Hardware* civil appeal No. 98 of 1990 the Court held that:-

“When the hearing notice was served on Mr. Wasilwa, an advocate in the firm representing the appellants, on 22nd March, 1990, he accepted service but made the following endorsement at the back: “Under serious protest – 1. Notice too short 2 Hearing date not suitable.... In his ruling, the Judge dealt with the excuses the advocate had given for failing to attend court on 26th March, 1990. The Advocate claimed that he was engaged in a matter before the Court of Appeal in Kisumu and that his partner was out of town. This was clearly a flimsy excuse as Mr. Wasilwa could have got in touch with one of the seventeen Advocates who ordinarily practice in Kisii to hold his brief and apply for adjournment. I cannot agree more with the Judge’s view that the squiggles which Mr. Wasilwa had scribbled on the back of the notice showed a certain measure of discourtesy to the Court.”

28. Also in the case of *Sukari Investments Co-operative Society Limited –vs- snowball construction Limited* Civil Application No. NBI 269 of 1999 that it is discourteous on the part of an advocate to fail to attend court and that there is no procedure for application for adjournment being made by letter. In the case of *Town Clerk of the City Council of Nairobi* [2013] eKLR, NBI HC Misc. Civil application No. 224 of 2012 the Court held that:-

“In my view the practice of receiving hearing notices “under protest” is a practice without any force of law. As between the parties to a suit, it is meant to alert the other party that the party served may seek an adjournment on the basis of the “protest”. It is, in my view not an application for adjournment and the court is not bound to consider it as such.”

29. It was further submitted that the Applicant’s Advocate allegation that he did not file the present application timely for one reason or another the applicant has not proven the said assertions. It is principle law that he who alleges a fact must prove it as provided by Section 107 to 109 of the [Evidence](#)



Act. Since the Applicants advocate on record did not provide any proof as to why it took the Advocate 4 months to file the present application hence the same should be dismissed.

Determination

30. The Court has considered in detail and outlined the chronology of events culminating to the instant application as the matter was heard upto conclusion; confirmation of grant by Hon D.K. Kemei J and the matter is now being handled and conducted by this Court.
31. This Court being a Court of record is bound by the proceedings on record.
32. The issue for determination is whether the protest by the Protestor, Maria Patrick Kasoni ought to be reinstated and heard on its merits or not; but before that the protestor raised objection on substitution of the Petitioner.
33. The Protestor objected to substitution of the Petitioner John Makau Daudi by his widow Jane Mbula Makau as her consent was not sought. This Court considered under Section 66 the Law of Succession Act on appointment of administration whose final discretion is with the Court, that spouses rank highest in priority. The case of *Musa v Musa* (202) IEA of 182 explains the position of spouses in the law of succession in the following self-explanatory terms.

“.....it may be straight away that as the widow of the deceased she had priority in petitioning for the grant as virtue of Section 66 of Succession Act (cap 160) and she did not require the consent of any other person under R(7) of the Probate and Administration Rules as no other person was entitled to apply for the grant in priority to her (emphasis added)”

34. With regard to reinstatement of the Protest; the Applicant's submission is based on the following basis; that the effect of the dismissal order has far reaching effect on the Applicant/Protestor as she stands to be disinherited of her husband's share of the estate yet she is equally entitled to the estate of the deceased and was unable to state her case and the adjournments were occasioned by illness a natural occurrence.
35. The Applicant in submissions outlined the events as alleged to have taken place that led to dismissal of the Protest. However, since this Court took over the matter, it shall rely on the Court record as is and shows as follows;

The Court record confirms on February 23, 2017, the Court granted orders for viva voce evidence of hearing of the Protest and parties were to file and exchange Witness Statements; on 23/5/2017 Counsel for Protestor was sick and adjournment was granted. On November 14, 2017, the Protestor was bedridden; on 26/9/2018, Counsel for Petitioner was absent; on December 19, 2018; Counsel for Protestor was not ready as Protestor was sick; on 8/5/2019, the Protestor was absent; on 7/11/2019 Counsel for Protestor was sick; on 23/9/2020 Counsel for Protestor was absent; on December 15, 2020, Counsel for Protestor was absent and service was confirmed by the filed Affidavit of Service.

36. The Petitioner's Counsel applied for dismissal of the Protest as both Protestor and Advocate despite service were absent. The Court dismissed the Protest for want of prosecution and the Summons for Confirmation hearing was fixed for 11/2/2021. On 11/2/2021 The Protestor and/or Advocate were absent and the Petitioner was allowed to proceed with the Summons for Confirmation which was granted after the beneficiaries physically appeared in Court and gave their consents.
37. Whereas the Court ought to grant parties the right of access to justice and fair hearing envisioned by Articles 22, 48 & 50 CoK 2010, this Court finds the Trial Court granted parties several opportunities to



ventilate the Protest and/or Confirmation of Grant as exhibited by the Court Record. The Protestor failed to attend Court if she was sick no evidence was presented to the Court to consider the circumstances of ill health and grant relevant orders. Secondly, if the Protestor was taken ill the Counsel ought to have appeared in Court and if indisposed then he would have sought Counsel to hold brief and explain the predicament or circumstances surrounding non-attendance. Thirdly, these were several adjournments and non-attendance without any explanation by the Protestor /Applicant. Even where a party has a right of their day in Court, parties' and the Court cannot be held in abeyance stalling the hearing and determination of the dispute; litigation cannot continue ad infinitum. Therefore, as provided by Order 17 Rule 1 & 2 *CPR* 2010, the Court may dismiss the suit for non-compliance of any direction and/or after 2 years where no step has been taken. The Protest was filed in 2017 and was dismissed in 2020, it remained unheard for 3 years.

38. Further, the law provides for expeditious disposal of cases as follows;

(S. 1A (1) *Civil Procedure Act*) -Overriding Objective

“ 1A.

- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

1B.

- (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims—
 - (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Court;
 - (c) the efficient use of the available judicial and administrative resources;.....”

(Art. 159(2)(b) –*CoK* 2010.

S. (2) in exercising judicial authority, the courts and Tribunals shall be guided by the following principles—

 - (b) Justice shall not be delayed;

39. From the above analysis of the circumstances and application, this Court finds no legal basis to exercise discretion and to reinstate the Protest.



The Protestor application is on reinstatement of the pending Protest filed in 2017 is on the basis that if not reinstated the Applicant shall suffer prejudice. The gist of the protest is as follows;

- a. That the Protestor is the wife of Patrick Kasoni Daudi who died on 05/01/2006; before the demise of Alice Mbatha Daudi; she had allocated Patrick Kasoni Daudi and his wife parcel of land being Makueni/Kimundi/32xx and they have settled on the said land since then; the Petitioner did not include the said property Makueni/Kimundi/32xx in the list of assets and the Protestor as a beneficiary of the estate of the deceased; the Chief's letter concealed material facts as the name of the protestor's husband was excluded as a beneficiary of the estate;
the Protestor is entitled to a transfer of the said property Makueni/Kimundi/32xx upon confirmation of the grant; she is a beneficiary of the estate of Alice Mbatha Daudi(deceased) as she was the wife to her fist son Patrick Kasoni Daudi (deceased);
40. The Replying Affidavit by the Petitioner filed on 13/9/2012 to the Affidavit of Protest 1st filed by Protestor of 17/1/2012, raised certain facts with regard to the Protestor/Applicant's claim, which in subsequent pleadings, the Protestor/Applicant failed to controvert by any other evidence or to take the stand in Court. The facts placed on record are, Maria Patrick Kasoni/Protestor/Applicant separated with her husband – Patrick Kasoni Daudi son of the deceased and she left the matrimonial home. Patrick Kasoni Daudi married the second wife by the name Esther Ndululu Kasoni.
41. When the Protestor's father in law father died the two parcels of land namely Machakos/Kiandani/32xx and Makueni /Kimundi/3266 were registered in the name of Alice Mbatha Daudi, the deceased herein.
42. The Deceased apportioned Machakos/Kiandani/32xx to each of the children as they each got married. Each child was given a portion of Machakos/Kiandani/32xx measuring 0.065 Ha. Patrick Kasoni Daudi sold his portion of land and bought another portion of land at Matuu where he relocated with his second wife; Esther Ndululu Kasoni.
43. The Protestor, Maria Patrick Kasoni separated from their late brother and left with 2 children namely; Minza Kasoni and Ndeto Kasoni (deceased) and they lived with their grandfather while their mother lived in Mombasa. Later, Minza Kasoni, one of the children of the protestor and Patrick Kasoni Daudi, returned and requested The Petitioner to talk to the grandmother (deceased herein) to be given a portion to stay as the Protestor deserted them. The deceased gave them a portion on Makueni/ Kimundi/32xx on condition that the whole parcel of land was still to be sub-divided among the children of the deceased herein. Later, the Protestor came on the said parcel of land and she was in the process of selling the land before she was stopped by the matter being referred to Chairman of Atwii Clan Mr. Ndolo to stop the sale of land and he summoned her.
44. The Protestor, is not the only wife/widow of her deceased husband and during his life, they parted he sold his share of the land in Machakos/Kiandani/32xx and moved and bought another piece of land and settled with his 2nd wife. So the Protestor has no claim /share in Machakos/Kiandani/32xx in this estate and may only pursue such claim in her late husband's estate.
45. With regard to Makueni/Kimundi/32xx, the Protestor/Applicant asserted that the said property was bequeathed to her wholly and not to be distributed equally amongst the children of the deceased. That assertion was not proved by either documentary or oral evidence. There is no evidence of any transfer of the said property to her. Instead as per the Summons for Confirmation and Certificate of Confirmation of Grant of 11/2/2021 Makueni/Kimundi/32xx is distributed as follows;

Share of Heirs- to be shared in the following ratio



Flora Nduku Damon ----- 0.932 Ha

Maragaret Nthambi Wambua- 0.932 Ha

Richard Musembi Kaleke---0.932 Ha

Jane Mbula Makau---0.932 Ha

Minza Kasoni (Patrick Kasoni Daudi & Maria Patrick Kasoni's child) -----0.932Ha

Dickson Mutiso Daudi -----0.932Ha

46. The distribution herein is in compliance with Section 71(1) & (3) LSA & Section 38 LSA where the deceased is survived by children and no spouse the distribution of the estate shall be equal portions amongst the children of the deceased.

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

47. The Protestor/Applicant has an equal share of the Makueni/Kimundi/32xx, through the portion allotted to her child mainly because it was alleged that she was in the process of selling the land which she did not controvert. From the above consideration, the Protestor is not prejudiced, she is catered for in compliance with the law and her share is in the name of her child which they can be jointly registered so that she does not sell and deprive her child her late father's inheritance.
48. Finally, even if there were grounds to reinstate the Protest, in the circumstances after the Summons for Confirmation is granted, a party files Summons for revocation and /or annulment of grant under Section 76 LSA. The Protest is raised against confirming the grant and is heard first before the confirmation of grant, thereafter it is an application for revocation and annulment of grant that is filed to contest any grant limited and/or confirmed grant.

Disposition

1. The Notice of Motion filed on 11/3/2021 for reinstatement of the Protest is dismissed.
2. The Certificate of Confirmation of Grant of 11/2/2021 remains valid legal and regular order of the Court and the Deceased's estate shall be distributed as confirmed.

**DELIVERED SIGNED DATED IN OPEN COURT IN MACHAKOS ON 31ST MAY 2021
(VIRTUAL CONFERENCE)**

M.W. MUIGAI

JUDGE

