



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**SUCCESSION CAUSE NO. 359 OF 2014**

**IN THE MATTER OF THE ESTATE OF ROLF ROBERT MEIER (DECEASED)**

**STEPHEN NICK OMONDI ODONGO .....APPLICANT**

**VERSUS**

**JAPHETH PHIDELIS LUMERENI MWALIMO .....RESPONDENT**

**JUDGMENT**

1. Rolf Robert Meier the deceased herein died intestate on 26<sup>th</sup> June, 2013 while domiciled in Ukunda Kwale County. A grant of letters of administration was on 30<sup>th</sup> June, 2015 issued to Japheth Phidelis Lumereni Mwalimo(hereafter the petitioner/respondent ) who described himself in the petition application lodged on 26<sup>th</sup> August, 2014 as the deceased's friend.
2. Among the properties listed in form P&A 5 as comprising the estate are;
  - a. Plot No. Kawle/Diani Beach Block/683-0.0499 ha.
  - b. Plot No. Kwale/Diani Beach Block 684-0.0985 ha.
  - c. Plot No. Kwale/Diani Beach Block 397.
3. On 11<sup>th</sup> May 2015, Nick Odongo (hereinafter the objector) filed an objection to revoking of a grant. However, the grant was issued on 30<sup>th</sup> June, 2015 before the objection could be heard. Vide Chamber Summons for confirmation dated 18<sup>th</sup> March, 2016, the petitioner sought confirmation of the grant. When the matter came up on 19<sup>th</sup> September, 2016, the court granted the objector an opportunity to file an answer to petition and cross petition for a grant.
4. On 28<sup>th</sup> July, 2017 the objector filed petition by way of cross petition for a grant claiming that he and his siblings namely; Nelly Anyango Puntheller, Lilian Adhiambo Odongo, Judith Atieno Odongo, Grace Akinyi Odongo, David Odhiambo and Evans Otieno Odongo were children to Emily Achieng Odongo wife to the deceased but who is also deceased. They claimed that as step children to the deceased, they were in priority entitled to take out a grant of representation and not the petitioner who had no relationship with the deceased. He described the petitioner as a mere employee to the deceased and not a beneficiary.
5. From the record, it would appear that the summons for confirmation was not opposed by way of a protest as directed by the court on 18<sup>th</sup> September, 2017. The objector having failed to comply with the direction to file protest, the application for confirmation was allowed and the grant confirmed on 12<sup>th</sup> February, 2018.
6. Consequently, the objector filed a summons for revocation of grant dated 20<sup>th</sup> November, 2019 seeking orders that; An injunction and inhibition to issue restraining any dealings, transfer or intermeddling with the subject property comprising the estate; the grant issued to the petitioner on 30<sup>th</sup> June 2015 be revoked; respondent/petitioner to file a full and accurate inventory or accounts of administration of the deceased's estate since 30<sup>th</sup> June, 2015 and the objector be appointed as the administrator of the estate.
7. The application was based on grounds that; the respondent/petitioner concealed material facts at the time of obtaining the grant; the grant was obtained fraudulently by making false statement and false allegation of fact essential in point of law by claiming that he was a trusted friend to the deceased; the respondent failed to seek from the objector and his siblings aforesaid the requisite consent; proceedings to obtain the grant were defective; the relationship between the deceased and the applicant was that of employer /employee; the respondent was harassing tenants occupying the deceased's premises and that he had failed to account for the proceeds collected as rent; the respondent is intermeddling with the estate and that, he was not made aware of the hearing of the application for confirmation by his advocate hence the failure to file a protest in time.

8. In response, the petitioner filed a replying affidavit sworn on 5<sup>th</sup> December, 2019 opposing the application on grounds that; it was filed after 2 years hence inordinate delay; it amounts to an abuse of the court process; the prayer for revocation amounts to resjudicata as the court has already pronounced itself on the same subject; it does not meet principles for revocation of a grant and issuance of an injunction ; there was no proof that the deceased was married to the objector's mother; the applicant and siblings have no relationship with the deceased; the only daughter to the deceased Gabriela Brigitta Hoppler who resides in Switzerland had renounced the right to apply for the grant of letters of administration; the applicant had failed contrary to the court's direction to file an affidavit of protest against the confirmation application hence cannot challenge it now.

9. Subsequently, on 19<sup>th</sup> March, 2020, the petitioner filed a preliminary objection challenging the revocation application citing similar grounds as stated in the replying affidavit. The court heard the preliminary objection first and delivered its ruling on 23<sup>rd</sup> October, 2020 thus dismissing the same. The court observed that the grounds cited were matters of facts to be addressed through viva voce evidence. Consequently, the matter proceeded for hearing viva voce

#### **Hearing of the revocation application.**

10. During the hearing, the applicant/objector (Pw1) basically adopted the grounds and averments contained in the affidavit in support of the revocation application. He told the court that the deceased was a husband to his mother Emily Achieng now deceased. He referred to the petitioner as a neighbor to his mother and also an employee to the deceased taking care of the premises in Kwale/Diani/683. He claimed that the petitioner did not seek consent from him nor his siblings as the rightful beneficiaries to the estate. He stated that during the subsistence of the marriage between the deceased and his mother, they jointly acquired L.R Nos Kwale/Diani/Beach Block /686 and 687. To prove this fact, he attached title deeds of the two properties as annexure No. SNN0-7 reflecting the said joint ownership. He further produced a grant of letters of administration obtained by himself in respect of the estate of his mother.

11. He also relied on the introductory letter by Diani chief who confirmed that the deceased was a husband to Emily Achieng his mother and that he was survived by the objector/applicant and siblings.

12. In his further affidavit sworn on 18<sup>th</sup> December, 2019, and filed on 19<sup>th</sup> December, 2019, he attached a letter dated 1<sup>st</sup> October, 2013 (SNN0-16" being an introductory letter addressed to whom it may concern by Gabriella Hoppler Meier the only daughter of the deceased renouncing her interest in the Kenyan property on grounds that her country's laws do not allow ownership of property in a foreign country. She acknowledged that the father had a long standing relationship with the late Emily. She further recognized Nick the objector and his sisters Nelly and Grace as children to Emily whom she stated should be given a right to inherit properties jointly held between her father and their mother and the rest be amicably shared between Japheth (petitioner) who acted as a close staff member and representative of her father and the children of Emily.

13. Pw2 Gabriel Ouma who claimed to be a cousin to Nick adopted his affidavit sworn on 30<sup>th</sup> November, 2020 confirming that Emily Nick's mother and Rolf were husband and wife. He claimed that the two used to support him and even paid for his school fees. He also stated that Nick and Grace his sister used to stay with their mother Emily and Rolf the deceased.

14. Pw3 Suleiman Yusuf Chief Diani location swore an affidavit on 27<sup>th</sup> November, 2020 confirming that he knew the applicant as a son to Emily who was a wife to the deceased. He also stated that he used to visit the couple who were living together as husband and wife. He further stated that the deceased maintained the deceased's children and that Japheth was a care taker to the deceased's property.

15. On his part, the petitioner (Dw1) adopted the content in the affidavit in reply to the application and a supplementary affidavit. He termed the revocation application as malicious and full of falsehood. It was his testimony that Emily was a mere tenant to the deceased. He told the court that before Rolf died, he had transferred L.R Kwale Diani/686 and 687 to Emily Odongo. He also stated that he knew Rolf (deceased) from 1984 and that as a tourist he was his good friend. That Gabriela Rolf's daughter gifted him with three properties belonging to the deceased after renouncing her right to the property. He further stated that Nick has his biological father in Siaya hence cannot claim Rolf's property.

16. On cross examination, he admitted that he was not related to the deceased. After the close of the case parties agreed to file submissions.

#### **Applicant's submissions.**

17. Through the firm of Masore Nyangau, the applicant filed submissions on 13<sup>th</sup> April, 2021, basically reiterating the averments contained in the affidavit in support of the application. Mr Masore submitted on two issues; firstly, whether the summons for revocation is resjudicata and an abuse of the court process; secondly, whether the applicant has made a case for revocation.

18. On the issue of resjudicata, counsel submitted that there has never been any other application for revocation hence the doctrine of resjudicata does not apply. Counsel contended that when the preliminary objection was canvassed, the prayer for revocation was never adjudicated to conclusion. He opined that the cross petition was struck out by the court as time barred as the grant had already been issued hence the only available opportunity was to file a protest which was not filed. According to learned counsel, failure to file a protest was not a bar to filing of the revocation application hence the doctrine of resjudicata is not available. In support of this proposition, counsel made reference to the case of **Ngoni -Matengo co-operative Marketing union Ltd vs Almahomed Osman (1959)1 E.A 577 ( CAD)**

19. It was further submitted that failure to file a protest was occasioned by the then applicant's advocate's failure to file a protest. As to the respondent's claim that the applicant should have filed an appeal against confirmation, counsel submitted that an appeal does not lie against a certificate of confirmation but against a grant.

20. Concerning revocation of the grant, Mr Masore submitted that the applicant had proved that he was a step son to the deceased and that

the evidence tendered was not rebutted. That by virtue of the deceased having married the applicant's mother, the applicant and his siblings were step children to the deceased hence beneficiaries and therefore failure to seek their consent amounts to non-disclosure of material information.

21. Further, it was submitted that the respondent had no capacity to petition for a grant as he was not related to the deceased. That under Section 66 of the law of succession, a friend is not recognized as a beneficiary hence the respondent is a stranger in respect to the estate. That the deceased never gifted the respondent hence the claim that the deceased's daughter Gabriela gifted the respondent and appointed him as a legal representative is not recognized in law.

### **Respondent's submissions.**

22. Mr Ananda appearing for the respondent filed his submissions on 29<sup>th</sup> April, 2021. Learned counsel submitted on 5 issues. Firstly, he submitted on the aspect whether the respondent had capacity to petition for a grant of letters of administration. Counsel adopted averments contained in the affidavit in reply to the application and a further affidavit thereof.

23. Mr Ananda contended that the applicant having ignored court directions to file answer to petition and cross petition as well as a protest against the application for confirmation cannot purport to be an interested party in the estate by filing an application for revocation.

24. Learned counsel contended that the applicant slept over his rights for over two years without seeking review of the confirmed grant nor appealing against it hence inordinate delay and abuse of the court process. Counsel opined that by filing the application for revocation the applicant was re-opening an already determined matter hence the doctrine of res-judicata is applicable. In support of this proposition, counsel made reference to the case of **Agnes Nyambura Munga vs Lita Violet Shephard succession No 1327/2010** where the court held that, the applicant could not attempt to revoke the grant on the basis of an objection that has already been determined by both the high court and court of appeal.

25. As regards the delay in filing this application, Mr. Ananda stated that the time taken to file the application was quite inordinate. As concerns capacity to sue, counsel contended that the applicant was not a step son to the deceased and that there was no proof. He opined that there was no proof of customary marriage between Emily the applicant's mother and the deceased.

26. It was further contended that Emily like other women was a girlfriend to the deceased but not a wife as the deceased never lived in Kenya but was a frequent visitor. That the fact that the deceased and Emily had joint properties is not proof of marriage.

27. On the respondent's relationship with the deceased, Ananda stated that the two were good friends and business associates who even operated a joint bank account and incorporated a company as co-directors. That the renunciation of the right to petition for a grant by the daughter to the deceased in favour of the respondent was proof enough of the close relationship between the deceased and the respondent. That Gabriela did nominate the respondent as an administrator hence the right to inherit the property. Counsel contended that the applicant had no obligation to notify the applicant nor seek his consent. As to the ground of fraudulent acquisition of the grant of letters of administration, counsel submitted that there was not proof.

### **Analysis and Determination.**

28. I have considered the application herein, response thereto and rival submissions by both counsel. Issues for determination are;

- a. **Whether the application for revocation amounts to resjudicata**
- b. **Whether the application herein is bad in law for being filed after a long period;**
- c. **Whether the applicant has met the threshold for revocation of the grant.**

### **Whether the suit amounts to resjudicata.**

29. The doctrine of resjudicata is provided for under Section 7 of the Civil Procedure Act which provides that;

**“No court shall try any suit or, issues in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”**

30. To further galvanize the above statutory provision, the Supreme court in the case of **Independent Electoral and Boundaries Commission vs Maina Kiai and 5 Others (2017) e KLR** amplified the doctrine of resjudicata as hereunder;

**“The rule or doctrine of resjudicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common-sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, out comes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be noisome nuisance and brought to disrepute and calumny. The foundations of resjudicata thus rest in the public interest for swift, sure and certain justice;**

31. The court went further and broke down the elements of resjudicata which must conjunctively apply to as follows;

- a. **The suit or issues was directly and substantially in issue in the former suit.**
- b. **That former suit was between the same parties or parties under whom they or any of them claim.**
- c. **Those parties were litigating under same title.**
- d. **The issue was heard and finally determined in the former suit.**
- e. **The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.**

32. It is the respondent's argument that revocation application was filed after the applicant had squandered the opportunity to file an answer to petition and cross petition. Secondly, during confirmation stage the applicant was given a chance to file a protest but failed to file one. It's true that the applicant did cross petition outside the prescribed time hence the same could not be heard. Equally, the court gave the applicant a chance to file a protest but failed to do so. The question then begging for an answer is whether the doctrine of resjudicata is applicable in respect of the revocation application.

33. From the record, the answer to petition and cross petition was not heard and determined on merit. Further, the intended protest was never filed hence nothing to be heard. According to the principles outlined in Maina Kiai case above, the doctrine of resjudicata does not apply as no application similar to the revocation application herein has been heard and determined on merit. See also **In the matter of the estate of Hemed Abdalla Kaniki (deceased) HCC Succession No 1831/1996** where the court said failure to prosecute objection proceedings is not a bar to prosecuting a revocation application.

34. As regards the aspect of inordinate delay in filing the revocation application, the law of succession does not have a time limitation. The limitation of actions Act does not apply. See **In the re Estate of Josephine Magdalena (deceased) (2016) e KLR** where the court stated that;

**“My reading of this is that an application founded on Section 76 of the Law of Succession Act can be made at any time. There is no limitation set to the provision for the making of the application. The provision is open-ended. Of course there is room for bringing in the test of reasonableness into play. That, however, does not introduce time limitation. It merely requires the court to bring in to bear reasonableness in its exercise of discretion on whether or not to revoke a grant.”**

35. Further, Section 76 of the Law of Succession provides that, a grant whether or not confirmed may be revoked on application by any intended party or on the court's own motion. Again, Section 76 does grant an open ended ground for an application for revocation to be filed. It is incumbent upon the applicant to prove the conditions set out under the said Section. In my opinion, by filing this application two years after confirmation of the grant does not bar the applicant from what the law entitles him to do. The right to file a revocation application is not extinguished by limitation of time.

36. As regards failure to file an appeal or seek review, both options were open to the applicant. Had the applicant filed a protest and the same determined, he could then have filed an appeal or review depending on the grounds cited but not revocation. Revocation application is the convenient escape route for those beneficiaries left out in distribution of the estate more particularly where their consent is in question. To that extent, the ground of resjudicata and in-ordinate delay falls by the way side.

#### **Whether the applicant has met the threshold for revocation of the grant.**

37. There is no dispute that the grant herein was issued to the respondent who described himself as a close and trusted friend to the deceased. On the other hand, the applicant is claiming that he and his siblings are beneficiaries on account of being step children to the deceased who was married to their mother who pre-deceased the deceased herein.

38. It is incumbent upon each of the two opposing parties to show and prove that they have an interest in the estate and that they are entitled to a share.

39. The law governing revocation of a grant is Section 76 of the Law of Succession Act which provides 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.**
- d. **That the person to whom the grant was made has failed, after due notice and without reasonable cause either;**

i. To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or

ii. To proceed diligently with the distribution of the estate; or

iii. To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of Section 83 or has produced any such inventory or account which is false in any material particular; or

(e) That the grant has become useless and inoperative through subsequent circumstances.

40. In the case of Samuel Wasike Masika vs Hudson Simuyu Wafula (1993) LLR (CAK) the court of appeal held that; a grant obtained on the strength of false claims, without obtaining the consent of persons who had prior right to the grant and on the basis of facts concealed from the court is liable to revocation. See also Matheka and Another vs. Matheka (2005) EA 251 in which the court re-emphasized proof of the grounds stipulated under Section 76 of the Law of Succession Act before revocation of a grant.

41. In this case, the applicant is claiming that the respondent had no locus or capacity to petition for a grant as he was a stranger to the estate. The respondent acknowledged that he was not related by blood to the deceased. However, he claimed that he was a close friend to the deceased and that the deceased's daughter Gabriela had renounced her right to the estate and that she had nominated him as the administrator.

42. I wish however to set the record clear that in the absence of a will, Gabriella a daughter to the deceased had no power to appoint an administrator. Further, under Section 66 of the Law of succession, the order of reference as to who ranks first in petition for a grant is provided as follows;

**“when a deceased person has died intestate, the court shall, save as otherwise provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interest of all concern be made, but shall without prejudice to that discretion, accept as a general guide the following order of preference;**

(a) Surviving spouse or spouses, with or without association of other beneficiaries

(b) Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provide by part V

(c) Public trustee and

(d) Creditors

43. From the order of ranking on priority, a friend is not recognized nor provided for. In other words, where the above categories exist, any other interested person will come later.

44. The respondent's claim that he is an interested party by virtue of being a friend cannot stand. In my view, mere friendship or partnership in business with a deceased person during his lifetime is not sufficient enough to claim a share of a deceased person's property or right of administration of his estate. Although an interested person outside the list specified under Section 66 of the Law of succession can apply for a grant, he must first prove the specific interest at stake and the prejudice likely to be suffered if the interest is not recognized or protected. Is the respondent seeking protection of friendship which he enjoyed while the deceased was alive? See Musa Nyaribari Gekone and 2 others V Peter Miyinda and another (2015) where the court stated that; the expression any interested party as used in that provision, in its plain and ordinary meaning, is in our view wide enough to accommodate any person with a right or expectancy in the estate.

45. In the instant case, the interest claimed by the respondent is based on friendship and support by the deceased's daughter. In fact, the deceased's daughter in her renunciation attached to the further replying affidavit sworn by Stephen Nick Omondi Adongo describes the respondent as a friend to her father who worked for the father and managed his properties well.

46. Pw1, Pw2 and Pw3 all described the respondent as an employee of the deceased which is confirmed by Gabriela in her renunciation of 1<sup>st</sup> October, 2013. I do not find any specific interest nor has any been proved by the respondent over the estate of the deceased hence lack of capacity to petition for a grant.

47. As to whether the applicant was a step son, Gabriela in her said renunciation recognized him a son to Emily. Gabriela recognized that her father had a long standing relationship with Emily the mother to the applicant. She recognized Nelly and Grace Children to Emily whom her father stayed with while living with Emily.

48. Pw2 and Pw3 Diani chief confirmed that Emily and Rolf the deceased lived together and jointly acquired property known as Kwale /Diani 686 and 687 where Emily was buried and later the deceased.

49. Although the claim of customary marriage between the deceased and Emily was not proved, the period of long cohabitation as admitted by the deceased's daughter is sufficient to imply a presumption of marriage under Section 3(5) of the Succession Act. I have no doubt, Emily cohabited with the deceased as husband and wife hence the reason why they were buried in the same farm.

50. In arriving at the above conclusion, I am guided by the holding in Hortensia Wanjiku Yawe vs the Public Trustee C.A and Civil appeal No 13//1976 where the court recognized long period of cohabitation as a basis to infer a presumption of marriage for purposes of succession. It is not convincing that Emily was a mere friend to the deceased yet they lived together for a long time, bought property together and got buried on the same property.

51. Having held that Emily and Rolf were husband and wife through long cohabitation, the question begging for an answer is; whether the children of Emily sired by another man automatically became step children of the deceased and therefore dependants and beneficiaries.

52. It was admitted that Emily did not get any biological children with the deceased. Can the applicant and his siblings qualify as dependants of the deceased? Under Section 29 of the Law of Succession, a dependant is defined as;

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

**b. Such of the deceased's parents, step parents, grandparents, grandchildren, step children, children whom the deceased had taken into his family as his own, brothers and sisters and half brothers and sisters, as were being maintained by the deceased immediately prior to his death and if where the deceased was a widow, her husband if he was being maintained by her immediately prior to the date of her death.**

53. From the above provision, there are two categories of dependants. The first category under para.(a) they are automatic dependants who do not need to prove that they were being maintained by the deceased prior to his death or her death. The second category where the applicant falls, is that of persons who must prove maintenance immediately prior to the deceased's death. See in the Estate of the late Annelies Ana Graff (2019) e KAR.

54. By virtue of Emily being a wife to the deceased, all Emily's children became the deceased's step children. For the applicant to qualify for provision out of the estate, he must prove that he was being maintained by the deceased immediately prior to his death.

55. Although Pw1 claimed that the deceased paid for his school fees and provided for him, Pw3 the area chief confirmed on cross examination that only Nelly and Grace used to stay with the deceased and Emily. This is a contradiction to Pw1's evidence that he used to stay with the deceased hence was dependent on him.

56. Equally, the evidence from Gabriel recognized Nelly and Grace as children who were staying with Emily and Rolf the deceased. The onus to prove that he was being maintained by the deceased lies with the applicant. He has not tendered any single evince of dependency. He is a grown up with a biological father who is alive. He never moved into the deceased's home. Any other support when living separately from the deceased must be proved by tangible evidence. To that extent I do find and hold that he was not a dependant to the deceased during his lifetime.

57. From the uncontroverted evidence, the only dependants of the deceased in the absence of Gabriela the biological child is; Nelly Anyango Puntheller and Grace Akinyi Odongo. It is my finding that they are the only step children entitled to share the estate of the deceased. Ordinarily, they are supposed to administer the estate. Since they are living outside the county, I will use my discretion suo motto to appoint an administrator who will manage the estate on their behalf given that they are residing outside the country.

58. Having found that both the applicant and the respondent as lacking locus and not qualified to petition for a grant without seeking consent from those qualified, the grant issued herein on 30<sup>th</sup> June, 2015 and confirmed on 12<sup>th</sup> February, 2018 is revoked on grounds of non-disclosure of material information to the court and also failure to seek consent of those entitled. In view of the above and in my due exercise of discretion I will appoint the public trustee as the administrator of the estate on behalf of Nelly and Grace. Secondly, I wish to review the certificate of confirmation of grant on distribution of the estate to devolve between Nelly Anyango Puntheller and Grace Akinyi Odongo in equal share.

59. For the above reasons stated, the revocation application is allowed. In conclusion therefore, it is hereby declared and ordered as follows;

**(a) The grant herein issued on 30<sup>th</sup> June 2015 and confirmed on 12<sup>th</sup> February 2018 is hereby revoked**

**(b) The public Trustee is hereby appointed as the new administrator to administer the estate to completion**

**(c) The respondent shall hand over the administration of the estate and give a full account and inventory of the assets comprising the estate to the public trustee within 45 days.**

**(d) The public trustee shall ensure completion of the administration of the estate within six months and file a report back to the court upon the expiry of that period.**

**(e) The estate be distributed equally between Grace Akinyi Adongo and Nelly Anyango Puntheller.**

**(f) A fresh certificate of confirmation of grant to issue reflecting the said distribution.**

**(f) This being a family matter, each party shall bear own costs.**

**DATED SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 30TH DAY OF SEPTEMBER, 2021**

**J. N. ONYIEGO**

**JUDGE**