



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

SUCCESSION CAUSE NO. 12 OF 2018

IN THE MATTER OF THE ESTATE OF WILFRED KOINANGE GATHIOMI (DECEASED)

JOEL NG'ANG'A KARIUKI.....PETITIONER

AND

JOYCE WAMBUI MUTURA.....1ST OBJECTOR

FLORENCE NJERI KAMAU.....2ND OBJECTOR

RULING

1. The Petition for grant of Letters of Administration with terms of the oral will annexed by the Petitioner JOEL NGANGA KARIUKI as the deceased's appointed executor of the will allegedly dictated to him on the 13th, 21st, 22nd and 26th December, 2017 following which the deceased died on 28th December, 2017 was filed in 2018.

2. The Petition is supported by among others the Petitioner's affidavit. He deposed that the deceased dictated his oral will on 13th, 21st, 22nd and completed it on 26th December, 2017 and that together with Margaret Wanjiku Gathiomi he witnessed the will by which he was appointed as the executor being made. He contended that the said oral will is not contrary to any written will. The deceased's assets were estimated at Kshs. 300,000,000/=.

3. After the Petition was published, JOYCE WAMBUI MUTURA and FLORENCE NJERI KAMAU both sisters of the deceased filed an objection to the making of the grant on 23rd March, 2018. They asserted that the oral will disposes of the assets described as **Limuru/Bibirioni/2223, Kiambaa/Waguthu/1302 and Kiambaa/Waguthu/1306** which were properties held in trust by the deceased on behalf of the Respondents pursuant to High Court Civil Case No. 66 of 1984 and as such the deceased had no authority to distribute the said properties. They attacked the oral will on grounds that it was insufficiently attested; that the deceased lacked testamentary capacity as he was very sick; that the deceased did not make a provision to his lawful dependants but majorly to the Petitioner who was said to be a stranger to the deceased and therefore the will should be treated with suspicion as it is invalid.

4. In a further supporting affidavit, the Petitioner contended that the deceased was not a trustee but the absolute owner of the parcels of land comprising his estate and that he had every right to bequeath his assets to whoever he desired. He asserted that the deceased was lucid and mentally alert only that he had challenges with writing and as such dictated his will. He reiterated that the objectors were facing criminal charges for having forged the signature of the deceased in a succession cause filed in regard to the estate of their deceased father **David Gathiomi Koinange aka David Koinange Gathiomi**.

5. The court directed that the objection be heard by way of *viva voce* evidence and that the parties to be cross-examined on their filed affidavits. Parties were granted leave to file further affidavits in preparation for the hearing and complied.

6. During the hearing, JOEL NGANGA KARIUKI (**PW1**) the Petitioner, adopted his supporting affidavits as evidence. He also produced the oral will as exhibit. He stated that the deceased was in good mental health when he dictated the will and appointed him the executor. When cross-examined by Ms. Alogo for the objectors he asserted that he did not participate in HCCC NO.66 of 1984 but asserted that the effect of the judgment in that cause was that the deceased was the absolute owner of the disputed properties. He testified that the deceased was lucid when he dictated the will between 13th and 26th December, 2017 and that he wrote what the deceased dictated and moreover, that the deceased's sister was present and witnessed the same. He contended that the deceased made bequests to all his family members including the objectors.

7. MARGARET WANJIKU GATHIOMI (**PW2**) testified that the will was recorded by **PW1** in her presence and that the same was written as dictated by the deceased who asked her to sign as a witness. She testified that she lived with the deceased who was of sound mind at all times despite his illness. In cross-examination, she denied that the disputed properties were held in trust by the deceased. She reiterated that the deceased was in good mental condition as he dictated the will.

8. JOYCE WAMBUI MUTURA (RW1) adopted her affidavit sworn on behalf of herself and her Co-objector. She testified that the deceased held the disputed properties in trust for the two sisters as the properties belonged to their deceased father and that the deceased had no property of his own to will away . In cross examination she clarified that she was seeking property which the deceased held in trust for the family.

9. FLORENCE NJERI NJOROGE KAMAU (RW2) adopted her affidavit and was cross - examined by Mr. Wandaka. She denied forging the deceased's signature in the consent used to obtain letters of administration in respect of the estate of the siblings' late father. She admitted that pursuant to the criminal charges being laid she had executed an agreement to withdraw her claims to the deceased's property in return for the deceased's withdrawal of the criminal charges. She insisted that she used to visit the deceased both at the hospital and at home.

10. Subsequently, parties filed their written submissions. The Petitioner submitted that the deceased was bequeathed the disputed land parcels by his grandfather and was registered as an absolute owner and not as a trustee for his family, the latter fact which the objectors failed to establish. Reliance was placed on the case of **In the matter of the estate of Manasseh Osiako Nyawira (deceased) (2012) eKLR** where it was held that if the deceased had held the suit property in trust for the Plaintiff therein , the same would have been clearly indicated in the register. It was also submitted that the disputed oral will was made in the presence of two persons as required by the law.

11. Counsel for the Petitioner submitted that the burden of proof lay with the objectors to prove that the deceased lacked testamentary capacity to make an oral will. To support this proposition counsel quoted the case of **In Re Estate of Gatuthu Njuguna (Deceased) (1998) eKLR**. It was his submission that the Law of Succession Act gives the testator freedom to bequeath his property to whomever they please as held in **James Maina vs Lorna Yimbiha Ottaro & 4 others (2014) eKLR**. The court was urged to dismiss the objection.

12. On their part, the objectors submitted that the oral will is not valid as it was made on different days and in the absence of two competent witnesses; that the oral will was invalid as the testator lacked testamentary capacity as he was sick and of unsound mind; and that the deceased did not make a provision for his lawful dependants rendering the will repugnant to the law. The court was urged to treat the will with suspicion as thereunder, the executor takes a substantial benefit . Reliance was placed on the case of **Julius Wainanina Mwathi vs Beth Mbere Mwathi and Another (1996) eKLR** where the Court of Appeal invalidated a will stating that a brother appointed executor of the deceased's will was not only the recorder of the will of the deceased but also the sole beneficiary. The Court found in that case that the Petitioner did not demonstrate that the deceased freely dictated and executed the alleged will. The court was urged to find that the alleged oral will in this instance is invalid and that the same disposes property held in trust and therefore not the free property of the deceased.

13. The court has considered the parties' evidence and submissions in respect of the objection filed by Joyce Wambui Mutura (1st objector) and Florence Njeri Kamau (2nd Objector). The undisputed facts of the case are that the two objectors, Margaret Wanjiku Gathiomi, John Njoroge Koinange were siblings of Wilfred Koinange Gathiomi (the deceased herein) all of them children of David Gathiomi Koinange and Damaris Wanjiru Gathoni both deceased. David Gathiomi Koinange was himself the son of Joyce Kagendo Koinange, one of the six wives of the late Senior Chief Koinange Wa Mbiyu who died possessed of vast tracts of land. The Petitioner herein, Joel Nganga Kariuki is a cousin to the deceased.

14. The properties in dispute, namely **Kiambaa/Waguthu/1302** (4.5 acres), **Kiambaa/Waguthu/1306** (5.6 acres) and **Limuru/Bibirioni/2233** (6.13 acres) are some of the properties registered in the name of the deceased at the time of his death. Others are land parcels **No. Kiambaa/Waguthu/1152** (0.50 acres); **Kiambaa/Waguthu/2309** (0.167 ha); **Kiambaa/Waguthu/4355** (1.06 ha); **Kiambaa/Waguthu/2308** (0.05 ha); motor vehicle registration No. KAU 975Z make Toyota Corolla, and cash in the bank. The deceased had no wife or children in his lifetime. The issues falling for determination are firstly, the validity of the will and secondly, whether the disputed property comprised the deceased's free property at the time of the making of the oral will.

15. Concerning the first issue, the objectors asserted that the alleged oral will is not valid because:

a) it was made on different days and not in the presence of two competent witnesses save on the last day;

b) it is not sufficiently attested as one of the attesting witnesses, the Petitioner is also a beneficiary;

c) the testator did not have testamentary capacity due to illness and effects of medication;

d) the deceased did not understand the extent of his property and failed to dispose of his residential property, namely **Kiambaa/Waguthu/1161** (4.9 acres) and the testator failed to make provisions for his dependents/beneficiaries.

16. Regarding persons with legal capacity to make wills, Section 5 of the Law of Succession Act provides that:

“1. Subject to the provisions of this Part and Part III, every person who is of sound mind and not a minor may dispose of all or any of his free property by will and may thereby make any dispositions by reference to any secular or religious law he chooses.

2...

3. Any person making or purporting to make a will shall be deemed to be of sound mind for the purpose of this section unless he is at the time of executing the will, in such a state of mind, whether arising from mental or physical illness, drunkenness or from any other cause, as not to know what he is doing.

4. The burden of proof that a testator was, at the time he made any Will, not of sound mind, shall be upon the person who so alleges.”

17. The onus lay with the objectors to satisfy the court that the deceased at the time of making the will was too ill or affected by medication to know what he was doing. No report by a medical officer or other professional witness on the score was proffered, save for the bare assertions by the objectors who, it seems were even unable to recollect their last encounter with the deceased, beyond asserting that they visited him at home and in hospital during his sickness, an assertion disputed by the Petitioner and a sister Margaret Wanjiku Gathiomi (Margaret) who admittedly lived in the same homestead with and cared for the deceased in his last days.

18. The Court of Appeal had this to say in **Ngengi Muigai & Another V Peter Nyoike Muigai & 4 Others In the matter of James Ngengi Muigai (Deceased) [2018] e KLR:-**

“In the recent case of Rosemary B. Koinange (suing as legal representative of the late Dr. Wilfred Koinange and also in her own personal capacity) & 5 Others V Isabella Wanjiku Karanja & 2 Others [2017] e KLR this court examined the issue of mental capacity (to make a will) and stated as follows:

“The essentials of testamentary capacity were laid out in the case of Banks V Goodfellow [1870] LR5QB 549 as cited with approval in the Tanzanian Court of Appeal case of Vaghella V Vaghella [1999] EA 351 thus:

“ A testator shall understand the nature of the act and its effects, shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing property and bring about a disposal of it which if the mind had been sound, would not have been made.”

19. The Court of Appeal further stated:

“Construing the issue of capacity, Githinji J. in the case of In Re Estate of Gatuthu Njuguna (Deceased) (1998) e KLR stated:

“As regards the testator’s mental and physical capacity to make the will, the law presumes that the testator was of sound mind and the burden of proof that the testator was not of sound mind is upon the person alleging lack of sound mind, in this case the applicant However paras 903 and 904 of Volume 17 of Halsbury’s Laws of England show that, where any dispute or doubt of sanity exists, the person propounding a will must establish and prove affirmatively the testator’s capacity, and that where the objector has proved incapacity before the date of the will, the burden is shifted to the person propounding the will to show that it was made after recovery or during a lucid interval. The same treatise further shows that the issue of testator’s capacity is one of fact which can be proved by medical evidence, oral evidence of the witnesses who knew the testator well or by circumstantial evidence and that the question of capacity is one of degree, the testator’s mind does not have to be perfectly balanced and the question of capacity does not solely depend on scientific or legal definition. It seems that, if the objector produces evidence which raises suspicion of the testator’s capacity at the time of execution of the will which generally disturbs the conscience of the court as to whether or not the testator had necessary capacity, he had discharged his burden of proof and the burden then shifts to the person settling up the will to satisfy the court that the testator had the necessary capacity.”

20. In this case, it is not disputed that the deceased was aged 70 years at death. A copy of his death certificate marked as annexure “**JNK 1(a)**” to the affidavit of the Petitioner filed on 27th February 2018 indicates that the deceased died on 28th December 2017. The cause of death is stated in the copy of death certificate to be gastric adenocarcinoma, a type of cancer of the stomach, which according to the Petitioner was diagnosed in May 2017 after several treatments in 2016. According to the Petitioner, the deceased was admitted five times in hospital in 2017 and that upon learning of his cancer diagnosis he had commenced preparations to write a will by making notes and discussing these matters with the Petitioner.

21. The Petitioner and the deceased’s sister Margaret testified that the deceased had remained lucid and of sound mind despite his illness, and more particularly on the day when the record of the oral will was signed by the said witnesses. It was their evidence that from 13th to 26th December 2017 the deceased dictated his will to the Petitioner because though lucid, his hand had tremors hence he could not write. The witnesses did not waver during cross-examination. It is evident from the objectors evidence, particularly the 2nd Objector, that prior to the illness of the deceased, the trio had fallen out, arising from disputes relating to the property now disputed in this case, and that matters came to a head after the said signature of the deceased was forged in **Nairobi Succession Cause No. 2964 of 2012 In the matter of Estate of David Koinange Gathiomi.**

22. The objectors were subsequently charged in **Kiambu CM’s Criminal Case No. 1435/17** with 3 counts of Forgery contrary to Section 349 of the Penal Code and Uttering a False Document. According to the charge sheet copy annexed to the Petitioner’s affidavit filed on 11th October 2018 as annexure “**JNK AA**” the complaint was reported *vide* O.B No. 19 of 16th May 2017 and the complainant was the deceased. It appears that the charges were laid on 11th September 2017. Thus, it is more believable, as admitted by the 2nd objector that the objectors’ relationship with the deceased was at an all-time low in the material period. Indeed the 2nd objector admitted that the Deceased would not admit the objectors to his home. Significantly, neither objector could state any specific dates when they visited the deceased at home or in hospital. It seems therefore that the objectors’ contention that the deceased lacked testamentary capacity at the material period is based on surmises premised on his illness and treatment but not from any observation they made.

23. Equally, it is not correct that the deceased did not will away his entire estate as the will indicates instructions concerning his Kiambaa home. In contrast, Margaret was close to and cared for the deceased, as she lived in the same homestead as him. Similarly, the Petitioner related with the deceased closely and also cared for him during the period of ailment until his death. Not only was he a cousin to the deceased and his siblings, he was a confidant to the deceased. Finally, the deceased did make provision for the objectors even though there is no evidence that they depended on him and were his dependents as envisaged in Section 29 Law of Succession Act. Clearly, therefore the objectors have failed to discharge their burden of proof in relation to the challenge to the testamentary capacity of the deceased. I find their

claims unsupported by evidence and dismiss them. Based on the Petitioner's evidence, it is evident that though ailing during the material period the deceased remained lucid. The detailed contents of the will document leave no doubt concerning the acuity of his mind at the time.

24. Next, the court has considered the objection that the contested will was not sufficiently attested as one of the witnesses, that is, the Petitioner was also a beneficiary. This objection is misplaced in my opinion as attestation of wills only applies to written wills. Attestation of written wills as required in Section 11 of the Law of Succession Act involves the witnessing of the testator's signature of the will which is signified by the witnesses signing or witnessing the will in the presence of the testator. The will in this case is an oral will. Section 8 of the Law of Succession Act recognizes both oral and written wills and Section 9 provides in respect of the latter that:

“1) No oral will shall be valid unless –

a) it is made before two or more competent witnesses

b) the testator dies within a period of three months from the date of making the will:

Provided that an oral will made ...

2) No oral will shall be valid if, and so far as, it is contrary to any written will which the testator has made, whether before or after the date of the oral Will and which has not been revoked as provided by Sections 18 and 19.”

25. In this case, it is the evidence of the Petitioner and Margaret that the deceased began to make preparations to make his oral will and held discussions with the Petitioner and also prepared notes. The Petitioner's affidavit states inter alia that:

“17. THAT (the deceased) started writing his will soon after he knew he had cancer and wrote notes in a note book and discussed with me at length on matters pertaining to his will and I am the only one he showed his final resting place

19. THAT in the month of December, 2017 he handed over to me all the important documents like title deeds, logbook, keys e.t.c and that on 13th December 2017 he started dictating to me his oral will and I wrote everything that he said

21. THAT he dictated to me his will between 13th December 2017 and 26th December 2017 when everything was completed.

22. THAT his youngest sister Margaret Wanjiku Gathiomi had visited on 26th December 2017 as usual and had just left since it was time for visitors to go. That I asked him about the will since we had agreed that someone had to sign it as a witness after reading it in his presence.

That he told me to call Margaret... back which I did and he explained to her about the will and asked me to read it in her presence which I did and she signed”

26. During cross-examination the Petitioner stated that:

“Oral will dictated between 13th and 26th December in his home and when he was also admitted to hospital...I wrote what deceased dictated on several dates. I do recall on 13th December his sister was present – Margaret Wanjiku. Even in hospital he (deceased) confirmed...will was witnessed by Margaret ... although she was not always present during the entire dictation.”

27. Margaret described the Petitioner not only as a cousin but best friend and confidant of the deceased who stayed close to and cared for the deceased in his final months and was a regular visitor. Further in her affidavit she deposed that living on the same compound as the deceased who had no family of his own, she made meals for him and performed his chores on his behalf. She stated that on 12th December, 2017 in the evening he witnessed the deceased give the Petitioner some documents including title deeds.

28. She recounted that following his discharge from hospital in May 2017, the deceased had been busy making notes and on 13th December discovered that the deceased was preparing his will when she found the deceased dictating his wishes to the Petitioner. She stated that she had visited the deceased in hospital on 26th December 2017 and found the deceased in a good mood. At the end of the visit, she left the deceased in the company of the Petitioner. She deposed further that:

“...just before I reached the stairs, to go down stairs cousin Joel Ngang'a Kariuki called me back and my brother explained about his will and he asked cousin Joel ... to read it for me which he did and I signed as witness and it was the same will that cousin Joel ... read to us after my brother died.”

29. Under cross-examination Margaret stated that:

“On 13th December he (deceased) had just returned home from hospital in company of PW1 (Petitioner). He was in very good condition and was seated. He was lucid. He dictated to Joel from 12th December. The deceased's hands had tremors, so he only wrote short notes in advance preparation then dictated to PW1. On 26th December, I was called to have (completed) will read and signed.

I was in and out as it was dictated. I was living there so I used to be present often during dictation sessions. I was making meals for him (deceased). Wilfred told Joel to read for me and then I signed. Deceased gave directions and distributed the estate.”

30. From these accounts, it is evident that the deceased dictated his will over the period of between 12th and 26th December 2017. The objectors appear to fault this fact, asserting that the two witnesses were not present on all occasions. The Petitioner’s evidence was that after the deceased had made preparations by making notes and held discussions with the Petitioner, he had given his instructions. Both the Petitioner and Margaret are agreed that the deceased dictated these matters which the Petitioner recorded over the period. In some instances, such as 13th and 26th December the witnesses were both present.

31. From the accounts given, the will was complete on 26th December, 2017, that the deceased briefed Margaret about the will and asked that it be read out by **PW1** who had recorded the wishes of the deceased. There is no requirement that a will be recorded on one occasion and be completed in one sitting. In this case, it seems that dictation and discussions between the deceased and the Petitioner, sometimes witnessed by the sister Margaret, were recorded and culminated in the final document which the deceased gave assent to and had read by **PW1** in the presence of Margaret, acknowledging these words to constitute his final wishes.

32. Thus, for the purposes of this case, the oral will acknowledged by the deceased and read out in the presence of Margaret by the Petitioner can be said to have been completed and witnessed by the two persons on the 26th December, two days before the death of the deceased. In the case of **Beth Wambui & Another V Gathoni Gikonyo & 3 Others [1988] e KLR**, the Court of Appeal considered two testamentary documents by the deceased, one of which marked ‘**B**’ was written by a witness upon the dictation or direction of the deceased and confirmed his wishes concerning a certain property. While the court found that the said document did not qualify as a written will, the court stated:

“The document is not witnessed as required. But it expresses the deceased’s wishes. Couldn’t it be regarded as an oral will? There is nothing to prevent a person making an oral will disposing of his property.”

33. The court (**Gachuhi JA**) proceeded to cite the provisions of Section 8 and 9 of the Law of Succession Act before concluding that:

“In Re Rufus Ngethe Munyu (Deceased) Public Trustee V Wambui [1977] KLR 137 where the deceased gave instructions of the disposal of his properties to his wives and children, and that those instructions were written on a piece of paper by the person recording it, the deceased having died few days later, Harris J. held the writing disposing the property to be an oral will. In the present appeal, the deceased gave instructions which were written and signed by him in presence of two witnesses. He died few days later. In this case, on the authority of Re: Rufus Ngethe Munyua and Section 8 and 9 of the Law of Succession Act I hold the document dated 12.5.78 (Document B) capable of being construed as an oral will.”

34. Similarly, in this case the deceased had given instructions which culminated in the record made by the Petitioner and adopted and acknowledged by the deceased in the presence of the Petitioner and Margaret as his oral will on 26th December 2017. The court therefore finds no merit in claims that the said will is invalid as it was not made in the continuous presence of two witnesses. The evidence by the Petitioner and Margaret shows the contrary.

35. The objectors made heavy weather of the fact that the Petitioner was himself a recipient of several bequests in the deceased’s will and that the fact ought to raise suspicion concerning the validity of the will. First of all, that the deceased and the Petitioner were close friends in addition to being cousins is not disputed. Secondly, outside his immediate family, the deceased did not make bequests to the Petitioner alone. The will indicates bequests to his worker, one **Mwangi** and to two young men, **Kevin Gitau** and **Edward Kinuthia** none of whom were his own sons in that sense of the word, as well as to a niece **Mary Magiri Mutura** (a daughter to the 1st Objector) and a nephew **Enos Koinange**, all in appreciation of various favours and arising from the beneficiaries’ relationship with the deceased. The deceased was unmarried and had no family. He relied heavily upon Margaret and the Petitioner in his last days. In spite of his frosty relationship with the objectors, the deceased made several bequests to them and if the Petitioner and Margaret got more than the objectors did, then the explanation lay not in the mischief of the Petitioner as suggested by them, but in their troubled relationship with their own brother.

36. There is no basis in this case for suspicion that the Petitioner somehow procured the will in his favour through craft or fraud. It is not difficult, reading the document to notice the thread running through it that reflects how the deceased’s relationship corresponded with the bequest to specific beneficiaries. That is hardly unusual in human affairs. The deceased was at liberty to dispose of his free property as he desired. Finally, I noted that the objectors neither filed an Answer to Petition nor Cross-Application as required under Rule 17 of the Probate and Administration Rules.

37. The next question relates to the objection raised with regard to the three disputed properties. The objectors claim is that these properties were held by the deceased in trust for them, as children of **David Koinange Gathiomi**. The Petitioner and other siblings of the deceased dispute these assertions. A valid will cannot fail on the basis merely that it includes amongst others, property not forming part of the deceased’s free property. Nonetheless, the court has considered the evidence laid before it in this regard and is of the view that the question cannot be conveniently determined in these proceedings. As stated by the Court of Appeal in **M’Inoti Nthai v Naomi Karegi M’Imanyara [2014] e KLR**:

“As pointed out elsewhere in this judgment, if the Appellant’s claim was based on trust, he ought to have filed an independent suit. This could have been by way of a separate suit against the Respondent as the administrator of the Deceased’s estate or vide the provisions of Rule 41(3) of the Probate and Administration Rules that require a party who is claiming an unidentified share of a deceased’s estate as a beneficiary to file an Originating Summons under Order 37 of the Civil Procedure Rules.”

38. The objectors’ assertion of a trust is based on the fact of their common father with the deceased and that the disputed assets formed part of the share that was due to their father as a son in the house of **Joyce Kagendo Koinange vide Civil Case No.66 of 1984**. It is questionable, on the basis of the evidence before the court whether, the second objector was even a daughter of the said David Koinange

Gathiomi, having been born, according to official records, two years after his death. The objectors had submitted *inter alia* that:

“9. It was the Objectors’ testimony that the alleged oral will disposes off 3 properties namely Limuru/Bibirioni/2223, Kiambaa/Waguthu/1306 and Kiambaa/Waguthu/1302 which are properties held in trust by the deceased on behalf of the Respondents herein pursuant to High Court Civil Case No. 66 of 1984.

10. As a result of the said High Court Civil Case No. 66 of 1984 the deceased held the said properties in trust for the estate of David Gathiomi Koinange who is the father to the deceased and Respondents (read Objectors) herein. The said properties were an inheritance by the Respondent’s late father, the said David Gathiomi Koinange from his father Senior Chief Koinange Wa Mbiyu. As such, the Deceased testator herein had no authority to distribute and/or dispose off the properties he was holding in trust through the alleged oral will.” (sic) (emphasis added).

39. In this regard the objectors claim appears to be based on or related to the estate of their late father, and not themselves necessarily as direct beneficiaries of their deceased brother’s estate. Thus, to my mind the question relating to whether or not the disputed property was held in trust by the deceased on behalf of the family of the late **David Gathiomi Koinange**, cannot and ought not to be agitated or determined in this present proceeding. It is upon the objectors to take the next legal step that they deem fit in the circumstances.

40. For all the reasons given, the court has found no merit in the objection under consideration and will dismiss it, while directing that a grant in respect of the oral will does issue to the Petitioner herein. Parties will bear own costs.

SIGNED ON THIS 12TH DAY OF JUNE 2020 AND DELIVERED VIA eMAIL TO THE PARTIES ON 12TH DAY OF JUNE 2020

C. MEOLI

JUDGE