REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 417 OF 1990

IN THE MATTER OF THE ESTATE OF EDWARD EPENI ORACHO (DECEASED)

JUDGMENT

1. This matter relates to the estate of Edward Epeni Oracho, who died on 25th February 1987. According to the letter from the Chief of Chekalini Location, dated 17th December 1990, the deceased had married twice, and had children with his two wives. His first wife was said to be Veronica Khatali Eben, who was the mother of their six children, being John Emonyi Edward, Willingstone Omonyo Edward, Moses Ateko Ombacho, Andrew Okwemba Eben, Nahashon Khamati Edward and Joseph Ojomo Edward. His second wife was said to be Zaida Andaye Eben, the mother of Peter Ombacho Edward and Bramwel Nasiali Edward. The Chief also stated that a John Benson Indimuli had bought two acres from the family to help them settle a loan from the Settlement Fund Trustees. The deceased was said to have died possessed of a property described as Plot No. 204 Chekalini. There is a letter on record from the District Settlement Office at Kakamega, dated 17th November 1990, confirming that that land was allocated to the deceased.

2. Representation to his estate was sought vide a petition lodged herein on 18th December 1980, by Veronica Khatali Eben and Zaida Andaye Eben, in their capacities as widows of the deceased. They expressed the deceased to have had died possessed of Kakamega/Chekalini/204 and to have been survived by the individuals mentioned in the Chief's letter that I have mentioned above. Letters of administration intestate were made to them on 2nd August 2001, a grant was duly issued, dated 28th August 2001. I shall consequently refer to two as the administratrices. The said grant was confirmed on 26th September 2011, on an application dated 2nd October 2009, and out of Kakamega/Chekalini/204 John Benson Indimuli was allocated two acres and the remainder of the property was shared equally amongst the children named in the Chief's letter and the petition.

3. What I am tasked with determining is the summons for revocation of the widows' grant. The application is dated 26th October 2018 and was lodged herein on even date, by John Emonyi Edward Ateko, to be hereinafter referred to as the applicant. The grounds upon which the application was premised are set out on the face of the application, while the factual background is given in the affidavit in support of the application, sworn by the applicant on 26th October 2018. He sought that the grant made to the administratrices be revoked and that the certificate issued upon confirmation of the said grant be annulled. He also sought that the estate property that had been subdivided and distributed as per the certificate of confirmation of grant be reverted to Kakamega/Chekalini/204 in the name of the deceased, with the new titles being cancelled. He would like a fresh grant issued to himself. He complained that the grant was obtained by concealment of material facts, misrepresentation of facts, and through stealth. He averred that one of the administratrices, Veronika Khatali Eben, had since died and was not substituted. He further averred that some of the children of the deceased, the daughters, had not been disclose. They were left out of the process and disinherited; and that a stranger, John Benson Indimuli, had been introduced in the process and awarded land, and was now threatening to evict him from his father's land. The daughters alleged to have been left out were said to be Mical Ayuma, Ruth Nyangasi and Sarah Olesi. He asserted that as the eldest son of the deceased he was one of the proper and rightful persons to administer the estate of the deceased.

4. Filed simultaneously with the application and the affidavit of the applicant is another affidavit, sworn on even date, by John Ojomo Edward. He described himself as a son of the deceased born out of wedlock, stating that his mother was never married to the deceased. He stated that he was not aware of the initiation of the proceedings, and his consent had not been obtained. The rest of the averments in the affidavit support those of the applicant in material particulars, including the allegation that John Benson Indimuli was a stranger and not a member of the household of the deceased, and should not have been allocated any portion of the estate of the deceased. He also mentioned that Mical Ayuma, Ruth Nyangasi and Sarah Olesi had been excluded altogether from the process.

5. There is an affidavit of service on record, sworn on 5th April 2019, by Habil Juma Wanyama, to the effect that the said application was served on the surviving administratrix, Zaida Andaye Eben, on 5th April 2019. I have scrupulously ploughed through the file of papers before me and I have not encountered a response to the application by the surviving administratrix.

6. The application was placed before me on 8th May 2019 for directions, and I directed that the same be disposed of by way of affidavit and *viva voce* evidence. I gave the administratrix thirty days to file her papers in response to the application, and directed that the directions be formally extracted and served on her. I also fixed 25th September 2019 as the date for hearing. There is an affidavit of service on record,

sworn on 9th July 2019, by a court process server, indicating that the directions were served on her. The hearing happened as scheduled on 25th September 2019. The applicant gave oral evidence. He was not cross-examined as the administratrix did not attend the hearing.

7. The application for determination seeks revocation of a grant representation. The deceased died in 1987, which was after the Law of Succession Act, Cap 160, Laws of Kenya, had come into operation in 1981. His estate, therefore, falls for administration and distribution in accordance with the provisions of the said Act.

8. The Law of Succession Act provides for revocation of grants under section 76, which states as follows:

> "76. Revocation or annulment of grant
>
> 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 order or allow; or
>
> (ii) to proceed diligently with the administration 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."

9. Under section 76 of the Act, a grant of representation is liable to revocation on three general grounds. The first ground would be where the process of obtaining the grant was attended by glaring difficulties, such as where the same was defective, say because the person who obtained representation was not qualified to be appointed as personal representative, or the procedural requirements were not met for some reason or other. It could also be because the petitioner used fraud or misrepresentation or concealed important information in order to obtain the grant. The second general ground is where the grant is obtained procedurally, but the administrator subsequently runs into difficulties during the process of administration of the estate. Such difficulties include his failure or omission to apply for confirmation of his grant within the period allowed in law, or where he fails to exercise diligence in administration of the estate, such as where he omits to collect or get in an asset, or where he fails to render accounts as and when he is required to do so by the law. The third general ground is where the grant has become inoperative or useless on account of subsequent circumstances, such as where the sole administrator died or loses the soundness of his mind or is adjudged bankrupt.

10. In the instant case, the applicant appears to anchor his case on the first general ground, that there were issues with the manner the grant was obtained. He has raised arguments about the process of obtaining the grant having had challenges. He has not complained about anything that would bring the case within the second general ground, nor the third ground. My understanding of his case, therefore, is that the process of obtaining the grant was defective, as the administratrices used fraud, misrepresentation and concealed matter from the court. His principle argument appears to be that his consent was not obtained before the grant herein was sought. He is also asserting what he calls his right as the eldest son to be appointed administrator of the estate.

11. The framework for applications for grants of representation is set out in section 51 of the Law of Succession Act. The most relevant portions, for the purpose of this application, are in subsection (2)(g), which state as follows:

> "Application for Grant
>
> 51. (1) …
>
> (2) Every application shall include information as to—
>
> (a) …
>
> (b) …

(c) …

(d) …

(e) …

(f) …

(g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;

(h)...”

12. My understanding of section 51(2) (g) is that the petitioner is required to disclose all the surviving spouses and children of the deceased. The provision is in mandatory terms. The administratrices herein only disclosed themselves and the sons of the deceased from both houses. They created an impression to the court that these individuals were the sole survivors of the deceased. The deceased had three daughters, from the averments that have been made in the two affidavits sworn in support of the application, which has not been controverted by the surviving administratrix. These daughters were not disclosed to the court. Therefore, there was no compliance with section 51(2) (g).

13. To my mind the above indicates procedural defects in the manner the grant was obtained to the extent that the administratrices did not comply fully with the requirements of section 51(2) (g). There was fraud and misrepresentation to the extent that they did not disclose all the persons who survived the deceased. They misled the court into believing that the deceased did not have any female children. There was concealment of important matter from the court, to the extent that they did not disclose the three daughters of the deceased. That meant that a fairly good number of survivors was locked out of the succession process. The motive of that act is unknown but it would be wholly irrelevant.

14. The applicant complains that he was unaware of the proceedings. That would mean that he was not consulted before administration was sought, or, put differently, that his consent was not obtained before representation was sought by the administratrices.

15. The law on who qualifies to apply for representation in intestacy is section 66 of the Law of Succession Act, which sets out the order of preference with regard to who ought to apply and be appointed administrator in intestacy. Priority is given to surviving spouses, followed by the children of the deceased. Rule 7(7) of the Probate and Administration Rules requires that a person with a lesser right to administration ought to obtain the consent of the person or persons with a greater priority to administration, or get that person or persons to renounce their right to administration or cause citations to issue on them requiring them to either apply for representation in the estate or to renounce their right to so apply.

16. For avoidance of doubt, these provisions state as follows:

“66. Preference to be given to certain persons to administer where deceased died intestate

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, 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 provided by Part V;

(c) the Public Trustee; and

*(d) cr*editors …”

and

“7 (7). Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has –

a. renounced his right generally to apply for grant; or

b. consented in writing to the making of the grant to the applicant; or

c. been issued with a citation calling upon him to renounce such right or to apply for a grant.”

17. Then there is Rule 26 of the Probate and Administration Rules, which states as follows:

> "26(1). Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.
>
> (2). An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equally or priority, be supported by an affidavit of the applicant and such other evidence as the court may require."

18. Rule 26(1) (2) applies where representation is sought by a person with equal right to others who have not petitioned like him. In such case, the petitioner is expected to notify such persons with equal entitlement with notice. The individuals with entitlement who have not applied for representation would signify that they had been notified of the petition by either executing their renunciation of their right to administration or by signing consents in Forms 38 or 39, depending on whether the deceased died testate or intestate. Where a consent or renunciation is not forthcoming, then the petitioner should file an affidavit, ostensibly dealing with these issues, that is by indicating that notice was given to all the other persons equally entitled, and perhaps demonstrating that such person had failed or refused to renounce their rights or to sign consents to allow him to go ahead with his petition.

19. The administratrices in the instant cause, being surviving spouses, had a superior right to administration over the children and any other other relatives of the deceased, going by section 66 of the Law of Succession Act. A reading of section 66 and Rules 7(7) and 26 of the Probate and Administration Rules would mean the widows did not need to comply with the requirements of Rules 7(7) and 26, since those provisions apply only to persons who seek representation while they had an equal or lesser right to administration. They did not, therefore, have to obtain the consents of their children before they applied for representation to the estate of their late husband.

20. The applicant has raised issue with the fact that the initial first administratrix, Veronika Khatali Eben, who also happened to be his biological mother, had died, and that she was illiterate.

21. Illiteracy *per se* does not disqualify a person from appointment as administrator. The disqualifying factors are set out in section 56 of the Law of Succession Act. They do not include illiteracy. Illiteracy may raise questions of competence and suitability, but it does not, by no means, disqualify a person from appointment. The said provision says:

> "56. No grant to certain persons
>
> (1) No grant of representation shall be made—
>
> (a) to any person who is a minor, or of unsound mind, or bankrupt; or
>
> (b) to more than four persons in respect of the same property.
>
> (2) No grant of letters of administration, with or without the will annexed, shall be made to a body corporate other than the Public Trustee or a trust corporation."

22. The death of a sole administrator or personal representative has profound consequences, for the estate would in such case be left without an administrator. Such a circumstance calls for revocation of the grant under section 76(e) of the Law of Succession Act. However, where the administrators or personal representatives are two or more, the death of one of them does not have a similar effect, and section 76(e) of the Act would not apply. Instead, what should happen, by virtue of section 81 of the Law of Succession Act, is that the surviving administrators or personal representatives continue in office, with the powers of the dead personal representatives being vested in them. Section 81 states as follows:

> "81. Powers and duties of personal representatives to vest in survivor on death of one of them
>
> Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:
>
> Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him."

23. Upon the death of the first administratrix all the powers and duties became vested in the surviving administratrix, Zaida Andaye Eben. The said death did not leave the estate without a personal representative. Perhaps to cement her position the surviving administratrix could have gone back to the Judge to be confirmed as the sole administratrix. It could be that the applicant is unhappy that the death of his mother has left the first house unrepresented in administration. If that is his case, then he ought to state it clearly.

24. He asserts that as the eldest son of the deceased he ought to be appointed administrator of the estate. I have scrupulously pored through the provisions of the Law of Succession Act, and I have not come across a provision that supports that proposition. Under the Law of Succession Act, being a first born child, leave alone being a first born son, of the deceased does not accord such a child any privileges over the rest of the children of the deceased. Under this law, which governs this process, all the children of the deceased are treated equally, regardless of gender or seniority in the order of birth. Either of them qualify for appointment as administrators. This argument about seniority in terms of birth is a carry-over from customary law, which has no place in the current scheme of things.

25. There is then the matter of John Benson Indimuli. Indeed, it would appear that these proceedings arise from the inclusion of this individual in the process of succession to the estate of the deceased. He was named in the Chief's letter as a person who had bought 'from the family' to assist it settle a loan outstanding with the Settlement Fund Trustees. He is equally listed in the petition as a creditor. Eventually, at confirmation he was factored in and allocated two acres, presumably what he had been alleged to have had bought from the family. It appears that transmission has now been done under section 62 of the Land Registration Act, No. 3 of 2012, and he is now said to be seeking vacant possession of what was given to him, by having the applicant move out. There is a suit at the Environment and Land Court in that respect. The pleadings in that cause have not been placed before me so I have no appreciation of the nature of the dispute that has been placed before the Environment and Land Court.

26. The inclusion of persons who claim to be claimants from or creditors of the estate is not a ground for revoking a grant. After all, creditors of an estate are entitled to have their debts settled. It is for this reason that debts and liabilities are given priority over distribution of the estate. Debts and liabilities ought to be settled first. Distribution is of the net estate, after the debts and liabilities have been met. The administrators have a duty to identify the creditors of the estate and to pay them off before proposing distribution, or to make provision for them at confirmation of grant.

27. A question often arises as who exactly is the creditor of the estate or what ought to be treated as a liability of the estate. The most obvious candidates are individuals or entities that transacted with the deceased during his lifetime. Debts that the deceased left unsettled are a burden that the administrators of his estate ought to take care of. Transactions that he left incomplete, such as for sale of land by him or to him, should be completed by the administrators. The administrators are able to do so through the powers conferred upon them by section 82 of the Law of Succession Act, being mindful of section 79, which vests the assets of the estate in the administrator. Section 83 imposes a duty on administrators to settle such debts before distributing the estate.

28. The matter of transactions entered into by the survivors of the deceased after his death, and which affect the assets of the estate, is a different story. In the first place, no survivor, whether as spouse or child of the deceased, has a right to transact over estate assets until representation has been granted to them. Under section 45 of the Law of Succession Act, it is an offence for such a person to handle estate property without first obtaining representation. As I have stated above, the fact of appointment as personal representative of the deceased vests the assets of the estate in the person so appointed, by virtue of section 79 of the Law of Succession Act. It is only then that the person so appointed, and upon whom the estate has vested under section 79, can exercise the powers that are set out in section 82 of the Law of Succession Act and incur the duties imposed by section 83 of the same Act.

29. What the above means is that any transaction that is entered into with regard to the assets before representation is obtained, be it selling or leasing or contracting in connection with the assets, would be unlawful, and the contracts entered into would be unenforceable for that reason. A grant-holder can bind the estate since the assets vest in them by virtue of section 79, and any contracts entered into with regard to estate assets would be enforceable. However, there is a restriction with respect to immovable assets. The proviso in section 82(b) (ii) of the Law of Succession Act is to the effect that immovable property is not to be sold before the grant has been confirmed. That would mean that where it becomes necessary to dispose of estate assets for whatever reason, the administrators have to have regard to that provision. It bars them from selling such property before confirmation. If the estate requires funds so urgently that it cannot wait for confirmation, then the prudent thing would be to move the court for leave to dispose of such property before confirmation for reasons that they should place before the court. Otherwise any contracts that they would get into contrary to that proviso would leave them with contracts that they cannot enforce on account of their unlawfulness.

30. In the instant case, the nature of the transaction involving John Benson Indimuli has not been made clear. No documents were availed at confirmation to demonstrate the nature of his claim. It is, therefore, not clear whether he had bought the two acres from the deceased during his lifetime, or whether the transaction was carried out after his death with some of his survivors. If the transaction was carried out after the death of the deceased, it should have been demonstrated whether or not it happened after representation had been obtained. If it happened after the representation had been obtained, it would be prudent to demonstrate whether or not the said John Benson Indimuli transacted with the administrators appointed by the court or not. If he did transact with the administrators, it would be of interest to court to know whether or not leave of court had been obtained to sanction the transaction, which was no doubt done before the grant was confirmed. The legality of the transaction would be dependent on those issues being brought out. The status of the said John Benson Indimuli as a lability or creditor can only be gauged from that background. From what I can see from the record not material has been placed on record for the court to assess whether or not he was a lability or he had transacted with the estate or where he was justified to be allocated assets from the estate.

31. Should the matter of the dealings between the estate and John Benson Indimuli be a matter that ought to tax the mind of the court? I believe so. One of the duties of administrators, set out in section 83(d) of the Law of Succession Act, is to ascertain and pay out of the estate all the debts of the deceased. Ascertainment of the debts of the estate is about identifying them, in terms of finding who the creditors were, how the debts were incurred, what documentation is available, before pay out can be done. If the debts arose during administration, and was necessitated by the exigencies of administration, such as where funds were needed to pay for the administration process, in terms moneys for court fees, advocates costs and attendant expenses, then section 83(c) of the Law of Succession Act would be relevant. That provision requires administrators to pay out of the estate all the expenses of obtaining the grant and all other reasonable expenses of the administration. Where estate assets have been dissipated to address the expenses envisaged in section 83(c) then it must be stated what these expenses were, how they arose and how they were settled. The same would apply where certain debts and liabilities of the estate needed to be settled and estate assets had to be sold to facilitate the settlement of such debt. Section 83(d) of the Law of Succession Act requires administrators to ascertain and pay, out of the estate, all the debts of the deceased. In addition, section 83, at paragraph (e), requires the administrators to render accounts of their administration within six months of their appointment.

32. Whether John Benson Indimuli was a legitimate claimant is something that should have been addressed at the confirmation hearing. It would have given opportunity to anyone who had misgivings about the legitimacy of the status of John Benson Indimuli as a creditor to raise them. Unfortunately, the record before me indicates that when the matter came up for confirmation on 24th September 2011, the only persons in attendance were the two administratrices, who were also the applicants in the confirmation application. It is not clear from the record whether the other survivors were aware of the confirmation proceedings. There is also no evidence they consented to the distribution proposed, as no document had been attached bearing the signatures of the survivors.

33. The confirmation application is by far the most critical stage of the succession cause. The cause is initiated for the purpose of having the estate of a dead person distributed. The confirmation hearing is about distribution, and it is the final step in the life of a succession cause. It must be handled with care. Where it is handled in a manner that does not give opportunity to all affected a chance to ventilate, it would not conclude the matter as envisaged, for surely the parties dissatisfied would still come back with an application of one kind or other. For the court to conclusively address all the issues, the confirmation application must be served on all affected, be they creditors or children or grandchildren or siblings of the deceased who might evince an interest in the estate. Where it is proposed to give property to persons who are outside of the immediate family circle, explanations must be given, supported by documentary evidence. If the deceased was alleged to have had sold property to some third party, it would not be enough to just say or to just list the name of that person as a beneficiary, the administrator should go further and attach documentary proof, for, under the Law of Contract Act, Cap 23, Laws of Kenya, a contract disposing of land must be evidenced by a memorandum in writing. Where the administrators sold property after the deceased died and upon their appointment, they must give details, and attach documents. After all, that is what is envisaged by section 83(e) of the Law of Succession Act.

34. The other thing is that the proviso to section 71(2) of the Law of Succession Act, envisages that the court, before it confirms the grant, must be satisfied as to the identity of all the persons beneficially entitled and of their shares in the estate. Where a deceased is said to have been a polygamist, it should raise suspicion where only sons are presented as the sole survivors. The court ought to enquire, in the spirit of getting satisfied as to whether the administrators had satisfied the proviso, whether the deceased had daughters. If there is a proposal to convey property to a non-survivor of the deceased, yet no explanations are offered as to why that should be so, and especially where no documents are attached, the court should also enquire. That is the spirit of the proviso, which says:

> “Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.”

35. The terms of the proviso are reproduced in Rule 40(4) of the Probate and Administration Rules that when the administrators apply for confirmation of their grants they must strive to satisfy the court as to whether they had properly ascertained all those persons beneficially entitled and identified the shares of the estate to be allocated to them. Rule 40(4) states:

> “Where the deceased has died wholly or partially intestate the applicant shall satisfy the court that the identification and shares of all person entitled to the estate have been ascertained and determined.”

36. Rule 42 of the Probate and Administration Rules revamps the proviso and Rule 40(4) by providing that the court may adjourn the matter for further evidence to be provided on the identity of the persons entitled or refer the matter to the administrators for further consideration. The said Rule states:

> “The court may either confirm the grant or refer it back for further consideration by the applicant or adjourn the hearing for further evidence to be adduced or make any other order necessary for satisfying itself as to the expediency of confirming the applicant as the holder of the grant or confirming the identities, shares and interests of the persons beneficially entitled and any other issue which has arisen including the interpretation of any will.”

37. From what I have seen so far I can safely conclude that the process of obtaining the grant herein was defective and attended by misrepresentation and concealment of matter from the court to the extent that the administratrices did not disclose to the court the existence of the three daughters of the deceased. That alone is sufficient ground for revoking the grant. However, the power in section 76 is discretionary. The court may or may not revoke the grant. In this case, I am persuaded that I ought not to revoke the grant. Instead I shall appoint the applicant an administrator to take the place of his late mother alongside the surviving administratrix.

36. The issues around distribution would call for setting aside of the confirmation orders, cancelation of the certificate of confirmation of grant and reversal of the process of transmission of the assets of estate to the persons listed in the certificate as beneficiaries.

39. I note that at the hearing of the revocation application only the administratrix was served, yet the orders sought would have profound effect on the interests of several individuals who were not served with the application and who did not have a say on the matter. I am talking of John Benson Indimuli and the other sons of the deceased, quite apart from John Ojomo Edward. The applicant has talked about the exclusion of the three daughters, yet the daughters did not file affidavits nor attend court at the hearing. Before the distribution that was ordered by the court on 24th September 2011 can be interfered with, it would be prudent to hear from the daughters.

40. In the end, the final orders that I shall make in this matter are as follows:

> **a. That I hereby appoint John Emonyi Edward Ateko as administrator of the estate of the deceased herein to act alongside the current administratrix, Zaida Andaye Eben;**
>
> **b. That the grant of letters of administration intestate shall be amended to remove the name of the dead administratrix, Veronica Khatali Eben, to be substituted with that John Emonyi Edward Ateko;**
>
> **c. That to facilitate the final disposal of the revocation application, I direct that the applicant shall serve the said application on the persons that I have mentioned in paragraph 39 of this judgement; and**
>
> **d. That all these individuals shall thereafter attend court on a date to be appointed at the delivery of the judgement to state their position on the setting aside of the orders on distribution of the estate and all the consequential orders.**

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF NOVEMBER, 2019

W. MUSYOKA

JUDGE