



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 130 OF 2008**

**IN THE MATTER OF THE ESTATE OF LATE IRAYA KABAIKO (DECEASED)**

**LUCY WANGUI KABAIKO.....1<sup>ST</sup> APPLICANT**

**ALICE WANGUI KABAIKO.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**JANE WANGARI KABAIKO.....1<sup>ST</sup> RESPONDENT**

**JOSEPH WAINAINA KABAIKO.....2<sup>ND</sup> RESPONDENT**

**GRACE WAMBUI KABAIKO.....3<sup>RD</sup> RESPONDENT**

**AND**

**HILLARY KIMUTAI KOSGEI.....INTERESTED PARTY**

**JUDGMENT**

1. The deceased, Iraya Kabaiko, died intestate on 3<sup>rd</sup> April 2008. He had been married to three wives. Grace Wambui Kabaiko, the third respondent initially petitioned for a grant of letters of administration intestate to the estate of the deceased. Joseph Wainaina Iraya and Jane Wangari Kabaiko, the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively, objected by way of a caveat. By a consent letter dated 9<sup>th</sup> January 2009 and filed in court on the same date, the three respondents agreed that the two caveators be enjoined as co-petitioners. A grant was issued by the Court to the three respondents and confirmed on 20<sup>th</sup> July 2009.
2. It is that grant that has triggered the three applications now before the Court. The first is a summons dated 2<sup>nd</sup> July 2012 for the revocation of the grant. It is presented by Lucy Wangari Kabaiko and Alice Wangui Kabaiko. They also seek to freeze the operation of two bank accounts in the names of the 1<sup>st</sup> respondent held at I & M Bank and Equity bank. Lastly, they pray all dealings over a property known as Eldoret Municipality Block 6/703 be prohibited.
3. The second application is a notice of motion. It is also dated 2<sup>nd</sup> July 2012 and brought by Jane Wangari Kabaiko. She craves orders to compel the respondents to render a just and true account of the estate; to restrain the respondents from disposing of the above property; and, to forbid the Registrar of Lands from transferring the property.
4. The third application is a summons dated 19<sup>th</sup> July 2012. It was taken out by Jane Wangari Kabaiko, the 1<sup>st</sup> respondent. She seeks to be enjoined in the summons dated 2<sup>nd</sup> July 2012 for

- revocation of the grant; that the grant be revoked; an order for an account; that the named respondents be declared trustees of the estate of the deceased; and, lastly, a declaration that all dealings or transfer of the above property to the interested party be declared null void.
5. The two applicants and three respondents are sons, daughters and one widow from the three houses of the deceased. On the other hand is the interested party, Hillary Kimutai Kosgei. He purchased the suit property from the respondents on the basis of the impugned grant. The interested party was enjoined into these proceedings under the summons dated 19<sup>th</sup> July 2010. As stated, the summons seeks to cancel the transfer of the property to the interested party. One ground urged is that the transfer flew in the face of a court order dated 3<sup>rd</sup> July 2012.
  6. I will now summarize the grounds and competing evidence between the disputants. The main application dated 2<sup>nd</sup> July 2012 for revocation of the grant is supported by an affidavit sworn on the same date by Lucy Wangui Kabaiko. In a nut shell, the two applicants aver that the grant was obtained fraudulently. They contend that the consent in support of the application for grant was irregular and obtained through false statements or concealment of facts. This is because the applicants never signed it; and no consent was obtained from the beneficiaries or filed in court prior to confirmation of the grant.
  7. On her part, Lucy Wangui Kabaiko deposed at paragraphs 6, 7 and 8 that she was neither notified of the succession cause nor approved the mode of distribution of the estate. She contends further that as a beneficiary of the estate, she was not provided for.
  8. In the summons dated 19<sup>th</sup> July 2012, the applicant Jane Wangari Kabaiko avers that she is a daughter of the deceased. She has sworn two depositions. The first is dated 17<sup>th</sup> July 2012 while the further affidavit is dated 27<sup>th</sup> July 2012. She alleges that the respondents have disposed of properties and continued to waste the estate in complete disregard of the interests of the beneficiaries. She contends that the property known as Eldoret Municipality Block 6/103 was excluded from the deceased's estate. It is her case that the respondents hold the property as trustees on behalf of the beneficiaries. She avers that the purported sale of the property to the interested party was illegal.
  9. The application is contested. In her replying affidavit dated 11<sup>th</sup> July 2012, the 1<sup>st</sup> respondent deposes that the applicants were aware of the proceedings and consented to the distribution of the estate. She avers that the suit property has been disposed of for the benefit of all the beneficiaries including the applicants. She states that the applicants have benefited from the earlier proceeds of the property to the tune of Kshs. 1,000,000 being school fees and other financial commitments. She contends that the revocation of grant would be unjust as it will affect the interests of the interested party who is a *bona fide* purchaser.
  10. The 2<sup>nd</sup> respondent has filed a replying affidavit dated 16<sup>th</sup> July 2011. He deposes that the applicants are merely making wild allegations without any tangible proof. He denies having received any proceeds from the said contested property. He contends that the applications are misconceived and an abuse of the court process.
  11. The interested party also opposes the summons. He has filed two replying affidavits. The first is dated 1<sup>st</sup> October 2012. Regarding the summons dated 2<sup>nd</sup> July 2012, he has deposed as follows: that the said application is incompetent under the Law of Succession Act; that it has been overtaken by events as he has already purchased the property from Jane Wangari Kabaiko and Joseph Wainaina Iraya who were the duly registered proprietors. In the second affidavit dated 28<sup>th</sup> April 2012, he contests the summons dated 19<sup>th</sup> July, 2012. He attacks the court's jurisdiction. He deposed further that he is a purchaser for value without notice and that he paid the full purchase price.
  12. From the record, it would appear that the 3<sup>rd</sup> respondent did not reply to the present applications.
  13. On 16<sup>th</sup> June 2014 all the parties agreed that the applications be determined by written submissions. The applicants' submissions are dated 26<sup>th</sup> June 2014; those of the 1<sup>st</sup> respondent are dated 28<sup>th</sup> July 2014; while those of the 2<sup>nd</sup> respondent are dated 14<sup>th</sup> July 2014. The interested party's submissions are also dated 14<sup>th</sup> July 2014. There had been earlier directions granted on 30<sup>th</sup> October 2013, that the summons for revocation of grant dated 2<sup>nd</sup> July 2012 and the summons dated 19<sup>th</sup> July 2012 be heard together. I have considered the pleadings, depositions

and rival submissions.

14. From the pleadings, evidence and submissions the following broad issues arise for determination:

- i. *Whether the Court has jurisdiction to enjoin the interested party;*
- ii. *Whether the grant herein should be revoked;*
- iii. *Whether the interested party has locus in this cause;*
- iv. *Whether the transfer of L .R. Eldoret/Municipality Block 6/103 to the interested party by the respondents should be nullified; and,*
- v. *Whether the respondents should hold the deceased's properties in trust for the estate.*

15. I will deal first with the question of jurisdiction to deal with the suit property. Learned counsel for the interested party submitted that this Court lacks jurisdiction to grant prayers sought by virtue of Rule 44(3) and 63 of the Probate and Administration Rules, Section 13 of the Environment and Land Court Act and Article 162(2)(b) of the Constitution. Article 162 (1) of the Constitution states as follows-

*“The superior courts are the Supreme Court, the Court of*

*Appeal, the High Court and the courts mentioned in clause (2).*

*(2) Parliament shall establish courts with the status of the High*

*Court to hear and determine disputes relating to—*

*(a) employment and labour relations; and*

*(b) the environment and the use and occupation of, and title*

*to, land.*

*(3) Parliament shall determine the jurisdiction and functions of*

*the courts contemplated in clause (2).....”*

16. Section 13 of the Environment and Land Court Act (No 19 of 2011) on the other hand provides as follows-

*“The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.*

*(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—*

*(a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;*

*(b) relating to compulsory acquisition of land;*

*(c) relating to land administration and management;*

*(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and*

*(e) any other dispute relating to environment and land. ”*

17. Those provisions must be understood within the context of section 47 of the Law of Succession Act which states as follows;

*“47. The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:*

*Provided that the High Court may for the purpose of this section be represented by resident magistrates appointed by the Chief Justice.”*

18. From a close reading of the Constitution and those statutory provisions, the submissions by learned counsel for the interested party are prosaic. In the present case, the respondents transferred L.R. Eldoret Municipality Block 6/103 to the interested party upon the confirmation of grant in this cause. That grant is sought to be overturned. It cannot be that merely because there was a transfer of land, the succession court is stripped of authority to inquire into the legality of the underlying grant. This court has express jurisdiction to deal with the matter at hand. I am fortified in that finding because on 3<sup>rd</sup> July 2013, an injunction was granted restraining the respondents from any dealings in the suit property. However, the extracted order refers to a different property described as *Eldoret Municipality Block 6/703*. That is one ground upon which the transfer is sought to be impeached. The fact that the transfer has been registered does not mean that the Court is powerless. On that score, I do not agree with the learned counsel that the prayers for injunction have been completely overtaken by events. I agree with Nyamweya J in *Henry Njung'e Kirika & Another v Kezia Njango Kirika (Being The Administrator Of The Estate Of Stephen Kirika Njunge (Deceased))* Nairobi High Court ELC 1073 of 2013 [2014] eKLR, where the learned judge held-

*“...if the Plaintiffs are aggrieved as a beneficiary of the Deceased's estate, and arising from the acts of the Defendant as an administrator of the estate, then the right forum to ventilate their grievances is in the succession cause in the High Court, and not in this court. This is for the reason that administration of estates of deceased persons are governed by the Law of Succession Act, which under section 47 gives the High Court jurisdiction to deal with any matter arising under the Act. The High Court in this regard has concurrent jurisdiction with this Court to hear and determine disputes of succession relating to land.*

*I also refer in this regard to the Practice Directions on Proceedings in the Environment and Land Courts, and on Proceedings Relating to the Environment and the Use and Occupation of, and Title to Land and Proceedings in Other Courts issued by the Chief Justice dated 25<sup>th</sup> July 2014 and published in Gazette Notice 5178 of 2014, which direct in Practice Direction No. 6 that all cases touching on inheritance, succession and distribution of land under the Law of Succession Act shall continue to be filed and heard by the High Court or the Magistrates Courts of competent jurisdiction.”*

19. The Applicants counsel has submitted that the interested party lacks standing in this cause for want of leave. That argument is on a legal quicksand for a number of reasons: first, it is the applicant Jane Wangari Kabaiko who sought to enjoin the interested party in this Cause vide her application dated 19<sup>th</sup> July 2012. Secondly, the interested party acquired the suit property from the deceased's estate. That property is the fulcrum of the dispute. It would be anathema to the Constitution to make any orders on that property without *hearing* the interested party. Furthermore, and notwithstanding the failure of leave, the interested party is a *necessary* party under Rule 60 of the Probate and Administration Rules which provides-

*“Every interested person (whether or not he has been served with notice thereof) who wishes to be heard upon or to oppose any application, and has not already*

*appeared in the proceedings, shall enter an appearance in Form 26 in the registry in which the application is made giving his address for service, and may file such affidavits as he considers proper, to each of which the applicant may with leave of the court file an affidavit in reply.”*

20. I will now turn to the issue of the validity of the grant. It seems clear to me that all the respondents consented to the mode of distribution. I say so in view of the consent marked *JWI 2* annexed to the summons for confirmation. In his supporting affidavit in support of the summons for confirmation, Joseph Wainaina Iraya deposed as follows;

*“4. That the identification of the shares of all persons beneficially entitled to the said estate have been established, ascertained and determined as shown by the annexed consent by all of them marked as JW1 2”*

21. The consent is not dated but was filed in Court on 30<sup>th</sup> April 2003. Upon the foundation of that consent, the impugned grant was issued and thereafter confirmed on 20<sup>th</sup> July 2009. A closer look at the consent reveals that it was signed by Grace Wambui Kabaiko, Joseph Wainaina Iraya, Jane Wangari Kabaiko, (ID No. 10032591), Stanley Ndegwa Kabaiko and Jane Wangari Kabaiko, (ID No. 2974337). There are two Jane Wangari's from two different houses of the deceased. It is clear that Jane Wangari Kabaiko, identity card number 2974337 consented and appended her signature to the consent. She has not denied the said signature neither has she alleged any forgery of her signature. It cannot then fall from her lips that she was unaware of these proceedings. In the absence of fraud, she is estopped from resiling from her earlier consent. See *Re Estate of Njoroge Kimani* Murang'a High Court Succession Cause No. 433 of 2013 [2014] eKLR. In the premises her prayer to be enjoined into the summons dated 2<sup>nd</sup> July 2012 for revocation of the grant is without foundation.

22. That said it is also clear that the two applicants in the application dated 2<sup>nd</sup> July 2012 seeking revocation of grant, Lucy Wangui Kabaiko and Alice Wangui Kabaiko, did not consent to the mode of distribution of the estate. Whereas they appear on the list of beneficiaries or survivors to the estate in form P&A 5, their names are not reflected on the consent. A grant once confirmed may be revoked either by the court *suo moto* or by an application made under section 76 of the Law of Succession Act. The section states as follows-

*“76. 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 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.”*

23. Section 51(2) of the Law of the Succession Act on the other hand provides as follows-

*“51(2) An application shall include information as to-*

*(a) the full names of the deceased;*

*(b) the date and place of his death;*

*(c) his last known place of residence;*

*(d) the relationship (if any) of the applicant to the deceased;*

*(e) whether or not the deceased left a valid will;*

*(f) the present addresses of any executors appointed by any such valid will;*

*(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) a full inventory of all the assets and liabilities of the deceased; and*

*(i) such other matters as may be prescribed.”*

24. Rule 26 of the Probate and Administration Rules is also relevant. It 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 equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require”*

25. In addition, Rule 40(8) of the Probate and Administration Rules states as follows;

*“40(8) Where no affidavit of protest has been filed the summons and affidavit shall without delay be placed by the registrar before the court by which the grant was issued which may,*

*on receipt of the consent in writing in Form 37 of all dependants or other persons who may be beneficially entitled, allow the application without the attendance of any person; but where an affidavit of protest has been filed or any of the persons beneficially entitled has not consented in writing the court shall order that the matter be set down as soon as may be for directions in chambers on notice in Form 74 to the applicant, the protester and to such other persons as the court thinks fit.”*

26. And finally, Rule 41(8) states as follows;

*“41(8) The approval of the accounts in court may be dispensed with if all persons beneficially entitled have signed as consenting to the accounts as produced.”*

27. It follows that under sections 51 and 76 of the Law of Succession Act as read with Rules 26, 40(8) and 41(8) of the Probate and Administration Rules, all beneficiaries must consent to the confirmation of grant and to the distribution of the estate. See *Re Estate of Evaristus Njagi Mugo* High Court, Embu, Succession Cause No. 324 of 2005 (2008) eKLR. The application for revocation filed by Lucy Wangui Kabaiko and Alice Wangui Kabaiko is not without merit. I have however noted that the 2<sup>nd</sup> applicant, Alice Wangui Kabaiko withdrew her claim vide a notice of withdrawal dated 29<sup>th</sup> August 2012. Accordingly I would allow the application by the 1<sup>st</sup> applicant.

28. I will now confront the elephant in the room. Having revoked the grant, should the sale and transfer of the suit property to the interested party be cancelled? The applicants' counsel submitted that the transfer offends sections 94 and 95 of the Law of Succession Act. It was also contended that it runs counter to the doctrine of *lis pendens*. It is not disputed that the transfer was made on 4<sup>th</sup> July 2012 upon the basis of the impugned grant. I have already found that the grant was irregular. It is not also contested that there were proceedings to revoke the grant. There were in particular two applications filed in court on 2<sup>nd</sup> July of 2012 seeking to revoke the grant or seeking preservatory orders. Quite clearly, the transfer was made two days of the filing of the summons. To that extent, the transfer occurred during the pendency of the suit. It is in the nature of a transaction that would have been caught up by section 52 of the Indian Transfer of Property Act (now repealed). See *Anne Njeri Mwangi v Co-Operative Bank Of Kenya* High Court, Nairobi, Commercial Case No. 507 of 2012 [2013] eKLR, *Mulla on the Transfer of Property Act 1882* ninth edition, Lexis Nexis, Butterworth at page 366 para 2.

29. The interested party's answer is that he was an innocent purchaser for value without notice. He seeks refuge in section 93 of the Law of Succession Act which provides as follows-

*“93. (1) A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.*

*(2) A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties and legacies of the deceased have not been discharged nor provided for.”*

30. There are a number of issues that arise. Section 93 does not clothe *all* such transactions with a veneer of legality. Certainly, the section would not condone an illegality, say where the purported holder of a grant had acquired it fraudulently or had no authority to transact. The law would not countenance intermeddling with the estate. In appropriate cases, a writ of tracing such property would be appropriate. Awaiting the final adjudication of a matter before the court is always in the general interest of public policy and fosters good and effective administration of justice. See generally *Consolidated Bank of Kenya vs. Usafi Services Limited* Court of Appeal, Nairobi, Civil Appeal No. 195/06 (unreported), *M'itwira Miraj (deceased)* Meru, High Court Succession Cause

- No. 167 of 1993 [2010]eKLR, Jane Gachoki Gathecha vs. Priscilla Nyawira Githingu and Another Court of Appeal, Civil Appeal No. 343 of 2002, Re Estate of Christopher Jude Adela (Deceased) High Court, Nairobi, Succession Cause No. 2853 of 2003 [2009] eKLR.
31. There is a further problem of the identity or description of the property in issue. The suit property's true identification is Eldoret Municipality Block 6/103. However the property was either disguised or erroneously described as *Eldoret Municipality Block 6/703* in the certificate of confirmation of grant. If it be an error, it was perfectly capable of rectification under the Act. Like I have stated, not all the survivors or identified beneficiaries executed the consent or agreed to the distribution of the estate.
  32. But I cannot say from the evidence that the grant in the hands of the respondents was tainted with fraud or illegality. Like I found at the beginning, the grant was irregular by omitting to include all the beneficiaries or obtaining their consent. The original P&A forms described the property as Eldoret Municipality Block 6/103. I have also looked at the green card annexed to the replying affidavit of the interested party. The property is no doubt Eldoret Municipality Block 6/103. The confusion is introduced by the certificate of confirmation of grant made on 20<sup>th</sup> July 2009 describing the property as *Eldoret Municipality Block 6/703*. That in essence removed the true property from the list of assets of the deceased. But I have no evidence that it was deliberate or at any rate fraudulent. The summons for confirmation of grant and the consent annexed marked *JW12* clearly described the property as Eldoret Municipality Block 6/103.
  33. That then points strongly to an error in the grant capable of rectification under section 74 of the Act. Lastly, I have also noted that the order of injunction against dealings in the property issued on 2<sup>nd</sup> July 2012 related to a property known as *Eldoret Municipality Block 6/703*. Granted those circumstances, I cannot then say that the transfer of the suit property on 4<sup>th</sup> July 2012 was in direct contravention of the order of court. Fundamentally, the interested party has deposed that he was unaware of such proceedings on the material date.
  34. I have not heard any serious allegation that the property was sold at an undervaluation. The real dispute seems to revolve around the distribution of the purchase price of Kshs. 55,000,000 or thereabouts paid by the interested party to the respondents. That is a matter that can be resolved by a full account and distribution of the sale proceeds without affecting the accrued rights of the interested party. Granted those circumstances, the sale and transfer of the suit property to the interested party is salvaged and validated by section 93 of the Act. Having reached that conclusion, the prayers to impeach the transfer of the suit property to the interested party are without merit and are hereby dismissed.
  35. I was implored to freeze the accounts of the respondents into which the proceeds of the sale were made. It was deposed that the sale proceeds from the property were deposited into the respondents' bank accounts at I & M Bank and Equity Bank. The 1<sup>st</sup> respondent has not seriously contested the fact. There were interim orders freezing those accounts. I have stated that it is in the interests of all beneficiaries that the respondents do render a true and just account. I am alive to the inherent power of the court under Rule 73 of the Probate and Administration Rules to ensure that the ends of justice are not defeated. I am thus prepared to grant an order to preserve the funds in those accounts until a full account is rendered to the estate. Accordingly I order that account number 01700634162 held by the 1<sup>st</sup> respondent at I&M Bank and account number 015019045659 held by the 1<sup>st</sup> respondent at Equity Bank be and are hereby frozen until the respondents render a true and just account to the estate.
  36. The respondents must be compelled to produce to Court the full inventory of the deceased's estate. By dint of section 83(h) of the Law of Succession Act, the respondents are enjoined to render a full and true account of all dealings during the period they have acted as personal representatives of the deceased's estate. They fell in the shoes of trustees as contemplated by section 84 of the Act on behalf of all the beneficiaries of the estate. Quite apart from the non-disclosures, it is not lost on me that deceased was survived by three houses. The respondents shall accordingly, at their own costs, present before the Deputy Registrar of the Court a full statement of the account of the estate prepared by a recognized Certified Public Accountant within the next 30 days of this decree.
  37. For all the foregoing reasons, and in the interests of justice, I finally order as follows-

- a. THAT the grant of letters of administration issued by the Court to the three respondents and confirmed on 20<sup>th</sup> July 2009 be and is hereby revoked. A fresh grant shall be applied for by *not more* than four beneficiaries comprising of some of the applicants and respondents and representing the three houses of the deceased.
- b. THAT the transfer of the property known as title number Eldoret Municipality Block 6/103 to the interested is upheld. Accordingly, the prayer for injunction to restrain dealings in the property or to forbid the Registrar of Lands at Eldoret from registering any further transfer is hereby dismissed.
- c. THAT the prayer by Jane Wangari Kabaiko in the summons dated 19<sup>th</sup> July 2012 to be enjoined into the summons dated 2<sup>nd</sup> July 2012 is hereby dismissed.
- d. THAT I order that account number 01700634162 held by the 1<sup>st</sup> respondent at I&M Bank and account number 015019045659 held by the 1<sup>st</sup> respondent at Equity Bank be and are hereby frozen until the respondents render a true and just account to the estate as particularized below or until further orders of the Court.
- e. THAT the respondents shall render a true and just account of the estate. They shall file, at their own cost, before the Deputy Registrar of the Court a full statement of the account of the estate prepared by a recognized Certified Public Accountant of Kenya within the next sixty days of this decree.
- f. THAT the respondents shall meet the costs of the interested party. However, as between the applicants and the respondents, and considering that this is a family dispute, there shall be no order on costs.

It is so ordered.

**DATED, SIGNED and DELIVERED at ELDORET this 28<sup>th</sup> day of October 2014.**

**GEORGE KANYI KIMONDO**

**JUDGE**

***Judgment read in open court in the presence of:-***

Mr..... for the applicants  
instructed by Munene & Associates Advocates.

Mr.....for the 1<sup>st</sup> respondent  
instructed by J. K. Bosek & Company Advocates.

Mr.....for the 2<sup>nd</sup> respondent  
instructed by Chepkwony & Company Advocates.

Mr.....for the 3<sup>rd</sup> respondent.

Mr.....for the interested party  
instructed by Wambua Kigamwa & Company Advocates.

Mr. J. Kemboi, Court clerk.