



**In re Estate of Ayabei Chemweno (Deceased) (Succession Cause
17 of 2020) [2025] KEHC 1698 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1698 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 17 OF 2020
JRA WANANDA, J
FEBRUARY 7, 2025**

IN THE MATTER OF THE ESTATE OF AYABEI CHEMWENO (DECEASED)

BETWEEN

**ELIUD CHERUIYOT CHEMWENO 1ST PETITIONER
SAMMY KIBET CHEMWENO 2ND PETITIONER
LILIAN CHEPCHUMBA CHEMWENO 3RD PETITIONER
ROSA KOECH 4TH PETITIONER**

AND

BILL KIPTOO CHEMWENO PROTESTOR

RULING

1. Before this Court for determination is a Summons for Confirmation of the Grant of Letters of Administration issued herein as well as a Protest filed in opposition thereto.
2. The deceased, Ayabei Chemweno, died intestate on 3/05/1993. On 26/02/2020, the 4 Petitioners, claiming as sons, a daughter and daughter-in-law of the deceased, through Messrs Kalya & Co. Advocates, jointly petitioned for Grant of Letters of Administration Intestate in respect to the estate. In the Petition, it was stated that the deceased had left behind 1 widow, various children and grandchildren. The deceased was also stated to have left behind the property known as L.R. No. 8647 measuring 1075 acres.
3. The Grant of Letters of Administration was then, on 11/05/2020, given to the Petitioners as joint Administrators. Pursuant thereto, the Petitioners, on 21/10/2021, filed Summons for Confirmation of the Grant. The Affidavit in support of the Summons for Confirmation of Grant was sworn by the 1st Petitioner-Administrator, Eliud Cheruiyot Chemweno.



4. However, before the above Summons could be heard, on 8/04/2022, the Objector, Bill Kiptoo Chemweno, through Messrs J.M. Kimani & Co. Advocates, filed Summons seeking Revocation of the Grant claiming that the same was obtained through misrepresentation and concealment of material facts. The ground he alleged was that the Petitioners failed to disclose to the Court that the Objector's father, one Robert Kimutai Chemweno, a son of the deceased herein, and who died on 4/07/2003, was not recognized as one of the beneficiaries of the estate.
5. In addition, the Objector, on 5/05/2022, also filed an Affidavit of Protest. In the Affidavit, he deponed that he is a beneficiary of the estate as he is a grandson of the deceased, being the son of the said Robert Kimutai Chemweno. He deponed further that he was born on 21/03/2001, and that his mother is one Jane Muthoni Maina who, to the best of his knowledge, was married to the said Robert Kimutai Chemweno. He also deponed that his said father died when he (Protester) was 2 years old and was buried on 12/07/2003, and that family of the deceased recognized the Protester and his mother both in media notices and in the funeral programme. He urged that in December 2014, together with his mother and other family members, he visited his grandmother and uncles to seek their blessings before he was initiated into adulthood and who gave such consent and blessings. He also deponed that in 2019, after he completed Secondary School education, his grandmother requested the Protester to go and stay with her which he did for a period of 2 years. He complained that it was deliberately not disclosed to the Court by the Petitioners that his father, Robert Kimutai Chemweno, was one of the beneficiaries to the estate. He thus prayed that the Petitioners be ordered to recognize him and provide him with his late father's share. He exhibited a copy of a Grant of Letters of Administration ad Litem which he obtained in respect to the estate of the late Robert Kimutai Chemweno, in Eldoret Chief Magistrate Court Succession Cause No. E092 of 2022. He also exhibited a letter from the Chief and also a letter from the Deputy County Commissioner indicating his paternity, and which he used in applying for the Grant.
6. I observe that on 29/03/2023 as the matter was pending determination, the parties filed a consent letter whereof it was agreed that a reasonable monthly rent for the Protester would be paid for a period of 6 months, and that the Protester would commence farming of 5 acres comprised in the parcel of land known as Irong/Kapkongga/17 for the year 2023. It was also agreed that the parties would continue with out of Court negotiations. The consent was duly adopted as an order of the Court. The record indicates that thereafter, the parties appeared in Court on several occasions for Mention to record a final consent but which never materialized, hence the setting down of the matter for determination by the Court. At some point, I even arrested the delivery of this Ruling when it was hinted that the parties were about to record a consent, which too, never saw light of day.
7. Further, on 11/07/2024, Mr. Kinyanjui Advocate, holding brief for Mr. Kimani, Counsel for the Protester, informed me that at this stage, they were only interested in prosecuting the Affidavit of Protest, and not the Summons for Revocation. My understanding therefore is that the Summons for Revocation remains in abeyance. It is for this reason that in my opening statement, I stated that what is before Court for determination is the Summons for Confirmation of the Grant of Letters of Administration as well as the Protest filed in opposition thereto.

Petitioners'-Administrators Response to the Affidavit of Protest

8. In response to the Affidavit of Protest, the 2nd Petitioner-Administrator, Sammy Kibet Chemweno, through Messrs Kalya & Co. Advocates, swore the Affidavit filed on 31/10/2023. He deponed that he is a son of the deceased and that he was in agreement with the Affidavit sworn by his brother, the 1st Petitioner, in support of the Summons for Confirmation of Grant. He deponed that the Protester has no locus standi herein thus the Protest is incompetent, that the Protester is not a beneficiary of



the estate herein, but of the estate of Robert Kimutai Chemweno, that Jane Muthoni Maina was never married to Robert Kimutai Chemweno, and that these facts are confirmed by the Chief's letter exhibited by the Protester.

9. He deponed further that the family of the deceased herein has never recognized the Protester's mother as a wife to Robert Kimutai Chemweno, that the Protester has not proved that he was a dependent of the deceased, that the proceedings herein were lawful and in compliance with the law, and that under Section 66 of the [Law of Succession Act](#), insofar as it relates to the issue of degree of consanguinity and affinity, the Protester is not qualified to be appointed as an Administrator herein. He deponed further that the mode of distribution proposed by the Petitioner is in accordance with the wishes of the deceased herein as communicated to the family by their uncle and as consented to by the beneficiaries, and that the Protester has not supplied any evidence of fraud. He then urged that their father passed on in 1993, 30 years ago and the matter should now be finalized.
10. There is also an Affidavit sworn by the widow of the deceased, Elizabeth Chemaiwa Chepngeno, also filed through Messrs Kalya & Co. Advocates, on the same 31/10/2023. She supported the contents of the above Affidavit of the 2nd Petitioner and deponed that the deceased had indicated to his brother how the estate should be distributed, and which wish was then followed in drafting the Summons for Confirmation of Grant. She, too, denied that the Protester is a beneficiary of the estate or that the said Jane Muthoni Maina was married to Robert Kimutai Chemweno, or that the family of the deceased had ever recognized the Protester's mother as such wife. She then repeated the contents of the above Affidavit.
11. The firm of Ochieng Opiyo & Co. Advocates is also on record in this matter as acting for the 1st Petitioner only. I have not however come across any Response to the Protest or Affidavit, filed through the said firm.

Hearing of the Protest

12. The Protest was canvassed by way of written Submissions. The Protester filed his Submissions on 33/22/2023, while the 1st Petitioner-Administrator filed on 11/01/2024, and the 2nd - 4th Petitioners-Administrators filed on 6/02/2024.

Protester's Submissions

13. Counsel for the Protester, in respect to the issue of inheritance by a grandchild, submitted that in determining the same, the Court has to establish who is a "dependent" within the meaning of Section 29(a) of the [Law of Succession Act](#). He submitted that there is no dispute that the Protester is a grandchild of the deceased and thus, pursuant thereto, he can inherit from his grandfather. He cited the case of *In the Matter of the estate of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR and also observed that the Protester had survived his father, the said Robert Kimutai Chemweno who died in 1993. He urged that it was a material non-disclosure on the part of the Petitioners to suppress the existence of the late Robert Kimutai Chemweno who had left behind the Protester yet they were aware of the Protester's existence as evidenced by the obituary and funeral program exhibited. He also cited the case of *In re estate of Njogu Mugo (Deceased)* [2019] eKLR.
14. In respect to locus, Counsel submitted that a deceased person can only be represented in a suit by a legal representative as defined in Section 2 of the [Civil Procedure Act](#), Section 3(1) of the [Law of Succession Act](#), and also Paragraph 14 of the 5th Schedule to the same Act. He submitted that armed with the Limited Grant, the Protester is clothed with the legal capacity to step in the shoes of his late father and claim his rightful share and thus he has the necessary locus standi. He cited the case of Gabriel



Simali & 7 Others v George Oduor Oloko [2020] eKLR and referred to the Limited Grant Ad Litem obtained by the Protester in Eldoret Chief Magistrate Court Succession Cause No. E092 of 2022. In respect to the reliefs available, he submitted that the Petitioners, in response to the Protest seem to have lost sight of the Protest and paid too much attention to the Protester's mother not being a wife to the Petitioner's father, that this argument is neither here nor there since the Protester was not grafted from a tree but like all men, he was born of a woman and his father is known and who had acknowledged him and was providing for him save for his untimely death when the Protester was just 2 years old. He cited the definition of a "child" set out at Section 3(2) of the *Law of Succession Act* and submitted that it is not in dispute that the Protester had been recognized not only by his late father but by the entire family of the deceased as evidenced by the obituary and the burial program, not to mention that he attended the burial as evidenced by the photographs attached.

15. He urged that even if the Protester was born out of wedlock, he is still entitled to his rightful share that could have gone to his father had he lived to see this day. He cited the case of Mombasa Court of Appeal Civil Appeal No. E043 of 2022 Fatuma Athman Abud Faraj v Rose Faith Mwawasi & 2 Others (unreported). Counsel also referred to the consent letter dated 29/03/2023 filed herein whereof the Protester was recognized and accommodated by provision of farming land and submitted that the same was an admission by the Petitioners of their recognition of the Protester and are therefore estopped from denying the Protester's status. He cited Section 120 of the *Evidence Act* on "estoppel", and also the case of Serah Njeri Mwobi v John Kimani Njoroge [2013] eKLR.
16. In the end, Counsel submitted that given the material non-disclosure and attempt by the Petitioners to deny the Protester his late father's share of inheritance, it is only fair that the Protester be appointed as one of the Administrators. I will however ignore this portion of the Submissions noting that there is no prayer before this Court seeking change of the Administrators, the Court having been informed by the Protester's Counsel, as aforesaid, that the Summons for Revocation of Grant was not being pursued at this stage. The same is not therefore a subject of this Ruling as an Objection, and in any event, even the Summons for Revocation it does not even contain any prayer for appointment of the Protester as an Administrator.

1st Petitioner's Submissions

17. Counsel for the 1st Petitioner began my making submissions on the issue of revocation of Grant under Section 76 of the *Law of Succession Act*. However, as I have already stated, the Summons of Revocation is not in issue in this Ruling.
18. In respect to the Protest, he submitted that there is no dispute that the said Robert Kimutai Chemweno was the son of the deceased and was thus entitled to a share in the estate of the deceased, his father, and that Robert Kimutai Chemweno died on 4/07/2023, 10 years after the deceased. He denied the Protester's claim that his mother, Jane Muthoni Maina, was married to Robert Kimutai Chemweno and contended that in any event, having a child does not confer on their relationship the badge of marriage and that absence of a marriage was also confirmed by the letter from the Deputy Commissioner Moiben sub-County. Counsel then introduced a matter not deponed in any of the Affidavits, namely, that Jane Muthoni Maina has since been married elsewhere thereby effectively removing her from the list of contenders for the estate herein. Being a new matter irregularly introduced for the first time at the Submissions stage, I will ignore this portion of the Submissions.
19. Counsel however conceded that there is no substantial dispute that the Protester was accepted by the family of the deceased as a son of Robert Kimutai Chemweno but contended that this fact alone does not entitle the Protester to automatically step into the shoes of Robert Kimutai Chemweno, and that the deceased herein having predeceased Robert Kimutai Chemweno, the Protester's inheritance,



if any, lay, not in the estate of the deceased, but in the estate of Robert Kimutai Chemweno. He cited Section 29(a) of the *Law of Succession Act*, and submitted that for the Protester to inherit directly from the estate of the deceased, he must demonstrate that was a “dependent” of the deceased before his death. He averred that the Protester was not such “dependent” as he was being raised and maintained by his mother throughout his life. He cited the decision in High Court at Kerugoya, Probate and Administration Succession Cause No. 4 of 2013; In the Matter of the estate of Esther Kabare (Deceased).

2nd – 4th Petitioners’ Submissions

20. Counsel for the 2nd – 4th Petitioner cited the case of In re estate of Julius Ndubi Javan (Deceased) [2018] eKLR on the principle that the primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries and that as of necessity, the estate property must be identified. She, too, contended that the Protester does not fall under Section 29(a) of the *Law of Succession Act* but rather, under Section 29(b) and that he therefore has a duty to demonstrate that he was maintained by the deceased immediately prior to his death, which he failed to do. He also cited the case of In Re Estate of Wahome Njoki Wakagoto (supra). In respect to the Protester’s mother, Counsel submitted that there is no proof of marriage between her and the said Robert Kimutai Chemweno, that even the Protester’s own documents (Newspaper death announcement notice, funeral programme and Chief’s letter) confirm that the Protester’s mother was not a wife to Robert Kimutai Chemweno, but only a friend. Counsel then strayed into the issue of revocation of the Grant but again, I reiterate, as aforesaid, that the Protester’s Counsel, at the time of taking directions, expressly informed the Court that the Summons for Revocation of Grant was not placed for determination in this Ruling

Determination

21. It is evident that the issue for determination herein is “whether the Protester should be recognized as a grandchild of the deceased and thus, his alleged father having died, whether the Protester should now be allowed to “step into the shoes” of his said alleged father, and thus share in the inheritance of the estate of the deceased as a beneficiary”.
22. On the issue of inheritance by grandchildren, my first port of call will be Section 41 of the *Law of Succession Act*, which provides as follows:
- “41. Property devolving upon child to be held in trust
- Where reference is made in this Act to the “net intestate estate”, or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.” (emphasis mine).
23. The question of whether grandchildren can inherit from their grandfather’s estate was addressed by the Court of Appeal in the case of Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others [2014] eKLR in which it was held as follows:

“Although Section 35 and 38 of the *Law of Succession Act* is silent on the fate of surviving grand children whose parents predeceased the deceased, the rate of substitution of a



grandchild for his/her parent in all cases of intestate known as the principle of representation is applicable. The Law is section 41. If a child of the intestate has pre-deceased, the intestate then that child's issue alive or in centre as mere on that date of the intestate's death will take in equal shares per stirpes contingent on attaining the age of majority. Per stirpes means that the issue of a deceased child of the intestate take between them the share their parents would have taken had the parent been alive at the intestate's death". (emphasis mine)

24. On the same question, Hon. W. Musyoka J, in the case of *Re Estate of Wahome Njoki Wakagoto* (2013) eKLR, also held as follows:

"Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents." (emphasis mine)

25. There is also the decision of Hon Justice A. Mrima J, in the case of *Cleopa Amutala Namayi vs. Judith Were Succession Cause 457 of 2005* [2015] eKLR in which he observed as follows:

"Be that as it may, under Part V of the Act grandchildren have no automatic right to inherit their grandparents (sic) who died intestate after 01/07/1981 when the Act came into operation. The argument behind this position is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents (sic) indirectly through their own parents, the children of their grandparents. The children to the grandparents inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren can inherit directly from their grandparents is when the grandchildren's own parents are dead. Those grandchildren can now step into the shoes of their parents and take directly the share that ought to have gone to the said parents. Needless to say, such grandchildren must hold appropriate representation on behalf of their parents." (emphasis mine)

26. Similarly, H.K. Chemitei J in the case of *In re Estate of Hellen Wangari Wathiai (Deceased)* [2021] eKLR, stated as follows:

"52. The evidence on record suggest that the Applicant herein brought these proceedings on behalf of his father; Abdi Ibrahim Hassan (deceased) who was the beneficiary to his father's estate. The Applicant's interest emanates from the fact that his father was a beneficiary to the suit property, thus the Applicant being dependent to his father Abdi Ibrahim Ibrahim's estate within the provisions of Section 29 of the *Law of succession Act*, he acquires an interest in his grandfather's estate; the suit property by virtue of his father's share. Therefore, in the court's view, the instant Application is properly before this court.

53. In my humble view, therefore, it is clear that the applicant had the locus standi and he was rightfully before the court to fight for the interests of the estate of his late father with regard to the deceased grandmother's estate. The fact that



he was a grandchild of the deceased taken care of by his deceased grandmother prior to her death and a dependant of his father's estate has not been disputed.

54. This therefore supports the fact that he and his sister acquired interest over the deceased's grandmother's estate and thus he had the necessary locus standi.”

27. There is also the case of *In re Estate of Imoli Luhitse Paul (Deceased)* [2021] eKLR, where Hon. W. Musyoka J, again, stated as follows:

“3. In the instant case, the applicant, in the summons for revocation of grant, is a child of a dead son of the deceased herein. The applicant is claiming directly by dint of *In re Estate of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR (Musyoka J) and *In re Estate of Florence Mukami Kinyua (Deceased)* [2018] eKLR (T. Matheka J), and does not require to take out letters of administration to intervene in the estate of her late grandfather, where her own parents are dead. Secondly, apart from case law, the provisions of the *Law of Succession Act* cover these situations. Section 39 of the *Law of Succession Act* makes grandchildren heirs in intestacy, where their own parents, who are biological children of the deceased, are dead. Section 41 of the *Law of Succession Act* is the provision that enables grandchildren to step into the shoes, of their own parents, and to step into those shoes they need not take out letters of administration.”

28. In short therefore, it is evident that Section 41 of the *Law of Succession Act* provides that where one of the children of the deceased is himself/herself deceased, and such deceased child is survived by a child or children of his/her own, then the share due to him/her ought to devolve upon his/her said child, and where they are more than one, the children would take equally.

29. Applying the above principles to this case, I note that in the instant case, there is no major dispute that the Protester is a grandchild of the deceased. This is because there is also no dispute that the deceased herein, Ayabei Chemweno, who died in 1993, was the father of the late Robert Kimutai Chemweno, who is said to have been the Protester's father, and who himself died subsequently in 2003 at the age of 29 years old. There is also no dispute that when Robert Kimutai Chemweno died, the family of the deceased acknowledged and recognized the Protester as his son as evidenced by the copies of the obituary and funeral program exhibited. The Protester also exhibited a copy of his Certificate of Birth which names the said Robert Kimutai Chemweno as being his father. The authenticity of this Certificate of Birth and its contents has also not been challenged. I therefore find that the Petitioners have not controverted the Protester's claim that Robert Kimutai Chemweno was his father.

30. In respect to locus, it is also not disputed that the Protester, claiming as a son, obtained a Limited Grant Ad Litem in respect to the estate of the said Robert Kimutai Chemweno in Eldoret Chief Magistrate Court Succession Cause No. E092 of 2022. Such Grant has also not been challenged. In view thereof, it cannot be disputed that, by virtue of holding the Grant, the Protester possesses the legal capacity, mandate and authority to “step in the shoes” of Robert Kimutai Chemweno, as his son, and claim the latter's rightful share in the estate.

31. In view of the above, the Protester may indeed, have a point in contending that it was a material non-disclosure on the part of the Petitioners to keep silent over the existence of the late Robert Kimutai Chemweno when they were aware that he had left behind the Protester as a son.



32. I also tend to agree with the Protester’s Counsel’s that that the Petitioners, in responding to the Protest, seem to have lost sight of the real matter in issue herein or misconstrued the nature of the Protester’s case, and thus ended up dwelling unnecessarily on the issue of the status of the Protester’s mother, namely whether she was a “wife” to their brother, Robert Kimutai Chemweno, or not. The Petitioners went into great lengths to try and demonstrate that the Protester’s mother was simply a girlfriend to their brother, Robert Kimutai Chemweno and, that although she bore the Protester with Robert Kimutai Chemweno, the Protester’s mother was never married to Robert Kimutai Chemweno. Counsel for the Protester is right that this argument is of no relevance to the question for determination herein since the Protester’s claim is not in any way anchored on her mother’s marital status with Robert Kimutai Chemweno, rather, the question is whether the Protester was recognized as a son of the said Robert Kimutai Chemweno. Regardless of whether or not her mother was married to Robert Kimutai Chemweno, or whether he sired the Protester out of wedlock, it is clear that the Protester was acknowledged and recognized, not only by the said Robert Kimutai Chemweno as his son, but also by the rest of the family of the deceased.
33. The Petitioners’ arguments that the Protester ought to demonstrate that he was a “dependent” or was maintained by the deceased prior to the latter’s death is also wholly misplaced since the Protester’s claim herein has not been founded on the ground of “dependency” under Section 26 - 29 of the [Law of Succession Act](#).
34. As correctly submitted by Counsel for the Protester, the above debate was laid to rest by the Court of Appeal in the case of *FAAF v RFM & 2 others* (Civil Appeal E043 of 2022) [2023] KECA 1322 (KLR) (10 November 2023) (Judgment), in which the Court pronounced itself in the following terms:

“ 61. In this case we have been urged by the appellant to uphold an Islamic Law that provides that children born out of wedlock are not entitled to benefit from the estate of their deceased's father. No rational justification has been placed before us and we are unable to find any to warrant creating a distinction between such children when it comes to their entitlement to the estate of their father. To deny children born out of wedlock the benefit which accrues to other children born in wedlock on the basis of the alleged 'sins' committed by their parents, in our view cannot be justified since it would mean that this Court would be adopting 'hurtful discrimination and stereotypical response' to a clear case of discrimination. It is our view that the rights of the children must be distinguished from marital issues. Whereas a man and a woman who enter into a relationship that is not legally recognised as husband and wife, such as where there already exist a monogamous marriage by one of them, may not lay claims as regards the estate of the other upon death, the issues of such relationships ought to be treated differently from their parents. This, in our view, comes out from a reading of Article 53(1)(d) and e which provides that:

53.

1. Every child has the right-
 - d. to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;



- e. to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and

62. It is our view that culture that is harmful to a child in the sense that it denies such a child his or her otherwise right to parental care and protection on the ground of marital status of the father and the mother cannot be countenanced. We are persuaded by the decision of this Court in *CKC & another (Suing through their mother and next friend JWN) v ANC* [2019] eKLR”

35. I also accept the submission by Counsel for the Protester that the Petitioners’ act of agreeing to the consent filed herein on 29/03/2023 whereof provision was made to the Protester from the estate, in terms that his rent was to be paid out of the proceeds of the estate for a period of 6 months and also, he was allowed to cultivate 5 acres of a parcel of family land, strongly points to recognition and acknowledgment of the Protester as a member of the family.
36. I note that in advancing a contrary view regarding the a grandchild’s claim to inheritance, Counsel for the 1st Petitioner cited the decision of Hon. Lady Justice L. Gitari J rendered in the case of *In re estate of Esther Kabare (Deceased)* [2020] eKLR. It is however evident that either Counsel did not carefully read that decision, and if he did, then he has deliberately misrepresented the facts, or has knowingly read it selectively, or in the alternative, he just did not understand the decision, and thus completely misconstrued it. I say so because in the said decision, the only reason upon which the grandchild’s claim therein was correctly dismissed was simply because the grandchild’s own mother (a daughter of the deceased) was still alive at the time that the Protester purported to seek to inherit directly from his grandmother’s estate. In this case, the position is totally different as the Protester’s father is deceased and the Protester even holds Letters of Administration, though limited, in respect to the estate. All that the Protester is asking herein is “to step into the shoes” of his deceased father.

Final Orders

37. In light of the foregoing, I make the following orders:
- i. The Petitioners having failed to controvert the Protester’s claim that he is a son of the late Robert Kimutai Chemweno, and thus a grandchild of the deceased herein, Ayabei Chemweno, it is hereby declared that the Protester is entitled to inherit from the estate of the said Ayabei Chemweno, by claiming the share that is/was due to the said Robert Kimutai Chemweno.
 - ii. The Protester is therefore hereby recognized as a beneficiary of the estate of the deceased herein, Ayabei Chemweno.
 - iii. With the issue of the Protester’s right to inheritance now determined, to give the parties the opportunity to discuss the share of the estate that the Protester should receive during distribution of the estate in accordance with the above finding and/or declaration, I now remit this matter to the Court Annexed Mediation forum to enable the parties explore an amicable settlement.
 - iv. This matter shall then be mentioned before this Court upon lapse of sixty (60) days from the date hereof, for the purposes of reviewing the progress of the Mediation.



- v. In light of the above orders, the Protester shall now also address the Court in respect to the fate of the Summons for Revocation and/or Annulment of Grant, dated 5/04/2022.
- vi. Being a family matter, each party shall bear his/her own costs of the Protest.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 7TH DAY OF FEBRUARY 2025

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WANANDA J.R. ANURO

JUDGE

Delivered in the presence of:

Mr. Kinyanjui for the Protester

Chasia for Ochieng Opiyo for a Petitioner

Ms. Kesei for other Petitioners

Court Assistant: Brian Kimathi

