



REPUBLIC OF KENYA



KENYA LAW
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**In re of Estate Monica Nduku Muia (Deceased) (Succession Cause
312 of 2014) [2025] KEHC 2961 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2961 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 312 OF 2014**

FR OLEL, J

MARCH 13, 2025

IN THE MATTER OF THE ESTATE OF MONICA NDUKU MUIA (DECEASED)

BETWEEN

ANNAH NDUNGE NZIOKI APPLICANT

AND

KIMOLO RESPONDENT

RULING

A. Introduction

1. Before this court is the Chamber application dated 13th July 2022, filed by the Objector/applicant herein under Provisions section 47 and 76 of the *Law of Succession Act* Cap 160 Laws of Kenya, and Rule 73 of the Probate and Administration Rules and seeks for the following orders: -
 1. Spent.
 2. Spent.
 3. Spent.
 4. That the grant of letters of administration and certificate of grant issued by this Honorable Court be revoked and /or annulled together with any act consequent and or pursuant to the grant and certificate of confirmation of grant herein.
 5. That the cost of this application be provided for.
2. The application is premised on the grounds stated on the face of the said Application and the supporting affidavit of the Obector/Applicant sworn on the even date and is opposed by the respondent through her replying affidavit dated 29th September 2022.



3. It was the Applicant's contention that the certificate of confirmation dated 26th March 2015, was obtained by the respondent through material non-disclosure principally by failing to disclose that the Applicant was a lawful wife (Iweto) of the deceased, having been married to the deceased since 1980.
4. The applicant further deposed that the respondent presented to this honorable court a letter from the Area chief that did not recognize her and her children as being the rightful beneficiaries/heirs to the estate and subsequently proceeded to apply for the confirmation of grant without full disclosure, thereby denying her family their rightful share of inheritance from the estate of the deceased.
5. The respondent, who is a sister to the deceased in response deposed that the applicant had moved court too late in the day approximately six years after the grant had been confirmed and had never resided on any of the estate property. Further the deceased had sold off her property to various third parties, who were entitled to get their share. She therefore urged this court to find that the Applicant's objection was not merited and be pleased to dismiss the same.
6. The parties' counsels appeared before the court for directions on 27th June 2023 and consented that this Application be canvassed through viva voce evidence.

B. Evidence at Trial

Objector's case

7. OW1 Ann Ndungu Nzioki, adopted her witness statement, where she reiterated that she got married to the deceased herein under Kamba woman-to-woman customary law (Iweto) in 1980 and the deceased paid dowry of 12 goats, sugar cane, bananas, sugar, two blankets, two sheets and cash of Kshs 20,000/= as per Kamba customary marriage.
8. When she got married, she already had been blessed with 4 children namely; Patrick Kyalo, Pauline Mwaniki, Esther Ndungwa and Eunice Mbithe and while residing with the deceased she was further blessed with three more children named after the deceased husband Mr Muia Ngandi. The three children were known as Samuel Kimolo Muia, Teresia Kioko Muia and Elizabeth Ngusye Muia.
9. The deceased died on 10th September 2007 and after her burial, they continued to reside within the suit parcels of land. The petitioner was the deceased sister but was not a dependent. She also faulted the petitioner for fraudulently filing this succession cause while concealing material facts and upon having the grant confirmed, she began to sell off portions of the suit property to third parties. She thus urged the court to revoke the said grant.
10. Under cross-examination OW1 affirmed that she got formally married to the deceased in 1980 under "Iweto" arrangement and the same was formalized under Kamba customary law in 1984 in the presence of the deceased, her family members, and neighbours. The deceased was a businesswoman in Kithimani and would visit her home in Ndalani where she resided, while their husband, who was also a businessman resided at Mbooni and Nairobi and would occasionally visit them.
11. When the deceased got unwell, she took care of her and when she passed on was buried at her Ndalani home. She was not sure whether she resided on plot 400 or 401 but believed she resided in the middle of both parcels of land. She also confirmed that the deceased was buried next to her house.
12. Under re-examination, she confirmed that the deceased conducted her business and resided at Kithmani market. Initially, when she was married into the home, she found that the deceased had built a one-room hut within her home at Ndalani, where they resided together. Later she constructed a two-



- roomed house next to the deceased house. She also reaffirmed that dowry had been paid and that their union was valid.
13. OW2 Rhoda Wavinya Muteti testified that the objector was her neighbour and she was the one who introduced her to the deceased. She further relied on her witness statement dated 15.08.2022, where she stated that the objector was married to the deceased under Kamba woman-to-woman marriage, and they had the pleasure of attending and participating in her betrothal ceremony which occurred in Kangundo around the year 1980. The other persons present included Mr Muia Ngandi, Mr. Bonface Kioko (the deceased brother), and family members of both families.
 14. Later in 1984, the deceased paid dowry to the objector's parents which included 12 goats, sugar cane, bananas, sugar, two blankets, two bedsheets, and cash of Kshs 20,000/=. She further affirmed that by the time the objector was being married, she was already blessed with four children and subsequently bore three more children while residing with the deceased on the suit properties. It was her evidence that the petitioner resided with her parents at a place known as Kwa Makaa and not on the suit property as she alleged.
 15. Under cross examination she reaffirmed that she was present during the dowry ceremony, which was also attended by the deceased, her husband and other relatives from both families. Later, the objector's family also visited the deceased home, in recognition of this marriage.
 16. OW3 MARITA WAYUA MUTU, testified that she was a village elder and knew the objector to be the deceased wife, though she did not participate in the dowry ceremony. In 2008, the petitioner had attempted to interfere with the objector's possession of the estate property, which issue was reported to her before she escalated it to the area Assistant chief. After deliberations at the chief's office, the petitioner was asked to leave the estate property under the care of the objector and later was charged in court with the offence of forgery.
 17. Under cross-examination, OW3 reaffirmed that she was not present during the dowry ceremony and only learnt about it later in the cause of her work as the village elder. During the land dispute, they had visited the estate in the presence of the assistant chief, Kioko, who was the petitioner's brother, and after deliberations had stopped the petitioner's unlawful interference. OW3 further confirmed that the deceased was buried where OW1 resides.
 18. OW4 SAMUEL KIMOLO MUIA, stated that he was OW1's son and was born in 1994. He adopted his witness statement dated 13.08.2022, where he affirmed that he grew up at Kithimani, while residing with OW1 and the deceased who he regarded as his grandmother. After she died in 2007, the petitioner came and started to interfere with them. She took the deceased goats and cattle and they also later realized that the title deeds to the estate property were missing.
 19. Later third parties started to claim portions of the estate on the basis that, they had bought land from the petitioner. They also later learnt that the petitioner had filed this cause without involving them to their detriment. OW4 insisted that his mother was lawfully married to the deceased and they were the rightful heir of this estate.
 20. Under cross examination, OW4 stated that the deceased ordinarily resided at Kithmani town, but would come home at Ndalani, where they resided and had built their two bedroomed house. When the deceased fell ill, they all jointly took care of her and also eventually attended her burial. Under re-examination, OW4 confirmed that they grew up in the deceased home, which was owned by their father, one Mr Muia.
 21. OW5 PAULINE MWIKALI, also adopted her witness statement dated 15.08. 2022 as her evidence in chief. She stated that OW1 was her mother, who in 1980 was married by the deceased under Kamba



- traditional woman-to-woman marriage, after which they moved out of their grandfather's home in Kangundo and went to reside with the deceased in Kithmani. She also continued with her schooling in her new environment.
22. They had moved to Kithmani while she was in class three and lived peacefully within the deceased home, until after her death, when the petitioner started to sell off the deceased estate without their knowledge and/or involvement. They conducted a land search and discovered that the petitioner had already unlawfully transferred the deceased estate to her name, hence this objection was filed.
 23. OW5, reiterated that at no point during her lifetime did the petitioner reside with the deceased and she was therefore not a dependent of the Estate. They had reported the petitioner's fraudulent activities to the police and after investigations had been complete, the petitioner was charged with the offence of fraud before Kithimani court. she thus prayed that the objection filed be allowed.
 24. Under cross examination, OW5 confirmed that she did not attend her mother's dowry function as she was young by then. Further she also confirmed that initially they resided on the suit parcel of land alone, but after the deceased passed on, other people trespassed thereon, having bought their portion from the petitioner herein.
 25. It was her further evidence that when her mother had got married to the deceased herein, she was in class three, and her grandmother took over the responsibility of taking care of them. She thus brought them to reside at Kithmani and took up the responsibility of schooling them.
 26. Further, at Ndalana, their home was built within the deceased home and her mother and Mr. Muia resided together therein. She reiterated that the various purchasers came into the picture about eight years ago, after her grandmother's death.

Petitioner case

27. PW1, Pauline Katumbi Kimolo adopted her witness statement as her evidence in chief, wherein she stated that the deceased was her sister and was the registered proprietor of properties known as Ndalani/Ndalani/block 1/400 & 401. Before she passed on, she had sold part of the suit property as follows;
 - i. One acre of Ndalani/Ndalani/block 1/400 and one acre Of Ndalani/Ndalani/block 1/401 to Florence Ndikina.
 - ii. Two acres of Ndalani/Ndalani/block 1/401 to Daniel Thairu Maina.
 - iii. Two acres of Ndalani.Ndalani/block 1/400 to Beth Mutinda
28. Further the deceased had entrusted her with her title deeds and requested her to transfer the title properties to the three purchasers upon her demise. PW1 further emphasized that the objector herein never resided on the suit properties and at the time of her death, she was her sister's caregiver.
29. After confirmation of Grant, she had the estate properties transmitted to herself and proceeded to subdivide the same. Thereafter, she transferred the sub-divided titles directly to Abraham Kilonzo, who had purchased the two acres from Florence Ndikina, and to a new buyer who had purchased two acres from Daniel Thairu. From the sub-divided stated property, she was only left with one title under her name, Ndalani/Ndalani/Block 1/2050.
30. PW1 further confirmed that she had been unable to transfer Ndalani/Ndalani/Block 1/400 to Florence Ndakina and Beth Mutinda as the objector and her son had invaded the said property and



used physical violence on them, whenever they attempted to enter the said property. The objector had also illegally cultivated and erected structures on the said parcel of land

31. PW1 reiterated that the objector was not married to the deceased but was just an employee of her daughter from 1985 to 1988 after which she left employment. She was therefore not entitled to any share of her estate.
32. Under cross-examination PW1 stated that the objector was her sister's employee/ housemaid and was never her wife under Kamba customary woman-to-woman marriage. She also confirmed that in relation to the deceased parcels of land, she had been charged before Kithimani court with "forgery", was convicted, and placed on probation.
33. PW2 Elijah Katolo Kioko stated that he was the retired assistant chief of Kithmani sub-location, and had worked for 20 years before retiring in 2019. He confirmed that he was the author of the letter dated 26.11.2013 introducing the petitioner to court and had relied on information given to him by the said petitioner. He produced the said letter as Exhibit P1.
34. Under cross-examination, PW2 confirmed that he did not know the objector, but had known the petitioner from 1983 when he bought land and settled at Yatta. He also confirmed that under Kamba tradition "Iweto" marriage was allowed and further that the petitioner had been charged with the offence of "forgery" and convicted before Kithimani court.
35. PW3 Florence Ndikini Mwanza, testified that she was a businesswoman based at Yatta and adopted her witness statement as her evidence. The deceased was her immediate neighbor, had not been blessed with any children, and during her lifetime was consistently assisted by the petitioner and her children (the petitioner's children).
36. At one point in 1999, the deceased had challenges and opted to sell a portion of her land to raise funds. After negotiation, they agreed that, she would purchase two acres of land at a purchase price of Kshs 90,000/= and reduced the said agreement into writing. she produced the said agreement dated 14.11.1999 as Exhibit P2.
37. After the first transaction, the deceased again offered to sell to her more land and they again entered into a new agreement dated 05.09.2002, where she bought a further two acres and produced the second agreement as Exhibit P3. After acquiring the four (4) acres of land she took possession of the same and proceeded to settle her mother and sister on Plot 400, and later sold the other two acres of Plot 401, to enable her to educate her children through school.
38. PW3 further testified that as a neighbour of the deceased, she never saw the objector take care of the deceased when she was ailing nor did she attend her funeral. To her knowledge, the deceased had a male worker and the objector was not part of the deceased family.
39. Under cross-examination she confirmed that she got to know the deceased in 1985 when she went to stay at Kithimani but had never met the deceased husband nor was aware if the deceased was married to the objector under Kamba woman-to-woman marriage. She further reiterated that she never saw the objector take care of the deceased during her illness nor was she present during her final rites.
40. After the burial, the objector's son had reported her to the local administration (D.O), claiming the entire parcel of land, which was about 16 acres but after hearing both parties, his claim was dismissed, and she was rightly found to own 4 acres thereof. PW3 further confirmed that she did not have the title deeds to the portion of land bought and also did not know about the petitioner land fraud case.
41. PW4 Daniel Thairu Maina testified that he was a businessman residing at Kithimani Market and had known the deceased from 1996 or thereabouts when he gave her space within his stall to sell beans and



maize sourced from Thika. To his knowledge, the deceased was not married and later offered to sell to him a portion of land on Plot 1/401. After negotiations, he bought two acres thereof at a consideration of Kshs 70,000/= . The deceased also had her own home within this parcel of land and had a male friend known as Richard from Kangundo, but they were not married.

42. PW4 further stated that he did not know the objector as she never resided with the deceased. Unfortunately, the deceased died before effecting transfer of title to him, but the petitioner undertook the said process and transferred his portion of land to him, which he eventually sold to a third party. Under cross-examination, he confirmed that he did not know if the petitioner herein was charged with forgery, and affirmed that the people he sold land to, had built their homes and resided thereon.
43. PW5 Beth Mutinda, adopted her witness statement and confirmed that the petitioner was the deceased younger sister and they lived together at Ndalani. The petitioner was her friend and on different occasions, she would help her cultivate her shamba using her cows. Eventually in 1994 or thereabouts the deceased sold her two acres of land on plot 400, where she had built her home and settled her family.
44. It was her further evidence that the objector herein never stayed with the deceased, whose primary caregiver before her death was the petitioner. Under cross-examination, PW5 confirmed that she had built her home within plot 400, and was the deceased immediate opposite neighbour. The deceased resided with her sister, the petitioner herein, and she also knew the objector who at one point was an employee of the petitioner.
45. She also knew the objector's son as he had made a complaint at the DO's office, claiming that the deceased and the objector had an "Iweto marriage arrangement" and after deliberation, the DO had decreed that they be given the title deed of the disputed parcel of land. Under re-examination, PW5 reiterated that she never saw the objector reside with the deceased under "Iweto arrangement".

C. Analysis & Determination

46. I have considered all the pleadings filed, the oral evidence adduced by both parties and their witnesses and also both sets of submissions filed. The issues which arise for determination are as follows: -
 - a. Whether the Objector was the deceased wife 'Iweto' under Kamba customary law and if so is entitled to benefit from her estate.
 - b. Whether the grant should be annulled and/or revoked on the basis that the objector and her children did not participate in Petitioning for letters of administration and the subsequent confirmation of the grant.
 - c. Who should bear the costs of the suit?

Whether the Objector was the deceased wife 'Iweto' under Kamba customary law.

47. Section 3(2) of the Judicature Act, permits the court to Apply African customary law where applicable and provides as follows: -

“The High Court, the Court of Appeal and all Subordinate Courts shall be guided by African Customary Law in Civil Cases in which one or more of the parties is subject to it or affected by it, so far as it is applicable and is not repugnant to justice and morality or inconsistent with any written law and shall decide all such cases according to substantial justice without undue regard to technicalities or procedure and without undue delay.”



48. The main protagonists herein were from the Kamba tribe and Kamba customary law would therefore apply unless inconsistent with [the constitution](#) or is found to be repugnant.
49. An Iweto marriage under Kamba customary law is described in Restatement of African Law Volume 1: The Law of Marriage and Divorce (1968) by Eugene Cotran at page 26 as follows:
- ‘WOMAN-TO-WOMAN MARRIAGE. Where a husband dies leaving a childless widow who is past child-bearing, the widow may marry a wife (iwetu) by giving ngaswya to her family in the usual way. The widow then selects a man (mutuanya) from her late husband’s relatives to have sexual intercourse with her wife and any children resulting from such cohabitation are regarded as the children of the widow and her deceased husband. This form of marriage can also take place during the lifetime of a husband where the wife is barren or has not produced male children.
50. Therefore, under Kamba customary law, woman-to-woman (Iweto) marriage was encouraged to ensure the continuity of a household and would happen in three instances:
- a. . If the couple is barren
- Adoption in the olden days was not common and in such a situation the woman would find an unmarried woman with kids and marry her.
- The kids would carry the husband's name live in the same compound as one family.
- (b). A married woman without a son
- In the African culture, a man without a son was considered same as barren and in the Kamba community, a woman who hadn’t bore a son had to find ways to appease his husband by finding a son that will carry his name.
- The woman would either find a young woman with a son or sons carry the family’s name.
- (c) The marriage was popular amongst wealthy families whereby the couples were more worried about who will inherit their wealth.
- If the husband was fertile and willing, he would also sleep with the ‘Iweto’ to sire kids.
51. OW1 confirmed that she was married to the deceased under Kamba traditional marriage woman to woman marriage and the same was consummated when the deceased paid dowry to her parents in 1984 in the presence of relatives from both sides. Also present in the deceased delegation was her husband Mr Muia Ngandi and she subsequently moved from her parent’s home at Kangundo and went to reside with the deceased at her Ndalani home.
52. When she arrived at Ndalani, she resided with the deceased in a one-roomed mud house and later built her house within the same “boma”. She was also blessed and bore three more children with Mr Muia Ngandi namely; Samuel Kimolo Muia, Teresia Kiloko Muia and Elizabeth Ngusye Muia. OW1 also urged the court to note that the deceased was buried next to her home.
53. OW2 confirmed participating in the “ Iweto betrothal ceremony” and also confirmed that she was the one who introduced the objector to the deceased. After the traditional marriage ceremony, the objector’s family also visited the deceased home at Ndalani and that has been the objector’s home ever since. OW3 the village elder also in her evidence confirmed that the two resided together under the “Iweto arrangement” and finally the objector's children OW4 and OW5 reinforced this fact.



54. The petitioner and her witness on the other hand referred to the objector as a stranger to the deceased estate. PW1 in particular referred to the objector as her daughter's former employee having worked for her daughter from 1985 to 1988. PW2, PW3, and PW4 stated that they did not know the objector, while PW5 stated in cross-examination that, "I never saw Ann Ndunge but was told at one point Ann was an employee of Monica". She further emphasized in re-examination, that the objector was not residing with the deceased under "Iweto customary marriage arrangement".
55. The Question that arises is whether based on the evidence adduced the objector has on a balance of probability proved that she was married to the deceased under "Kamba woman to woman marriage. (Iweto marriage).
56. The Question as to what amounts to proof on a balance of probabilities was discussed by Kimaru J in William Kabogo Gitau Vs George Thuo & 2 others (2010) 1 klr 526 stated that;
- "In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. in percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposite party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegation that he made has occurred.
57. I also refer to Palace Investments Ltd Vs Geoffrey Kariuki Mwnedwa & Another (2015) Eklr , Where the judges of Appeal referred to "Denning J in Miller Vs Minister of Pensions (1947) 2 ALL ER 372 discussing the burden of proof had this to say;
- "That degree is well settled, it must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say; we think it is more probable than not; the burden is discharged, but if the probability are equal it is not. This burden on a balance of preponderance of probabilities means a win, however narrow. A draw is not enough. So in any case in which a tribunal cannot decide one way or the other which evidence to accept, where the parties.....are equally (un)convincing, the party bearing the burden of proof will loose because the requisite standard will not have been obtained."
58. It is confirmed that the deceased was not blessed with children and according to OW1, she was married to one Mr Muia Ngandi. After the Iweto arrangement, she was blessed with three children who use the same surname. The deceased was known as Monica Nduku Muia, which in all likelihood means she was married to the same person OW1 was referring to. PW3 also confirmed under cross-examination that, "I did not meet her husband, I was told that she was married to one Mr Muia, but I never met him".
59. The area chief vide his letter dated 06.07.2022 (Objector's Exhibit 1) confirmed that the objector was a resident of his location. The deceased was married to one Mr Muia Ngandi and left the objector's family as their beneficiaries to her estate.
60. Secondly, based on observation, I do find the evidence of the objector and her witness to be very compelling. In particular, OW1, OW2 and OW3 were elderly women and stuck me as compelling and sincere witnesses. OW2 and OW3 had no stake in the estate and confirmed that OW1 and her children resided with the deceased under the "Iweto marriage arrangement".
61. OW2 is the one who introduced both parties to each other and also attended the betrothal ceremony. OW3 on the other hand was a village elder from 2002, similarly confirmed the obtaining arrangement. OW4 and OW5 also schooled at Kithimani, while residing under the care of the deceased.



62. In contrast, PW1 was proven to be a convict who had been charged with the offence of forgery and was convicted. she admitted under cross-examination that, “ I was charged with forgery- two counts at Kithmani court and was convicted and placed on probation”. She was shifty while giving her evidence and made wild allegations that the objector was her daughter’s maid, a fact which remained unproven. At the same time under cross examination, she changed her story and stated that, “Annah was my sisters maid”. Her witness PW3 supported this fact and also stated that the objector was the deceased maid.
63. PW2, the assistant chief was also categorical that, he wrote what PW1 told him to note, while refereeing to his letter dated 26.11.2013 (Exhibit P1). All other petitioner’s witness’s testimony emphasized on their personal interest in the estate property as opposed to testifying as to the veracity of the facts relating to the core dispute herein, which was whether the two were married under “ Iweto marriage”. Finally PW5 also admitted in cross examination that this dispute had been adjudicated upon by the D.O and the estate awarded to the objector.
64. Having critically analyzed and reviewed all the evidence adduced I do find that the objector has established her case on a balance of probabilities and indeed proved that she was married to the deceased under “Kamba customary woman to woman marriage” and is therefore a direct beneficiary to her estate.

Whether the grant should be annulled and/or revoked

65. Section 76(a), (b), and (c) of the [Law of Succession Act](#) provides as hereunder:

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;
66. That section provides that a grant of representation may at any time be revoked or annulled as long as the court is satisfied that the facts contemplated under the said section are proved. It is therefore clear that there is no limitation in so far as matters revocation or annulment of grant are concerned. However, it is not in every situation where transgressions are alleged that the grant must be revoked.
67. This position was adopted in the case of *Albert Imbuga Kisigwa vs. Recho Kawai Kisigwa* [2016] eKLR Succession Cause No.158 of 2000, Mwita Where it was held that; -

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously. There must be evidence of wrongdoing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”



68. The court also in the case of *Re; Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

69. The petitioner did not include the objector and her family in the process of obtaining the grant of letters of administration intestate and/or during the confirmation of grant. The objector has proved that she had a right in priority over the deceased estate and it is obvious that the process of obtaining grant was therefore obtained through concealment of material fact and misrepresentation, which rendered the entire process to be null and void.

70. The final issue that arises is the position of the various purchasers who bought land from the petitioner. PW3 produced Exhibit P2 & P3, to show that she bought land from the deceased. While PW4 & PW5 only gave oral evidence of having bought land but did not produce any document to show that indeed they had bought land from the deceased. To the contrary evidence was adduced to show that they had bought land from PW1 through fraudulent transactions for which PW1 was convicted and placed on probation.

71. In *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169 Lord Denning delivering the opinion of the Privy Council at page 1172 (1) said;

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

72. I do find and hold that the petitioner is not the lawful heir of the deceased estate and did not have the capacity to sell off the deceased land to third parties. Her actions were automatically null and void and I so declared. This fact is also reinforced by the petitioner's admission that she was convicted on two counts of forgery in relation to selling the deceased land and was placed on probation.



E. Disposition.

73. The upshot having made the above analysis on the evidence adduced, I do find that the objector's Chamber summons Application dated 13th July 2022 has merit and is allowed on the following terms;
- a. The Grant of Letters of Administration intestate issued on 27th June 2014 and the subsequent certificate of confirmation of grant issued on 30th January 2015 be and are hereby revoked and stand cancelled.
 - b. All sale of land effected by the petitioner to third parties under the said confirmation of grant stand's cancelled, apart from the 4 acres which Florence Ndikina Mwanzia proved to have bought from the deceased.
 - c. New letters of Grant of Administration Intestate be issued jointly to Annah Ndunge Nzioki, Samuel Kimolo Muia, and Pauline Mwaniki.
 - d. The new administrators are directed to file for confirmation of Grant, and in the process will include Florence Ndikina Mwanzia and/or those she sold to as beneficiaries of four (4) acres of the estate land.
 - e) Any arising land dispute relating to the suit parcel's will be resolved by the Environment and land court.
74. The Objector will have the costs of these proceedings.
75. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MARSABIT THIS 13TH DAY OF MARCH 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAM THIS 13TH DAY OF MARCH 2025.

In the presence of: -

Ms Mukundi for Petitioner

Mr. Soita for Objector

Mr. Jarso Court Assistant

