



**In re Estate of the Late Mwaura Makuro (Succession Cause
4 of 2015) [2025] KEHC 5860 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5860 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 4 OF 2015
JRA WANANDA, J
MAY 9, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE MWAURA MAKURO

BETWEEN

**JOHN NJENGA MAKURO 1ST APPLICANT
SUSAN WANGARI MAKURO 2ND APPLICANT
JAMES MWANGI MAKURO 3RD APPLICANT
MARY WAHU MAKURO 4TH APPLICANT
LUCY WANJIRY MAKURO 5TH APPLICANT**

AND

**PATRICK NJERU MUNENE 1ST RESPONDENT
JAMES KIMANI KABATA 2ND RESPONDENT**

RULING

1. Before Court for determination is the Applicants' Chamber Summons dated 05/03/2024. The same is filed through Messrs Mukabane Kagunza & Co. Advocates and seeks orders as follows:
 - i. [.....] spent
 - ii. [.....] spent
 - iii. The Applicants herein be granted leave to enjoin in this cause, tender evidence and participate in the proceedings herein.
 - iv. Proceedings and order of 06.06.2022 appointing John Kimani Kabata and Patrick Munene Njeru as administrators of the estate of the deceased and consequential orders be, reviewed,



lifted, vacated, discharged and/or be set aside and in their place the Applicants hereto be appointed as the new administrators of the estate of the deceased herein.

- v) Costs of this Application be provided for.
2. To appreciate the context of the above Application, it will be prudent to first recount the background of this matter.
 3. Mwaura Makuro, the deceased herein, died on 22/07/2014 at the advanced age of 90 years. On 12/01/2015, through Messrs Ngigi Mbugua & Co. Advocates, one Michael Kinuthia Makuro, as a son to the deceased, petitioned the Court for Grant of Letters of Administration in respect to the estate. In the Petition, he listed 10 survivors of the deceased, including himself, as the beneficiaries of the estate. He also listed several assets, namely, parcels of land and bank accounts, as comprising the estate. The Grant of Letters of Administration was then issued to the Petitioner as the sole Administrator on 30/03/2015 and the same was subsequently confirmed on 11/04/2016 and the properties distributed amongst the beneficiaries, all in equal shares.
 4. Subsequent to confirmation of the Grant as aforesaid, the beneficiaries have engaged in protracted and seemingly endless litigation, needless in my view, and as a result, not much progress has been made in concluding and/or closing the file. From the record, it is evident that the Petitioner delayed in actualizing the distribution of the estate and some other beneficiaries thus became understandably impatient with this inaction. As a consequence, there has been a plethora of successive unending Applications after Applications filed in the matter by different parties. The Applications have sought, inter alia, Revocation of the Grant, replacement and/or substitution of the Petitioner as the Administrator, injunctions, production of inventories of the assets and liabilities, accounts of the estate, issuance of warrants of arrest, stay of orders issued, reinstatement of orders, leave to appeal, etc. Several Rulings have therefore been rendered in the case and one of these is the Ruling by E. Ogola J, dated 20/12/2021, in which he issued orders as follows:
 - i. Michael Kinuthia Makuro (the administrator herein) shall within 90 days from the date hereof produce a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.
 - ii. Michael Kinuthia Makuro (the administrator herein) be and is hereby ordered to distribute the estate of the deceased as per the Certificate of Confirmation of Grant; and to complete the administration of the deceased's estate within 120 days from the date hereof.
 - iii. That in default of (i) and (ii) above, the Grant of Letters of Administration Intestate made herein on 14th May, 2015 and confirmed on 15th April, 2016 shall stand revoked, and the applicants, James Kimani Kabata and Patrick Njeru Munene shall be appointed administrators of the estate of the deceased herein by this Court during a mention of this matter on 9/5/2022.”
 5. I note from the record that Ogola J, on 6/06/2022, satisfied that the Petitioner failed to comply with the above orders and timelines, permitted the default clause to take effect, which therefore meant that the said James Kimani Kabata and Patrick Njeru Munene, the Respondents herein, took over the reigns as the new Administrators, in place of the Petitioner.
 6. As has become the norm in Succession matters in our Courts, it is always one step forward, two steps backwards, today the Court makes orders intended to move the matter forward, a few days later, several



Applications surface seeking to revert the status back to the beginning. In the meantime, wastage of the estate continues unabated while the beneficiaries continue pointlessly feuding back and forth.

7. Back to the Application the subject hereof, it is supported by the Affidavit sworn by the 1st Applicant, John Njenga Makuro, who deponed that he has the authority of the other Applicants to swear the Affidavit on their behalf. The 5 Applicants are all siblings (deceased's children) and all are also beneficiaries. I understand two of their other siblings to be the mothers of the Respondents.
8. In his Affidavit, the 1st Applicant deponed that following the demise of the deceased, the family convened a meeting in August 2014 and resolved that the Succession process be conducted as per the wishes of the deceased, a holding entity for the estate properties be set up to cater for the Succession process, there be no mutilation of the properties, and one of their other siblings, Francis Muigai, was given the role of assisting in the transition process by first securing the Nzoia property to forestall any interference from outside forces. He deponed that however, the said Francis Muigai went ahead and took a destructive path by wanton cutting of trees, dishonouring the deceased's commitment to persons who had tilled the land (and which the former Administrator, Michael Kinuthia Makuro, had to finally pay off), leasing properties to multiple parties, and cannibalizing a motor vehicle. He deponed further that Michael Makuro was appointed the Administrator and with the Applicants' consent, took over control of the estate to implement the family agreements, and that in 2016, the Applicants' nephews and nieces started laying claim to properties outside the family agreements. According to him, the orders of 6/06/2022 appointing the Respondents as Administrators were obtained through concealment of material facts and misrepresentation, that the purported Power of Attorney donated to the Respondents by the mothers was not registered, that the Applicants did not consent to the appointment, that the orders seem to nullify the mode of distribution agreed by the family, and that the orders were issued without the Applicants being heard. He also deponed that the Respondents are not immediate and/or primary dependents of the deceased, that the Respondents have caused conflicts, squabbles and fight within the family, that legally, it is the children of the deceased who ought to be the rightful inheritors and appointment of the Respondents as Administrators also offends the law and also the Kikuyu culture as they are nephews and thus grandchildren of the deceased who cannot inherit directly from the deceased during the lifetime of their own parents.
9. I have not come across any Replying Affidavits filed by any of the parties, either in opposition or in support to the Application, either in the physical file or in the Judiciary Case Tracking System (CTS) online portal.
10. The Application was then canvassed by way of written submissions. The Applicants filed their Submissions dated 16/10/2024 whereas the Respondents filed theirs dated 25/11/2024 through Messrs. Kabata Mwaura & Partners. During the taking of directions on 26/11/2024, Mr. Nyachiro, acting for the said Francis Muigai informed the Court that he was opposed to the Application and would therefore be adopting Mr. Kabata's Submissions, thus he would not be filing any Submissions of his own. On his part, Mr. Ngigi Mbugua, acting for the Petitioner/former Administrator, Michael Kinuthia Makuro, stated that he supported the Application, thus he would be adopting Mr. Kagunza's Submissions and would not therefore be filing his own.

Applicants' Submissions

11. Counsel for the Applicants, in his Submissions, inexplicably, reproduced the entire 32-paragraph Supporting Affidavit, word by word, leaving me with the disturbing question whether Advocates really appreciate the purpose and essence of written Submissions. Counsel then stated that he relies on a certain "Supplementary Affidavit" which, he alleged, was sworn on 24/05/2024 and proceeded to again reproduce it in its entirety, the whole 19 paragraphs, word by word. I have however not come across



this alleged Supplementary Affidavit, either in the physical file or in the CTS online portal. I will not therefore consider it. Be that as it may, I note, to my amusement, that while the Applicants' Submissions is comprised of about 15 pages, a whole 10 pages contains entirely the reproduced Affidavits.

12. Back to the 5 pages remnant of the Submissions, Counsel submitted that review of decisions in probate matters is governed by Rule 63 of the Probate and Administration Rules which imports Order 45 of the Civil Procedure Rules and Section 80 of the *Civil Procedure Act*. He submitted that Order 45 Rule 2(2) of the provides that if a Judge who passed the decree is no longer attached to the Court, the Application may be heard by any other Judge who is attached to that Court. He again recited matters contained in the Replying Affidavit, cited the case of *In re Estate of Stephen Chege Kimari (Deceased) (Succession Cause 1511 of 2003 [2016] KEHC 2795 (KLR) (Family) (23v September 2016)* and submitted that in this instance, majority of the children of the deceased are in support of the removal of the current Administrators and that the Applicants have closer affinity to the deceased than the Administrators' consanguinity. He cited Section 66 of the *Law of Succession Act*.
13. According to him, the Administrator's response raises factual issues which can only be responded to by the Applicants being granted an opportunity to participate in these proceedings, and that the Administrators for ulterior motives, failed to disclose to the Court that the Applicants were necessary parties to these proceedings. Regarding the powers of the Court, he cited the case of the *Estate of George M'Mboroki (Deceased) [2008] eKLR*. Reverting to the issue of order of priority in administration, Counsel again cited several cases. He also cited several further cases on the issue of inferiority of grandsons in the appointment of Administrators, the issue of joinder of necessary parties to a suit, and also authorities in support of his argument that merely because a Court has given orders does not make it functus officio to the extent that it loses its power to order review or setting aside of the orders. He also cited further authorities on the principle that no party should be "condemned unheard". Citing the language of Order 45 Rule 2 of the Civil Procedure Rules, he submitted that in this case, the Applicants rely on the limb of there being "any other sufficient reason".

Respondents' Submissions

14. Counsel for the Respondent, on his part, submitted that the Respondents were lawfully appointed as Administrators and have, since their appointment, diligently undertaken their duties. He contended that the Applicants have made serious, albeit founded allegations against the Respondents, that the Court is being invited to engage in a futile "splitting of hairs" exercise on issues that are not only res judicata but also squarely within the jurisdiction of an appellate forum since it is trite law that once a matter has been fully adjudicated and a determination made by a competent Court, the same cannot be re-litigated. He urged that the Applicants' attempt to re-open settled issues undermines the principle of finality in litigation and serves only to waste the Court's precious time and resources. He submitted that the orders made on 06/06/2022 were based on a thorough consideration of the facts and the evidence presented. He submitted that the Applicants' allegations of exclusion in prior proceedings are false, that the Application dated 19/08/2021 annexed as "MKM 3(a)", evidences the 2nd Applicant, Susan Wangari Makuro, actively participating in the Application for revocation of the Grant, further, annexure "MKM 3(b)" evidences the participation of the 3rd Applicant, James Mwangi Makuro, in the same proceedings and establishes that the Applicants were not only aware of, but were also active participants in the very proceedings they now purport to challenge. He contended that the 7th Beneficiary swore an Affidavit in the said Application for Revocation, affirming the merits of the Respondents' case, that the 1st Applicant also swore an Affidavit, which was in fact drawn and filed by the Advocates for the former Administrator on 14/09/2021 and that this demonstrates a consistent and deliberate involvement by all the Applicants in the process, negating any claim of exclusion or lack of participation.



15. According to Counsel, the present Application appears to be a calculated ploy to hoodwink this Court into disregarding its role as the keeper of the original record and history of the proceedings and that the Applicants are attempting to mask their failure to challenge the Revocation of the Grant and the appointment of Administrators at the appropriate stage. Regarding the Applicants' challenge to the Power of Attorney relied upon by the Respondents, Counsel submitted that this issue is clearly moot, having already been determined by the Court in its said Ruling of 21/12/2021, delivered by Ogola J. Regarding the allegation that the Applicants did not consent to the appointment of the Respondents as Administrators, he submitted that the Applicants have failed to provide any evidence to substantiate the allegation. He urged further that the record clearly demonstrates that the proceedings leading to the appointment were transparent, lawful, and inclusive, as evidenced by the active participation of the Applicants and other beneficiaries. He submitted that the 1st Applicant and the 7th beneficiary, Francis Muigai, have taken single and exclusive occupation of a motor vehicle, the parcels of land Eldoret Municipality Block 12/38 and Block 12/39, and continue to enjoy the use and benefits of these properties to the exclusion of other beneficiaries, that despite the Administrators' efforts to ensure equitable access and distribution, they have faced undue obstruction and even required police protection to access the properties.
16. Counsel submitted that the current Administrators have remained steadfast in their commitment to fulfil their mandate as outlined under Section 83 of the *Law of Succession Act*, that the Applicants' contention that the removal of the previous Administrator nullified the agreed mode of distribution is untenable as the Ruling of by Ogola J, held that the agreed mode of distribution remained valid despite the removal of the Administrator, that while the Grant issued to the former Administrator, Michael Kinuthia Makuro, was revoked, the mode of distribution, as confirmed, was never set aside. On the allegations of intermeddling, he cited Section 45 of the *Law of Succession Act* and the case of *Re Estate of Dr. John Muia Kalii (Deceased)* [Machakos HCC Succession Cause No. 81/1995], and submitted that evidence of intermeddling must be credible and cogent, that in this case, the allegations made fall far below the threshold to prove the same, that the accusations are further baseless since, the Respondents, as the appointed Administrators, cannot intermeddle with the same estate. Regarding the reliefs sought, he submitted that stay of proceedings is not a remedy available in succession matters, and is not envisioned in the administration of estates, that instead, the law provides a clear and comprehensive statutory framework under which aggrieved parties may seek recourse, including but not limited to the revocation or annulment of a Grant under Section 76 of the *Law of Succession Act* and that any attempt to circumvent these statutory provisions undermines the orderly administration of justice in succession matters.
17. Counsel urged further that the order is also incapable of being stayed or appealed in the context sought as the order was made in pursuit of the substratum of the *Law of Succession Act* which is disposition and ultimate distribution of the estate. He submitted that the only provisions of the Civil Procedure Rules which apply to Succession proceedings are provided under Rule 63 of the Probate and Administration Rules and he cited several authorities thereon. He urged that the distribution of the estate ought to be finalized within an aggregate of 1 year, post appointment. He cited the case of *AG v Tames Hosea Gitau Mwaura (2014) eKLR*. According to him, the logic behind stay of execution is to safeguard the substratum in a suit, and a party who is intended to receive an equal share in distribution would be an awkward fellow to convince the Court of the prejudice that he will suffer by getting such an equal share. He also submitted that the removal of an Administrator is not a matter to be undertaken lightly or whimsically. He further urged that a Court's decision cannot be reviewed to change its character and to take away a party's right to inheritance, where the result is likely to amount to a departure from the original decision, it would be prudent to bring an appeal instead. He cited the case of *In the Matter of the Estate of Hannah Nvangahu Mwenja (deceased) 901 of 1996*. On costs, he also cited several



authorities and urged that where litigation is needlessly brought by a frivolous Applicant, as is the case herein, the estate should not be burdened with such Applicant's costs and thus prayed that the Application be dismissed with costs.

Determination

18. The issues for determination are as follows;
 - i. Whether the Applicants should be granted leave to join this cause.
 - ii. Whether the Court should review and/or set aside the orders made herein on 06/06/2022 by Ogola J.
19. I now proceed to analyze and answer the said issues.
 - i. Whether the Applicants should be granted leave to join these proceedings
20. On the issue of joinder of a new party into a suit, the Supreme Court in the case of Trusted Society of Human Rights Alliance Vs. Mumo Matemu & 5 others, Supreme Court Petition No. 12 2013, [2014 eKLR] held as follows:

“(18) An Interested Party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause...”
21. Similarly, the Supreme Court in *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated))* [2016] KESC 12 (KLR), stated the following:

“37.

... Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court on the basis of the following elements.

The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended Interested Party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”



22. However, regarding joinder of new parties in Succession matters, W.M Musyoka J, in the case of In Re Estate of David Aura Wesonga (Deceased (Succession Cause 257 of 2012) [2023] KEHC 20222 (KLR) (17 July 2023) (Ruling) opined as follows;

“The Law of Succession Act, Cap 160, Laws of Kenya, and the Probate and Administration Rules do not provide for joinder of interested parties. That would leave room for whoever seeks intervention in a probate matter to just file their Application, without seeking leave to be added as a party. There are no parties in a succession cause, for such cause is not a suit in the same vein with the suits envisaged in the Civil Procedure Act and the Civil Procedure Rules.”

23. I agree with Musyoka J that in Succession matters, considering the unique nature thereof, there does not seem to be any express requirement for leave to join an existing Cause. The prayer herein for joinder may therefore not even have been necessary. Be that as it may, on whether the Applicants have shown that they have an identifiable stake or legal interest in these proceedings, it is not disputed that they are children of the deceased and beneficiaries to his estate. There is therefore no doubt that the Applicants have an identifiable stake or legal interest in the subject matter of this Cause. The prayer has not also been expressly opposed. There is therefore no reason why the Applicants should not be permitted to join this Cause.

ii. Whether the Court should review the orders of 06/06/2022

24. Review of orders in a Succession Cause is governed by Rule 63(1) of the Probate and Administration Rules, which provides as follows:

“63. Application of Civil Procedure Rules and High Court (Practice and Procedure) Rules

(1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIX (Cap. 21, Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.”

25. It is therefore clear from the foregoing that the only provisions of the Civil Procedure Rules imported to the Law of Succession Act are those listed above and which include Order 45 of the Civil Procedure Rules which relates to Review (see John Mundia Njoroge & 9 Others vs. Cecilia Muthoni Njoroge & Another [2016] eKLR).

26. In the circumstances, any party seeking review of orders in a probate or Succession matter must meet the requirements set under Order 45(1). The same provides as follows:

“1.

(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or



(b) by a decree or order from which no appeal is hereby allowed,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

27. Order 45 therefore provides for 3 circumstances under which an order for review can be made. The first one is where there has been “discovery of new and important matter or evidence”, the second is where there has been “a mistake or error apparent on the face of the record” and the third is “for any other sufficient reason”. This third ground is the one the Applicants state that they have come under. It is however also clear that although the Applicants have avoided to say so, the arguments that they have presented also tilt towards the ground of there being “a mistake or error apparent on the face of the record”. The question therefore is whether the Applicants have successfully brought themselves within those grounds.

28. On the issue of review, the Court of Appeal, in the case of *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR, guided as follows:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.

In the instant case the matters in dispute had been fully canvassed before the learned Judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise, we agree that the learned Judge would be sitting in appeal on his own judgment which is not permissible in law. An issue which has been hotly contested as in this case cannot be reviewed by the same court which had adjudicated upon it.”

29. There is also the case of *Muyodi -v- Industrial and Commercial Development Corporation & Another* (2006) 1 EA 243, in which, again, the Court of Appeal stated as follows:

“...in *Nyamogo & Nyamogo -v- Kogo* (2001) EA 174 this Court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an



error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error or wrong view is certainly no ground for a review although it may be for an appeal...”

30. It is therefore clear that for a Court to review its orders, the ground alleged must be one that is obvious to the eye, and self-evident. It must be one which when considered, would not yield two results and does not require elaborate arguments to be established.
31. In this case, the major ground alleged by the Applicants for their seeking for review of the order issued on 6/06/2022 is that they were “condemned unheard” as they were not allegedly accorded an opportunity to be heard yet have an interest in the matter. The other ground raised are that the Applicants, being grandsons of the deceased, rank much lower to the Respondents, in the priority of appointment of Administrators, as the Applicants’ parents are in any case, still alive. It was also alleged that the Applicants and other beneficiaries never consented to the appointment of the Respondents as Administrators. Another ground alleged is that the Power of Attorney relied on by the Respondents was invalid. To interrogate these grounds, recourse has to be made to the Ruling of Ogola J dated 20/12/2022 in which the Judge gave the former Administrator strict timelines to execute his obligation to distribute the estate failure whereof the Respondents would take over as Administrators. It is not in dispute that it is upon default in compliance by the former Administrator with the orders, Michael Kinuthia Makuro, that therefore the Respondents assumed the role of Administrators. The relevant portions of the Ruling of 20/12/2022 are as follows:

“

“2. The application is premised on the grounds set out therein and the Supporting Affidavit sworn by James Kimani Kabata on 19th August 2021. The deponents deposed that on 15th April, 2016 this Court issued a Certificate of Confirmation of Grant to Michael Kinuthia Makuro (the administrator), who has failed and or refused to administer the estate to the detriment of the beneficiaries without just cause or reason. The Applicants further averred that in a ruling delivered 26th July, 2021 this Court took keen notice of the administrator’s ineptitude and sanctioned the beneficiaries in the interest of justice, to proceed to either move the Deputy Registrar to distribute the estate or seek to revoke the grant and pursue an alternative administrator.

.....

5. The Applicants further averred that in a ruling delivered on 24th October, 2019 this Court while pronouncing itself in an application seeking to compel the administrator to distribute the estate of the deceased directed the administrator to distribute the estate to all the beneficiaries equally within (6) months from the ruling date and thereafter also render an accurate account of the estate within 3 months post distribution.
6. Accordingly, the Applicants propose that they be appointed as administrators to the deceased’s estate. They already have a mode of



distribution of the estate in place and are ready to administer the deceased's estate.

7. Michael Kinuthia Makuro, the Petitioner herein in a Replying Affidavit sworn on 13th September, 2021 opposed the application for revocation of grant stating that these proceedings relate to the estate of his father Simeon Mwaura Makuro. The Petitioner denies that the Applicants are heirs or beneficiaries of the estate of his late father but rather are grandchildren having been born of Teresa Wangui Kabata and Joyce Wanjiku Munene respectively while Simon Mwaura Wanja, on the other hand is the son to Peter Kamau Makuro (deceased) who is a brother to the Petitioner.

.....

12. Therefore, according to the petitioner, this instant application is bad in law as it is proffered by persons appointed by an unregistered instrument, that is, a power of attorney that is ordinarily registerable under the Land Registration Act (General Regulations, 2017 rule 18 thereof. The Petitioner further contends that even if the instruments appointing the Applicants were valid their power is only limited to dealing with the specific shares and entitlements of their donors and not the administration of the entire estate.

13.

14. The 7th beneficiary, Francis Muigai also in opposition to the application filed a Replying Affidavit dated 14th September, 2021 in which he averred that the estate has been distributed to the 10 beneficiaries entitled under the grant.

15. The 10th beneficiary, Simon Mwaura Wanja also in opposition to the application filed a Replying Affidavit dated 14th September, 2021 in which he reiterated the contents of the affidavit filed by the Petitioner herein.

16.

Determination

17. I have carefully considered the application, the affidavits and the submissions filed as well as the authorities relied upon. The only issue is whether the Grant of Letters of Administration intestate issued to Michael Kkinuthia Makuro on 15th April, 2016 should be revoked?

.....

20. The 1st and 2nd Applicants herein are grandchildren to the deceased.

21. A grandchild only becomes a direct heir to the estate of the grandparent where the parent pre-deceased the grandparent. The grandchildren step into the shoes of their deceased parents and take the parent's share in the estate of the grandparents as was enunciated in RE Estate of Wahome Njoki Wakagoto (2013) eKLR where it was held: -

.....



22. The evidence on record suggest that the 1st and 2nd Applicants herein brought these proceedings on behalf of their mothers; Teresa Makuro Gechanga and Joyce Wanjiku Munene (who are still alive) and who are the beneficiaries to their father’s estate. The 1st and 2nd Applicants’ interest emanates from the fact that their mothers are beneficiaries to the deceased’s estate, but they are not dependents within the provisions of section 29 of the Law of succession Act as they do not acquire an interest in their grandfather’s estate in the suit property by virtue of their mothers’ share. The record before court indicates that the 1st and 2nd Applicants herein are Attorneys at Law having been given the power of attorney to act on behalf of their mothers. From the foregoing, it is my view that the 1st and 2nd Applicants therefore have locus standi to seek the revocation of grant issued to the administrator herein.
23. The Petitioner has submitted that the deceased was from Agikuyu Community and it thus Agikuyu customary practices about the appointment and removal of administrator or “Muramati” are applicable. The Petitioner has further submitted that a “Muramati” can only be appointed or removed by elders and therefore the Applicants herein cannot undo what they did not make. The Petitioner has further submitted that the Kikuyu culture is patrilineal with a pattern of inheritance that is based on equal distribution of a man’s property among his sons with a proviso that the eldest son may get a slightly larger share.
24. The Judicature Act allows the application of customary Laws where applicable and is not repugnant to justice and morality. See Section 3(2) of the Judicature Act Cap 8 Laws of Kenya. The appointment of the administrator in this present case was not based on Agikuyu Customary Laws and therefore the argument by the administrator does not hold any water. The argument by the Petitioner that the Kikuyu culture is patrilineal is therefore not applicable in the present case.
25. Failure to distribute a deceased’s estate is a ground for revocation of a grant for letters of administration as provided under Section 76 (d) of the Law of Succession. However, such revocation is not automatic. It is conditional.
.....
26. The Applicants chose to rely on this Court’s ruling that was delivered on 24th October, 2019 directing the Petitioner; to distribute the estate of the deceased as per the Certificate of Confirmation of Grant, and to complete the administration of the deceased’s estate within six months from the date of the ruling and that a full and accurate inventory of the assets and liabilities of the deceased be filed along with an accurate account of all dealings therewith up to the date of account. I am therefore not satisfied that the Application had proven the ground set out in Section 76(d) of the Law of Succession for the revocation of the said Grant.
27. However, the relationship between personal representatives of a deceased and his heirs is a fiduciary one. The administrator herein is in a fiduciary



relationship with the beneficiaries of the deceased. Section 83 of the Law of Succession Act on the duties of personal representatives provides as follows:

.....
28. The duty to account for the assets, liabilities and dealings of any estate purely lies on the personal representatives. There is no short cut about it. It is a statutory obligation to which the administrator of an estate must adhere without any discretion.

29.

30. Section 83(e) requires an administrator to within six months from the date of the grant, produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account. Under Section 83(g) an administrator is obligated to complete the administration of the estate in respect of all matters within six months from the date of confirmation of the grant and to produce to the court a full and accurate account of the completed administration.

31. There is no evidence that the administrator completed the administration of the estate within the period specified by law. The administrator has also not filed accounts 6 months from 14th May, 2015 when the Grant was issued or within 6 months from 15th April, 2016 the date of confirmation of the Grant. Section 83(e) and (g) have therefore not been complied with.

32.

33. From the foregoing, I am satisfied that the administrator has not diligently proceeded with the administration of the estate. The administrator is also liable to produce full and accurate account of his dealings with the estate as required by law.

34.:

35. Indeed, the Applicants have made a good case for the removal of the administrator on account of failing to proceed diligently with the administration of the estate and failure 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. These are some of the statutory grounds set out in Section 76(d) of the Act upon which the grant may be revoked.

36. It must be noted that the objective of the court is to uphold substantive justice. Having considered all the circumstances herein, I find that no useful purpose will be served by revoking the Grant. It is for that reason, that I invoke the inherent powers of this court granted under Section 76 of the Law of Succession Act and Section 73 of the Probate and Administration Rules and make the following orders:

.....”

32. From the foregoing, it clear beyond peradventure that Ogola J extensively dealt with all the now again raised by the Applicants, including the eligibility of the Respondents for appointment as



Administrators despite being grandsons of the deceased, and the issue whether other beneficiaries were involved or consulted in the Succession proceedings. It is also clear that Ogola J resorted to the appointment of the Respondents as replacement Administrators as a matter of necessity noting that the former Administrator, Michael Kinuthia Makuro, and his faction (which it is now clear the Applicants belong to), despite being given ample opportunity, continued deliberately delaying and frustrating the distribution of the estate for their own gain, to the detriment of the other helpless beneficiaries, including the Respondents' mothers. The decision to replace the Administrator and the choice of the Respondents to replace him was therefore well-reasoned and justified in the circumstances.

33. The Respondent's Counsel, Mr. Kabata is also clearly right in submitting that the Applicants' allegations of exclusion in the proceedings herein are false. It is indeed true that the Applicants, or at least some of them, have always been active participants in this matter and have even on different occasions, sworn Affidavits herein. Going through the Court file, I have come across, for instance, the Replying Affidavit sworn by the 1st Applicant, James Mwangi Makuro, on 14/09/2021 and filed by Messrs Ngigi Mbugua & Co. Advocates, the same Advocates who have all along been on record for the former Administrator, Michael Kinuthia Makuro, and who by their Application dated 17/06/2022, even applied for setting aside of the same Ruling of 20/12/2021 and orders of 6/06/2022 made by Ogola J. I have also come across a letter dated 8/09/2021 authored by the 2nd Applicant, Susan Wangari Makuro, exhibited to the former Administrator's (Michael Kinuthia Makuro) Replying Affidavit sworn on 13/09/2021. In the letter, the said Susan Wangari Makuro extensively commented on these proceedings. Also exhibited to the same Affidavit sworn by the former Administrator, is a notarized brief Affidavit sworn earlier by the 3rd Applicant, James Mwangi Makuro, on 9/11/2021. Both the Applicants registered their stern opposition to removal of the former Administrator, Michael Kinuthia Makuro, from that role and his intended replacement with the Respondents. It is clear in swearing as aforesaid, they were indeed responding to the Application then pending before Ogola J and which he subsequently ruled on. This therefore, is sufficient proof of the Applicants' prior knowledge of the Application, and thus the inescapable demonstration of their active involvement in these proceedings. They cannot now feign ignorance.

In any case, the distribution of the estate herein is one of equal shares amongst the beneficiaries the estate. As correctly submitted by the Respondent's Counsel, the Applicants' contention that the removal of the previous Administrator nullified the agreed mode of distribution is false. This is because in his Ruling, Ogola J, never interfered with the mode of distribution adopted. The same remained as it was despite the replacement of the Administrator. Clearly therefore the Applicants have no genuine grievance. I am astounded by the unexplained obsession to remove the current Administrators. In my view, were they genuine, the Applicants would be instead have been pushing for conclusion of the distribution regardless of who the Administrator is. The current Application seems to be motivated by other undisclosed ulterior motives.

34. The current Application is nothing but a collusion between the former Administrator and the current Applicants to steal a match on this Court. After all attempts by the former Administrator to circumvent successive directives given by the Court were thwarted, he has now, through the current Applicants, returned with yet another Application, in disguise, cleverly now brought through his proxies. I am constrained to remind the former Administrator and the Applicants, of the wise following words of Madan, J (as he then was) which he made in the case of N vs. N [1991] KLR 685:

“I wish people would not tell me absurd and unbelievable lies. I feel disappointed if a lie told in court is not reasonable imitation of the truth and is not reasonably intelligently contrived. I wish people who tell lies before me would respect my grey hair even if they consider that



my intelligence is not of high order. I wish the witness had not told me the most stupid of his lies, which both disappointed and made me feel intellectually insulted.”

35. I suspect that the Applicants, and by extension, his proxies - the current Applicants - were misled to believe that with Ogola J now out of the way, the new Judge taking over the matter may be sympathetic to their cause, and most probably, would not even read through the Court file to ascertain previous proceedings herein, before making a determination. Too bad if they thought so. Judicial officers, as swamped with work as they are, still always take their time to carefully read files, and litigants are warned never to underestimate the industry and intelligence of Judicial officers. The prayer for Review and/or setting aside was a total waste of this Court’s precious judicial time and was one very long shot. Had this not been a family matter in respect to which the Courts always try to facilitate reconciliation, I would have swiftly penalized the Applicants, and/or their legal team, to pay costs of the Application.

Final Orders

36. In the premises, I rule and order in respect to the Applicants’ Chamber Summons dated 5/03/2024, as follows:
- i. Although there may be no necessity for leave as prayed, the Applicants are nonetheless granted leave to join in, and participate, in this Cause or proceedings.
 - ii. The prayer for review and/or setting aside of the orders made herein by Ogola J on 6/06/2022 appointing the Respondents, John Kimani Kabata and Patrick Munene Njeru, as Administrators of the estate of the deceased herein, is hereby declined.
 - iii. The Respondents, as the current Administrators, are however directed to fast-track and conclude the distribution of the estate otherwise they, too, may be replaced if necessary.
 - iv. To promote reconciliation amongst the family members herein, each party shall bear his/her own costs of this Application.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 9TH DAY OF MAY 2025

.....

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Mr. Ngigi Mbugua for former Administrator

Mr. Kabata & Ms. Sitienei for current Administrators

N/A for Applicants

Court Assistant: Edwin Lotieng

