



REPUBLIC OF KENYA



In re Estate of Lawrence Kaplelach Karonei (Miscellaneous Succession Cause E006 of 2024) [2025] KEHC 8605 (KLR) (20 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8605 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS SUCCESSION CAUSE E006 OF 2024**

JRA WANANDA, J

JUNE 20, 2025

IN THE MATTER OF THE ESTATE OF LAWRENCE KAPLELACH KARONEI

BETWEEN

JULIUS KIRWA ROP APPLICANT

AND

JANE JEPKEMEI KARONEI RESPONDENT

RULING

1. The subject of this Ruling (son versus mother dispute) is the Applicants' Summons dated 22/02/2024 filed through Messrs Tarigo Kiptoo & Co. Advocates. It seeks orders as follows:
 - a. [.....] spent
 - b. [.....] spent
 - c. That this Honourable Court be pleased to issue an Order calling for the file in Eldoret Chief Magistrate's Court Succession Cause No. 219 of 2020 in respect to the estate of Lawrence Kaplelach Karonei -(Deceased), for hearing, determination and final disposal of the same by this Honorable Court.
 - d. That this Honourable Court be pleased to cancel, annul, revoke, set aside and/or dismiss the Certificate of Confirmation issued on 2nd September, 2022 by Eldoret Chief Magistrate's Court in respect to the estate of the deceased herein.
 - e. That costs of this Application be provided for.
 - f. That this Honourable Court be pleased to issue any order that that it deems fit and just to grant.
2. The Summons is premised on the grounds appearing on the face thereof and is supported by the Affidavit sworn by the Applicant. He deponed that he is the son of the deceased referred to hereinabove



- who died on 4/02/2019 and the Respondent, that the deceased was survived by the Respondent as the widow, and 9 children, whom he listed, including himself as the 3rd born. He deponed that the deceased had various properties and that the Succession Cause, namely, Eldoret Chief Magistrate Court Succession Cause No. 219 of 2020 was filed on 7/07/2020 in respect to his estate, that however, the Magistrate's Court lacked jurisdiction to handle the matter as the value of the estate is over Kshs 100,000,000/- as most of the immovable property are situated within Eldoret town and/or its outskirts with good public utilities and their market value is high.
3. He deponed further that the Magistrates' Court confirmed the estate in a manner that is ambiguous and lacks clarity, and which has caused a lot of issues within the family, as the entire estate was left at the hands of the Respondent to hold in trust, that it defeats logic why the Respondent should hold the entire estate in trust, while all the dependents and beneficiaries are adults of sound mind and who have their own families, and that it is therefore only proper and fair that the estate be distributed afresh, and every beneficiary given his rightful share of the estate.
 4. In opposition to the Summons, the Petitioner, through Messrs Ngigi Mbugua & Co Advocates, filed the Replying Affidavit sworn on 29/05/2024. She deponed that the estate belonged to her husband and that the Applicant is only her son who was listed as one of the beneficiaries and was involved and participated in the said Eldoret Chief Magistrates Cause No. 219 of 2020 and even signed the consent to the Summons for Confirmation, and approved the distribution in the manner spelt out.
 5. She deponed that this is not the first complaint made by the Applicant as he had done so by way of a Notice of Preliminary Objection which was heard on merit and dismissed by the trial Court, that the instant Summons is "a second bite at the cherry" as the Applicant never appealed the dismissal of the Preliminary Objection by the trial Court nor did he seek its review. She deponed that she was in the process of registering the Grant at the Lands Office and pursuing other "uncrystallized" assets in which the deceased had an interest before distributing it to the beneficiaries, including the Applicant, when she was served with the instant Summons. She deponed further that the interest the estate owns at Kiplombe, Nine Farms Moi Barracks measures about 6 acres and is currently in the Applicants' use and exclusive control but he wants to displace his other siblings who are currently eking a living on L.R. Kiplombe/Kiplombe Block 2(Kipsang Suge)/42.
 6. She urged further that the Applicant has disrespected her by using his wife and children to haul insults at her and has even threatened to harm her and his sisters. She also urged that the Applicant should be reminded that the Respondent only enjoys a life interest in the estate and she has the first right to is a widow and should be left to enjoy her sunset years in peace. She further deponed that the plea for transfer on account of the worth of the estate is unsupported by any valuation or professional opinion and ought to be dismissed outrightly and that in any case, a similar plea has been rejected before and the Applicant acquiesced to the subsequent proceedings.
 7. The Applicant then filed the Further Affidavit sworn on 18/09/2024 in which he basically, but needlessly, merely reiterated matters already contained in his Supporting Affidavit. He also generally denied the matters deponed in the Replying Affidavit but then introduced, unprocedurally of course, the new matter that the Respondent has been enjoying the proceeds and/or rent from some of the properties to the detriment of the Applicant and there is therefore need for her to render a true account of the income derived from the estate. He also deponed that the Respondent's claim that she enjoys life a interest and holds the right to the estate as the widow, offends the provisions of Section 29 of the *Law of Succession Act* in that it does not recognize that in the event of demise of a deceased person, the order to be applied in distribution and all persons entitled thereto are subject to equal distribution.



8. The matter was canvassed by way of written submissions. The Applicant filed the Submissions dated 15/11/2024 while the Respondent filed the Submissions dated 17/02/2025.

Applicants' Submissions

9. Counsel for the Applicant reiterated matters already stated above and added that the Grant was issued by Hon. Mogire and confirmed by Hon. R. Odenyo, (SPM) but that Section 7(1)(b) of the Magistrates Court Act sets the pecuniary Jurisdiction of a Court presided over by a Senior Principal Magistrate at Kshs 15,000,000/-. He urged that the question of jurisdiction is twofold because whereas the Applicant maintains that the lower Court lacked jurisdiction to handle this matter because the monetary value of the estate exceeded Kshs 20,000,000/-, the Respondent asserts that there is nothing demonstrating that the estate is over Kshs 20,000,000/- in value, and that Summons for Revocation of Grant should have been filed in the lower Court because in his view this Court lacks jurisdiction. He urged that, on the question of monetary value of the estate, there are photographs presented to this Court proving that claim, but that the Affidavit sworn by the Petitioner before the Magistrate's Court indicated that the assets are valued at Kshs 5,000,000/-, way below the value of the estate considering the developments made thereon. He reiterated that the value was obviously beyond Kshs 20,000,000/- as the value of the assets, even without factoring in the value of the developed properties, was in excess of Kshs 20,000,000/-. He cited Section 48 of the Law of Succession Act. On Revocation of the Grant, Counsel cited Section 76 of the Law of Succession Act and on duties of an Administrator, he cited Section 83 thereof and submitted that one of the duties is to complete administration of the deceased's estate within 6 months from the date of Confirmation of Grant. He urged that distribution should be done in accordance with the Certificate of Confirmation of Grant which must contain identities of beneficiaries and their respective shares in accordance with Section 71 of the Act.
10. On Revocation of a Grant, he cited the case of *Jesse Karava Gatimu Mary Wanjiku Githinji* (2014) eKLR and the case of *Matheka and Another vs. Matheka* (2005) 2 KLR 455. According to him therefore, the Respondent obtained the Grant fraudulently as she did not disclose that she had undervalued the estate. In respect to the issue of creation of trusts where the beneficiaries are all adults, Counsel submitted that the provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependents. He cited Rule 41(3) of the Rules. He then urged that the Applicant is justified in protesting the blatant discrimination exhibited by the mode of distribution proposed by the Respondent.

Respondent's Submissions

11. Counsel for the Respondent submitted that the Applicant had resisted the issuance of the Grant by the Magistrate's Court to the Petitioner (his mother) through a Preliminary Objection on which the Court made a Ruling declining the same, that the argument at the time was that the value of the estate exceeded the pecuniary jurisdiction of the Magistrate's Court capped at Kshs. 20,000,000/-, that followed was a truce between the Applicant and the Petitioner that allowed the Grant of Letters of Administration intestate to issue on 09/12/2021 and which was subsequently confirmed on 25/8/2022 and a Certificate of Confirmation of Grant was issued on 02/09/2022. He submitted that before the lower Court considered the Summons for Confirmation of Grant, it had to be satisfied that all beneficiaries including the Applicant consented to that Application and agreed with the mode of distribution as that is the legal requirement demanded by Section 76(2), that the Applicant sat through the proceedings in the lower Court and agreed that the entire estate devolve to his mother. Counsel urged that it appears that there was a change of mind as the current Summons attacks that very Grant that transmitted the estate to the Respondent. He submitted that the value of the estate can only be



established scientifically through valuation of the estate, that no request was placed before the Court for such an exercise and therefore, in the absence of a Valuation Report, and that allegation remains unproven. He urged further that the issue was raised before the lower Court and a Ruling made, and the Applicant did not appeal or review that decision and that the doctrines of Res Judicata and Estoppel frown against relitigating an issue that has been conclusively been dealt with by a competent Court. Regarding the plea that after calling for the lower Court file, this Court distributes the estate afresh, Counsel pointed out that there is no such prayer in the Summons. He also submitted that the provisions cited as the foundation for this action do not support the prayers made in the Summons and that the proper provisions have not been cited.

12. On jurisdiction, he cited the case of Owners of Motor Vessel “Lilian S” v Caltex Oil (Kenya) Ltd (1989) eKLR and submitted that the jurisdiction of the High Court in respect to matters arising from an order/decreed of the Magistrate’s Court is by way of an appeal and that this proper procedure has not been invoked. In respect to Revocation of the Grant, he pointed out that Section 76 of the [Law of Succession Act](#) which is the applicable provision has not been cited in support of the Summons. He also urged that an order made by consent has the same effect as a contract made between parties in a commercial transaction, that for it to be set aside, one must allege and prove fraud, mistake and or misrepresentation and yet none of those ingredients have been alleged or proved and that the Applicant made a conscientious decision to allow the mother to administer the estate for all beneficiaries, including himself.

Determination

13. The issues that arise in this matter can be broadly summarized as follows:

“Whether this Court should call for the file in Eldoret Chief Magistrates’ Succession Cause No. 219 of 2020, cancel, annul or revoke the Grant of Letters of Administration issued and confirmed therein, and re-distribute the estate afresh.”

14. The first issue I will deal with is whether this Court even possesses the requisite jurisdiction to entertain this matter in the first place. I say so because this action basically challenges orders made by the Magistrate’s Court.

15. In respect of jurisdiction, the Supreme Court in the case of Samuel Kamau Macharia vs. KCB and Others [2012] eKLR held as follows:

“A Court’s jurisdiction flows from either [the Constitution](#) or Legislation or both. Thus, a Court can only exercise jurisdiction as conferred by [the Constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law ... the Court must operate within the constitutional limits. It cannot expand jurisdiction through judicial craft or innovation.”

16. Earlier, in the celebrated case of The Owners of the Motor Vessel “Lillian’s” -V- Caltex Oil Kenya Ltd [1989] KLR 1, Nyarangi J.A. held as follows:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for



continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds that it is without jurisdiction.”

17. In this action, the Applicant, in challenging the orders made by the Magistrate’s Court, has approached this High Court by way of a Summons filed in a Miscellaneous Application. The provisions cited by the Applicant in support of the Summons are Sections 47 and 48 of the *Law of Succession Act*, and Rule 73 of the Probate and Administration Rules.
18. Section 47 provides that “the High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient”.
19. Section 48 provides that “a Magistrate shall have jurisdiction to entertain any application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed”.
20. On its part, Rule 73 provides that “nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”.
21. Looking at the said provisions, it is clear that none expressly supports the procedure invoked by the Applicant to come to this High Court to challenge the orders made by the Magistrate’s Court.
22. In comparison, Section 50(1) of the *Law of Succession Act* provides as follows:

“An appeal shall lie to the High Court in respect of any order or decree made by a resident magistrate in respect of any estate and the decision of the High Court thereon shall be final.
23. It therefore follows that the only express procedure stipulated for challenging a decision of the Magistrate’s Court at the High Court in Succession proceedings is by way of an appeal under Section 50(1) aforesaid. Has the Applicant therefore approached this Court in the proper manner, and can this action be therefore sustained?
24. Despite the challenge on jurisdiction having being consistently raised at every stage by the Respondent, the Applicant did not give any serious or coherent explanation on the validity of the procedure that he adopted to come to the High Court. His Counsel, in his Submissions, simply went straight to arguing the merits of the Summons without first attempting to demonstrate that this Court has the jurisdiction to entertain the action. Counsel does not seem to have realized that without first convincing this Court that it had jurisdiction to hear the matter, the rest of his submissions would be irrelevant. Since Counsel did not offer any meaningful explanation on the choice of the procedure to approach this Court, he seems to have left it to the Court to grapple with the issue, and by extension, the issue of jurisdiction.
25. The Applicant prays that this Court calls for the file in Eldoret Chief Magistrates’ Succession Cause No. 219 of 2020, revokes the distribution of the estate made therein and takes over the fresh hearing and determination of the Succession Cause. The basis of the prayer is that, although the Magistrate’s Court has fully heard and determined the Cause, that Court lacked the jurisdiction to do so since, according to the Applicant, the estate is worth in excess of the pecuniary limit of the Magistrate’s Court which is capped at Kshs. 20,000,000/-.



26. On the issue of the High Court being asked to revoke a Grant issued by the Magistrate’s Court, I cite the following statements made by W. Musyoka J in the case of *Re Estate of Charles Boi (Deceased)* [2020] eKLR

“2. Let me start by stating that this cause ought not to have been initiated or brought at the High Court. I say so because the law on revocation of grants, made by a magistrate’s court, changed in 2015, to give jurisdiction to magistrates’ courts to revoke grants that they have power to make. I am talking about the *Magistrates’ Courts Act*, No. 26 of 2015, which commenced on 2nd January 2016. The said statute amended the provisions of the *Law of Succession Act*, Cap 160, Laws of Kenya, which provide for jurisdiction of magistrates’ courts in probate matters, that is to say sections 48 and 49. The changes were effected through sections 23 and 24 of the *Magistrates Courts Act*.

3. The amendments stated as follows –

.....

5. The first effect, of the amendments, was that the pecuniary jurisdiction of the magistrate’s court was enhanced from Kshs. 100,000.00 to a maximum of Kshs. 20,000,000.00. Secondly, where the High Court and the magistrate’s court are situated within the same station, the High Court shall no longer enjoy exclusive jurisdiction, for it shall share jurisdiction in succession causes with the magistrate’s court, subject, of course, to the pecuniary ceilings and gazettelement by the Chief Justice. Finally, the exclusive jurisdiction of the High Court to determine revocation applications, under section 76, was taken away, and the same was extended to the magistrate’s court, with respect to grants of representation that such magistrate’s court would have power to make.

6. This ruling is concerned with jurisdiction to revoke grants made by the magistrate’s court. Under *Act No. 26 of 2015*, by virtue of the amendment of section 48(1) of the *Law of Succession Act*, a magistrate’s court now has power to revoke a grant of representation that it has power to make. There is now no need, for a person who wishes to have a grant made by a magistrate’s court revoked, to move the High Court. All what that person needs to do is to file a summons for revocation of grant within the cause in which the grant was made by the magistrate’s court.

7. *Act No. 26 of 2015* commenced on 2nd January 2016, and, therefore, the amendment of section 48(1) of the *Law of Succession Act*, became effective from that date. The summons for revocation of grant herein, dated 3rd September 2018, was filed in this cause on 4th September 2018, that is after *Act No. 26 of 2015* had commenced and the amendment of section 48(1) of the *Law of Succession Act* had become effective. There was no need for the applicant, in the circumstances, to have initiated a fresh cause, for revocation of the grant made in Hamisi SRMCSC No. 29 of 2016, at the High Court. She should have simply filed the summons for revocation of grant in Hamisi SRMCSC No. 29 of 2016, since the magistrate’s court had, by then, been conferred with jurisdiction to revoke the grant made in Hamisi SRMCSC No. 29 of 2016.



8. The taking away of jurisdiction from the High Court, with respect to revocation of grants, made by the magistrate’s court, would mean that the High Court no longer has original jurisdiction to address that issue, and that its jurisdiction, over the issue, would be as an appellate court, from a ruling of the magistrate’s court, on a summons for revocation of the grant issued by that court. I have no jurisdiction, therefore, sitting as a High Court, to entertain a summons for revocation of grant, where the applicant has not filed such application at the magistrate’s court in the first instance, since the Law of Succession Act, as currently framed, does not vest me with such jurisdiction. Secondly, the issue of revocation of the grant made by the magistrate’s court has not been placed before me in invocation of my appellate jurisdiction.”

27. Similarly, Mrima J in the case of *Turfena Anyango Owuor & another v Mary Akinyi Dengo* [2018] eKLR, stated as follows:

“ 6. Turning to the issue of the jurisdiction of the magistrates in succession matters, I believe the law as amended is so clear and settled. Initially the jurisdiction of the magistrates in succession matters was provided by Section 48(1) of the Law of Succession Act, Cap. 160 of the Laws of Kenya (hereinafter referred to as ‘the Act’). The said provision stated as follows: -

.....

7. In 2015 Section 48(1) of the Act was amended by the enactment of the Magistrates’ Court Act, Act No. 26 of 2015 (hereinafter referred to as ‘the new Act’). Section 23 of the new Act repealed the said Section 48(1) of the Act and substituted it with the following new subsection: -

.....

8. The effect of the aforesaid amendment was to accord jurisdiction to the magistrates to deal with applications under Section 76 of the Act which are for revocation or annulment of the grants issued by the magistrates’ courts. I therefore hold that a Magistrates’ Court has jurisdiction to deal with an application for revocation or annulment of a grant it issued subject to the pecuniary jurisdiction of that court. Since the value of the estate in Form P & A 5 was disclosed as Kshs. 200,000/= the application must be determined by the lower court.”

28. I fully share and associate myself with the above sentiments which have also been reiterated in numerous other authorities from the High Court. The instant Summons basically seeks the revocation or annulment of the mode of distribution of the estate as ordered by the Magistrate’s Court. I agree with the Respondent that the Application is improperly before this Court since Magistrate’s Courts now possess the jurisdiction to revoke or annul Grants issued by themselves. In such matter, the High Court only retains Appellate jurisdiction.

29. The Respondent has also exhibited a copy of a Preliminary Objection which, he states, the Applicant filed before the Magistrate’s Court raising the same challenge of lack of pecuniary jurisdiction. According to the Respondent, the Preliminary Objection was heard and dismissed and the Applicant never appealed against it nor sought any order of review thereon. Further, according to the Respondent, the Court thereafter proceeded to confirm the Grant and distributed the estate by



allocating all the properties into the name of the Respondent, which determination, again, the Applicant never appealed against it nor sought any order of review thereon. In fact, according to the Respondent, this mode of distribution was agreed upon and adopted by consent. Although a copy of the Ruling dismissing the Preliminary Objection has not been exhibited, I note that the Applicant did not comment on, deny or controvert the above averments, which then indicates that they are indeed true.

30. It is therefore evident that by filing the instant Summons via a Miscellaneous Application, the Applicant is cleverly, but unwisely, attempting to circumvent the procedure stipulated for challenging orders made by the Magistrate Court, namely, filing of an Appeal under Section 50(1) of the Law of Succession Act. This, the Court cannot countenance.
31. The Court of Appeal, in the case of Mutanga Tea & Coffee Co. Ltd versus Shikara Ltd & Another [2015] eKLR held as follows:

“The real question then becomes whether an aggrieved party can ignore these elaborate provisions in both the PPA and the EMCA and resort to the High Court, not in an appeal as provided, but in the first instance.

This Court has in the past emphasized the need for aggrieved parties to strictly follow any procedures that are specifically prescribed for resolution of particular disputes. Speaker of The National Assembly v. Karume (supra), was a 5(2)(b) application for stay of execution of an order of the High Court issued in judicial review proceedings rather than in a petition as required by the Constitution. In granting the order, the Court made the often-quoted statement that:

“[W]here there is a clear procedure for the redress of any particular grievances prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”

(See also Kones v. Republic & Another Ex Parte Kimani Wa Nyoike & 4 Others (2008) 3 KLR (ER) 296).

It is readily apparent that in those cases the Court was speaking to issues of the correct procedure rather than of the correct forum for resolution of a dispute. However, we entertain no doubt in our minds that the reasoning of the Court must apply with equal force to require an aggrieved party, where a specific dispute resolution mechanism is prescribed by the Constitution or a statute, to resort to that mechanism first before purporting to invoke the inherent jurisdiction of the High Court.

32. There is therefore no doubt that this Court lacks the jurisdiction to entertain this matter in its original jurisdiction and that the High Court’s jurisdiction on the matters raised herein can only be invoked in an Appeal, which this action is not. On this ground alone, this action cannot be allowed to progress any further. It must suffer a natural death at this very point.
33. Even assuming that the Applicant had invoked this Court’s powers to exercise supervisory jurisdiction over the trial Court under Article 165(6) and (7) of the Constitution, which he did not in any case, still the argument would fall fat. Article 165 (6) and (7) provide as follows:

“6) The High Court has supervisory jurisdiction over the subordinate Courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior Court.



(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate Court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

34. In respect to the High Court’s supervisory jurisdiction over subordinate Courts Mativo J (as he then was), in the case of Republic versus Magistrates Court, Mombasa; Absin Synegy Limited (Interested party) (Judicial Review E033 of 2021) [2022] KEHC 10 (KLR) (24 January 2022) (Judgment), stated as follows:

“35. This power of superintendence conferred by Article 165 (6) of the Constitution, as pointed out by Harries, C.J. in *Dalmia Jain Airways Ltd. v Sukumar Mukherjee*²⁶ is to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors. This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with an unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes. As the Supreme Court of India stated, unless there is a grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under Article 165 (6) of the Constitution to interfere.”

35. I also agree with the Respondent’s Counsel that despite there being no prayer for “Revocation of the Grant” in the Summons, the Applicant’s Counsel, in his submissions, cited Section 76 of the Law of Succession Act and extensively purported to submit that the Grant be revoked on the ground that it was obtained fraudulently by non-disclosure of the correct value of the estate. Similarly, regarding the submission that after calling for the lower Court file, this Court should proceed to distribute the estate afresh, again, the Respondent’s Counsel correctly pointed out that there is no such prayer in the Summons. I agree, as it has been held in numerous cases, that Submissions cannot take the place of the relevant pleadings which is where the specific orders sought must be expressly stated.

36. Further, the Application is also defective in that what is sought to be revoked is the “Certificate of Confirmation of Grant”, and not the “Grant of Letters of Administration”. Musyoka J, in the case of *Re Estate of Joel Cheruiyot Rono* [2016] eKLR, held as follows:

“2. A certificate of confirmation of a grant is not a grant representation, but a certificate to the effect that the grant had been confirmed by the Court. The discretion given to the Court by the provisions in section 76 of the Law of Succession Act is for revocation of grants of representation, not certificates that confirm those grants. There is therefore no power in those provisions for the Court to revoke a certificate of confirmation of grant. As can be seen from the outset, the said Application stands on shaky ground.

.....



4. I am being invited to revoke a certificate of confirmation of grant. The certificate is not an order of the Court. A certificate is not a judicial order. It is an extract from a Court order made in the confirmation proceedings. The certificate is generated from the Court order. It is important for the parties to differentiate between the character of a grant of representation and a certificate of confirmation of the grant. A grant is a Court order; it is a judicial pronouncement to the effect that some person has been appointed as administrator and granted the power to act as such. The certificate of confirmation of grant on the other side merely certifies that orders have been made to confirm the grant. The certificate of confirmation of grant is not the order itself.
5. I wonder whether any purpose would be served by revoking the certificate without touching the orders that gave rise to the certificate. If I revoke the certificate dated 29th February 2012, another certificate can still be generated from the orders of 29th February 2012, for the revocation would leave those orders intact.”

37. I fully agree with Musyoka’s J assertion above that Section 76 of the *Law of Succession Act* does not provide for “Revocation of Certificate of Confirmation of Grant”. To this extent, I find that the Summons is also defective.
38. In any event, and even if I were to consider the matter on merits, it is trite law that he who alleges must prove. The Applicant has merely alleged that the value of the estate is in excess of Kshs. 20,000,000/- and he even placed it at about Kshs 100,000,000/-. He does not however explain how he arrived at these figures. He seems to have “plucked them from the air” as there is no Valuation Report, at the very least, presented to substantiate the allegations. His only basis is, in his own words, that “most of the immovable property are within Eldoret Town and/or its outskirts with good public utilities”. It seems the Court is being invited to take “judicial notice” of factors contributing to the value of an asset. To “prove” this allegation, the Applicant has exhibited photographs of some of the properties. Unfortunately, and this the Applicant should know, photographs, alone, cannot prove the monetary value of a property and cannot therefore take the place of a Valuation Report. Courts do not operate on guesswork, speculation, intuition or whims, and even if this Court had jurisdiction, it would still have been prudent of the Applicant to provide tangible proof on the issue of the monetary value of the estate. In the absence of any such proof, this Court would not even have been able to find that the value of the estate was as alleged by the Applicant.

Final Orders

39. In light of the above findings, I rule and order as follows:
 - i. The Applicant’s Summons dated 27/03/2024 is struck out in its entirety.
 - ii. Although this is a family matter in which ordinarily Courts try to avoid imposing costs of proceedings against the parties, in the circumstances of this matter, I award costs of this action to the Respondent.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 20TH DAY OF JUNE 2025

.....

WANANDA J. R. ANURO



JUDGE

Delivered in the presence of:

N/A for the Applicant

Mr. Ngigi Mbugua for the Respondent

Court Assistant: Edwin Lotieng

