



REPUBLIC OF KENYA



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**In re Estate of Roger Bryan Robson (Deceased) (Succession Cause
955 of 2013) [2025] KEHC 8562 (KLR) (Family) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8562 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 955 OF 2013

HK CHEMITEI, J

JUNE 19, 2025

IN THE MATTER OF THE ESTATE OF ROGER BRYAN ROBSON (DECEASED)

BETWEEN

PLOVERS HAUNT LIMITED 1ST OBJECTOR

AGNES KAGURE KARIUKI 2ND OBJECTOR

AND

**GUY SPENCER ELMS (SUING AS THE PERSONAL REPRESENTATIVE AND
EXECUTOR OF THE ESTATE OF THE LATE ROGER BRYAN ROBSON -
DECEASED) RESPONDENT**

JUDGMENT

Background

1. The deceased herein died on 8th August 2012 leaving a written Will dated 24th March 1997 in which he appointed the Respondent Guy Spencer Elms and Sean Battye as Executors and trustees of his estate.
2. Sean Battye according to the Respondent renounced his Executorship because she was leaving the jurisdiction of this court.
3. The Respondent filed for probate with a written Will and on 30th October 2013 the grant was issued to him and was thereafter opposed by the Objectors who filed the following objections:-
4. The 1st Objector's application dated 15th April 2015 prays that:-
 - (a) The grant issued to Guy Spencer Elms the Executor of the Will of the estate of the late Roger Bryan Robson (deceased) as far as it concerns the parcel of land known as land reference



number 209/289/1/3 and Commercial Bank of Africa Limited Mama Ngina street branch account number XXXXXXXXXXXX be and is hereby annulled and or revoked.

5. On the other hand, the second Respondent's application dated 16th March 2017 prays for orders that:-
 - (a) The grant of probate made to Guy Spencer Elms on 30th October 2013 be revoked and or annulled.
6. After a long interlude of various applications, the parties were able to proceed by way of viva voce evidence where several witnesses were called from both sides. The parties adopted their rival affidavits and or witness statements during the hearing. Thereafter the court directed the parties to file written submissions which they complied.

Summary Of The Evidence

7. The 1st Objectors witness number one Thomas Murima Mutaha testified that he was a director of the 1st Objector and he relied on various affidavits which were already on record to buttress his evidence. He testified that the deceased was his family friend as he knew his brother who was in UK as well as his mother.
8. He explained how he obtained land parcel number LR 209/289/1/3 which contained some structures and which were illegally demolished.
9. He said that he complained to DCI as well as DPP concerning the Respondent who had a purported to have the deceased Will which to him was a forgery. The Respondent was however not charged. It was the said Will which he applied to the court to have it revoked.
10. When cross examined, he said that the deceased transferred the property to him without any sale agreement and that he gave him the land for free.
11. The second Objectors witness Sgt Felix Kalasya based at CID headquarters testified that he was involved in criminal case Number 60 of 2016 at the Chief Magistrate's court where Thomas Mutaha was the suspect.
12. The said person came with the original documents but the Respondent failed on his part. He said that the property was registered under the 1st Objector's name.
13. The 3rd witness was one CIP Susan Wanjiru Wambugu an officer from the forensic department who went ahead and produced some exhibits which she had been tasked to authenticate the signatures. These included the deceased Will and a power of attorney in favour of the Respondent.
14. Her ultimate conclusion was that the signatures in all the sets of documents were made by different authors.
15. When cross examined, she said that what was before her was basically her opinion and that it was not her duty to call the makers of the Will.
16. The 4th witness Cyrus N Ngatia Deputy Solicitor General testified that he had earlier worked at the Registrar of Companies. He identified the certificate of incorporation which he had prepared while at the said office.
17. When cross examined, he said that the signature on the CR 12 form dated 28th September 2015 was not his. He also denied knowing one Lagat.



18. The 5th witness was Hannah Nyokabi Waititu who was a legal officer at the Ministry of Agriculture and previously at the Registrar of Companies at Sheria House.
19. She acknowledged signing various documents and recording her statement with the police.
20. The 6th witness SSP John Muinde from DCI headquarters testified and produced several documents he had been referred for examination. He concluded that based on his analysis the signatures in all the documents when compared were at variance.
21. When the Objectors closed their case, the Respondent called one Anastasia Kioko Muiruri as his first witness. She testified that she was an advocate and worked at the law firm of Archer and Wilcock and that she knew the Respondent for many years as he was in the said firm between 1997 and 1999.
22. She said that she did not know the deceased but from the records he was their client for many years. She confirmed that the deceased will was prepared by their firm. The same was witnessed by Milka Wangari Nduati who worked in the firm between 1/11/1979 to June 2000 and Mary Kariuki who worked between 28th June 1978 to 16th October 1998.
23. The witness testified that although they had left the firm their employment records were still available and that the Respondent later left the firm to joint Rafman Dhanji Elms and Virdee Advocates.
24. She said that they have records to show that the Will was collected by Richard Adrue and given to the Respondent on 23rd February 2005.
25. When cross examined, she said that she had no particular interest in the matter and that she recorded her statement with the police.
26. The Respondent's second witness was John Allan Masese advocate who testified and gave a chorology of conveyancing processes. He denied the signatures on the transfer documents which were shown to him to be his.
27. He said that he had never acted for the Objectors herein neither had he transacted for them.
28. The third witness was Mohamed Akram Khan an advocate from 3rd March 1961. He testified that he knew the deceased who was a customer with Habib Bank who were his clients.
29. The witness identified the charge document in respect to LR No. 2327/10 and 2327/117 dated 18th November 1991.
30. The witness went on to dispute the conveyancing and re-conveyancing details which were contained in the documents' presented before him during evidence in chief as well as cross examination.
31. Witness number four Briged Ann Kosgey from Old Mutual Insurance company who testified that she knew the deceased as he was their client and had a policy with them.
32. She said that he went to his house and found him in poor health and that he referred him to the Respondent for purposes of preparation of a power of attorney. As a result of the said power of attorney they prepared some payments for him.
33. Witness number five Lilian Gathighia Lofty an advocate testified that she prepared a power of attorney in respect to the deceased after getting instructions from him. The same was in favour of the Respondent.
34. Witness number six Nafysa Abdallah Adam an advocate as well testified that she witnessed the power of attorney and stamped it. That the signatures therein were appended in her presence.



35. Witness number Seven Michael Fairfax Robson the brother to the deceased testified online. He gave a chronology of family history and that he had fallen with his brother and had left for UK. As a result, he had resigned from Plovers Haunt Company but the same was not registered.
36. He denied that the deceased had sold any of the properties as claimed by the Objectors. He also denied knowing Mr. Thomas Mutaha or at all.
37. He said that the deceased Will was valid as he was well acquainted with his signature.
38. He also denied seeing any sale agreement between the deceased and the 2nd Respondent.
39. David Muthee Michuki advocate the eight-witness testified on behalf of the Respondent as well and said that he knew the deceased as a client and for the period he acted for him he appeared frail, weak and sickly and his hand would shake when writing.
40. He further said that at no time did the deceased notified him that he was intending to sale his property.
41. When shown the picture on the conveyancing instrument he denied that, that was the deceased as he appeared much younger contrary to the deceased age.
42. Japhet Oduor the Respondent's ninth witness testified and produced a document examiners report on behalf of the late Antipas Nyanjwa who passed away before producing his report dated 8th February 2017. The findings were that the signatures on the disputed documents differ fundamentally with those of the deceased. He found them to be forgeries.
43. He went on to criticize the report by John Muinde, a document examiner and the Objectors witness who compared a 1972 signature of the deceased and that of 2015. He found the period to be too long.
44. He also faulted Susan Wambugu another document examiner and who was his student when he said that the same was not procedurally submitted to the DCI headquarters and the same was therefore suspect.
45. The Respondent eventually gave his version or his evidence where he told the court that he was an advocate and that the deceased was his client for many years. That he was the Executor of the Will and that there were two sets of applications for revocation.
46. He denied that the deceased had sold and transferred his shares at the 1st Objectors' company and in any case the Articles of Association barred any transfer of shares to a person other than one of European descent.
47. When cross examined, he said that he knew advocate Ann Mululu and the two ladies who had witnessed the Will.
48. He said further that he had been charged with an offence of forging a will but the same was later withdrawn. He said that he was involved in the drafting of the Will.
49. When the deceased died, he called his brother who was then in the UK who came and arranged for his burial. That despite the deceased stating in the Will that he should be buried, his brother had him cremated.
50. He testified that the deceased's brother transferred his shares in the Plover Haunt Company to himself and his wife and they went ahead to register another company known as Plover Haunt (2015) Limited which was a subsidiary of Plover Haunt Limited.



51. When cross examined, he confirmed that he helped with the drafting of the Will at the firm of Archer and Wilcock Advocates.
52. He also said that the deceased was sickly and that he was unwell severally.
53. According to him the property was still mortgaged and there was no way the same could be sold and or transferred.
54. He also confirmed that the deceased had given him the power of attorney which he used to access deceased funds at Old Mutual.
55. As indicated above the parties after close of the case were directed to file written submissions which they complied.

1st Objectors Written Submissions

56. Plover's Haunt Limited (Peter Gaitho Wallace & Thomas Murima Mutaha) have filed written submissions dated 27th March, 2025 placing reliance among others on.
 - a. In Petra Development Services Limited vs Evergreen Marine (Singapore_ PTE Limited & Another (2014) eKLR where the court opined as follows: "It will assist to remind myself rudimentary principles of company law by referring to the book Gower's – "Principles of Modern Company Law." On legal entity of a corporation he wrote, "As already emphasized, the fundamental attribute of corporate personality – from which indeed all the other consequences flow – is that the corporation is a legal entity distinct from its members. Hence it is capable of enjoying rights and of being subject to duties which are not the same as those enjoyed or borne by its members. In other words, it has "legal personality" and is often described as an artificial person in contrast with a human being, a natural person. As we have seen, corporate personality became an attribute of the normal joint stock company only at a comparatively late stage in its development, and it was not until Salomon v Salomon & Co. at the end of the nineteenth century that its implications were fully grasped even by the courts."
 - b. Patrick Kibathi Kigwe & 2 others vs Charles Kigwe Gathecha 92015) eKLR where the court opined as follows: "The reality is, this court can only adjudicate on transfer of shares to the extent the process involves the deceased's property and estate. However, the valuation of shares of a company, valuation and apportionment of the company's property is subject to the Companies Act, the Memorandum and Articles of Association of the company. This court's jurisdictions begins and ends with the transfer of shares in accordance with the will of the deceased and preservation of the estate until distribution. Thereafter, the beneficiary is at liberty to pursue his rightful role and shares from the company. In case of any dispute, then the matter be adjudicated by the commercial division of the high court."
 - c. In Re Estate of Kirumba Mugochi (Deceased) 2017 eKLR where the court held as follows: "The provisions of Section 76 (b) empower his court to revoke a grant with respect to the estate of the deceased if the grant was obtained by fraudulent means or by concealment of material facts essential to the case. The Respondent concealed material facts. The court is thus inclined to revoke the confirmed grant issued to Helina Wanja Kirumba and Ndegwa Ngage. i. That the grant of letters of administration made to Helina Wanja Kirumba on 30th June, 2003 is hereby revoked on the grounds that the said confirmed grant was obtained fraudulently by the making of false statement and concealment of material facts."



2nd Objectors Submissions

57. Agnes Kagure Kariuki has filed written submissions dated 10th April, 2025 and supplementary written submissions dated 12th May, 2025 placing reliance among others on the following:
- a. *Banks vs Good Follow* (1870) where the court pronounced itself as follows: “... he must have a sound and disposing mind and memory in other words, he ought to be capable of making his will with an understanding of the nature of the business in which he is engaged, a recollection of the property he means to dispose of and of the persons who are the objects of his bounty and the manner it is to be distributed between them.”
 - b. *In re Estate of Julius Mimano (Deceased)* [2019] eKLR where the court espoused as follows: “The other provision related to testamentary capacity is section 7 which states: “A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, or has been induced by mistake, is void. Section 7 covers situations where the testator at the time of making the Will is of the requisite testamentary capacity. That would be to say that the testator was of age and of sound mind at the material time, but the circumstances of making the Will detract from or undermine its validity. Fraud would arise in cases where the making of the Will is procured by deceit or similar underhand methods. Coercion would refer to circumstances where a person is literally forced to make a Will in a certain way, either under duress or threats to life or limb. The Will, though made by the deceased himself, in terms of the same being executed by him, would not reflect his Will or wishes or intentions in the circumstances, but those of the person driving him to make it in that particular way. Importunity refers to what is often described as undue influence. In such cases there would be no coercion or force or duress as such, but pressure would be brought on the testator of such nature that he cannot resist. He would bend to the pressure, not so much because he is persuaded or convinced that he should make his Will in such manner, but because he would be tempted to rid himself of the pressure by capitulating to it. Mistake would refer to cases where the testator signed the written document, such as that meant for someone else believing it to be meant for him. There must be evidence of the intimate details of the making of the Will, in terms of what exactly transpired at the event of the making of Will... That role would include being the person in general control of the testator, being the one who took him around, being the person who prepared the Will or procured his own advocate to do it, or the person who took him to an advocate of his own choice for that purpose”

Respondents Written Submissions

58. Guy Spencer Elms has filed written submissions dated 24th April, 2025 placing reliance among others on the following:-
- a. *David Sironga Ole Tukai v Francis Arap Muge & 2 others* [2014] KECA 155 (KLR) and *Pacific Frontier Seas Ltd v Kyengo & another* [2022] KECA 396 (KLR) where the court of appeal reaffirmed that it is trite law that parties are bound by their pleadings. Granting orders and reliefs which were not prayed for is totally out of character and amounts to a determination made without hearing the parties and is a denial of justice to the Executor.
 - b. *In re Estate of Julius Mimano (Deceased)* [2019] KEHC 10103 (KLR) where the court stated as follows: “Coercion would refer to the circumstances where a person is literally forced to make a Will in a certain way, either under duress or threats to life or limb. The Will, though



made by the deceased himself, in terms of the same being executed by him, would not reflect his Will or wishes, in terms of the same being executed by him, would not reflect his Will or wishes or intentions in the circumstances, but those of the person driving him to make it in that particular way.”

- c. In re Estate of Jackson Mugo Mathai (Deceased) [2010] KEHC 2447 (KLR) where the court held that: “There is no agreement in the high court on who is an interested party thus competent to bring the application. Koome J held in the matter of the Estate of Gichia Kabiti (deceased) Nairobi High Court Succession Cause No. 2559 of 2002 that they are the persons who have priority in law to apply for grant of representation are those set out in Section 66 of the Law of Succession Act and the order of preference is as set out in the provision. In the Matter of the Estate of Hemed Abdalla Kaniki (Deceased) Nairobi High Court Succession Cause No. 1831 of 1996, Kamu J, on the other hand took the view that Section 76 is open to any person who may be interested in the estate of the deceased person, and not just to the class of persons mentioned in Section 66. In his opinion, Section 76 and Rule 44 are intended to determine greater fundamental legal issues with a view to ensuring the proper administration and finalization of the estate. Section 76 (D) and (e) of the Law of Succession Act are concerned with the administration of the estate. Any person therefore interested in the administration of the estate has sufficient standing to seek revocation of the grant under Section 76 (D) and (e) of the Law of Succession Act. It is only the persons listed in Section 66 who, as it were have a stake in the estate who in my view can legitimately bring applications under Section 76 (A) (B) and (c) of the Law of Succession Act challenging the propriety of the grant making process. Persons who are not qualified to apply for grant making process. Persons who are not qualified to apply for grant would have no basis for challenging the making of a grant. In this case, it is not in dispute that the applicant is not an heir and is not and has never been a dependent of the deceased. It has not proprietary interest in the deceased’s estate. It is also not an advocate of attorney of the purchasers. If they are aggrieved purchasers, they should sue the Respondent as the legal representative of the deceased.”
- d. In re Estate of Josiah Kipkurui Arap Rono (Deceased) [2017] KEHC 4925 (KLR) where the court held as follows: “21. I have stated earlier on that the applicant is not a beneficiary of the estate of the deceased. She has not enforceable interest in the estate of the deceased. A party seeking revocation of grant must be an interested party. The applicant’s interest, I reiterate, is a competing interest in property against the estate. The application as presented is thus defective... 23. In our instant suit, the grounds raised are that the applicant lays claim to the subject property. Such a claim is not contemplated under Section 76 of the Law of Succession Act and the remedy lies elsewhere. 24. As held by the court (Ngaah J) in the matter of the estate of Peter Githinji (supra), the grounds upon which a grant may be revoked or annulled are statutory. They do not include a claim to ownership of land by a party. Such a party has readily available remedy (ies) elsewhere within the law... 26. From the above analysis and for reasons stated, I am persuaded that the applicant’s remedy lay in a proper suit/ claim through the suitable jurisdiction of court. The applicant is not a beneficiary to those of the estate herein. The remedy lies in a court of competent jurisdiction seized with the jurisdiction to entertain matters affecting ownership, use and occupation of land. 27. The applicant is a stranger to the estate herein. The perfect reason why she has no business interfering with the administration of the estate herein including a complaint about accounts being rendered. The law provides a proper mechanism through which she could articulate her claim.”



Analysis And Determination

59. I have gone through the application, the responses thereto and the rival submissions.

60. The issues for determination as crafted by the parties can be summarized as follows:-

- a. Plover's Haunt Limited:
 - i. Whether the properties Land Reference No. 209/289/1/3 and Bank Account No. XXXXXXXXXXXX with the Commercial Bank of Africa Limited were properties of the deceased and therefore whether the said properties were available for distribution in a succession cause.
 - ii. Whether the Respondent tampered with the records of the 1st Objector at the company's registry.
- b. Agnes Kagure Kariuki:
 - i. Whether the Will dated 24th March, 1997 is valid.
 - ii. Whether, in obtaining the grant, the Executor forged signatures on the Will and the power of attorney.
 - iii. Whether, in petitioning this court for grant of probate, the Executor made false statement or concealed material information from the court.
 - iv. Whether the Objectors had the requisite locus standi to institute the objection herein.
 - v. Whether the objection dated 16th March, 2017 was withdrawn.
 - vi. Whether evidence was called in support of the objection dated 16th March, 2017.
 - vii. Whether the affidavits of the witnesses not called by the Executor have any probative value.
 - viii. Whether the testimony of the Executor's witnesses was independent and impartial.
- c. Guy Spencer Elms:
 - i. Whether Thomas Mutaha and Agnes Kagure have the locus standi to bring an application to revoke the grant.
 - ii. Whether Agnes' failure to testify deems her application abandoned.
 - iii. Whether the will dated 24th March, 1997 was a forgery.
 - iv. Whether the shares in Plover's Haunt Limited belonged to the Estate of Roger Bryan Robson.
 - v. Whether Thomas Mutaha & Peter Gaitho Wallace had any locus standi to make any application on behalf of Plover's Haunt Limited.
 - vi. Whether Thomas Mutaha's application is incompetent.
 - vii. Whether the Partial Confirmation ordered on 24th March, 2015 should stand.



61. I have looked at the entire submissions and the summary of the above grrafted issues by the parties and in my view and for the reasons which I shall state in the body of this decision, there is only one major fundamental issue to determine as of priority, namely, whether the impugned Will is valid or not.
62. The other issues raised by the parties in the entire proceedings I respectfully think ought to be raised in the two other courts namely the Environment and Land court as well as the Commercial Division of the high court.
63. My above assessment is premised on the evidence raised by all the parties involving the sale or otherwise by the deceased of the three contested properties namely LR No. 209/289/1/3 and LR No. 2327/10 and 2327/117. The evidence presented would be more valuable at the land court considering that it has nothing to do with inheritance but pure contracts.
64. The evidence of advocates John Masese and Mohamed Akram Khan whom I found to be conveyancing gurus by virtue of their practice experience were succinct. They clearly explained the issue of conveyancing and re-conveyancing under the Government Land Act (GLA) vis a vis the other Acts.
65. On the other hand, the Respondent was at pains to explain to the court that as far as he was concerned the suit properties were still mortgaged and therefore not available for transfer as suggested by the Objectors. Indeed it appears to me that there was some element of evidence to suggest so and if that is the case then the other courts will be able to deal with it fully.
66. Clearly this is beyond the jurisdiction of this court. The parties must subject themselves to the land court where they will be able to challenge the issues surrounding the sale and transfer of the said parcels of land and more particularly defend their respective position.
67. This goes again with the issue of shares in the two entities namely Plovers Haunt Limited and Plovers Haunt (2015) Limited. As far as the Respondent was concerned the deceased did not transfer his shares to the Respondents or at all. He also claimed that he registered Plovers Haunt (2015) Limited as a fully owned subsidiary of the 1st Respondent after the deceased had passed on and after the transfer of the shares to him by the deceased brother.
68. He alleged therefore that whatever the 1st Respondent was holding as shares in the said company were fraudulently transferred.
69. Again, these issues shall be dealt with by the Commercial Court. As to how the shares were transferred to the Respondent or the Objectors, whether fraudulently or not is for the said court to make more in-depth inquiries which is way beyond this court's paygrade.
70. Further whether there were fraudulent changes in C R 12 form and whether the Articles of Association barred any transfer to any person with no European descent is for the said commercial court to inquire and make appropriate findings.
71. In the event the said courts find that the properties and or shares belonged to the deceased and therefore his estate, then the ball shall be thrown back to this court to make a determination on how they ought to be distributed in line with the Succession Act.
72. My above finding is buttressed by the fact that the deceased Will made no direct mention of the same and in the premises this court will act after the decisions by the two courts.
73. The next question is whether the impugned Will was valid or not. The provisions of Section 5(1) and (3) of the Succession Act as read with section 11 is worth considering.



74. Section 5(1) and (3) states:-

“Subject to the provisions of this Part and Part III, every person who is of sound mind and not a minor may dispose of all or any of his free property by will, and may thereby make any disposition by reference to any secular or religious law that he chooses.

(3) Any person making or purporting to make a Will shall be deemed to be of sound mind for the purpose of this section unless he is, at the time of executing the will, in such a state of mind, whether arising from mental or physical illness, drunkenness, or from any other cause, as not to know what he is doing.

75. Section 11 states:-

“No written will shall be valid unless—

(a) the testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;

(b) the signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;

(c) the will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

The burden of proof that a testator was, at the time he made any will, not of sound mind, shall be upon the person who so alleges.

76. The substance of the above law is that the deceased must have a sound memory and capable of transacting any concern business including recollection of his properties and dependants and how he desires the same to be distributed. At the same time the law allows the deceased to exercise his testamentary freedom and ensure that whatever he desires after his demise concerning his estate is not unnecessarily hindered.

77. I have perused the original Will on record and in my view, there is nothing to fault. It was executed by the deceased and as a matter of fact he signed all the pages. The same was witnessed by two persons and was drafted by an advocate.

78. This accords well with section 11 of the [law of Succession Act](#) cited above.

79. Much issue was raised concerning whether the same was a forgery or not. I think this was much to do with the documents signed or allegedly signed by the deceased subsequent to the Will. These were the transfer documents concerning the three properties as well as the shares and the power of attorney.

80. In my view whether the deceased was not in a position to sign or not is for the other courts with necessary jurisdiction as outlined above to decide. For now, this court is satisfied that the will meets all the requirements and parameters of a valid Will.



81. Neither do I find any evidence to suggest any pressure or coercion applied against the deceased when he made the Will. It appears that he simply walked into his counsels' chambers and gave direction on his intention to make a Will. The parties including the Respondent went ahead to work on it and the relevant parties witnessed.
82. Some few years later when the Respondent left the firm the deceased file (Will) was sent to him. In any case there is nothing to show that the Respondent benefitted from the estate as the will does not bequeath him anything despite the deceased not having any heirs and disregarding his brother who was still alive.
83. At the same time, the fact that the deceased did not include specific properties in the Will does not make it invalid for all intent and purpose. If in the long run there are some which were left then they shall be administered as intestate and therefore it cannot be a ground for invalidating a Will.
84. It is possible sometimes for testators to leave some properties out completely for whatever reasons or even to forget them at the time of making the Will. This does not mean that the Will, will be rendered invalid as the law provides the alternative avenue for administration.
85. While at it I have perused the evidence tendered by the expert witnesses and in particular the four document examiners. In my view and as far as the Will is concerned and as stated earlier, they all do not agree and therefore this court will not take their evidence into consideration. Of course, the other courts at the relevant time may make analysis as regards the other documents. Otherwise as regards the will I do not find their evidence of much probative value.
86. In re Estate of Alice Mumbua Mutua (Deceased) Succession Cause No. 3142 of 2003 [2017] eKLR where Musyoka J. held:

“Clearly, disputes as between the estate and third parties need not be determined within the succession cause. The legal infrastructure in place provides for resolution elsewhere, and upon a determination being made by the civil court, the decree or order is then made available to the probate court for implementation. In the mean-time the property in question is removed from the distribution table. The presumption is that such disputes arise before the distribution of the estate, or the confirmation of the grant. Where they arise after confirmation, then they ought strictly to be determined outside of the probate suit, for the probate court would in most cases be functus officio so far as the property in question is concerned. The primary mandate of the probate court is distribution of the estate and once an order is made distributing the estate, the court's work would be complete.”

87. The same position was well articulated by Ngugi J (as he then was) when he said in Joseph Koori Ngugi & another vs. Stephen Ndichu J. Mukima [2017] eKLR where Hon. Justice Ngugi observed that:-

“In addition, in my view, prudential reasons militate in favour of these kinds of disputes being heard at the ELC or at least in a separate suit. While I agree that the *Law of Succession Act* envisages a class of people beyond “traditional” beneficiaries to bring proceedings for revocation or annulment of a grant of representation in a probate cause, cases which present a straightforward challenge to the ownership of property by the Deceased present a separate question and not a probate matter. To attempt to resolve such issues of contested ownership in the context of a probate case could obfuscate the real issues and lead a Court to reach wrong or compromised conclusions. This is in part because probate proceedings are not designed for parties to be able to effectively litigate complex issues of ownership. In a separate suit, parties are better able to plead their case, go through discovery process and a fully-



fledged hearing where evidence can be properly presented, contested, examined and veracity tested.”

88. I think looking at the evidence of the above document examiners experts they all tilted towards whoever briefed them. On this question of the experts the court in Kenya Ports Authority v Modern Holdings [E.A.] Limited [2017] eKLR; Civil Appeal No. 108 of 2016 (Mombasa) held that:

“We agree with the learned Judge that in the event of conflicting expert evidence, it is the duty of the court to consider the evidence and form its opinion. However, in so doing, the court must give cogent reasons why it prefers the evidence of one expert over the other.”

89. In this regard and based on what I have stated above I decline to agree with the evidence of the three conflicting experts.

90. Although there was an argument by the Objectors that the two witnesses Milka Nduati and Mary Kariuki did not testify there was no doubt that the evidence of Anastasia Kioko Muiruri was not shaken on the two persons who worked at the firm of Archer and Wilcock advocates. They appeared to have done exemplary work between 1979 to 2000 and 1978 to 1998 respectively.

91. More importantly are the evidence of Bridged Ann Kosgey and David Muthee Michuki. According to them and having dealt with the deceased during his almost last days and specifically around 2009 and 2011 respectively the deceased was unwell and was not very coherent and was of poor health.

92. This contrast materially with the deceased health in 1997, about 14 years earlier, when he made the Will. In my view therefore he was in his right faculties and in good health when he prepared the said Will.

93. There was the issue raised by the Respondent that the Objectors had no locus standi to file the objection proceedings.

94. Whereas that may be so, I however find that there was a lot of mention about some purchase consideration which passed between the 2nd objector in particular and the deceased. There was however not much evidence presented in form of what one can call solid argument.

95. Secondly the conveyancing instruments were all questionable including the shares issue I have outlined above.

96. In the Matter of the Estate of M’Ngarithi M’Miriti (Deceased) [2017] eKLR the court was categorical, that a person with a proprietary interest in property claimed to form part of an estate has sufficient locus standi to participate in succession proceedings touching on that property. Based on the arguments from the Respondents they squarely fit to be considered as creditors to the estate for now and until the other courts pronounced themselves.

97. Further and in view of my finding that this matter in particular ought to be decided by the other courts clothed with the relevant jurisdiction I shall decline the invite to decide that they do not have the locus standi. I state so because should the said courts hold that the sale or transfers were valid then this court might be required to step in and direct the Respondent to transmit the properties to the Objectors.

98. In the premises I hold that for now the Objectors are clothed with locus to challenge this cause. They will in any event be treated as creditors to the estate should the said courts find that they had rights over the estate.



99. As to the Respondent's argument that the 2nd Objector withdrew her objection proceedings dated 16th March 2017, I do not find any evidence on record. For that reason, the said objection is valid for all intend and purpose.
100. Taking totality therefore of my above findings, I think I have stated much to demonstrate that the objection proceedings dated 15th April 2015 and 16th March 2017 were not proved beyond the balance of probabilities and the same are hereby dismissed with costs to the Respondent.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 19TH DAY OF JUNE 2025.

H K CHEMITEI

JUDGE

