In re Estate of Joseph Toroitich Cherono (Deceased) (Probate & Administration 46 of 2020) [2025] KEHC 10922 (KLR) (25 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10922 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

PROBATE & ADMINISTRATION 46 OF 2020

RN NYAKUNDI, J

JULY 25, 2025

IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH TOROITICH CHERONO (DECEASED)

BETWEEN

PATRICK CHERONO ..... 1ST APPLICANT

RAYMOND CHERONO TOROITICH ..... 2ND APPLICANT

AND

RUTH JERONO CHERONO ..... 1ST RESPONDENT

SUSAN CHERONO ..... 2ND RESPONDENT

IAN KWAMBAI ..... 3RD RESPONDENT

VIOLA JEPCHUMBA ..... 4TH RESPONDENT

KIBIWOTT CHERONO ..... 5TH RESPONDENT

KIBET CHERONO ..... 6TH RESPONDENT

RULING

1. What is before this court for determination is a Notice of Motion Application dated 23rd June 2025 expressed under the provisions of Order 51 Rule 1 of the Civil Procedure Rules 2010, Section 47 of the Succession Act and Rule 73 of Probate and Administration Rules in which the Applicants are seeking the following orders;

    a. Spent.

    b. That in distributing the deceased estate herein, the Honourable Court be pleased to consider Susan Cherono, Ian Kwambai, Vola Jepchumba, Kibiwott Cherono And Kibet Cherono, the

2nd to 6th Respondents, as Dependents of the deceased and not beneficiaries and/or heirs of the deceased estate.

c. In the alternative to prayer (b) above, the Honourable Court may be pleased to order for DNA test against Susan Cherono, Ian Kwambai, Vola Jepchumba, Kibiwott Cherono And Kibet Cherono to ascertain as to whether they are the biological children of the late Joseph Toroitich Cherono, deceased whose estate herein revolves.

d. Costs of the application be in cause.

2. The Application is based on the following grounds among others;

a. That on 9th August 2024, the Honourable Court vide the ruling of the Court delivered on the said date, declined to consider matrimonial proprietary interest vested in the deceased estate and ruled that section 40 of the *Law of Succession Act* is to apply in the distribution of the estate herein.

b. That on 27th May 2025, this Honourable Court vide the Ruling of the Court dated the even date declined to grant stay of proceedings herein pending the Appeal lodged in the Court of Appeal by the Applicants.

c. That this matter is yet to be finalized to its logical conclusion and it is pending final judgement on distribution and hence the said appeal being pre-appeal, there is likelihood that the Court of Appeal may not grant stay of proceedings herein given the fact that the final judgement on distribution is yet to be delivered.

d. That following the said denial of stay of execution herein, the Objector, Ruth Cherono has moved this Honourable Court through Chamber Summons dated 20th June 2025 seeking that the Honourable Court may proceed to deliver the final judgement with regard to the distribution of the estate in question.

e. That in view of the court's ruling dated 9th August 2024, which ruled out the possibility of the applicability of the *Matrimonial Property Act*, it is evident that and given the fact that the deceased was survived by the two houses, the Honourable Court will heavily rely on section 40 of the *Law of Succession Act* as pointed out in the said Ruling.

f. That paternity of some of the children from the 2nd house is disputed and therefore it is in the interest of justice that before the Honourable Court proceeds to deliver the final judgement on distribution of the estate, order for DNA test.

g. That on 27th May 2025, this Honourable Court vide the Ruling dated the even date declined to grant stay of proceedings herein pending the Appeal lodged in the Court of Appeal by the Applicants.

h. That this matter is not yet finalized to its logical conclusion and the said appeal being pre-appeal, there is likelihood that the Court of Appeal may not grant stay of proceedings given the fact that the final judgement on distribution of the estate is yet to be delivered

i. That following the denial of stay of execution herein, the Objector, Ruth Cherono has moved this Honourable Court through Chamber Summons dated 20th June 2025 seeking that the Honourable Court may proceed to deliver the final judgement with regard to the distribution of the estate in question.

j. That in view of the court's ruling dated 9th August 2024, which ruled out the possibility of the applicability of the Matrimonial Property, it is evident and given the fact that the deceased was survived by two houses, the Honourable Court will heavily rely on section 40 of the *Law of Succession Act* as pointed out in the said ruling.

k. That paternity of some of the children from the 2nd house is disputed and therefore it is in the interest of justice that before the Honourable Court proceeds to deliver the final judgement on distribution of the estate, order for DNA test against the 2nd to the 6th Respondents so as to ascertain number of children (units) from each household.

3. In response to the application, the 1st Objector/Respondent swore a replying affidavit on 7th July, 2025:

a. That the application herein has been brought forth in bad faith as the same is marred with malice, falsehoods and meant to derail and frustrate the distribution of the estate of Joseph Toroitich Cherono (deceased).

b. That Susan Cherono, Ian Kwambai, Viola Chepchumba, Kibiwott Cherono and Kibet Cherono are my children and their biological father is Joseph Toroitich Cherono (deceased).

c. That I married Joseph Toroitich Cherono (deceased) in the year 1967 under the Keiyo Customary Law and officiated the same in the year 1975.

d. That Susan Cherono, Ian Kwambai, Viola Chepchumba, Kibiwott Cherono and Kibet Cherono are biological children of Joseph Toroitich Cherono (deceased), who were born on 8th August, 1979, 10th December, 1986, 30th June, 1989, 24th June, 1983 and 10th February, 1995 respectively and they were raised by their father until demise.

e. That the Applicants are aware that the afforested persons are biological children of Joseph Toroitich Cherono (deceased) and have held them as such, including in the petition for letters of administration intestate dated 1.7.2020 filed by the 1st Applicant herein.

f. That the suit herein proceeded for hearing on 31.7.2023 whereby the Applicants herein testified and confirmed that Susan Cherono, Ian Kwambai, Viola Chepchumba, Kibiwott Cherono and Kibet Cherono are the biological children of Joseph Toroitich Cherono (deceased) and did not raise the issue of paternity raised in the application herein.

g. That the Honorable Court has already made its determination on the beneficiaries in its ruling delivered on 9.8.2024.

h. That the Applicants have not preferred an appeal against the determination of the beneficiaries of the estate made by the Court and therefore the same stands.

i. That for DNA to be conducted, that will mean that the body of Joseph Toroitich Cherono (deceased) be exhumed so that the DNA samples can be obtained for the DNA tests, prayers which the Applicants have not sought.

j. That exhumation of the body of the deceased is unnecessary and an emotional exercise which should not be conducted on the basis of the malicious allegations by the Applicant.

k. That the applicants allege that he biological fathers of the listed beneficiaries are well known but have failed to list them, make them swear affidavits in support of the allegations or even to conduct DNA with the alleged fathers.

l. That the Applicants have to demonstrate any exceptional circumstances to warrant issuance of the orders that the five beneficiaries to undergo DNA test.

m. That in the unlikely event the Court issues an order for DNA, then the order should direct all the beneficiaries of the estate of Joseph Toroitich Cherono (deceased) from both the first and second houses to undergo DNA tests so that their paternity is ascertained.

n. That the application herein is an afterthought, malicious and intended to delay the distribution of the estate to the respective beneficiaries so that the Applicants and other beneficiaries from the first house can continue to enjoy the use of and intermeddle with the estate in the exclusion of other beneficiaries.

o. That the Applicants filed this application immediately after being served with my application dated 20.6.2025 seeking to have a judgement delivered in this suit by distributing the estate to the respective beneficiaries in order to bring other unnecessary issues and disrupt the Court from distributing the estate to the beneficiaries.

p. That the application herein has been brought in bad faith with intention to disinherit the beneficiaries of the estate from the second house from what they are legally entitled to.

q. That the Applicants have developed a habit of filing several unnecessary applications after the close of both cases because the final judgement in this matter has never been delivered.

r. That I urge this Honorable Court to dismiss the application dated 23.6.2025 and proceed to deliver a final judgement on the matter by distributing the estate to the respective beneficiaries and bring the matter to a close.

4. The Respondents filed their submissions essentially opposing the instant application. Learned Counsel Mr. Omwenga identified three issues for determination couched as follows:

a. Whether Susan Cherono, Ian Kwambai, Viola Jepchumba, Kibiwott Cherono and Kibet Cherono should be considered as dependants and not beneficiaries of the estate of Joseph Toroitich Cherono (deceased) and in the alternative, the court to issue an order of DNA test against them.

b. Whether the court should deliver its judgment on this succession cause and distribute the estate to the beneficiaries as determined vide the ruling of the court delivered on 9.8.2024.

c. Who should bear the costs of the application dated 20.06.2025 and 23.6.2025

5. Learned Counsel Mr. Omwenga submitted that the Respondents have adequately demonstrated that Joseph Toroitich Cherono (deceased) was their biological father by annexing their birth certificates and baptismal cards to their replying affidavit dated 7th July 2025. He argued that despite stating in their application dated 23rd June 2025 that the 2nd to 6th Respondents' fathers are well known, the Applicants have not availed any evidence in proof of their allegations on paternity.

6. Counsel emphasized that it is not in dispute that the 2nd to 6th Respondents herein have been recognized by Joseph Toroitich Cherono (deceased) from birth until his demise in December 2019, with the deceased having fully provided for them all their needs including educating them. He argued that all of them were born within the period which the Objector was married to Joseph Toroitich Cherono (deceased) as demonstrated by the marriage certificate annexed to the replying affidavit dated 7th July 2025 as annexure. Counsel submitted that the 2nd to 6th Respondents cannot therefore be termed as

dependants as alleged by the Applicants since they are clearly the beneficiaries of the estate of Joseph Toroitich Cherono (deceased) by virtue of being the deceased's biological children.

7. Counsel pointed out the irony that during the filing of the succession cause, the Petitioners who are the Applicants herein had filed a petition dated 1st July 2020 in which they listed the 2nd to 6th Respondents as beneficiaries of the estate of Joseph Toroitich Cherono (deceased). He noted that they also annexed to the affidavit in support of the petition chiefs' letters dated 4th June 2020 and 6th January 2020 which indicated the beneficiaries of the estate of Joseph Toroitich Cherono (deceased) from the second house, with the 2nd to 6th Respondents being among them. Counsel argued that this clearly demonstrates the malicious attempts of the Applicants to disinherit the beneficiaries of the estate from the second house from what they are legally entitled to.

8. Counsel argued that the Court can only order DNA tests in exceptional circumstances, and that the Applicants have not demonstrated exceptional circumstances to warrant issuing an order for DNA against the 2nd to 6th Respondents. He contended that such an order is unwarranted and would amount to infringement of their constitutional right to bodily integrity and right to privacy.

9. On the second issue, learned counsel Mr. Omwenga submitted that the issue of paternity and whether the 2nd to 6th Respondents having been submitted above and established that they are indeed beneficiaries of the estate of Joseph Toroitich Cherono (deceased), the Honourable Court should deliver its judgement in the matter by distributing the estate to the beneficiaries. Counsel argued that vide the ruling delivered on 9th August 2024, the Honorable Court determined the beneficiaries of the estate of Joseph Toroitich Cherono (deceased) to be seventeen and ordered that they are all entitled to equal shares of the estate.

10. Counsel submitted that the Court further directed the administrators of the estate to come up with the matrix on the distribution of the estate, but the beneficiaries could not agree despite holding three mediation sessions vide Eldoret High Court Mediation No. E359 OF 2025. He argued that litigation must come to an end, noting that the Petitioners/Applicants from the first house have developed a habit of filing so many unnecessary applications even after the close of both cases because the final judgement in this matter has never been delivered.

11. Mr Omwenga prayed that this Honourable Court delivers its final judgement in this succession cause, distribute the estate to the respective beneficiaries and bring the matter to a close as litigation must come to an end. He argued that any aggrieved beneficiary will have a chance to ventilate their issues at the Court of Appeal if they so wish.

12. Counsel further submitted that the estate is being wasted as some of the beneficiaries are intermeddling with the assets, and that it is in the interest of justice that a final judgement is delivered and the estate is distributed to the respective beneficiaries. He noted that on 21st January 2025, the Court directed the parties to file an inventory of all the assets of the estate of Joseph Cherono (deceased), with the Objector having filed an inventory dated 13th February 2025 as directed by the Court, which inventory is annexed to the supporting affidavit dated 20th June 2025 as annexure B.

13. Counsel noted that the homestead for the 1st house is on the parcel of land No. Uasin Gishu/Kaptagat/214 where Joseph Toroitich Cherono (deceased) was buried and the beneficiaries from the first house are domiciled, whereas the homestead for the second house is on the parcel of land No. Uasin Gishu/Illula/1 where the beneficiaries thereof are domiciled. Based on this, counsel humbly prayed that the Honorable Court distributes and/or shares the parcel of land No. Uasin Gishu/Kaptagat/214 to the beneficiaries from the first house only and the parcel of land No. Uasin Gishu/Illula/1 to the beneficiaries from the second house.

14. On costs, learned counsel Mr. Omwenga submitted that under Rule 69 of the *Probate and Administration Rules, 1980*, the costs of all proceedings under these Rules shall be in the discretion of the Court. Counsel argued that it is the Respondent's submissions that the Objector's application dated 20th June 2025 seeking to have a judgement delivered in this succession cause is merited and the same should be allowed with costs to be borne by the Petitioners/Applicants.

Analysis and determination.

15. This court is confronted with an application seeking DNA testing and reclassification of beneficiaries in circumstances that need a closer look at the record. The present application, filed on 23rd June 2025, emerges against the backdrop of this court's comprehensive ruling of 9th August 2024, which definitively determined that the estate of the late Joseph Toroitich Cherono should be distributed amongst seventeen beneficiaries, including the five individuals now subject to challenge. That ruling followed extensive consideration of matrimonial property claims, detailed analysis of asset acquisition spanning several decades, and a careful examination of family relationships within a polygamous marriage that produced children from two houses. The court now finds itself asked to question the paternity of beneficiaries whose status as legitimate heirs was neither disputed during the deceased's lifetime nor challenged throughout years of this litigation that preceded the August determination.

16. What emerges from the present application is a fundamental contradiction that defies basic principles of judicial administration. The applicants, having actively participated in proceedings that resulted in the recognition of the 2nd to 6th respondents as legitimate beneficiaries, now seek to challenge the foundation of that recognition. This turnaround cannot be divorced from its temporal context.

17. The doctrine of judicial estoppel operates to prevent parties such as the applicants herein from adopting positions fundamentally inconsistent with their previous conduct before the same court. Where a party has induced a court to act upon a particular set of facts or legal positions, that party cannot subsequently seek to benefit from a contrary position. The applicants' conduct falls squarely within this prohibition, having presented detailed distribution proposals that explicitly recognized the challenged beneficiaries' legitimacy.

18. I find guidance in *Halsbury's Laws of England* in Vol. 16 (2) at paragraphs 1076 and 1079 which states as follows on the doctrine of estoppel: -

> "1076. Common law estoppel by representation arises where a person has by words or conduct made to another a clear and unequivocal representation of fact, either with knowledge of its falsehood or with the intention that it should be acted upon, or has conducted himself that another would, as a reasonable person, understand that a certain representation of fact was intended to be acted upon, and the other person has acted upon such representation and thereby altered his position. In such circumstances an estoppel arises against the party who made the representation, and he is not allowed to aver that the fact is otherwise than he represented it to be. It seems that, in contrast to the position where promissory estoppel or proprietary estoppel arises, there is no additional requirement of unconscionability.....
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> 1079. In order for a common law estoppel by representation to arise, the person to whom the representation is made must have changed his position in some way to his detriment. In doing so, he must have relied on the representation, although that need not have been the sole cause of his change of position."

19. In *Serah Njeri Warobi vs. John Kimani Njoroge* [2013] eKLR, the court held as follows: -

> " The doctrine of estoppel operates as a principle of law which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person."

20. The evidential foundation upon which the applicants seek to build their case reveals itself to be nothing more than a house of cards. Their bold assertion that the biological fathers of the contested beneficiaries are well known stands in stark contrast to their complete failure to identify these alleged fathers or produce any corroborating evidence. This evidential vacuum becomes particularly glaring when considered against the backdrop of the extensive litigation history, where such fundamental questions of family relationships would have been both relevant and necessary to address.

21. In the comparative dictum the court in *Hoystead v Commissioner of Taxation* [1925] AC 155 Lord Shaw stated that:

> " In the opinion of their Lordships it is settled, first, that the admission of a fact fundamental to the decision arrived at cannot be withdrawn and a fresh litigation started, with a view of obtaining another judgment upon a different assumption of fact; secondly, the same principle applies not only to an erroneous admission of a fundamental fact, but to an erroneous assumption as to the legal quality of the fact. Parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the Court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted, and there is abundant authority reiterating that principle. Thirdly, the same principle—namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the plaintiff and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken. The same principle of setting parties' rights to rest applies and estoppel occurs."

22. In the application at bar the applicant was under duty to pierce the provisions of section 29 of the *Law of Succession Act* so as to lift the corporate veil of the deceased family within the scope of consanguinity and affinity. The lineage of the deceased family seems to me not to have been a contested issue at the point of petitioning the making of the grant of representation. If fresh litigation is allowed to reopen this matter that had been judicially determined, then litigation would not end. This could surely lead to an abuse of the process and that cannot at all be sanctioned by the court as being a fair administration of justice. That to me is what the doctrine of res judicata under section 7 of the *CPA* is geared at preventing. So whether the applicant knew of section 7 of the *Act* or not at the time of the first motion, chamber summons, petition or claim would not be sufficient to assist in advancing the argument that the claim on DNA is not res judicata. I am of the considered view that the applicant should be estopped from filing an application post-judgment and setting it up in the same cause of action as a defense to the distribution of the estate. This issue could have pleaded but he chose the proper time to go by so as to convince the court that a new issue has arisen for determination. There is no new compelling evidence for this court to reopen the proceeding. True to the record the applicant did not avail himself of the opportunity of setting it up in the first summons, motion or application so as to give the court to exercise adjudication powers at once without re-litigation. This is what the court had in mind when it

pronounced itself in the case of *John Florence Maritime Services Limited & Another vs Cabinet Secretary Transport & Infrastructure & 3 Others* [2021] inter-alia that the doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.

23. The temporal sequence of events provides perhaps a clear picture of the application's true character. Throughout years of litigation involving matrimonial property disputes, detailed asset valuations, and family genealogies, no party raised questions about the paternity of these individuals. Their recognition as beneficiaries was not contested when the deceased was alive and not challenged during the initial stages of these succession proceedings. The sudden emergence of these concerns only after all other legal avenues had been exhausted speaks to a manufactured controversy designed to frustrate rather than illuminate.

24. The constitutional dimensions of this application cannot be ignored. The rights to human dignity, bodily integrity, and privacy enshrined in the *Constitution* create a presumption against intrusive procedures such as DNA testing absent compelling justification. The applicants have failed to demonstrate the exceptional circumstances that would warrant such an intrusion, particularly given their previous conduct acknowledging these individuals as family members.

25. In *WKG vs JWM & Another* [2016] eKLR the Court stated as follows:

> " The matrix of the competing interests which involve the Petitioner's right to have the dispute adjudicated fairly and the Respondent's interests to have his constitutional rights to bodily integrity and privacy protected, would dictate that the level of certainty to be achieved is not simplified. Rather the court should be satisfied that an appropriate basis has been laid...
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> ... It is true a determination of paternity (or more correctly, non-paternity) puts to rest nagging questions or doubts. A basis however needs to be set for such a test. Such a basis may be set in the preliminary stages of the suit where there is clear and irrefutable conduct pointing towards paternity...."

26. The Court must be satisfied that there exists special circumstances sufficient to warrant the issuance of the orders sought. In the case of *S.W.M vs G.M.K* [2012] eKLR Majanja J stated as follows:

> " Ordering the respondent to provide DNA for whatever reason is an intrusion of his right to bodily security and integrity and also the right to privacy which rights are protected under the Bill of Rights. The petitioner bears the burden of demonstrating to the court the right she seeks to assert or vindicate and which the court would consider as overriding the respondent's rights."

27. Against this background, the court finds no merit in the application seeking DNA testing or the reclassification of the 2nd to 6th respondents as dependents rather than beneficiaries. The application represents an impermissible attempt to relitigate settled matters and contradicts the applicants' own previous position. The interests of justice and the constitutional rights of the respondents all militate against granting the relief sought.

28. Generally, there is no dispute that DNA technology is used in Kenyan courts to adjudicate paternity disputes and is more prominent in custody, family and succession claims. What is always borne in mind

is the fact that courts cannot order DNA samples extraction as a matter of course for such decisions are underpinned within the *Constitution* imperative on the fundamental rights and freedoms. The right to privacy and bodily integrity are some of the crucial considerations when exercising discretion for ordering DNA tests. Therefore, there is always need to undertake a balancing act based on the specific facts of each case and the potential impact on the threat, infringement or violation to the individual fundamental rights. Whether there should be a DNA test the application ought to be weighed alongside the test of the principle of proportionality. The issue herein is regarding the effect of the conclusive presumption of legitimacy of the respondents as heirs to the estate of the deceased from the documentary evidence so adverted to during the pendency of this litigation before the final judgment as issued by this court. To this end it is the argument by the applicant that the presumption of legitimacy under section 29 of the Laws of Succession Act is not conclusively until it is rebutted by the scientific evidence such as the DNA test. I am of the considered view that in exercising the threshold of balancing of interests and evaluating the eminent need for a DNA test has not been discharged by the applicant. There must be a prima facie evidence case in that scenario as pleaded by the applicant for this court to order the DNA test to establish paternity which to me is a matter of last resort. The persuasive case law by the supreme court of India in *K.S. Puttaswany (Privacy-9J.) v. Union of India* (2017) 10 SCC 1 made the following observations on this issue: That on the DNA test it is pertinent for the court to address the aspect of the right to privacy. That privacy is concomitant to the right of the individual to exercise control over his or her personality. Privacy includes, at its core, the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home, and sexual orientation. Privacy also connotes a right to be left alone, as a corollary to the safeguarding of individual autonomy and the ability of an individual to control vital aspects of his life. Elaborating further, this court held that:

> " 325. Like other rights which form part of the fundamental freedoms protected by part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the threefold requirement of
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> (i) legality, which postulates the existence of law;
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> (ii) need, defined in terms of a legitimate state aim; and
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> (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them."

29. It is implicit from the above principles that in domesticating them Art 26, 27, 28 & 31 of the *Constitution* apply in equal force to the facts and circumstances of this case. This convoluted succession case has been in court since 10th July 2020 and has no doubt taken its toll on the parties involved and other relevant stakeholders. Given these extenuating circumstances at this stage, it must be closed for all intents and purposes.

30. As a consequence, having consistently exercised jurisdiction under Art 50 (1) of the *Constitution* the heirs of this estate have litigated and re-litigated on this succession cause without ever setting the pace to devolve the shares of the estate to themselves as per law established. In this context the application is res judicata under section 7 of the CPA. On the strength of the documentary evidence admitted in court under Parts III, IV & V of the *Evidence Act* the respondents are presumed to be legitimate

beneficiaries to the estate of the deceased. In my considered view there is no eminent need for a DNA test as agitated by the applicant.

31. It is for these reasons I dismiss the application dated 23rd June, 2025 with costs.

32. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS AT ELDORET THIS 25TH DAY OF JULY 2025

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R. NYAKUNDI

JUDGE