In re Estate of Godfrey Kimani Mbugua (Deceased) (Miscellaneous Succession Application 142 of 2000) [2025] KEHC 13013 (KLR) (18 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13013 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

MISCELLANEOUS SUCCESSION APPLICATION 142 OF 2000

DKN MAGARE, J

SEPTEMBER 18, 2025

IN THE MATTER OF THE ESTATE OF GODFREY KIMANI MBUGUA (DECEASED)

BETWEEN

ANNA WANJIRU KIMANI ..... 1ST APPLICANT

JAMES NDUNGU KIMANI ..... 2ND APPLICANT

AND

MARY MUTHONI ..... 1ST RESPONDENT

SIMON MWANGI ..... 2ND RESPONDENT

JUDGMENT

1. Godfrey Kimani Mbugua (hereafter referred to as the deceased) died intestate on 11.5.1996. The Respondents applied and this court issued the Grant of Letters of Administration Intestate in respect of the deceased's estate on 10.2.1999. The Grant was subsequently confirmed on 20.9.1999. The Respondents were the Administrators of the Estate. On 23.7.2021, the Applicants filed Summons for Revocation of Grant dated 14.8.2000 and amended on 19.7.2021.

2. The Applicants described themselves as the widow of the deceased and her son. It was their case that the deceased's household comprised eight children. The Applicants further contended that the Respondents were neither beneficiaries nor dependants of the deceased. They alleged that the Respondents fraudulently obtained a Grant of representation and unlawfully subdivided land parcel Nyeri/Endarasha/272 into two parcels, namely Nyeri/Endarasha/2096 and Nyeri/Endarasha/2097. The Applicants prayed that the Grant be revoked, the said subdivisions cancelled, and the land reverted to the name of the deceased.

3. The Applicants described themselves as the widow of the deceased and her son. It was their case that the deceased's household comprised eight children. The Applicants further contended that

the Respondents were neither beneficiaries nor dependants of the deceased. They alleged that the Respondents fraudulently obtained a Grant of representation and unlawfully subdivided land parcel Nyeri/Endarasha/272 into two parcels, namely Nyeri/Endarasha/2096 and Nyeri/Endarasha/2097. The Applicants prayed that the Grant be revoked, the said subdivisions cancelled, and the land reverted to the name of the deceased.

4. It was the case of the Applicants that the grant was obtained by making a false statement. The Amended Summons prayed for the following reliefs:

    a. Spent

    b. Spent

    c. The Grant of Letters of Administration issued on 10.2.1999 and confirmed on 20.9.1999 be revoked.

    d. The subdivisions and titles of land parcel No. Nyeri/Endarasha/2096 and Nyeri/Endarasha/2097 be cancelled and the register rectified to revert to title No Nyeri/Endarasha/272 in the name of the deceased.

    e. Spent

5. The matter proceed by way of viva voce evidence.

Evidence

6. PW1 was Anna Wanjiru Kimani. She relied on the contents of her Affidavit in support of the Amended Summons as well as witness statements and the documents she filed in court. The witness statement and documents are dated 7.2.2022 and produced as supporting documents. On cross examination, it was her testimony that she had a title deed to Nyeri/Endarasha/2097 which was half share. It was her further case that she was married to the deceased in 1973. She did not know Mary Muthoni. She knew Simon Mwangi who is deceased. While referring to the chief's letter, she confirmed that it named two individuals described as widows of the deceased, but stated that she was unaware that the deceased had two wives.

7. PW2, Luka Kirero Kahiga, testified that he knew the deceased during his lifetime and was aware that the deceased had only one wife, namely Anna Wanjiru Kimani. He further stated that the deceased was survived by eight children. During cross-examination, PW2 stated that he had no knowledge of any subdivision having been carried out on the deceased's land. He further maintained that he had never heard at any time that the deceased had two wives.

8. DW1 was Raphael Kuchuni Muthoni. He testified that Mary Muthoni was his mother but is since deceased. He was granted letters of administration ad litem in respect of the estate of the deceased mother on 23.2.2024. He placed reliance on the replying affidavit dated 21.12.2007. On cross examination, he testified that Ann Wanjiru was aware of the succession proceedings as she was invited. She was the second wife of the deceased.

9. Thumbi Karuu testified as DW2 and relied on his affidavit dated 21.12.2007. On cross examination, it was his case that he came to know that Ann Wanjiru wedded with the deceased. He knew that dowry was paid for Mary Muthoni.

Submissions

10. The applicant filed submissions dated 2.05.2025 stating the 1st applicant is the only and legal wife of the deceased while the 2nd applicant is a son of the deceased. She got married to deceased in the year 1968 through Kikuyu customary marriage and later solemnized the same in church in the year 1973. They were blessed with eight (8) children as listed in the applicants' supporting affidavit sworn on 14th August 2000, paragraph 4. They stated that the issues for determination are:

    a. Whether the Respondents are dependents of the estate of Godfrey Kimani Mbugua?

    b. Whether the Applicants is entitled to the prayers sought?

11. The first issue is erroneous as the only respondent was Mary Muthoni. They continued that in this case the respondent who testified during the hearing claimed that he is a child of the deceased. The 1st Respondent further claimed that she was married to the deceased but later on separated. In the case of Estate of Jackson Nicholas Kyengo Mulwa (Deceased) 2021KEHC1545 (KLR) the court held that;

> "In the interest of justice, it is paramount that all beneficiaries of the deceased are properly catered for. The *Law of Succession Act* in its very nature aims at ensuring all beneficiaries of a deceased person and their interests are protected. It is my opinion that the most efficient way to prove dependency in this matter would be through DNA evidence because the Applicant asserts that she is the biological child of the deceased. This court takes note that the Applicant has not prayed for DNA to be conducted....."

12. It was their case that the Respondent who testified had a duty to prove that he and his siblings were children of the deceased. They submitted that the evidence of Thumbi Karuu was contradictory as he said the marriage was in 1966. Their case was that other evidence was inadmissible by dint of section 33(e) of the *Evidence Act*. It was their case that the burden of proof was on the respondent.

13. They further stated that the court in Nanyuki did not have jurisdiction as the only parcel of land was in Nyeri County. They posited that the court had inherent powers under Section 47 of the Succession Act and Rule 73 of the Probate and Administration Rules to revoke the two tiles.

14. The Respondent on the other side submitted that the late Muthoni got married in 1965 and begat 4 issues. Later they got two issues even when they were separated. They stated that the succession cause was not fraudulently obtained. Reliance was placed on Section 10 of the *Law of Succession Act*. It was their case that despite the separation, the deceased never separated with the first wife. They stated that the second wife, 1st applicant was acknowledged. The parties had a verbal agreement to administer the estate and the land was subdivided as per the oral agreement. The administrators procured a tile for the applicant pursuant to the agreement. A family meeting was held on 26.7.2000 at the 1st applicant's insistence. Family members wrote affidavits and statements.

15. It was stated that there were no grounds as set out in Section 76 of the *Law of Succession Act* to warrant revocation. Reliance was placed on the case of John Mundia Njoroge & 9 others v Cecilia Muthoni Njoroge & another [2016] KEHC 6254 (KLR), where John M. Mativo J, as he then was, stated as follows:

> I take the view that the applicants can on application and upon satisfying the court that they were indeed bona fide beneficiaries, be accommodated by way of rectification of the grant and within their respective houses as per the court judgement or in such manner as the court may deem just without necessarily revoking the grant.

> A grant can only be revoked on the grounds enumerated under Section 76 of the Act, and the grounds relied upon must be proved, and even then, the court has the discretion as observed above. This is a matter that has been in court for long and litigation must be brought to a close. I find nothing in this application to demonstrate that the applicants have established any of the grounds stated in section 76 of the Act.

16. They stated that the applicants were properly appointed as administrators of the deceased's estate. They not only carried their duties but aligned the same to section 40 of the *Law of Succession Act*. The deceased and the children were living on land parcel number Nyeri/Endarasha/2096. They stated that they disclosed all the beneficiaries and acted transparently. They posited that the court is bound by section 40 of the law of succession. Reliance was placed on the case of M M M'm v A I M [2014] KEHC 2647 (KLR) where it was stated that:

> This court is bound by Section 40 of the *Law of Succession Act* and has no discretion. The section clearly provides that the estate be divided between the houses taking into account the number of children in each house. It is fortunate that the two houses have equal number of children however this court shall not shut its eyes to unfairness, meted on a deceased widows who are not allowed to take an extra share and whose efforts in acquisition of the properties are ignored and treated merely like children of the deceased not withstanding having been equal partners with the deceased. It is further unfortunate when the first wife who sacrificed a lot of her energy and who participated in the acquisition of the greater part of the deceased estate and even in situation where the properties are solely acquired by the first wife but registered in husbands have ended up being shared equally among all the wives not taking into account of less contribution by the younger wife who is married after acquisition of the bulk of the properties if not all the estate and who has contributed very little or nothing towards the acquisition of the estate.

17. They submitted that having distributed equitably, they acted in accordance to the law.

Analysis

18. Before proceeding, I note that I have perused Nanyuki Succession Cause Number 7 of 1998. I note that all the beneficiaries were listed in the application for confirmation including minors. The court is not sitting as an appellate court regarding shares. It is sitting in respect of the application for revocation only. The directorate of criminal investigations took copies of the documents on the file and there is no indication of any criminality found. Secondly, from submissions, the question of Nanyuki Law Courts has been raised. It was not raised in the main application.

19. Parties are bound to plead their cases fully. In the case of Daniel Otieno Migore v South Nyanza Sugar Co. Ltd [2018] eKLR, Justice A C Mrima stated as doth: -

> 11. It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded. That settled position was re-affirmed by the Court of Appeal in the case of Independent Electoral and Boundaries Commission & Ano. vs. Stephen Mutinda Mule & 3 others (2014) eKLR which cited with approval the decision of the

Supreme Court of Nigeria in Adetoun Oladeji (NIG) vs. Nigeria Breweries PLC SC 91/2002 where Adereji, JSC expressed himself thus on the importance and place of pleadings: -

> " .....it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.....
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> ...In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation."
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> In the case of Malawi Railways Ltd vs Nyasulu [1998] MWSC 3, Malawi Supreme Court of Appeal stated as doth when the learned judges cited with approval an article by Sir Jack Jacob entitled "The Present Importance of Pleadings" published in [1960] Current Legal Problems at p 174 whereof the learned author posited that: -
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> As the parties are adversaries, it is left to each one of them to formulate his case in his own way subject to the basic rules of pleadings .....for the sake of certainty and finality; each party is bound by his own pleadings and cannot be allowed to raise a different fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice....
>
> In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called "Any Other Business" in the sense that points other than those specific may be raised without notice."

20. In respect to the essence of pleadings, the Supreme Court of Kenya in its ruling on inter alia scrutiny in the case of Raila Amolo Odinga & Another vs. IEBC & 2 others (2017) eKLR found and held as follows in an election petition: -

> " In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law

is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings.....'"

21. The issue of admissibility of documents must be dealt with during the hearing. It cannot be raised out of the blues in submissions. Mwera J, posited as follows when postulating on what is the role of submissions. He stated that they are a course by which counsel or able litigants focus the court's attention on those points of the case that should be given the closest scrutiny in order to firmly establish a claim. In the case of Nancy Wambui Gatheru vs. Peter W Wanjere Ngugi Nairobi HCCC No. 36 of 1993:

> " Indeed and strictly speaking submissions are not part of the evidence in a case. Submissions, to this court's view, are a course by which counsel or able litigants focus the court's attention on those points of the case that should be given the closest scrutiny in order to firmly establish a claim/charge or disprove it. Once the case is closed a court may well proceed to give its judgement. There are many cases especially where parties act in person where submissions are not heard. Even some counsel may opt not to submit. So submissions are not necessarily the case."

22. Submissions are not, strictly speaking, part of the case, their absence of which may do no prejudice to a party. Their presence or absence does not in any way prejudice a case as held in Ngang'a & Another vs. Owiti & Another [2008] 1KLR (EP) 749, where the Court held that:

> " As the practice has it and especially where counsel appears, a Court may hear final submissions from them. This, strictly speaking, is not part of the case, the absence of which may do prejudice to a party. A final submission is a way by which counsel or sometimes (enlightened) parties themselves, crystallise the substance of the case, the evidence and the law relating to that case. It is, as it were, a way by which the Court's focus is sought to be concentrated on the main aspects of the case which affect its outcome. Final submissions are not evidence. Final submissions may be heard or even dispensed with. But the main basis of a decision in a case, we can say are: the claim properly laid, evidence fully presented and the law applicable."

23. The Court of Appeal was more succinct in that Submissions cannot take the place of evidence when they addressed the question in the case of Daniel Toroitich Arap Moi vs. Mwangi Stephen Muriithi & Another [2014] eKLR:

> " Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties' "marketing language", each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed there are many cases decided without hearing submissions but based only on evidence presented."

24. Having narrowed down the issues to be dealt with to what was raised and defended, I must also point out that parties cases are circumscribed. Parties cannot be allowed to wonder off the limits. In this case, the two administrators are the ones who were questioned in terms of their handling of the succession cause. The title holders in respect of the portion going to the children of the late Mary Muthoni are not party to this application.

25. The Applicants, the widow and her son questioned the Grant. It was their case that they were not aware of the existence of the grant that was confirmed and the same was issued and confirmed through false representation of facts. In principle, they challenged the process of obtaining the Grant, the temporary Grant and the process leading to the confirmation of the grant.

26. The issue for determination is whether process of obtaining the Grant was defective. The record shows that these are parties who either actively participated in, or willfully declined to participate in the succession proceedings. The Court nevertheless proceeded to subdivide the estate property in accordance with its judgment, following which the same parties obtained title deeds pursuant thereto.

27. Having later realized that they might have secured a larger share, they have now returned to Court armed with incredible untruths and shocking machinations in an attempt to upset the distribution already concluded. The administrator had concluded administration of the estate and stood discharged. Upon her death the grant she had became inoperative and useless with nothing to overturn.

28. One of the machinations that shock the conscience is the in-depth understanding of the process of transfer of land. There needs to be either dispensation of the requirements of the signatures, photographs, ID card or PIN of the Transferee or they be availed. The applicant wishes the court to believe that the deceased administrator, fraudulently concocted a succession plan, executed the same nefarious acts and went to the extent of transferring the benefits to the Applicant and collecting the title without their knowledge and participation.

29. This same administrator magically subdivided the land on the ground where the applicants found themselves on the other side of the land, as per their title without even noticing. This very administrator proceeded, to effect a subdivision of the land on the ground in such a manner that the Applicants found themselves allocated parcels situated on the portion they now utilize and as reflected in their title. This was said to be done without their prior knowledge or notice. This is a classic case of skullduggery and subterfuge meant to obfuscate issues with an aim of misleading the court.

30. Section 51 of the *Law of Succession Act*, requires a person seeking to administer the estate of a person who died in 1980 to comply with section 51(2)(g) of the *Law of Succession Act* and Rule 7(1)(e) of the Probate and Administration Rules, which require disclosure of all the children of the deceased.

31. A perusal of the summons for confirmation of grant dated 29.9.1999 reveals that the Applicant, Anna Wanjiru was listed as a beneficiary. She has not disputed this fact. The Court of Appeal, in Elizabeth Chepkoech Salat v Josephine Chesang Chepkwony Salat [2015] eKLR, held that: -

> From the consideration of sections 35, 40 and 42 of the Act, the broad principle of law which emerges is that where an intestate was polygamous, the estate, in the first instance, should be divided among the houses according to the number of children in each house adding a surviving wife as an additional unit taking into account any previous benefit to any house. Thereafter the estate devolving on any house is, subject to her life interest distributed by the surviving spouse in exercise of her power of appointment to each beneficiary taking into account previous benefit, if any, to any beneficiary. However, in the event that the life interest is terminated either by remarriage or death, then the net interstate estate devolves upon a house is divided among the surviving beneficiates equally subject to any previous benefit to any beneficiary.
>
> (30) Section 40 of the Act does not give discretion to a court to deviate from the general principles therein enunciated. Where a matter is contentious and the parties have not reached a consent judgment, the court is bound to

> apply the statutory provisions. More specifically, the court has no power to substitute the statutory principles for its own notion of what is an equitable or just decision. However, court has a limited residuary discretion within the statutory provisions to adjust the share of each house or of a beneficiary where, for instance, the deceased had during his lifetime settled any property to a house or beneficiary or to decide which property should be disposed of to pay liabilities of the estate or to determine which properties should be retained by each house or several houses in trust.

32. This court finds no reason why the Applicants contend that Mary Muthoni was not the widow of the deceased but do not contest that the children of the said Mary Muthoni were children of the deceased. The question of DNA was not part of the matrix that was submitted to court to decide. The children were not invited to have them undergo DNA. It cannot arise at the submission level. I leave it there.

33. Mary Muthoni was not listed as a beneficiary. However, she was one of the administrators. In the decision of the Supreme Court in MNK V POM; Initiative for Strategic Litigation in Africa Petition No. 9 of 2021 the court stated as follows on the presumption of marriage:

    1. The parties must have lived together for a long period of time

    2. The parties must have the legal right or capacity to marry.

    3. The parties must have intended to marry.

    4. There must be consent by both the parties.

    5. The parties must have held themselves out to the outside world as being a married couple.

    6. The onus of proving the presumption is on the party who alleges it.

    7. The evidence to rebut the presumption has to be strong, distinct, satisfactory and conclusive.

    8. The standard of proof is on a balance of probabilities.

    (65) The above notwithstanding, we are of the view that the doctrine of presumption of marriage is on its death bed of which reasoning is reinforced by the changes to the matrimonial laws in Kenya. As such, this presumption should only be used sparingly where there is cogent evidence to buttress it.

34. The available evidence is clear that the deceased had two wives. The testimony of Thumbi Karuu, DW2 confirmed that dowry for Mary Muthoni was paid in 1966. As earlier observed, it defeats the justice of the case that the Applicants maintained that Mary Muthoni was not a widow of the deceased but do not dispute that the children of Mary Muthoni are heirs of the deceased. The Applicants appear to base their argument on the understanding that the deceased could not have two wives simply because he was married in church to Anna Wanjiru and could not have another wife. This was long after the deceased had married the respondent.

35. The court has perused the marriage certificate relied upon. It is dated 14.4.1973. As at the time the applicant was married, the respondent was married. It makes no sense to drag a man to church for a marriage certificate and then wave it to the world and posit that the wife she found in the boma, married under African customary law, is not a wife.

36. The evidence on record provides sufficient reason to find that a marriage did in fact exist between the deceased and Mary Muthoni. It follows, therefore, that this matter concerns the intestate estate of a polygamous man. Accordingly, in determining the distribution of the deceased's estate, the Court is

guided by the provisions of Sections 40 and 41 of the *Law of Succession Act*, which govern the mode of distribution in cases of polygamous households and the shares due to the respective house. I do not believe the applicants for a moment. I got an impression of a greedy person intent on disinheriting children of a co-wife whom she found having married the deceased, more than 7 years before she was married.

37. Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall be divided among the houses having regard to the children and wives as units. Section 40(1) of the *Law of Succession Act* provides that:

> " Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.'

38. Therefore, this court has to establish a basis to revoke the grant and interfere with the mode of distribution proposed in the certificate of confirmation of grant as urged by the Applicants. The grounds for revocation or annulment of grant of Letters of Administration are set out in Section 76 of the Law of Succession as follows:

> A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-
>
> a. That the proceedings to obtain the grant were defective in substance;
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> b. That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
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> c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
>
> d. That the person to whom the grant was made has failed, after due notice and without reasonable cause either-
>
> i. To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
>
> ii. To proceed diligently with the administration of the estate; or
>
> iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
>
> e. That the grant has become useless and inoperative through subsequent circumstances.

39. The summons for confirmation of grant listed the beneficiaries and the shares to the beneficiaries. The succession process depicted two houses and shared the deceased's parcel into two equal portions in respect of each house. It is not the case of the Applicants that they were disinherited or given a portion

that was inadequate. They also seek to be the ones inheriting the entire estate of the deceased even in the light of evidence that the deceased had another family.

40. Therefore, this court finds that there was sufficient evidence to prove that Mary Muthoni was a wife of the deceased and her children are heirs of the deceased. The deceased has married another wife and there were no divorce proceedings in respect of a marriage certificate. A marriage certificate is evidence of a marriage having taken place. It is not evidence of the capacity of the deceased to marry. In any case, the court is aware of protection accorded to women as Mary Muthoni by section 3(5) of the *Law of Succession Act*.

41. Unfortunately, for the Applicant the provision for Mary Muthoni cannot be dealt with in this case for several reasons. She is deceased and cannot be heard on her marriage. She did not receive a share of the estate but her children did. And thirdly, and more fundamentally, there was no dispute that she was a wife. PW2 was alleging that he did not know that the deceased had two wives. That is not the same thing that he did not have. The court cannot base the decision of such magnitude on ignorance of a busy body. Had Mary Muthoni not been a widow, the deceased's sisters, brothers and nephews, nieces and other immediate family members were best placed to give more credible evidence.

42. PW2 appeared to be a hired hand and I formed a definite opinion that he was coached on what to say. He was lying on oath and had no basic recollection of even very basic facts as to death and burial of the deceased.

43. The Applicants equally failed to demonstrate the existence of reasons for revoking the confirmed grant. Further, the grant was already spent. In the case of Kibunya v Kariuki & another [2024] KECA 1274 (KLR), the court of appeal [SG Kairu, FA Ochieng & WK Korir, JJA], posited as follows regarding a grant that is already spent:

> The position adopted by the learned Judge cannot be faulted. The grant had not only become useless and inoperative as a result of the demise of the 2nd deceased but the purpose for which it had been issued had been achieved by the completion of the succession process. The appointment of new administrators could have only been necessary if the administration of the estate of the 1st deceased had not been concluded at the time of the death of the 2nd deceased.

44. The raison d'être for revoking a grant is to conclude succession. In this case it was concluded. It was also done procedurally. Further, it is contradictory for the Applicant, to assert that one of the subdivided portions of the estate had been registered in her name, while at the same time alleging that she had no knowledge of the succession process. The bounds and extent of the estate of the deceased were clearly defined in the succession proceedings, and I find no basis to hold otherwise. The succession was done above board and let sleeping dogs lie.

45. The law governing applications for confirmation of grant is section 71 of the *Law of Succession Act* and Rules 40 and 41 of the Probate and Administration Rules. The proviso to section 71, as read together with Rule 40(4), is that the administrator applying for distribution must satisfy the court that they have properly ascertained the persons beneficially entitled to a share in the estate and have properly ascertained the shares due to such beneficiaries. The effect of it is that the court then incurs a duty to be satisfied, before it confirms the grant, that the administrator asking for confirmation, has properly ascertained the persons beneficially entitled to a share in the estate and the shares due to such

beneficiaries. The Court of Appeal, in Elizabeth Chepkoech Salat v Josephine Chesang Chepkwony Salat , (2015) JELR 102481 (CA stated as hereunder:

> " From the consideration of sections 35, 40 and 42 of the Act, the broad principle of law which emerges is that where an intestate was polygamous, the estate, in the first instance, should be divided among the houses according to the number of children in each house adding a surviving wife as an additional unit taking into account any previous benefit to any house. Thereafter the estate devolving on any house is, subject to her life interest distributed by the surviving spouse in exercise of her power of appointment to each beneficiary taking into account previous benefit, if any, to any beneficiary. However, in the event that the life interest is terminated either by remarriage or death, then the net interstate estate devolves upon a house is divided among the surviving beneficiates equally subject to any previous benefit to any beneficiary.
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> (30) Section 40 of the Act does not give discretion to a court to deviate from the general principles therein enunciated. Where a matter is contentious and the parties have not reached a consent judgment, the court is bound to apply the statutory provisions. More specifically, the court has no power to substitute the statutory principles for its own notion of what is an equitable or just decision. However, court has a limited residuary discretion within the statutory provisions to adjust the share of each house or of a beneficiary where, for instance, the deceased had during his lifetime settled any property to a house or beneficiary or to decide which property should be disposed of to pay liabilities of the estate or to determine which properties should be retained by each house or several houses in trust.

46. The court has said enough to show that there is no basis to revoke the grant in place. Accordingly, the summons for Revocation of Grant dated 14.8.2000 is dismissed.

47. The next question is costs. The court of appeal in the case of Farah Awad Gullet v CMC Motors Group Limited [2018] KECA 158 (KLR) had this to say:

> It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

48. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others, SC Petition No. 4 of 2012; [2014] eKLR, as follows: -

> " (18) It emerges that the award of costs would normally be guided by the principle that "costs follow the event": the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the Respondent or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, before, during, and subsequent to the actual process of litigation.... Although there is

> eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases.

49. In order to discourage frivolous applications of this nature, and ameliorate the pain of defending a matter for the last 25 years, costs shall follow the events. The Respondents shall have costs of Ksh.105,000/= payable within 30 days, failing which execution do issue.

DIVISION - Determination

50. In the upshot, I make the following orders:

    i. The Summons for Revocation of Grant dated 14.8.2000 and amended on 19.7.2021 is dismissed with costs of Ksh. 105,000/= payable within 30 days, failing which execution do issue.

    ii. The file is closed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 18TH DAY OF SEPTEMBER, 2025. JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

Represented by: -

Kebuka Wachira & Co. Advocates for the Applicants

Magua & Mbatha Advocates for the Respondents

Court Assistant – Michael

M. D. KIZITO, J.