



**In re Estate of Naingayu Ole Dumati Parna also known as Naing’oyo Ole Dumati Parnarua (Deceased) (Succession Cause 22 of 2018) [2024] KEHC 4172 (KLR) (12 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 4172 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
SUCCESSION CAUSE 22 OF 2018  
SN MUTUKU, J  
MARCH 12, 2024**

**IN THE MATTER OF THE ESTATE OF NAINGAYU OLE DUMATI PARNA  
(ALSO KNOWN AS NAING’OYO OLE DUMATI PARNARUA) DECEASED**

**BETWEEN**

**SIAITA ENE NAING’OYO ..... 1<sup>ST</sup> APPLICANT  
RURET ENE NAING’OYO ..... 2<sup>ND</sup> APPLICANT  
PAUL LETION OLE NAING’OYO ..... 3<sup>RD</sup> APPLICANT  
MOSES KITILA OLE NAING’OYO ..... 4<sup>TH</sup> APPLICANT**

**AND**

**DANIEL TUTUMA SAKOI ..... RESPONDENT**

**RULING**

**Introduction**

1. This Ruling relates to two applications. The first application is the Summons for Review dated 29<sup>th</sup> October 2019. It was filed by the four applicants named above. The four are the administrators of the estate of the deceased herein. The application is anchored on Section 47 of the *Law of Succession Act*, Rules 63 and 73 of the Probate and Administration Rules and Order 45 of the Civil Procedure Rules. The applicants are seeking the following orders:
  - i. That leave be and is hereby granted to the firm of Nchogu, Omwanza & Nyasimi Advocates to come on record for the administrators/applicants in place of the firm of J. N. Pareno & Company Advocates.
  - ii. That the Notice of Change of Advocates filed herewith be deemed as duly filed.



- iii. That this Honourable Court be pleased and hereby issue orders restraining the Respondent, his agents, servants and his representatives from dealing in any way or transferring the parcel of land KJD/Kaputiei-North/25545 to any third party pending the hearing and determination of this application.'
  - iv. That this Honourable Court be pleased to review the Certificate of Confirmation issued on the 23<sup>rd</sup> day of July 2007 by removing the Respondent (Daniel Tutuma Sakori) as a dependant/beneficiary of the deceased's estate.
  - v. That this Honourable Court be pleased to revoke/cancel the title deed issued to the Respondent and registered in his name in respect of KJD/Kaputiei-north/25545.
  - vi. That the share of the deceased's estate allocated to the Respondent being 110 acres from LR. Kajiado/Kaputiei-north/8 do revert to the deceased's estate and distributed among the three (3) houses of the deceased as per the Summons for Confirmation of Grant dated 20<sup>th</sup> September 2005:
    - a. First House (Saita Ene Naing'oyo) - 58.67 acres;
    - b. Second House (Paul Letion Naing'oyo) - 27.9 acres;
    - c. Third House ( Ruret Ene Naing'oyo) - 23.48 acres
  - vii. That costs of this application be costs in the cause.
2. The Summons is supported by the grounds on the face of it and in the Supporting Affidavit sworn by the four applicants on 29<sup>th</sup> October 2019.
  3. The second application is a Summons dated 23<sup>rd</sup> August 2021. It is brought by Rhoda Mumbi Tutuma, wife to the Respondent in the first application and a daughter of the 1<sup>st</sup> Applicant and the deceased in this Cause. She has based her application on Section 47 of the Law of Succession Act and Rules 59 and 73 of the Probate and Administration Rules. She is also seeking review of the Grant of Letters of Administration issued on 22<sup>nd</sup> May 2002 to include her name in the list of beneficiaries/heirs of the estate of the deceased and determination of her share as well as the transfer of her share to her.
  4. She has supported her application with the grounds found on the face of it and in the Supporting Affidavit sworn by her on 11<sup>th</sup> August 2021.

## **Background**

5. This is an old matter. The Grant of Letters of Administration Intestate in respect of the estate of the deceased in this Cause was issued to the four applicants on 22<sup>nd</sup> May 2002 in Nairobi Succession Cause No. 2229 of 2000. The Grant was confirmed on 23<sup>rd</sup> July 2007 and a Certificate of Confirmation issued.
6. The estate of the deceased comprised of LR. No. Kajiado/Kaputiei-North/8, was distributed among the three wives/houses of the deceased. The house of Saita Ene Naing'oyo was allocated 472.4 acres; the house of Ruret Ene Naing'oyo was allocated 444.5 acres and the third house represented by Paul Letione Ole Naing'oyo, whose mother had passed on, was allocated 425 acres. The Respondent, Daniel Tutuma Sakoi, was allocated 110 acres. The rest of the properties in the estate, Plot No. 7 Konza Trading Centre and Kshs 332,000 with Miracle Mining Company was shared equally among the three houses.



7. It is the share that went to Daniel Tutuma that is contested. It has given rise to the two applications under consideration.
8. This file was transferred to Kajiado, and the matter proceeded for hearing through viva voce evidence. Justice Nyakundi started taking evidence. After he was transferred, Justice Mwita took over the matter. He was transferred before he concluded it. I took over the hearing at a time when the second application by Rhoda had been filed. Given that both applications seek review of the Grant of Letters of Administration, it is prudent that both applications be determined through one ruling.

### **The case for the Applicants**

9. In respect to Summons dated 29<sup>th</sup> October 2019, the Applicants are seeking to remove the name of the Respondent as a beneficiary of the estate and to have the share allocated to him from the estate of the deceased to revert to the estate to be shared out between the three houses. It is their case, as can be discerned from their oral evidence, that the Certificate of Confirmation of Grant was issued erroneously to include the Respondent who is a total stranger to the estate. It is their case that the Respondent is not a dependant or a beneficiary of the estate and that his name was included erroneously and that their former advocate did not inform them of this error.
10. Their evidence is that the Grant was issued to the four of them as administrators and confirmed with consent of all the beneficiaries and that the beneficiaries had agreed to have the estate shared among the three houses and each house to distribute their respective share of the estate amongst the children in that house.

### **Respondent's Case**

11. On his part, Daniel Tutuma testified that the 1<sup>st</sup> Applicant is mother to his wife Rhoda Mumbi who is Applicant in Summons dated 23<sup>rd</sup> August 2021. That the 2<sup>nd</sup> Applicant is also his mother-in-law and the 3<sup>rd</sup> Applicant is son to Nolamal, the second wife of the deceased, who is also deceased and that 4<sup>th</sup> Applicant is a brother in law.
12. It is his case that in 2006, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants approached him offering to sell land, part of the estate of the deceased, to him to enable them get cattle because their cattle had died from drought. They agreed to buy each head of cattle at KShs 12,000 which translated into KShs 12,000 per acre. They agreed on 110 acres, broken down as follows: 1<sup>st</sup> Applicant sold to him 12 acres; 2<sup>nd</sup> Applicant 39 acres and 3<sup>rd</sup> Applicant 59 acres. He stated that he gave the Applicant's money at his home and retained KShs 200,000 to pay the surveyor.
13. The Respondent stated that he was introduced to Judy Pareno, the advocate representing the Applicants at the time, who prepared an affidavit sworn by Paul Naing'oyo and consent of the mode of distribution. He stated that this Affidavit contained the terms of the agreement between him and his in laws and that this affidavit is missing from the Court file. He testified that he paid the balance of the purchase price, and his name was included in the mode of distribution for 110 acres, but he was not given a copy of the Affidavit sworn by Paul. He stated that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants went to pick 84 head of cattle from him and that he paid the surveyor, Lugard Mukui KShs 200,000 at his office in the presence of the 3<sup>rd</sup> Applicant.
14. It is the Respondent's case that he later collected his title from the surveyor's office in 2008 and moved to his land in September 2008; that in 2014, problems started when Standard Gauge Railway (SGR) was being constructed passing through some sections of the land. This pushed land prices upwards and problems with the Applicants started. He stated that there was no error in his name being included in



the Certificate of Confirmation. He stated that it is the Applicants who introduced him to the surveyor who was not known to him before.

15. The Respondent called Lugard Runke Makui as a witness. Lugard told the court that the Applicants are known to him. That they had approached him to subdivide their land into four (4) portions. That the Applicants were present when he surveyed and subdivided the land and that he was using successions documents presented to him by the applicants. That they signed the mutation forms and titles were processed. He denied colluding with the Respondent to give him land that did not belong to him.
16. The Respondent called his wife Rhoda Mumbi who testified that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants went to the Respondent's home and asked the Respondent to help them to buy land from them. She said she was present when the Respondent paid money. She said they were also given 84 head of cattle as part payment.
17. Judy Pareno testified that she was representing the Applicants in the succession cause in Nairobi and that she was introduced to the Respondent Daniel Tutuma as the son in law/brother-in-law of the Applicants respectively as a beneficiary of the estate. She said that she did not know Respondent and that he was not her client. She said that she prepared the documents to file in court in a Petition for Letters of Administration with all the family members agreeing that the Respondent should be a beneficiary. She said that she did not conclude the succession process as the Applicants took the file before she concluded with confirmation of the grant.
18. She testified, further, that she was instructed to prepare documents showing mode of distribution between the three houses and also to take into account the interest of the Respondent, which she did and filed the summons for confirmation, but the applicants took the file from her before the grant was confirmed. M/s Pareno denied signing the affidavit showing the mode of distribution shown to her during her testimony.

### **Summons dated 23<sup>rd</sup> August 2021**

19. The Applicant in this Summons, Rhoda, testified that she is a daughter of the 1<sup>st</sup> Applicant. She said that she was left out of the sharing of the estate. She said that her mother left her out of the distribution. On cross examination, she admitted that she was aware that the estate was distributed between the houses and each house was to distribute their share amongst the children in that house but that her mother did not give her any share.
20. The 1<sup>st</sup> Applicant testified that she has shared her portion of the estate to her children and that Rhoda has never gone to ask for a share of the estate from her mother. She said she was willing to give Rhoda a share if Rhoda goes home to ask for it.
21. Paul Letion testified that she did not have any objection to Rhoda getting share of the estate from the house of her mother the 1<sup>st</sup> Applicant.

### **Applicants' Submissions**

22. The Applicants' submissions are dated 9<sup>th</sup> October 2023. They have identified six issues for determination as shown below:

### **Whether the Respondent was a dependant/beneficiary of the estate of the deceased.**

23. To this issue, the applicants have submitted that the Respondent is not a beneficiary, or a dependant as defined under section 29 of the [Law of Succession Act](#); that he was not a child of the deceased or someone



under the care of the deceased immediately before his death and that the deceased had not sold him any piece of land before he died. That he had no known legal interest in the estate of the deceased and therefore he cannot claim any portion of the estate of the deceased through a succession process.

#### **Whether the Certificate of Confirmation of the Grant was regularly extracted**

24. It was submitted that the family of the deceased agreed to distribute the estate among the three houses to be held by each wife in trust for her children; that Judy Pareno confirmed preparing the Summons for Confirmation and Supporting Affidavit showing that mode of distribution; that the Respondent was not one of the beneficiaries and that his inclusion in the Certificate of Confirmation was fraudulent.
25. It was submitted that the name of the Judge who signed the Certificate of Confirmation is not indicated, and the Certificate might have been signed without his/her knowledge; that the Certificate was irregularly extracted since there is nothing to support the inclusion of the name of the Respondent.
26. It was submitted that the Applicants have established their case and therefore the onus was on the Respondent to demonstrate how his name ended up in the Certificate of Confirmation of Grant, which onus he has failed to discharge.

#### **Whether the Respondent's title Kajiado/Kaputiei-North/25545 should be revoked.**

27. It was submitted that the Respondent has not produced any written sale agreement as required under Section 3 of the [Law of Contract Act](#) to demonstrate that he entered into a sale agreement to buy the suit land. It was submitted that the applicants have demonstrated that the title to the suit land was irregularly acquired.
28. The applicants relied on *In re Estate of Andrea Ooko Tianga (Deceased)* [2019] eKLR and *Munyasya Mulili & 3 Others v Sammy Muteti Mulili* [2017] eKLR which authorities speak to the inherent powers of the court under Section 47 of the [Law of Succession Act](#) and Rule 73 of the Probate and Administration Rules to make orders as may be necessary for the ends of justice to be met. The applicants asked this court to cancel the title held by the Respondent.

#### **Whether Rhoda Mumbi Tutuma was provided for**

29. It was submitted that the estate was distributed among the three houses with each wife to hold her share for the benefit of her children. That the 1<sup>st</sup> Applicant who is Rhoda's mother confirmed that she got her share of the estate and is holding it in trust for all her children and that Rhoda has never asked her for the share of her estate.

#### **What reliefs can this court issue?**

30. It was submitted that a Certificate of Confirmation of Grant can be reviewed like any other court order when there is an error apparent on the face of it or for good reason in the interest of justice. The applicants relied on *Re Estate of Charles Kibe Karanja (Deceased)* [2015] eKLR to support that point. They submitted that there are sufficient reasons in this matter relating to fraudulent and irregular inclusion of the Respondent as a beneficiary.
31. It was submitted that the Respondent's title cannot stand and ought to be cancelled as it is not lawful. It was submitted that the 110 acres given to the Respondent ought to be distributed amongst the three houses of the deceased.



32. It was submitted that Rhoda’s application for review lacks merit and should be dismissed with costs as her share of the estate is being held by her mother the 1<sup>st</sup> Applicant.

### **Respondent’s Submissions**

33. On his part, the Respondent has identified four issues for determination as follows:

#### **Whether the Summons for Review of the Certificate of Confirmation of Grant is competent.**

34. The Respondent has submitted that the Applicants ought to have taken out an Originating Summons under Order 37 of the Civil Procedure Rules for determination of any question- arising directly out of the administration of the estate and not Summons for Review or any other application within this succession cause.
35. The Respondent submitted that this Summons is not competent because the Respondent is not a dependant, survivor or a person beneficially entitled to the estate; that the law does not permit the administrators to sue themselves or to complain about a transaction which they willingly and knowingly initiated in their capacity as personal representatives. The Respondent relied on The Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR and In Re Estate of Stone Kathuli Muinde [2016] eKLR where the court stated that “The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of dispute between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside the framework set out in the Law of Succession Act and the Probate and Administration Rules.....”
36. The Respondent submitted that the parameters within which review of court orders is granted are upon discovery of a new and important matter or evidence or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. That there is no known legal prescription for reviewing a certificate of confirmation of grant for the simple reason that a certificate is not an order by itself, but rather a document confirming the fact that the court has issued an order confirming the grant. He relied on Re Estate of Charles Karanja where the court stated, inter alia, that:
- “.....the certificate of confirmation of grant has no life of itself without the orders of the court confirming the grant. The alteration of the certificate of confirmation of grant has to find genesis in the review orders of the court upon which the certificate is grounded...”
37. It is submitted that the Applicants introduced fraud in their submissions which ought to have been specifically pleaded by way of particulars of fraud and proved. That the application is fatally defective and ought to be dismissed.

#### **Whether the Respondent’s title should be revoked**

38. The Respondent submitted that the Applicants first challenged the inclusion of the Respondent as a beneficiary of the estate through Summons for revocation dated 14<sup>th</sup> March 2018, almost 11 years grounding that application on allegations of fraud on the part of the Respondent and collusion between him and the surveyor and advocate. That this inordinate delay is unexplained and renders this application incompetent under the doctrine of laches. That the Summons for revocation was withdrawn and this application filed giving totally different reasons for seeking review from the reasons for revocation. That reek of dishonesty.



39. It was submitted that under section 26 of the *Land Registration Act* 2012, a certificate of title can only be challenged on the ground of fraud or misrepresentation or if it was acquired illegally, unprocedurally or through a corrupt scheme; that the applicants neither pleaded nor proved any of these incidences and therefore the Respondent's rights to title cannot be defeated or revoked.

**Whether the Summons for Review by Rhoda Tutuma ought to be allowed**

40. It was submitted that Rhoda's name was omitted in the distribution of the estate and that the 1<sup>st</sup> Applicant is willing to give Rhoda her share and that the 3<sup>rd</sup> Applicant was agreeable that Rhoda deserves her share but from her mother's share of the estate. It was submitted that Rhoda's application is merited and ought to be allowed.

**Whether the administrators ought to produce to the court a full and accurate account of completed administration before final decree is issued**

41. The Respondent urges that this court orders the administrators- to produce a full and accurate accounts of all the dealings in the estate up to the time of completion of the administration to give the court a clear picture of the actual status of the estate and assist in making the final determination.
42. The Respondent urges this court to dismiss the application by the applicants and allow that application by Rhoda and award costs to the Respondent and Rhoda.

**Analysis and Determination**

43. I have carefully read the two applications, all the affidavits in support of the said applications and against the same. I have read the entire court file. I have also considered the evidence of all the witnesses who testified and read the relevant sections of the law relied on by the parties. I have identified the following as the issues that arise in this matter for determination:
- i. Whether the Summons for Review of the Certificate of Confirmation of the Grant dated 29<sup>th</sup> October 2019 is competent?
  - ii. Whether the Respondent's title in respect of Kajiado/Kaputiei-North/25545 should be revoked?
  - iii. Whether the Summons for Review dated 23<sup>rd</sup> August 2021 should be allowed?
44. In my view, a determination of the three issues above will cover all the address all the issues raised by all the parties.

**Whether the Summons for Review of the Certificate of Confirmation of the Grant dated 29<sup>th</sup> October 2019 is competent?**

45. I have noted that the parties herein have cited certain provisions of the law to support their respective applications. It is prudent to revisit these provisions to clarify what they state and the relevance in being relied on by the parties.
46. Section 47 of the *Law of Succession Act* grants this Court jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.



47. Rule 63 of the Probate and Administration Rules imports certain provisions of the Civil Procedure Rules, including Order 45, into the Law of Succession Act, while Rule 73 of the Probate and Administration Rules provides that:

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

48. Rule 59 of the Probate and Administration Rules, the other provision cited by Rhoda in her Summons, talks about the form of pleadings. She too cited Rules 73 on the inherent powers of this court.

49. I have understood the case for each party as well as their submissions. The issues drawn by all the parties revolve around the issue that the Respondent is not a dependant, survivor or beneficiary of the estate of the deceased or whether the Summons for review by the applicants is merited. Further, whether Rhoda can claim against the estate.

50. The Applicants, who are the administrators, have sued the Respondent seeking to have his name removed from the Certificate of Confirmation of the Grant and to revoke his title to 110 acres allocated to him from the estate of the deceased. Fraud and irregularities relating to how the Respondent got allocated that land are alleged. I am not sure who is accused of fraud given that the submissions of the applicants is not clear whether the culprit is the court, the former advocate, the typist or the Respondent.

51. The Respondent has challenged the application by the Applicants terming it as incompetent. The reason advanced by the Respondent for holding this view is that the Application is not made by a dependant, survivor or a person beneficially entitled to the estate of the deceased seeking revocation or annulment of the grant of representation or rectification. It is the view of the Respondent that the law does not permit administrators to sue themselves or complains about a transaction which they were willingly and knowingly involved in as personal representatives.

52. Secondly, the Respondent is challenging the competency of the Application because it does not meet the threshold for review as provided under Order 45 of the Civil Procedure Rules. The Respondent holds the view that the application is fatally defective for seeking to review the Certificate of Confirmation instead of the actual orders made during the hearing.

53. The Applicants have raised issues of fraud in their submissions to support their case that the Respondent's name should be removed from the list of beneficiaries and the title revoked.

54. I have considered this issue. The law requires the party that alleges to prove that allegation. Section 107 of the Evidence Act is clear on that requirement. It provides as follows:

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.



55. The Court of Appeal, in *Demutilla Nanyama Pururmu v Salim Mohamed Salim* [2021] eKLR, stated as follows on the issue of fraud:

“The law is clear as buttressed in the case of *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000] eKLR, where Tunoi, JA. (as he then was) stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

As regards the standard of proof, this Court in the case of *Kinyanjui Kamau vs George Kamau* [2015] eKLR expressed itself as follows:

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo vs Ndolo* (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

56. In this case the Applicants have alleged fraud. The particulars of fraud have not been specifically pleaded and the particulars of fraud have not been set out. It is not even clear who committed fraud: is it the Respondent, the Court, the typist, or the advocate representing the Applicants at the time? The evidence on record from the Respondent and Judy Pareno shows that it is the Applicants who introduced the Respondent to her and they instructed her to ensure that the interest of the Respondent is taken into account.
57. I have noted that the submissions of the Applicants are tailored to overlook the evidence of Judy Pareno and Lugard Runke whose evidence was clear as recorded that the Applicants introduced the Respondent to both Judy Pareno and Lugard. In respect of the latter, the Applicants instructed him to subdivide the land into four portions as follows: 472.5 acres to go to the Saita; 444.5 acres to Ruret; 425 acres to Paul and 110 acres to the Respondent.
58. It is also clear from the evidence that Judy Pareno did not complete the process of Confirmation as the Applicants took the file from her. She testified that the Affidavit shown to her during cross examination was prepared by her but the signature on it is not hers.
59. This court was told that there is a missing affidavit that captured the details in respect of the interest of the Respondent. The record of the Court shows that there was a notice issued to Paul to produce that affidavit but that notice was not honoured.
60. There is evidence from the Respondent and Rhoda that the Applicants received money and cattle from the Respondent in payment of the 110 acres of land. The Applicants did not controvert that evidence. Lugard confirmed that Applicants and the Respondent were present when he was partitioning the land and that he was relying on the Certificate of Confirmation presented to him by the Applicants. He also confirmed that he was paid by the Respondent for the surveying services.



61. I have also noted that there is inordinate delay in bringing this matter to court by the Applicants. That delay is not explained. 110 acres is a big piece of land. If the Respondent illegally acquired it, the Applicants should have taken up the matter as soon as they found out and filed for a suit under the relevant provisions of the law.
62. I agree with the Respondent that claims to ownership of alleged property belonging to the estate of the deceased and a third party should be resolved through civil process (see In Re Estate of Stone Kathuli Muinde and The Estate of Alice Mumbua Mutua (deceased) cases).
63. The Applicants have failed to prove fraud on the part of the Respondent. It is my considered view that the Applicants' Application is incompetent as explained in this Ruling.

#### **Whether the Respondent's title in respect of Kajiado/Kaputiei-North/25545 should be revoked?**

64. Without belaboring the point, once this court has pronounced itself on the incompetency of the Summons dated 29<sup>th</sup> October 2019, it follows, therefore that this court cannot revoke the Respondent's title. The Applicants have failed to prove their case. They ought to have brought this matter under Order 37 of the Civil Procedure Rules, specifically plead fraud and prove it to enable this court to make a finding in their favour and proceed to revoke the title.
65. The Applicants did not do this. They also failed to controvert the evidence by the Respondent and shifted goal posts and brought up issues of fraud at the submissions stage.

#### **Whether the Summons for Review dated 23<sup>rd</sup> August 2021 should be allowed?**

66. Rhoda Mumbi Tutuma is a daughter of the deceased and Siaita, the 1<sup>st</sup> Applicant. Her case is that she was left out of the list of beneficiaries and did not get a share of the estate. Her mother told the court that according to Maasai culture married daughters do not inherit from their fathers. She however said that Rhoda ought not to have filed this application but ought to have approached her and asked to be given a share of the estate.
67. The evidence is clear that the estate was shared among the three houses of the deceased. Each household was represented by the wife. The 1<sup>st</sup> Applicant, being the first wife, got the bigger share. She also has more children. The other households also got their share with Paul taking the share for his mother who has since passed on. Paul and Siaita were not opposed to Rhoda getting a share but not from the estate but from her mother's share.
68. I have considered this issue and in my considered view, the case for Rhoda should not have been against the estate of the deceased but against her mother the 1<sup>st</sup> Applicant. If this court were to allow her application for review, the result would be allowing Rhoda to claim against the entire estate of the deceased which would be prejudicial to the other households as well as the Respondent.
69. Consequently, I find that Rhoda's application cannot be allowed. She is at liberty to pursue her claim against her mother. This is a family matter and to maintain good relations, it would be prudent to have that issue resolved through mediation.

#### **Conclusion**

70. After careful analysis and the application of the law, it is my finding that the [\*Law of Succession Act\*](#) does not support the Application by the Applicants. They are the administrators of the estate suing a third party. They ought to have invoked the relevant provisions of the law and specifically pleaded fraud



and proved the same. The standard of proof required where fraud is alleged is higher than the normal balance of probabilities. The Applicants have failed to reach that threshold.

71. Rhoda, too, failed to prove her case against the estate of the deceased. Consequently, both applications, the Summons for Review dated 29<sup>th</sup> October 2019 and 23<sup>rd</sup> August 2021 stand dismissed. This being a family matter, I decline to order costs and direct each party to bear own costs.

72. Orders shall issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 12<sup>TH</sup> MARCH 2024.**

**S. N. MUTUKU**

**JUDGE**

