In re Estate Nyamoringo Okinyi (Deceased) (Succession Cause 456 of 1995) [2024] KEHC 3001 (KLR) (7 March 2024) (Ruling)

Neutral citation: [2024] KEHC 3001 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISII

SUCCESSION CAUSE 456 OF 1995

DKN MAGARE, J

MARCH 7, 2024

IN THE MATTER OF THE ESTATE NYAMORINGO OKINYI (DECEASED)

BETWEEN

TERESA MWANGO ..... OBJECTOR

AND

JOEL MOSE NYAMORINGO ..... 1ST PETITIONER

EVANS NYAMORINGO OKINYI ..... 2ND PETITIONER

JOHN OKARI NYAMORINGO ..... 3RD PETITIONER

AND

TERESA MWANGO NYAMORINGO ..... INTERESTED PARTY

RULING

1. Kisii High Court has seen tears and sweat flow from brows and hate blossom for people who are related for the last over 100 years. Out of those over 100 years, a period of 29 years has been home to this file. It is neither a grace nor a curse. It is simply unthinkable. It is unfathomable how this could happen. A truly final solution is needed.

2. The case was filed on 13/10/1995. It is a typical matter that discloses what many cases in this county suffer from. In every single chief's letter that I laid my hands on, the deceased persons left behind only sons. Where the letters have names of women, they are the widows and mothers of sons. I wondered why there were no women ever born in this county. Where do our people marry from? It is a story of hate, greed and subterfuge. Each court Appearance is preceded by a night of long knives. Even adversaries conspire against their sisters while busy fighting each other.

3. It looked like a grand conspiracy against women. There was, what, John Madoshi Peter, of the University of Dodoma, Tanzania in his, 'Okot Pbitek's Song Of Lawino And Ocol: A Battle Of Cosmos And Ontological Differences', calls Cosmos and Ontological differences[1].

4. There is a world of difference between what is and what ought to be the norm. I saw the perplexed faces on the Respondents when I issued conservatory orders until this decision was made. It was simply out of this world to think that the court would consider giving land to a woman, just a woman, a daughter of the deceased. A clown once told me that women are, of course, the biggest single group of oppressed people in the world and, if we are to believe the Book of Genesis, the very oldest. He truly attributes this to Chinua Achebe, a renowned Nigerian author.

5. The words of Margaret Ogola, immortalized in the River and The Source, came rushing into my mind. She had this to say: -

> " A man's strength was only as strong as the number of boys they sired. Akoko, though she still had Nyabera, had little to do in Sakwa and trooped back to her paternal home in Yimbo. As fate will have it, Nyabera did not get a son to lean on. She stealthily walked out after her attempts to continue Okumu;s family with Ogoch Kwach hit a rock. She decided to leave her matrimonial home and seek refuge in Aluor at the mission." (paraphrased).

6. The discourse in this case can only be conceptualized, contextualised and problematized in the imbroglio obtaining where gender mainstreaming is a myth.

7. There is a general agreement on who are the dependants of the late Nyamoringo Okinyi (Deceased). The question is whether, the deceased's daughter, Teresa Mwango, should inherit. The ground is that she had some application dismissed, therefore is non-suited. I have never heard this kind of arguments in all my life as a scholar, advocate and judge. I could however read between the lines and could easily discern the façade that was presenting itself as a legal argument. It was misogyny clothed as res judicata.

8. It is such conduct on the part of a witness that Odunga J (as he then was), alluded to in the case of Kioko Peter v Kisakwa Ndolo Kingóku [2019] eKLR while referring to the reasoning of Madan J, (as he then was) in the case of N vs. N [1991] KLR 685. The Learned Judge lamented as follows:

> Parties and Counsel ought to give the courts some credit that the courts are not manned by morons who can be easily duped into believing all manner of incredible stories with little or no iota of truth. It is these kinds of allegations that Madan, J (as he then was) had in mind when in N vs. N [1991] KLR 685 when he expressed himself in the following terms:
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> > " I wish people would not tell me absurd and unbelievable lies. I feel disappointed if a lie told in court is not reasonable imitation of the truth and is not reasonably intelligently contrived. I wish people who tell lies before me would respect my grey hair even if they consider that my intelligence is not of high order. I wish the witness had not told me the most stupid of his lies, which both disappointed and made me feel intellectually insulted."

9. I have no grey hair of my own in any visible part of the body. I however expect parties to be more direct instead of circumscribing and obscuring the real issue. The real issue was that the Applicant is not entitled to inherit because she is a girl and in Kisii women don't inherit. I will not like to use the words

[1] Belogrdchik Journal for Local History, Cultural Heritage and Folk Studies Volume 10, Number 1, 2019

justice Odunga J as he then was when he was quoting justice Madan by stating in the case of Kioko Peter v Kisakwa Ndolo Kingóku [Supra], Justice Odunga stated as doth: -

> " I have perused the said ruling and it is clear that this court found that the said application was devoid of merit and dismissed the application. What the Court said was that the applicant ought to have applied for review before the lower court. In my view to mark such remarkable averments can only be taken to be meant to mislead the court. Parties and Counsel ought to give the court's some credit that the courts are not manned by morons who can be easily duped into believing all manner of incredible stories with little or no iota of truth. It is these kinds of allegations...
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> 5. In the South African case of Matatiele Municipality & Others vs. President of the Republic of South Africa & others (1) (CCT73/05) (2006) ZACC 2: 2006 (5) BCLR (CC); 2006(5) SA 47 (CC) it was held that
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> "in my view a person who deliberately either by commission or omission misleads the court and the public that a particular state of affairs exist while knowing very well that that is not the position cannot be said to be open, candid and transparent. Dishonest in my view is an Act which is antithesis to transparency and vice versa..."

10. The applicant filed an application for review seeking the following orders:-

    a. That this Honourable Court be pleased to enjoin the Interested party /Applicant in this matter.

    b. That this Honourable Court be pleased to review the Certificate of Grant of Confirmation issued herein with a view of declaring the entitlement of the Applicant in her Deceased Father's Estate comprising of LR.NOS.NC/B/B/BOBURIA/3377 and 1450 and have her share out of the Estate be declared by this Honourable Court

    c. N/a

    d. That costs of and incidental to this application be provided for.

11. The application was replied to by two Affidavits. The 1st Respondent, Joel Mose Nyamoringo filed an affidavit dated 8/12/2023. He stated that that litigation must come to an end. In a surprising argument, he stated that *the Constitution* cannot be applied retrospectively. These are the kinds of arguments that the court will dismiss out of hand. None of the issues raised by the applicant were answered by the first respondent. The application to that extent is unopposed. For the unschooled, the deceased died on 23/8/1983 during the currency of the Succession Act 1981. I shall not dignify the responses by discussing any further.

12. On the other hand, Evans Nyamoringo Okinyi filed a replying affidavit and stated that the Applicant is a biological sister entitled to inherit and be included to the schedule. He stated that the applicant lives in squalor though there is sufficient land. He supported the application. I shall revert to this later when addressing costs.

13. During the hearing I was informed that there is another daughter called Rose Nyamoringo, whose name was captured, in some minutes. No submissions were filed. Parties indicated that this was a straightforward application. I agree.

Analysis

14. One of the questions that has bedevilled the world is the use of black letter law to perpetuate oppression. Even in the Third Reich in Germany, atrocities were committed in the name of the law. In a judgment that paved the way to the Nuremberg trial in 1946 the courts found the black letter statutes were, "contrary to the sound conscience and sense of justice of all decent human beings."

15. If there was a culture degenerating one set of human beings, that culture is repugnant to good conscience and good order. To that extent it is anathema to Kenya's stand as a constitutional democracy. In any case, as I shall show shortly, customs are irrelevant when it comes to inheritance. Customs used to apply when people had large swathes of land and marriage was almost compulsory. Acquiring new parcels was not by purchase but by sheer brute force. You own the right to use that portion you cleared.

16. This was before the agrarian revolution as addressed in 'Tenants of the crown: Evolution of agrarian law and institutions in Kenya' by Prof. Okoth-Ogendo, HWO. A reading will save parties' papers in filing such shallow responses.

17. I decided to read the entire file. Some forms have faded and rusted due to age. The papers, especially those filed over a quarter of a century ago have suffered photolytic and oxidative degradation. Luckily the file was active throughout its 29-year history. Unlike other matters where the dispute is dissipated by the demise of the main protagonists, all the dependants are alive and kicking.

18. I have perused the forms that originated this cause, that is, forms 80, 11, 12, 5, and the chief's letter, the dependants were indicated as Joel Mose Nyamoringo Evans Nyamoringo Okingo and John Okari Nyamoringo There is an addition of Joseph Nyamoringo Okinyi though he is not indicated to be one of the beneficiaries.

19. The letter from the Chief, O.M. Israel indicates the dependants that the late left behind, that is the trio and Priscah Bonareri Nyamoringo, the widow. The grant was confirmed on 30/5/2001. Sometime later, an objector Teresa Mwango filed an objection. The same was dismissed on 31/5/2011 for non-attendance. Nothing turns on non-attendance as this is a foreign concept in the law of succession. The alleged non-attendance was due to having a criminal case before Hon Thuku. It is not far-fetched to imagine who the complainants were and the knowledge of these Respondents.

20. The replying affidavit was filed indicating that the deceased left two Parcels of land, that is, Nyaribari Chache B/ Boboburia 3377 and Nyaribari Chache B/ Boburia 1450. However, only one parcel was disclosed in form P & A 5. This should have alerted anyone that there is active non-disclosure going on. The surprising thing is that as all the subdivisions and shenanigans are going on the Applicant appears to be residing in some part of the estate. Nothing turns on this.

21. Indeed, even where the brothers go ahead and disinherit beneficiaries, there is still refuge in the supreme court case of Isack M'inanga Kiebia v Isaaya Theuri M'lintari & another [2018] eKLR where the supreme court posited as doth: -

> "(54) In the foregoing premises, it follows that we agree with the Court of Appeal's assertion that "to prove a trust in land; one need not be in actual physical possession and occupation of the land." A customary trust falls within the ambit of the proviso to Section 28 of the Registered *Land Act*, while the rights of a person in possession or actual occupation, are overriding interests and fall within the ambit of Section 30(g) of the Registered *Land Act*.

> Although the Respondents herein were not in possession or actual occupation of Parcel No. Njia/Kiegoi Scheme 70, both the High Court and Court of Appeal were entitled to enquire into the circumstances of registration, to establish whether a trust was envisaged. Since the two superior courts were satisfied that indeed elements of a customary trust in favour of the Respondents pertaining to the parcel existed, we see no reason to interfere with their conclusions."

22. Acres of papers were wasted on the debate on possession. It is irrelevant in succession matters. I shall not dwell on this aspect as this is a debate for another day. There are severe limitations on the Application of the civil procedure Rules and Act to the succession Act. The limitation of procedure to the Succession Act is something that cannot be gainsaid. This was done deliberately. The civil Procedure is essentially adversarial while the succession Act is inquisitorial.

23. The procedures under that act are governed by the succession act and probate and Administrative Rules. The long title to the Succession Act provides as 'An Act of Parliament to amend, define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons; and for purposes connected therewith and incidental thereto.'

24. I wish to point out that it serves no purpose to invoke the Civil Procedure Rules, except for limited occasions as provided under rules 41 and 63 of the Probate And Administration Rules and the schedule made under section 97 of the Succession Act as follows: -

> " 63. Application of Civil Procedure Rules and High Court (Practice and Procedure) Rules (1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIX (Cap. 21, Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules. (2) Subject to the provisions of the Act and of these Rules and of any amendments thereto the practice and procedure in all matters arising thereunder in relation to intestate and testamentary succession and the administration of estates of deceased persons shall be those existing and in force immediately prior to the coming into operation of these Rules.
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> 41. Hearing of application for confirmation
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> (3) Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to section 71(2) of the Act, proceed to confirm the grant.

25. The later rule relates to the current Order 37 rule 1, While the former relates to the corresponding orders in the current *civil procedure Act*. The doctrine of res judicata as we know it is severely modified in succession matters. In any case, there is nothing in the prior application that was decided on merit. Section 7 of the *Civil Procedure Act* Cap 21 Laws of Kenya defines the doctrine of Res Judicata in the following terms: -

> " No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

26. The *Civil Procedure Act* also provides explanations concerning the application of the res judicata rule. Explanations are in the following terms:-

1. ''Explanation. (1)—The expression "former suit" means a suit which has been decided before the suit in question whether or not it was instituted before it.
2. Explanation.(2)—For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.
3. Explanation (3)—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.''

27. In the dicta in re Estate of Riungu Nkuuri (Deceased) [2021] eKLR the court stated as follows:

> " The test for determining the Application of the doctrine of res-judicata in any given case is spelt out under Section 7 of the *Civil Procedure Act*. In Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR, the Supreme Court while considering the said provision held that all the elements outlined thereunder must be satisfied conjunctively for the doctrine to be invoked. That is:
>
> 1. The suit or issue was directly and substantially in issue in the former suit.
> 2. That former suit was between the same parties or parties under whom they or any of them claim.
> 3. Those parties were litigating under the same title.
> 4. The issue was heard and finally determined in the former suit.
> 5. The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised."

28. In the case of Attorney General & another versus ET (2012) eKLR the court stated that;

> " The courts must always be vigilant to guard litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in form of a new cause of action which has been resolved by a court of competent jurisdiction. In the case of Omondi s NBK & Others (2001) EA 177 the court held that "parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit".

In that case the court quoted Kuloba J, (as he then was) in the case of Njanju vs Wambugu and another Nairobi HCC No. 2340 of 1991 (unreported) where he stated: If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face lift in every occasion he comes to court, then I do not see the use of doctrine of res judicata.....".

29. In essence therefore, the doctrine implies that for a matter to be res judicata, the matters in issue must be similar to those which were previously in dispute between the same parties and the same having been determined on merits by a court of competent jurisdiction. The court in the English case of Henderson v Henderson (1843-60) All E.R 378, observed thus:

> " ...where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special case, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."

30. Res judicata applies to applications just like suits. In the case of Julia Muthoni Githinji v African Banking Corporation Limited [2020] eKLR the court stated thus:

> " 14. After a careful reappraisal of the application for injunction before the lower court, I have come to the conclusion that the application was resjudicata and the entire suit was subjudice as there was an active pending suit before a court of competent jurisdiction being Nakuru ELC No. 272 of 2017. All issues raised in the suit before the subordinate court could be properly litigated in the suit pending before the ELC. The filing of the suit by the appellant in the subordinate court when she had a similar suit in the ELC Court was an abuse of the Court process which the Court cannot countenance."

31. Further, in Maumbwa & 3 others v Kisemei (Civil Appeal E009 of 2021) [2022] KEHC 10416 (KLR) (26 May 2022) (Judgment Maumbwa & 3 others v Kisemei (Civil Appeal E009 of 2021) [2022] KEHC 10416 (KLR) (26 May 2022) (Judgment) the court stated doth:

> " By comparing the two applications and the authorities on res judicata, it is clear to me that the issues being canvassed in the application dated 11th January 2021 is res judicata. The issues in issue in that application were directly and substantially in issue in the application dated 13th September 2017. These issues relate to the same parties and these issues have been tried by a competent court. To my mind to bring the same issues between the same parties that have been determined by a court of competent jurisdiction is an abuse of the court process."

32. The earlier application was not heard on merit and it only related to revocation. It was not a blank cheque to exclude the Applicant. I will use words of Justice C B Madan, CJ, D.K.S. Aganyanya JA, and J.E. Gicheru, JA in the case of Stanley Munga Githunguri v Republic [1986] eKLR

> " Instead of merely crossing the t's and dotting the i's he could have used his own mind to use his powers under section 26 of *the Constitution*.
>
> Stanley Munga Githunguri! You have been beseeching the Court for Order of Prohibition. Take the order. This Court gives it to you.
>
> When you leave here raise your eyes up unto the hills. Utter a prayer of thankfulness that your fundamental rights are protected under the juridical system of Kenya."

33. For a long time, the need to keep harmony within the family has called silent pain, tears and blood commingled with perpetual hatred all in the name of God, family and culture. Of course, culture and God are invoked when it is convenient and discarded when exigencies demand. I cannot begrudge anyone. Nevertheless, choices have consequences, ramifications and effect.

34. I recall the words of George Orwell in the Animal Farm, that all animals are equal, but some animals are more equal than others. This immediately placed me in a trance flashback to a play I watched eons ago, Children of a Lesser God, by Mark Medoff. Though no consideration was made of the Applicant, subsequently, there was an application by other beneficiaries to revoke which was done. The said revoked grant ceased to exist.

35. Further several parcels were generated by fraudulent subdivisions. However, the court on application by some of the beneficiaries revoked the same reverting to the current status. That application was filed by one of the original beneficiaries. This application is dated 28/6/2019.

36. In response to that Application Joel Mose indicated that land parcel No. LR Nyaribari Chache/B/B/Boburia 1450 was to be included later. This later does not admit that it is concealment of property. The court ordered that the land registrar to visit the land parcel No. Nyaribari Chache/B/B/Boburia/1337 and file a report on 10/2/2020.

37. A Ruling was read on 4/3/2021 by Hon. Lady Justice R.E Ougo on 4/3/2021 in respect of the Application dated 5/11/2020. I shall revert to that ruling later in these decisions. Subsequently, a certificate of confirmation was issued.

38. Another application was filed dated 15/9/2023. The applicant is the daughter of the deceased. She stated that she has not been given an inheritance. It is in the cause of these proceedings that another daughter was disclosed, Rose Nyamoringo

39. Whereas Evans Nyamoringo Okinyi agreed that the applicant is a biological sister and was not included, their brother, Joel Mose Nyamoringo stated that the application dated 4/4/2011 was dismissed hence res judicata. He was of the view that the application to review the previous application was equally dismissed.

40. He stated that litigation must come to an end. They stated that the application was before the coming of the new constitution therefore discrimination was allowed. The 1st respondent raised an issue as the locus of M/s Job Obure and company advocates are strangers. They did not elaborate.

41. I perused the Law Society of Kenya portal and noted that indeed Obure Job Isaac is an advocate of the high court p/a Job Obure and Company Advocates and is entitled to practice in this country. These kinds of objections are usually raised in civil proceedings and have no place in both criminal and probate

matters. I dismiss the objection as having no basis. When parties try to raise preliminary issues, they must be preliminary issues.

42. In the case of Martha Akinyi Migwambo v Susan Ongoro Ogenda [2022] eKLR, Justice Kiarie Waweru Kiarie, summarized the preliminary objection nicely as seen from two of the judges in Mukisa Biscuit Manufacturing Co. Ltd(supra): -

> " A preliminary objection must be on a point of law. The Court of Appeal in the case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969) EA 696 at page 700 paragraphs D-F Law JA as he then was had this to say:
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> > ....A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.
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> At page701 paragraph B-C Sir Charles Newbold, P. added the following:
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> > A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...."

43. A Tanzania Court of Appeal sitting in Dar es Salaam, in Karata Ernest & Others vs Attorney General (Civil Revision No. 10 of 2020) [2010] TZCA 30 (29 December 2010), (Luanda, J.A., Ramadhani, C.J., Rutakangwa, JJA), put the issue of preliminary objections in a more succinct manner: -

> " At the outset we showed that it is trite law that a point of preliminary objection cannot be raised if any fact has to be ascertained in the course of deciding it. It only "consists o f a point of law which has been pleaded, or which arises by dear implication out of the pleading obvious examples include: objection to the jurisdiction of the court; a plea of limitation; when the court has been wrongly moved either by non-citation or wrong citation of the enabling provisions of the law; where an appeal is lodged when there is no right of appeal; where an appeal is instituted without a valid notice of appeal or without leave or a certificate where one is statutorily required; where the appeal is supported by a patently incurably defective copy of the decree appealed from; etc. All these are clear pure points of law. All the same, where a taken point of objection is premised on issues of mixed facts and law that point does not deserve consideration at all as a preliminary point of objection. It ought to be argued in the "normal manner" when deliberating on the merits or otherwise of the concerned legal proceedings.

44. Justice prof J.B. Ojwang J (as he then was) succinctly addressed the issue of preliminary objection in the case of Oraro vs Mbaja [2005] eKLR:

> " I think the principle is abundantly clear. A preliminary objection as correctly understood is now well settled. It is identified as, and declared to be the point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow

to proceed. I am in agreement that where a court needs to investigate facts, a matter cannot be raised as a preliminary point.

45. It is, therefore, my view that a preliminary objection must be based on current law, and be factual in its constitution. It cannot be based on disputed facts or fats requiring further inquiry.

46. The one related to Job Obure and company advocates is thus baseless and untenable. I dismiss the objection in limine.

47. The parties attended court on 8/12/2023. I directed that the grant issued be stayed till I determine this matter.

48. To concretise this matter, we need to settle certain aspects. The first one is who a dependant is. Section 29 of the *law of succession Act*, defines who a dependent is as doth: -

> " 29. Meaning of dependant
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> For the purposes of this Part, "dependant" means—
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> (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
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> (b) such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
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> (c) ....."

49. Children are not segregated. Under the law of succession (Amendment Act) 2022 discrimination) was fully removed. What the court did earlier was to dismiss the application for revocation. The applicant was never excluded as a beneficiary. No one has a right whatsoever to exclude a beneficiary from benefitting from her father's estate unless certain circumstances obtained in the penal code Apply which is not the case here.

50. Section 96 covers that specific aspect. It provides as hereunder: -

> " 96. Sane murderer not to share in victim's estate (1) Notwithstanding any other provision of this Act, a person who, while sane, murders another person shall not be entitled directly or indirectly to any share in the estate of the murdered person, and the persons beneficially entitled to shares in the estate of the murdered person shall be ascertained as though the murderer had died immediately before the murdered person. (2) For the purpose of this section the conviction of a person in criminal proceedings of the crime of murder shall be sufficient evidence of the fact that the person so convicted committed the murder."

51. The mere fact that a grant is not revoked and a beneficiary is not granted orders to be an administrator does not mean that she is to be excluded. The administrators have no right to dish out the estate. They must administer to the beneficiaries. In intestacy, any distribution without concurrency of the beneficiaries or renunciation of their right is a nullity.

52. The applicant was a disclosed biological daughter of the deceased and was entitled, as of right to inherit the deceased's estate. Her marital status or residence on the deceased property is irrelevant. Residence can only be relevant when deciding which portion will be given to which party. It is not relevant on the question of whether a beneficiary should inherit. Further, Section 71 of the *law of Succession Act* provides that: -

> " Confirmation of grants
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> (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.
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> (2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may-
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> (a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or
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> (b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 inclusive, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be unadministered; or
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> (c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or
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> (d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:
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> Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.
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> (2A) Where a continuing trust arises and there is only one surviving administrator, if the court confirms the grant, it shall, subject to section 66, appoint as administrators jointly with the surviving administrator not less than one or more than three persons as proposed by the surviving administrator which failing as chosen by the court of its own motion. (3) The court may, on the application of the holder of a grant of representation, direct that such grant be confirmed before the expiration of six months from the date of the grant if it is satisfied-
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> (a) that there is no dependant, as defined by section 29, of the deceased or that the only dependants are of full age and consent to the application;

(b) that it would be expedient in all the circumstances of the case so to direct.

(4) Notwithstanding the provisions of this section and sections 72 and 73, where an applicant files, at the same time as the petition, summons for the immediate issue of a confirmed grant of representation the court may, if it is satisfied that-

(a) there is no dependant, as defined by section 29, of the deceased other than the petitioner;

(b) no estate duty is payable in respect of the estate; and

(c) it is just and equitable in all circumstances of the case, immediately issue a confirmed grant of representation.

53. The Pertinent provisions of this section came into force by dint of Act No. 19 of 1984, Sch and Act No. 18 of 1986, Sch. There has been no other amendment. In the schedule to the confirmed grant, the name of the Applicant is conspicuously missing. A dependant does not need to attend court for their interests to be taken care of. They can even refuse to do so. They cannot however be excluded.

54. Such exclusion is a nullity. There is nothing that can be added to a nullity. It remains void and cannot be cured by terms of art like res judicata or sub judice. In Macfoy vs. United Africa Co. Ltd [1961] 3 All E.R. 1169, Lord Denning delivering the opinion of the Privy Council at page 1172 (1) said;

> "If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse."

55. Unless specifically provided, the *Civil Procedure Act* and the Civil Procedure Rules and like its counterpart the criminal procedure code are irrelevant to succession matters. By prolifically quoting the civil procedure Rules, the Respondents missed the train.

56. Section 97 of the Succession Act provides as doth: -

> "97. Rules The Rules Committee may make rules of procedure generally for the carrying out of the purposes and provisions of this Act, and without prejudice to the foregoing generality, any such rules of procedure may prescribe—
>
> (a) the procedure to be followed by a court in determining applications under section 26 or subsection (3) of section 35;
>
> (b) the procedure to be followed by a court in granting probate or letters of administration;
>
> (c) the procedure to be followed in the case of a dispute as to a grant;
>
> (d) the form and manner in which applications under section 26 and subsection (3) of section 35 and applications for grants are to be made, grants are to be issued, grants are to be limited, notices are to be given, or inventories or accounts are to be produced;

(e) the fees to be paid on any application or grant, or on any other procedure related thereto.

57. By invoking the non-attendance of the Applicants, they were stealing a match. In any case, non-attendance never makes anything res judicata. At no time did the court exclude the applicant from the estate. She is excluded simply for being a woman by the Applicants. Article 27 of *the constitution* provides as doth:-

" Equality and freedom from discrimination.

1. Every person is equal before the law and has the right to equal protection and equal benefit of the law.

2. Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

3. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

4. The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

5. A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

6. To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination."

58. Article 27 of *the Constitution* is not a decoration. It is an article with full force of the grundnorm of the country. It is consonant with various declarations starting with the Universal Declaration of Human Rights. There has never been a law in this country barring girls from inheriting. It was also in the mind. The decision of Mary Rono -vs- Same Rono, (2002) eKLR.

59. In the said decision of Mary Rono v Jane Rono & another [2005] eKLR, the court of Appeal, sitting at Eldoret, stated as doth: -

> The deceased in this matter died in 1988, while the Succession Act which was enacted in 1972, became operational by Legal Notice No. 93/81, published on 23.06.1981. I must therefore hold, as the Act so directs, that the estate of the deceased falls for consideration under the Act. Section 2(1) provides: -
>
> 2. (1) Except as otherwise expressly provided in the Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons."

The application of Customary law, whether Marakwet, Keiyo or otherwise, is expressly excluded unless the Act itself makes provision for it. The Act indeed does so in Sections 32 and 33 in respect of agricultural land and crops thereon or livestock where the law or custom applicable to the deceased's community or tribe should apply. But the application of the law or custom is only limited to "such areas as the Minister may by Notice in the Gazette specify." By Legal Notice No. 94/81, made on 23.06.1981, the Minister specified the various districts in which those provisions are not applicable. The list does not include Uasin Gishu district within which the deceased was domiciled. So that, the law applicable in the distribution of the agricultural land in issue in this matter is also written law. Does the Act provide for the manner of distribution? Partly, yes.

60. The Court made a bold statement for those days. The lead decision by justice Waki JA as the he was, stated as doth: -

> " I find no justification for the superior court whittling that proposal down to 5 acres to each daughter. More importantly, section 40 of the Act which applies to the estate makes provision for distribution of the net estate to the "houses according to the number of children in each house, but also adding any wife surviving the deceased as an additional unit to the number of children." A "house" in a polygamous setting is defined in section 3 of the Act as a "family unit comprising a wife ... and the children of that wife". There is no discrimination of such children on account of their sex.
>
> I think, in the circumstances of this case there is considerable force in the argument by Mr. Gicheru that the estate of the deceased ought to have been distributed more equitably taking into account all relevant factors and the available legal provisions. I now take all that into account, and come to the conclusion that the distribution of the land, "

61. In the case of Jonathan Munene v Attorney General & 2 others; Kenya Judges Welfare Association (Interested Party) [2021] eKLR, Justice J. A. MAKAU, J as then he was stated as doth: -

> " 51. Article 1 of *the Constitution* of Kenya 2010 clearly delegates sovereign power to the Respondents (Parliament and the legislative assemblies in the county governments; and the national executive and the executive structures in the county governments), I find that they are under an obligation to perform their functions in accordance with *the Constitution* of Kenya, the grund norm of all Kenyan Law and, due to its importance, was enacted by way of a referendum, to allow the Citizens of Kenya to express their will. Failure to do so allows the Petitioner (and indeed anyone) to seek recourse under Article 2 of *the Constitution* which not only expects the Respondents to bow to the will of the Citizens of Kenya but also allows for the recall of. Article 2 of *the Constitution* states:-
>
> > "Any law, including customary law, that is inconsistent with this constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid."

62. *The Constitution* is not idle. It is a covenant that goes beyond time and space. It must be recalled that rights in *the constitution* are not given but inherent. The inherence of those rights makes nonsense of the concept of retroactivity which applies only to ordinary statutes.

63. In the case of Joyce Wambui Samuel & Hellen Wanjiru Ndegwa v Jane Njeri Gakuru [2015] eKLR, Justice A.O. Muchelule J, a then he was stated as doth: -

> " The next question is whether the trial court was right in following Kikuyu customary law to disinherit the appellants on account that they were married daughters of the deceased. On this issue, I agree with the appellants. The deceased died in 1998, and the *Law of Succession Act* came into operation in 1981. Under Section 2(1) of the Act:-
>
> > "Except as otherwise expressly provided in the Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of the deceased persons dying after the commencement of this Act and to the administration of the estates of those persons."
>
> It follows that the Act applied to this estate. The Kikuyu customary law that was invoked by the trial Court had no application, and the reliance on it to disinherit the appellants was done in error. It is further noted that the estate was not subject to the provisions of sections 32 and 33 of the Act. It is now trite that the Act does not discriminate against daughters, whether unmarried or married. They are entitled to inherit the estate left behind by their parents. In Mary Rono –V- Jane Rono & Another, Civil Appeal No. 66 of 2000 at Eldoret, the Court of Appeal held that it is not only repugnant but also goes against natural justice and good conscience to uphold a decision that discriminates against women on the basis of a custom that is not in line with the supreme law of the land. .."

64. What I gather from the Court of Appeal is that unless gazetted, customary law does not apply to succession. I can only liken the continued reliance on outdated customs to camouflage misogynistic tendencies at best and greed at worst. It could have never been that the succession Act favoured one gender.

65. Indeed, Articles 1 and 2 of the Universal Declaration of Human Rights, provides as doth: -

> " Article 1 - All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
>
> Article 2 - Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

66. It was submitted that the law as it was then allowed discrimination in the family set up. This cannot be true. A reading of section 84 of the former constitution does not result in those rights. In any case, a constitution is not a statute. The rights it deals with are not granted but inherent. I find nothing in *the constitution*, retired constitution succession act, and the facts of this case, that exclude the Applicant from inheriting. Indeed, if there is another girl or other girls and boys, they remain entitled to the estate of the deceased, their non-attendance notwithstanding.

67. The right to be treated equally without discrimination on sex is paramount. A whole commission is tasked with the role of mainstreaming matters of gender. Article 59(1) and 2(b) provides as follows: -

> "(1) There is established the Kenya National Human Rights and Equality Commission.
>
> (2) The functions of the Commission are—
>
> a. ..
>
> b. to promote gender equality and equity generally and to coordinate and facilitate gender mainstreaming in national development;

68. The *Law of Succession Act* section 35 provides and doth: -

> " 35. Where intestate has left one surviving spouse and child or children (1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—
>
> (a) the personal and household effects of the deceased absolutely; and
>
> (b) a life interest in the whole residue of the net intestate estate: Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.
>
> (2) A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date."

69. The *Law of Succession Act* section 40 provides and doth: -

> " 40. Where intestate was polygamous
>
> (1) 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.
>
> (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38"

70. Nowhere in the two sections is reference made to sons or daughters. It refers to children. Therefore, anyone excluding a girl for purposes of culture, religion or ego, is living in a wrong century, he should have lived before the time of the Magna Carta when it was signed as a royal charter of rights and freedoms agreed upon by King Johni at Runnymede, near Windsor, England, in June 1215. Anything after that if taking us back to the dark ages.

71. Kenya is signatory to the Maputo Protocol to the African charter on human and peoples' rights on the rights of women in Africa. They ratified the treaty on 13/10/2010 with a reservation on cutting military expenditure to spend on women empowerment. The article that Kenya has a reservation on has nothing to do with matters in issue in this case. The Article provides as doth: -

> " 3. States Parties shall take the necessary measures to reduce military expenditure significantly in favour of spending on social development in general, and the promotion of women in particular."

72. Article 3 of the Maputo Protocol, which has no reservation provides as doth: -

> " Right to Dignity
>
> 1. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.
>
> 2. Every woman shall have the right to respect as a person and to the free development of her personality.
>
> 3. States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women.
>
> 4. States Parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence."

73. In a more succinct way, Article 21 of the Maputo protocol provides as follows: -

> " Article 21 Right to Inheritance
>
> 1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.
>
> 2. Women and men shall have the right to inherit, in equitable shares, their parents' properties."

74. Every international and national jurisprudence indicates that a right of a woman to inherit is inherent. It is not given and cannot be taken away. It is no wonder that Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, provides as thus: -

> " Article 1 For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

75. It is in this light that Article 5 of CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) gives a positive duty to eliminate discrimination. Article 5, states as follows: -

> " Article 5 States Parties shall take all appropriate measures:
>
> (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
>
> (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.:

76. There is no question that is lawful that a woman will inherit from their parents based on equality. She will not prejudiced or have excruciating pain if she inherits from her parents. It is the right and only thing to do.

77. It is my finding that any child regardless of gender or sex is entitled not only in equal protection but also full benefit of law. Some of the arguments I have seen are mired in ignorance and conceit that it is not possible to place then on the record herein without assaulting my sense of morality and civility.

78. Some of the respondents are stuck in ancient history before the passage of Vasco Da Gama along the Kenyan Coast in 1495. Even over 150 years ago women were entitled to inherit. They had a right to own property and dispose by will and definitely receive property. The repealed Married women property act, 1882 speaks volumes.

79. I do not find any serious bar to the Applicant inheriting her father's estate. Succession is mostly decided at conception and not birth. The very fact that a pregnancy has occurred, the estate potentially has an heir. It is neither important nor desirable to establish the gender or sex of the child. It is a futile exercise that is much ado about nothing.

80. Indeed, even England had to pass the Married women properties act, 1882 which allowed married women to own land. I find and hold that the objector does not need to prove anything other than she is a daughter. Her being a daughter is admitted by one and not opposed by the others.

81. The next question is the fate of Rose Nyamoringo. It became clear that she existed as a daughter of the deceased. She participated in several processes but appears to be at the mercy of her brothers. This should not be so.

82. The right to inherit for children is inherent and does not depend on brothers and sisters. I also note from the letter dated 17/1/2023 that there is a person named Velma Nyamoita. The parties will have to establish to this court her status. If she is a beneficiary she should be included, if not she should keep peace.

83. The presence of Rose Nyamoringo was a badly kept secret. Whether she wants to inherit is not a relevant question. The only thing that can bar her is section 96, and election. Though mostly, elections are mostly under testamentary succession, nothing precludes a beneficiary from making an election. Such a beneficiary must expressly elect, it can never be implied. Where there is no express election, it

may be implied or inferred from acts, or from failure to dissent, but such inference shall not arise unless the legatee knows of his right to elect as per rule 5 of the third schedule.

84. I thus hold and find that the grant was confirmed by concealing the presence of the applicant, Teresa Mwango, and her sister Rose Nyamoringo. Such concealment has no cure other than to cut off the cancer before it metastases.

85. What is the cancer? The Applicants made an application for letters of administration of the estate and undertook to faithfully. The first applicant Joel Mose Nyamoringo has perpetually perpetrated fraud leading to a myriad of Applications. Such conduct is incompatible with the grant and makes him incorrigible and anathema to good order.

86. Consequently, an order is issued dismissing, Joel Mose Nyamoringo as an administrator for failing to faithfully administer the estate and identify beneficiaries. In his place, I shall appoint Teresa Mwango Nyamoringo as a co-administratrix together with Evans Nyamoringo Okinyi. The grant of letters of administration intestate is accordingly amended.

87. The effect of the foregoing is that I revoke the certificate of confirmation of grant issued on 4/3/2021. In lieu thereof, I direct that all the children of the deceased share equally on both assets, of the deceased together with all assets or not disclosed.

88. I therefore direct That the following are known net assets of the deceased herein: -

    1. Nyaribari Chache/B/B/ Boburia 1450

    2. Nyaribari Chache/B/B/ Boburia 3377

89. The deceased left behind the following beneficiaries

    i. Joel Mose Nyamoringo

    ii. Teresa Mango Nyomoringo

    iii. Rose Nyamoringo

    iv. Evans Nyamoringo Okinyi

    v. John Okari Nyamoringo

90. Land parcel number Nyaribari Chache/B/B/ Boburia 1450 be shared equally among the beneficiaries, Joel Mose Nyamoringo, Teresa Mwango Nyomoringo, Rose Nyamoringo, Evans Nyamoringo Okinyi and John Okari Nyamoringo.

91. Land parcel number Nyaribari Chache/B/B/ Boburia 3377 be shared equally among the beneficiaries, Joel Mose Nyamoringo, Teresa Mango Nyomoringo, Rose Nyamoringo, Evans Nyamoringo Okinyi and John Okari Nyamoringo.

92. The administrators are to inform the court within 15 days either jointly or severally, if there are other daughters left out. If they are found, they shall be entitled to share equally in the estate of their father.

93. Further I direct parties to give a full inventory of all assets and beneficiaries. I direct Teresa Mwango Nyamoringo and or Evans Nyamoringo Okinyi to file in court within 15 days an affidavit confirming all the children of the deceased. The matter shall be mentioned before the Judge in Kisii on 7/5/2024 to confirm the whereabouts of other beneficiaries, if any.

94. Therefore, I direct, you Teresa Mwango Nyamoringo, a daughter of your father, who ran to the hills, to celebrate. This court renders Justice both to the meek and the powerful. Thank heavens that courts

work. Go down on your knees and utter a prayer for the founders of this nation. Your resilience in the face of opposition, greed and ignorance has trumped it all. May Justice be our shield and defender. It will not come out of your mouth, that you are a child of a lesser god. Get your inheritance. For the same was set apart from the foundations of the earth. For your Father, who knitted you in the womb of your mother knew you.

95. I thank advocates for the diligent submissions and gallant defence of their clients' cases. It is not them who lost. It is the law that succeeded. I thank them for the in-depth research. It is my sincere hope that it be known that it is futile to attempt to disinherit daughters. Their rights are cemented in the very foundation of this nation.

96. It should be remembered that all circumstances considered the future of this nation appears feminine. Retrogressive culture is transient and shall give way to rights and freedoms. The words used in the first French revolution in 1789 should reverberate in our mind that we are always in pursuit of Liberté, Egalité, Fraternité (liberty, equality and fraternity).

97. Twenty-nine is too long a period to fight over two pieces of earth with your siblings. Parties should take heed, take the little they may get, and look for their own. Their children are waiting for their round in our courts. The court is still open for the next generation. May this one end now.

98. I have no option other than to allow this application. The first application that was dismissed was to revoke the grant. The said grant was subsequently revoked and rectification was subsequently allowed on 4/3/2021. Only three sons were given the two properties. The daughters had not signed renunciation forms and had not elected not to inherit. Without the election, the confirmation was based on a lie. Two beneficiaries were left out. It does not matter whether they applied to revoke or protested. Presence in the world of dependants, ipso facto, entitles them to inherit. If anyone does not want to do so they must make that renunciation and election, freely and voluntarily. Where the election is un-informed, it remains worthless.

Determination

99. In the circumstances I make the following orders: -

    a. The application dated 15/9/2023 is not res judicata.

    b. Objection regarding the representation by the firm of M/s Job Obure and Company Advocates untenable as the firm is properly on record for their client.

    c. The application dated 15/9/2023 is merited and I accordingly allow the same.

    d. All the beneficiaries being all the sons and daughters including Teresa Mwango Nyamoringo rose are entitled to share equally to the estate of the late Nyamorigno Okingi (deceased).

    e. The administrators are to inform the court within 15 days either jointly or severally, if there are other daughters left out. If they are found, they shall be entitled to share equally in the estate of their father.

    f. Each of the beneficiaries is to share LR Nyaribari Chache/B/B/Boburia 3377 and 1450 equally, without having regard to gender or sex.

    g. Given the lack of good faith on the part of Joel Mose Nyamoringo, I dismiss him as an administrator and order that the original grant be amended to include Teresa Mwango Nyamoringo as a co- administrator with the remaining Administrator, Evans Nyamoringo Okinyi.

h. Accordingly, the grant issued on 4/3/2021 is accordingly recalled and revoked.

i. The Court therefore shall issue a new confirmed grant with all the children, sons and daughters sharing equally as follows: -

   a. Land parcel number Nyaribari Chache/B/B/ Boburia 1450 be shared equally among the beneficiaries, Joel Mose Nyamoringo, Teresa Mango Nyomoringo, Rose Nyamoringo, Evans Nyamoringo Okinyi and John Okari Nyamoringo.

   b. Land parcel number Nyaribari Chache/B/B/ Boburia 3370 be shared equally among the beneficiaries, Joel Mose Nyamoringo, Teresa Mango Nyomoringo, Rose Nyamoringo, Evans Nyamoringo Okinyi and John Okari Nyamoringo.

j. within 15 days.

k. The administrators Teresa Mwango Nyamoringo and Evans Nyamoringo Okinyi, being the administrators of the Estate of the late Nyamoringo Okinyi(deceased) are to to file a full list of all other beneficiaries and inform the court within 15 days either jointly or severally, if there are other daughters left out. If they are found, they shall be entitled to share equally in the estate of their father. If none, the file be closed.

l. The administrators to address in an affidavit the status of Velma Nyamoita.

m. The file be placed before the court on 7/5/2024, for directions and or closure.

n. All subdivisions based on all revoked grants are hereby set aside, in particular the ones referred to in the survey letter dated 17/1/2023 reference number KSI/SK089/(5) signed by David Lemayian for county surveyor.

o. The county surveyor to implement the subdivision and the estate be according new grant administered in the next 90 days.

p. Joel Mose Nyamoringo and John Okari Nyamaringo to bear cost of Kshs. 40,000 to the objector payable within 60 days, in default execution do issue.

q. This file is closed.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 7TH DAY OF MARCH, 2024. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of:

Job Obure and company Advocates for the applicant

G M Nyambati for the 1st petitioner/ Respondent

Evans Nyamoringo Okinyi the 2nd petitioner/Respondent, Pro Se.

Court Assistant - Brian

M.D. KIZITO, J.