



REPUBLIC OF KENYA



**In re Estate of Simon Kimendero Kabari (Deceased) (Succession Cause
13 of 2015) [2024] KEHC 5654 (KLR) (20 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5654 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
SUCCESSION CAUSE 13 OF 2015
F GIKONYO, J
MAY 20, 2024**

IN THE MATTER OF

TERESIA WANGUI 1ST PETITIONER

JOHN KABARI 2ND PETITIONER

ALLAN KEREMERI 3RD PETITIONER

AND

MONICA WAMBUI KIMENDERO APPLICANT

JUDGMENT

1. Monicah Wambui Kimendero, a daughter of the deceased filed a Summons for revocation of Grant dated July 31, 2017 which is supported by her affidavit sworn on July 31, 2017 and grounds set out in the application and *viva voce* evidence adduced in court. She is referred to as the objector in the proceedings. For consistent rendition, she will be referred to as the objector.
2. The major grounds cited are that, the grant was obtained; i) by untrue allegation of a fact essential in a point of law to justify the grant; ii) through deceit and non-disclosure of a fact which was essential in law; and iii) through mischief, with intentions of disinheriting the applicant and other beneficiaries.
3. According to her, she understood the three administrators were to hold the properties in trust for all beneficiaries as they negotiated on the mode of distribution.
4. It was her case that, it was on the basis of this understanding, which was reflected in a schedule of distribution that accompanied the consent, she signed the consent to confirmation.
5. However, she stated in the affidavit that the schedule was missing in the application.
6. She discovered much later when the grant was given to her that, all the properties were shared to the three absolutely and there was no provision made for any other dependant.



7. She therefore, sought for the grant to be revoked.
8. She also filed her mode of distribution *vide* affidavit sworn on 1st March, 2019.
9. Parties filed affidavits. They also agreed the matter to continue from where it ended. They adduced *viva voce* evidence.

Evidence by Objector

10. She gave oral evidence as PW1 that, she is the first born of the deceased. John follows her, and Allan is the third born the deceased is our father. When the deceased died, they all sat down and agreed to do succession. They all agreed to the following being administrators:
 1. John Kabari
 2. Allan Karemeri
 3. Teresia Wangui, their mother
11. They also decided that their brother Michael Nderitu was to process the succession. And, he used to update them on the progress of succession.
12. When Michael Nderitu showed her the confirmed grant, is when she realized all was not well and she was dissatisfied because she was not given anything in the confirmed grant. When she asked the petitioners as to why she was not given a share, they told her that they were to meet as a family and share the properties as the confirmed grant dated 30/3/2017 was only temporary. She believed him, and thereafter they had meetings to resolve that issue. But, the issue was not resolved because they did not agree on mode of distribution.
13. They decided to involve two elders, Peterson Gichuhi and Gitari to assist them resolve the issue, but were unable to agree.
14. According to her, the petitioners then decided to maintain the status quo. It is this situation that forced her to look for an advocate to assist in the resolution of the issue of distribution of the estate.
15. Her proposal was for all the assets of the deceased to be valued and be sub-divided among all beneficiaries. She also wants the sharing to take into account what the petitioners have so far benefited.
16. She also wishes all the assets of the deceased to be collected and shared. For instance, the deceased bought a plot of land in Olopito group ranch No. 788 measuring 100 x 100 which should be included in the list of assets of the deceased.
17. She produced the statement of the deceased as exhibit No. 1. There are other properties; their late father's note book, which refers to Nos 31, 33 and 324. These ones are not in the list.
18. The second reason was that, they never consulted her in getting the letters of administration. And, therefore, Paragraph 5 of the affidavit in support of summons for confirmation of grant is not correct as they did not consult her on distribution as stated of which she only learnt after the issuance of the confirmed grant.
19. She added a third reason for her objection; the petitioners are not honest in administering the estate. There is no documentation of how they are doing it, and they have not been accounting for monies received from the rent generating plots.
20. Connected thereto, she has also applied for audited accounts of the rent income from those plots.



21. she was vehement that, she is opposed to mode of distribution in the confirmed grant as it neither gives her any share of the estate, nor list her as one of the beneficiaries. It is only three beneficiaries who were given shares.
22. On mode of distribution: She proposes every beneficiary to have a share in the estate. She produced her proposed mode of distribution as exhibit Pex 2.
23. But, she was quick to add that, Exhibit Pex 2 does not contain all the properties of the deceased. The following are not in exhibit Pex 2.
24. Landed property: -
 1. Parcel of land No. 31, 33 and 324, which are at Naisuya. Title deeds have not been issued. I want every beneficiary to have a share in those parcels of land.
 2. A plot which is unsurveyed and has not title deed, which is at London estate being plot No. 79. This plot is in dispute, as there is a court case in respect of it.
 3. The shop of the deceased at Majengo at ODM Market.
25. Machinery (assets): -
 1. There were two sewing machines.
 2. There was also a ploughing machine.
26. The objector testified that the grant was issued to only three dependants yet they were 8 siblings.
27. She stated that she signed the consent to confirmation on the understanding that the three were to be trustees for all the others whilst they negotiate the mode of distribution.
28. According to her, nothing was explained to and that she did not renounce her right to inherit.
29. If she was made aware that she would be excluded from the estate, she would not have signed the consent to confirmation.
30. She came to court because she was excluded from inheriting her father's estate. Yet, she is a biological daughter of deceased and therefore entitled to inherit.
31. She was cross examined by John Kabari
32. She stated that she would like the accounts of the money John has used from 2013 to date. From 2013 to 2015 it was John Kabari, Allan Karemeri, Michael Nderitu, Daniel Njuguna and Paul Muthame who were in charge of expenditures.
33. Allan Karemeri is a businessman. Allan Karemeri trained as a veterinary doctor, but now he does business at the shop.
34. She stated that, it is true that all of the gentlemen named were collecting rent from 2013 to 2015.
35. Between 2013 and 2015, Allan Karemeri was residing here in Narok.
36. She confirmed that participated in the meeting in respect of discussions concerning matters of succession. In those meetings they used to get reports of income and expenditure, but not all. And, John in particular never used to present the full reports.
37. She used to ask for bank statements severally, because John was presenting the full picture of income and expenditure.



38. Allan in cross-examining the objector, claimed that the judge (Bwonwong'a J) said that the error will be corrected as the three were administrators and not sole beneficiaries, and, that the error was rectified.
39. She stated further that she was never in the meetings where the administrators claim they discussed the distribution of the estate. She was categorical that the wazee Allan claimed attended the alleged meetings were never called as witnesses in this case.
40. She claimed that she was called to attend court but later realized that a flawed grant had been issued by the court. She stated that she only heard of the distribution but was never involved in the entire process. She also gave a list of properties she claims were left out in the petition.
41. She accused Allan of taking his father's lucrative shop which part of the estate premises.
42. In cross-examination by Veronicah Nyambura, she stated that she wants the estate to be distributed to all of them. She claimed that she was not given anything.
43. In re-examination, she clarified that she signed the consent in the belief that the estate will be first transmitted to the administrators and then distributed to all of them. She also testified that her mother was substituted but she did not give her consent thereto.
44. It was her testimony that she has never been given any evidence that the property at Naisoya is forest land as people still live at Naisoya.
45. As for plot number 79, it has a case. But, the deceased had constructed three house which are still there.
46. She was categorical that the plot at Total is not estate property as it is the administrators who purchased it and purported to give it to her. According to her, they have never given her any property or tile documents in respect of the estate.

Evidence by John Kabari

48. John Kabari testified that he followed through on the grant. He said that they had family meetings of which the objector was the secretary. He claimed that one of the trustees whose name he could not remember attended the family meetings. The trustee was a major friend of the deceased.
49. He stated that after three months they received a letter from the objector seeking revocation of grant. He said to the court that they were merely administrators of the estate.
50. He stated however, that a problem arose with the grant and the judge asked them to go for arbitration. They involved the two trustees in the grant and their uncle who helped them fasten as settlement on distribution. They filed the agreement in court. He stated that when they presented the consensus to the court, all agreed except the objector who told the court that she does not agree. They left the matter to the judge to decide. But, he does not know whether the error was corrected. He said that they shared the property in accordance with the agreement.
51. He set out how he shared property to the objector i/e/ LR No. 14630 (0.2Ha), set aside Kshs. 5,000,000 to buy a plot for her at Total area measuring 50x100 at Kshs. 1.2million, 0.4Ha from Kanjogu land plot No. 257, 0.4Ha in Tetu properties Nos. 645-647. She however did not take any of these properties. And, she came to court.
52. He also stated that they consolidated funds in the sum of Kshs. 15million which were in KCB Bank.
53. He concluded by stating that they worked well as administrators and have filed an inventory of all assets of the deceased and expenditure.



54. On cross-examination, he admitted that the deceased had a vehicle number K VX 217 Make Datsun which they allocated to Paul. They agreed to sell it to him. There was a general agreement that a family member should be given priority to purchase any property they wish to sell.
55. He stated that he was given plot number 54(new number) which is developed and generates income. He deposits the income into his account as a person entitled to the property. This is where he lives.
56. Daniel Njuguna was given plot number B2/202, Narok Township. It is developed commercial property and generates income.
57. Paul Muthama was given plot number 856, Narok Township which is developed residential property. It generates income for Paul.
58. Veronicah Nyambura was given plot number 238, Narok Township which is developed residential property and generates income for her.
59. Allan Karameri was given plot number 95 Block 2- a developed residential property which generates income for Allan.
60. The income from the Nairobi, Kimathi plot number 152 is deposited in the family account at KCB. It is residential property with 10 units. The rent is collected by their agent. Rent has however not been revised since 2013.
61. Property number 724 at Enabelbel measuring 1.432Ha is registered in the names of the three administrators as absolute proprietors. But according to him, they hold the property in trust for the family members.
62. He stated that he shared property number Cis Mara/olulunga/14630 amongst all the 8 siblings, but not in equal shares as daughters have less portions and male has bigger portions.
63. He further stated that, Cis Mara/kojonga/257 measuring 3.64Ha is registered in their three names as absolute proprietors.
64. On bank accounts, he said that he listed four bank accounts. The first one at KCB Moi Avenue Branch was closed. He stated that the account had 15million which he shared out and the balance was deposited in the family account. He stated that he has evidence to show how the money was shared out; each beneficiary received and signed. According to him, all monies were consolidated into the family account at KCB, Narok Branch.
65. He told the court further that, the account at KCB, City Centre Branch was closed, and did not have any money. He required a court order to get the statement.
66. He stated that the Equity account where KTDA Tea money was being deposited was closed but he could not remember the balances in the account at the time of closing the account.
67. John told the court that KTDA Nyeri account has Kshs. 623,150.55 as at August 31, 2021. they had withdrawn Kshs. 600,000 for their mother's surgery which she did not undergo. They had however paid some money to the hospital for her admission. He did not however have receipts for the hospital bills. He stated that it is a mistake that the document indicates that the money was for funeral expenses as his mother was still living. The court noted that the witness was evasive on this issue.
68. He however stated that the money was for their mother's hip replacement treatment.



69. According to John, title deed for Tetu properties are in the name of the deceased. They are No. 645, 646 and 647. But, they are in the process of transferring them. They have tea bushes which generate income into the KTDA account.
70. They also opened an account at Family Bank, Narok Branch for their mother. But, he does not know whether it has money or not. Proceeds from Nairobi property was being deposited into her account. But, they stopped the money from being paid into that account after they received the grant. He distinguished this account from A/C No. xxx at KCB, Narok Branch which is the estate account although in the name of their mother. This is the account they are operating.
71. He said account number xxx, KCB, Moi Avenue was unknown to him.
72. He stated that they sat down as a family and agreed on the mode of distribution. He however, confirmed that the objector did not consent to the mode of distribution. They nonetheless left the agreement in court.

Evidence by Allan Karimeri

73. Allan Karimeri Kimendero also testified that, he is one of the administrators of the estate of the deceased.
74. He stated that they sat as a family and agreed on distribution upon which the court confirmed the grant. They were in the process of completing the administration until the objector filed objection.
75. He however clarified that, they did not know that distribution was to be in accordance with the certificate of confirmation of grant. They believed that they were trustees and were to distribute the estate as per their agreement. They distributed the estate as administrators. And, by the time the objection was filed, each beneficiary had received their respective shares. He stated that the court later amended the grant as this was a technical error.
76. According to him, Tetu properties were to remain family properties. But, when the objector filed objection, they changed the decision and decided that these properties be divided amongst all the children in terms of 'boys and girls'.
77. He also adopted the testimony by John in respect of all other matters.
78. In cross-examination, he stated that, they bought a plot for the objector. But, they do not have a title except an agreement of purchase of the plot. He changed and stated that he has the agreement for the plot but Michael Nderitu did the transfer and has its title deed. But, he does not know in whose name the title stands. Monicah was not a signatory to the agreement. Their mother is indicated to be the purchaser in the agreement but she was to transfer it later to the objector..
79. Allan told the court that they did not value the properties, and the distribution was based on the agreement by the family.
80. He stated that Kimathi property in Nairobi had been given to their mother, but when she died they changed it into their three names and stopped the income from being deposited in her account.
81. At subsequent point, he said the property is still in the name of the deceased, and therefore family property.
82. Allan however confirmed that titles of estate properties were registered to the names of the three administrators as absolute proprietors.



83. According to him they agreed that shares in Olulunga land were not to be equal. He said that the book with the agreed mode of distribution is with the objector who has refused to hand it over.
84. And he concluded by emphasising that they did not intend the estate property to go to the three administrators absolutely, and that the error was rectified.

Evidence by Veronicah Nyambura

85. Veronicah Nyambura Kimendero stated that she is one of the administrators, and she totally agreed with what John and Allan had stated.

Directions by the court

86. Objector/protestor to file and serve submissions in 30 days. The petitioners to file theirs in 45 days of service. The court noted that, due to the age of the case, judgment date was scheduled for purposes of fast-tracking the case.
87. Despite being given time to file submissions, parties did not file submissions as ordered, thus, causing the judgment to be deferred to some other dates. Nevertheless, parties evidence; oral, affidavit and documentary is explicit and the decision is properly grounded.

ANALYSIS AND DETERMINATION

88. 'A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion' that one or more of the grounds set out in section 76 of the *Law of Succession Act* have been established or exist.
89. The words 'at any time' gives a wide judicial discretion aimed at ensuring estates of deceased persons are administered according to the law, which really serves as a manner of protection of the rights of the beneficiaries of the estate of the deceased.
90. From the application, the papers filed, the evidence adduced and the law, the relevant grounds are:
 - a. That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case
 - b. That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently
 - c. That the person to whom the grant was made has failed, after due notice and without reasonable cause either
 - i. to proceed diligently with the administration of the estate
 - ii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular
91. The objector stated that she signed consent to distribution of the estate on the understanding that the three administrators selected by the family will hold the estate property in trust for all of them pending consensus on the mode of distribution. She stated that the consent she signed was accompanied by a schedule of distribution to that effect. But, according to her, she discovered after Nderitu gave her a copy of the grant that, the three administrators were designated as the absolute owners of the entire



estate. Nderitu was the one tasked with the follow through on the succession cause and was giving them updates on the progress.

92. Although the administrators have denied the claims by the objector, and stated that they had agreed on the mode of distribution, evidence shows that there was no agreement whatsoever that the three administrators were to take the entire estate absolutely. John and Allan confirmed to the court that the agreement was that the three administrators were to be registered in trust for all the beneficiaries. They also told the court that, the family was to sit down upon issuance of the grant and agree on the mode of distribution.
93. However, the administrators in applying for confirmation of grant stated that the family had agreed on the mode of distribution; and that all the properties of the deceased shall be registered in their three names. They did not indicate that the family agreed that they shall hold the properties of the estate in trust for themselves and for all the other beneficiaries.
94. To add insult to injury, they registered themselves as absolute proprietors of the estate property.
95. These are incidents of deliberate concealment of material facts, fraudulent and intended to disinherit the beneficiaries of the estate.
96. After the original sin came to light, they devised means in furtherance of their ill intentions. The administrators embarked on distribution of the estate at their own whims. They claimed that, the family sat and agreed on the mode of distribution which they filed in court and proceeded to distribute the estate in accordance with the purported agreement.
97. The administrators knew and confirmed that the objector did not agree with their proposed mode of distribution and she did not sign the agreement.
98. The court record show that, on May 17, 2018, after perusal of, the objector intimated to the court that she takes objection to the minutes of 12.2.2018, where an agreement on distribution is alleged to have been reached amongst the other siblings. And, the court ordered: -

'Parties are unable to agree even with the assistance of three elders.

Order

Hearing of objection on 11 & 12/7/2018'.

99. Whilst the hearing of the application for revocation of grant was on-going and pending in court, the administrators continued to do their thing. Despite the state of things in the proceedings, the objectors filed amongst others, 'Amended Schedule on the Mode of Distribution' on November 13, 2020. It appears their amended schedule on the mode of distribution was based on the minutes of the meeting held on February 10, 2018 which was at the heart of the dispute herein.
100. The agreement which is said to have been reached by the family did not involve the objector. An agreement must be total consensus amongst all, not some, of the family members. It appears the administrators ignored the objector, and hoped the 'agreement' will pass for a consensus because it was endorsed by the preponderant majority of the family members. Inheritance concerns rights, and rights get equal protection of the law; none is the lesser. The reality is that, the parties did not agree on distribution. The 'agreement' was not endorsed or accepted by the court as it was the thrust of the application for revocation herein. The court ordered the revocation application to be heard.
101. John claimed that, the confirmed grant was erroneous. At one point, John and Allan claimed that, the 'error' on distribution was rectified by the court. At another point, they stated that they are not sure if



it was corrected. And, at other time, that they were told by the court to leave the agreement or amended schedule with the court.

102. A quick spot-check. In the summons for confirmation of grant, the three administrators applied for confirmation of grant and averred in the affidavit in support that the family has agreed that the properties of the deceased shall be registered in the names of the three administrators. They stated in the affidavit in support of the Summons for Confirmation of Grant that, this was the agreement of the parties. A confirmation of grant was granted and a certificate of confirmation of grant was issued on March 30, 2017 which shows that the three take all the properties of the deceased. There is no any other dependant or beneficiary who takes a share under the confirmed grant. No record shows any review of this position. The distribution remained in situ as per the record.
103. Without doubt, the administrators obtained confirmation of grant by falsehoods. Similarly, the administrators distributed the estate of the deceased in a manner not authorized by the court. They, therefore, had no authority from the court or law or the grant herein to distribute the estate in the manner they did. The administrators assumed authority they did not have. They acted contrary to the law. Their actions were a deliberate violation of the law and duties of the administrators.
104. The ‘error’ claimed to have occurred was not an error, but stealth and contrived ploy to disinherit other beneficiaries, or to give them ‘authority’ as owners of the estate property to distribute it as they wished. It is not strange that John and Allan had the audacity to state in court that the sharing of estate properties was unequal as they decided it on the basis of “boys’ and girls” categorization, which stinks of negative patriarchy and prohibited discrimination under article 27 of the Constitution.
105. The objector has denied categorically that she has never received any money from the administrators, and that the signature against her name was a forgery. See paragraph 14 of her affidavit sworn on 20th January 2023 and filed in court on 20th January 2023.
106. John averred in his testimony as well as his affidavit sworn on June 10, 2022 and filed in court on June 13, 2022 that the proceeds in account number xxx, KCB, Narok Branch had always been shared amongst all the beneficiaries, and that, the share of the objector was always delivered to the objector by Veronica Nyambura.
107. The claim by John does not explain the signature against the name of the objector, Monica Wambui; by whom? And, there was no evidence that the money was delivered to her, or was collected by a person duly authorized by the objector. These things are important because; i) the objector has made a claim of forgery in the signature purportedly to be hers; and ii) according to John, the share of the objector of the proceeds of the account was always delivered to the objector by Veronica Nyambura.
108. From the evidence adduced, there is clear intention by the administrators to do anything to show that the objector was receiving the moneys- which is part of the wider scheme- contrived by the administrators to disinherit the objector.
109. The court has had to issue orders for the filing of accounts and inventory by the administration of the estate. The record show that, the administrators took the court in circles. They ultimately filed what they called ‘audited accounts’. The court, on October 27, 2021, ordered them to file proper accounts of the administration of the estate with all appropriate accountable documents. They were absent on December 20, 2021. They had also not complied with the order. The court once again, recorded its displeasure with the deliberate default by the administrators and issued a warrant of arrest against them. This is not the first time they had defaulted on court orders or were absent forcing the court to issue a warrant of arrest. See the record which is replete with these incidents.



110. Further orders were made on May 9, 2022 that the administrators do file affidavits listing all properties of the deceased as earlier ordered with supporting documents on all expenses, outgoings on or distribution of the estate of the deceased from the time of death to the time of the order. The order was in addition to the order for accounts issued earlier.
111. Although the administrators filed documents under 'estate accounts', in essence, no inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 was produced. And, documents produced as such inventory or account are not a true reflection of the administration of the estate, and which is false in material particulars.
112. The administration of the estate by the administrators is shrouded in obscurity, exclusion and unexplained preferences. From the evidence, the administrators have not been diligent in the administration of the estate.

Conclusions and orders

113. In sum, the court is satisfied: -
- i. That the confirmed grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case
 - ii. That the confirmed grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the confirmation of the grant
 - iii. That the administrators to whom the grant was made has failed, after due notice and without reasonable cause;
 - ii. to proceed diligently with the administration of the estate or
 - ii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in material particulars.
114. This grant, confirmation as well the purported distribution of the estate are perfect candidates for revocation. Accordingly, the grant made herein to the three administrators is revoked. The mode or schedule of distribution of the estate encapsulated in the Certificate of Confirmation issued herein is set aside. Similarly, distribution, transfer, conveyance or disposal of any estate property done by the three administrators, their assigns, agents or representatives are hereby cancelled. As a consequence, any subdivision of, or title to, issued pursuant to the purported distribution of the estate property is hereby cancelled. All estate property shall revert into the name of the deceased for purposes of distribution in accordance with the orders of this court. The land registrar will accordingly effect these orders.
115. For purposes of the foregoing orders and borne of the evidence before the court, the following are some of the estate properties:
1. M/V registration No. K VX 217 Engine No. 346757
 2. Plot No. NRK/TOWNSHIP/44 Block 8 (New number 54)
 3. Plot No. NRK/TOWNSHIP/202 Block 2 (New number 21)
 4. Plot No. NRK/TOWNSHIP/856 Block 1 (New number 489)
 5. Plot No. NRK/TOWNSHIP/238 Block 1 (New number 14)



6. Plot No. NRK/TOWNSHIP/93 Block 2 (New number 4)
 7. Plot No. 152 Kimathi Riverbank Shopping Centre
 8. LR. No. CIS-MARA/ENABELBEL-ENENGETIA/724
 9. LR. NO. CIC-MARA/OLOLUNGA/14630
 10. LR. NO. CIC-MARA/KOJONGA/257
 11. LR. NO. TETUICHAGACHIRI/645
 12. LR. NO. TETUICHAGACHIRI/646
 13. LR. NO. TETUICHAGACHIRI/647
 14. LR. NO. CIS-MARA/OLOPITO/1160
 15. LR. No. CIS-MARA/OLELESHWA/5288
 16. KCB A/C NO xxxx, Moi Avenue Brabch
 17. KCB A/C NO. xxxx, City Centre Branch
 18. KCB A/C NO. xxx, NAROCK BRANCH
 19. Equity Bank, A/C NO. xxx, Narok Branch
 20. NYERI KTDA A/C NO. GH130137
116. As no estate of the deceased should remain unattended by diligent and capable administrators, the court issues a grant of letters of administration to the Objector and John Kabari Kimendero who shall enforce the orders of the court and do all that appertains to a grant of representation, including but not limited to, collection and preservation of the estate property. This decision is made on the basis of two reasons. One, in light of the evidence adduced, it is prudent that she is one of the administrators to secure her rights. Two, the ills committed by the three administrators to the estate should exclude all from the administration of the estate. However, in their own interest- and perhaps of the other beneficiaries- the court finds it reasonable to appoint only one of them as a joint administrator of the estate.
117. The applicant sought for other orders which the court may deem fit and expedient. Given the nature of matters forming the controversy in these proceedings, and the orders of the court, other orders are necessary. The two administrators shall, within 7 days, open an estate account in their joint names, and the account shall be clearly designated as estate account. The proceeds in the estate account held by the previous the administrators of the estate shall be transferred to the new estate account ordered by the court. The bank shall include as part of signing instructions of the new estate account that, both administrators must sign in any transaction upon the account.
118. There are many outstanding issues which the court should unravel in these proceedings including estate accounts by the previous administrators, estate properties, bank accounts held by the deceased, properties purchased using estate funds as traceable products of estate property under the doctrine of ‘tracing and property rights’ etc. In addition, to foster unity, the two administrators shall apply for confirmation of grant within 21 days of today. But, as a matter of caution, and to avoid prolonged delay which has been witnessed in these proceedings, if the two do not file a joint summons for confirmation of grant, the objector shall file and serve Summons for Confirmation within 14 days of expiration of the time allowed for the filing of a joint application for confirmation of grant. And, upon such service,



John Kabari and any other beneficiary who may not agree with the mode of distribution proposed by the objector shall file a protest within 14 days thereof. The court will thereafter fix the application for confirmation of grant on the basis of priority to avoid prolonged delay seen in these proceedings.

119. These orders are necessary to meet the ends of justice and are directly connected to the function of the court and duties of administrators on the efficacy and utility of administration, and preservation of the estate of the deceased. See section 47 of the *Law of Succession Act* and rule 73 of the *Probate and Administration Rules*.
120. Despite the fact that these proceedings involve close family members, given the manner the three administrators handled the administration, they will bear the costs of the application.
121. Orders accordingly.

Dated, Signed, and Delivered at Narok Through Microsoft Teams Online Application This 20th Day of May, 2024.

F. Gikonyo M.

Judge

In the Presence of: -

John Kabari

Allan Karimeri

Veronica Nyambura

Michael Nderitu

Ruth Nyariri

Kilele for objector

Otolo C/A

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