



In re Estate of Jackson Kiptalam Maiyo (Deceased) (Succession Cause 4 of 1997) [2024] KEHC 7496 (KLR) (21 June 2024) (Judgment)

Neutral citation: [2024] KEHC 7496 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 4 OF 1997
JRA WANANDA, J
JUNE 21, 2024**

BETWEEN

**SARAH JEPTOO MAIYO 1ST APPLICANT
ESTHER JELAGAT MAIYO 2ND APPLICANT
ABIGAEAL CHEROTICH BETT 3RD APPLICANT
JANE JEMELI 4TH APPLICANT**

AND

JOHAN KIPKEMBOI TANUI MAIYO RESPONDENT

JUDGMENT

1. This matter was concluded and the file closed 27 years ago when the Grant given herein was confirmed on 12/07/2001 and a Certificate containing the schedule of distribution issued. I cannot tell whether it is because of this or whether it is by design that the Court file appears to be incomplete. For instance, the Judges’ notes prior to May 2021 are missing as is a copy of the Petition for Letters of Administration. The Summons for Confirmation of Grant is also incomplete.
2. Be that as it may, the matter relates to the estate of the late Jackson Kiptalam Maiyo (deceased) who died intestate on the 19/5/1993. The Grant of Letters of Administration in respect to the estate were given to the Petitioner on 8/7/1997 and subsequently confirmed on 12/7/2001. In the Chief’s letter relied upon in the Petition, it was stated that the deceased had 2 wives and left behind several children. However, from the pleadings and Affidavits and Submissions, it is clear that there were 3 wives, not 2. I also gather that at the time of the death of the deceased, 2 wives were still alive and 1 had died. From my perusal of the record, I have also gathered that the 5 parties herein (Objectors and the Petitioner) are all from the 1st house and thus are all children of the 1st wife, the late Emily Jelal Maiyo. There is also indication that there were also 5 other members of the 1st house who are however not involved in the instant Application.



3. Now before Court is the Application brought by way of the Summons dated 12/2/2021 and filed by the Objectors through Messrs Munyaga Githaiga & Co. Advocates. It seeks the following orders;
 - A. That the Grant of Letters of Administration issued to Jonah Kipkemboi Tanui Maiyo on 8/7/1997 and confirmed on 12/7/2001 as the administrator of the estate of Jackson Kiptalam Maiyo be annulled and revoked.
 - B. That this Court issues a temporary injunction restraining the Petitioner, Jonah Kipkemboi Tanui or his agents from further dealings with the estate of Jackson Kiptalam Maiyo (Deceased) including;
 - i. Land Parcel known as LR. 4794/5.
 - ii. 5 acres parcel of land within Kimumu Estate, Eldoret known as UG Kimumu/42.
 - iii. 5 acre parcel of land in Kimumu subdivided from the mother title known as UG Kimumu/68 (into land parcels known as UG Kimumu 4896, UG Kimumu 4897, UG Kimumu 4898, UG Kimumu 4890 and UG Kimumu 4900).
 - iv. Eldoret Municipality/Block 21(Kin'gon'go) 1913
 - v. Standard Chartered Bank Limited Shares.
 - vi. Shares at Chibokaa House Limited.
 - vii. Shares at Sirgoi Holdings Limited.
 - C. That this Honourable Court cancels the subsequent irregular and unlawful transfers resultant from the Grant of Letters of Administration issued to Jonah Kipkemboi Tanui Maiyo and confirmed on 12/7/2001.
 - D. That the Court issues a fresh grant to Esther Jelagat Maiyo, Sarah Jeptoo Maiyo, Stanley Talam and Lamek Kiplagat Tanui.
4. The Application is brought under the provisions of Section 76 of the Law of Succession Act and is premised on the grounds stated on the face thereof. It is then supported by the Affidavit sworn on 12/2/2021 by the 1st Objector, Sarah Jeptoo Maiyo.
5. She deponed that when the Grant of Letters of Administration to the estate herein was issued and confirmed, a full inventory of the estate was not made by the Petitioner thereby leaving out several properties unadministered, which included 5 acres UG Kimumu/42, 1-acre UG Kimumu/7898, ¼ acre Eldoret Municipality/Block 21 (King'ong'o) 1913, and shares at Chipokaa House Limited and Sirgoi Holding Limited, respectively. She further deponed that the Grant was obtained by the Petitioner yet the consents of the Objectors were not sought or obtained, and that the Petitioner failed to summon his sisters before Court to confirm their consents to the schedule of distribution. She therefore contended the grant was obtained by means of untrue allegation of fact in that the Petitioner only named his brothers as beneficiaries of the estate without including his sisters thus alienating them from inheriting from their father's estate, that the Petitioner failed to include a continuing trust for a minor (one Kiplating Talam) who at the time of the grant needed shielding, protection and provision and that the Petitioner also failed to include one more trustee in the grant to act as a trustee for the minor.
6. According to her, the Petitioner failed to proceed diligently with the administration of the estate in that he transferred all the unadministered land aforesaid to himself and to his sole benefit, that the Petitioner irregularly allocated the estate to himself and his brothers by disinheriting his sisters thereby flouting the dictates of the Law of Succession Act and the Constitution on discrimination based on



gender. She contended that the Petitioner has time and again failed to give an account of distribution of the deceased's estate and has withheld vital information that has led to complete alienation of his sisters from their inheritance and that he seeks to subdivide and sell portions of the remainder of the property known as LR No. 4794/5 for his benefit, to the detriment of his sisters and the remainder of his family members, that the Petitioner has on many occasions drawn out dividends from Chipokaa House Limited and Sirgoi Investments Limited where their late father, the deceased, was a shareholder and that the Petitioner has used the dividends for himself to the exclusion of the Objectors. According to the Objectors therefore, the grant ought to be revoked and annulled at the soonest time possible so as to halt continued mismanagement and deterioration of the estate.

Petitioner's Replying Affidavit

7. The Application is opposed by the Petitioner vide his Replying Affidavit filed on 9/4/2021 through Messrs Nyambegera & Co. Advocates. According to the Petitioner, the application lacks merit as it is meant to revive this matter which was concluded way back in the year 2001. He deponed that their late father, the deceased, had 3 wives and that all the 3 households were represented as required by the law. He maintained that his late mother Emily Jelel Maiyo represented their household in these proceedings and that all the family members from the 3 households through their representatives agreed by consensus that the Petitioner should be the Administrator of the estate. He further deposed that merely being the administrator did not grant him any privileges over the other beneficiaries, that throughout the entire proceedings he was in constant communication with other family members up to its completion and that all the properties of the deceased were well tabulated and as such, there was nothing that was transacted behind the Objectors' back.
8. He contended that the 5 acres Kimumu Estate known as Kimumu Scheme/42 is his personal property which he acquired with his own money and does not therefore form part of the estate, that Eldoret Municipality/Block 21(King'ong'o)/1913 was awarded to him by the deceased prior to his death and during that same period other family members, namely, Benjamin Cheruiyot Talam was awarded Eldoret Municipality/Block 21(King'ong'o)/1926, Rael Jepkemboi Maiyo was awarded Eldoret Municipality/Block 21(King'ong'o)/1921, David Kipkemei Maiyo was awarded Eldoret Municipality/Block 21(King'ong'o)/1914 and Esther Jelagat Maiyo the 2nd Objector herein was awarded Eldoret Municipality/Block 21(King'ong'o)/1917 all measuring ¼ acre. He further contended that the 2nd Objector is not being truthful by failing to disclose that she, too, was a beneficiary of the said parcels of land that were awarded by the deceased as gifts and that the said land is where she currently resides with her husband and children. He added that the shares at Chipokaa House Limited and Sirgoi Holding Limited have never been divided and dividends are usually divided amongst all the family members including the Objectors proportionally and that there has never been a complaint over the same save for the Objectors who are raising an alarm yet their interests are being catered for.
9. He reiterated that the Grant was procedurally confirmed after the representatives of all the 3 households affirmed the mode of distribution of the estate and averred that if there was any issue to be dealt with then the Objectors should have taken it up with their late mother, Emily Jelel Maiyo, prior to confirmation of the Grant, that the trial judge correctly made a finding that all the 3 households were adequately represented and as such, proceeded to confirm the grant. He added that their late mother having represented their household, there was no need to summon the Objectors as the estate was not meant to be subdivided within their household, and that the Objectors were privy to the Succession proceedings as their late mother being the matriarch held them together as a family and therefore the Objectors' allegation of not being consulted is neither here nor there, that it is their late mother who listed or instructed him on the names to be inserted in the proceedings, that in regard to the allegations of not including the said Kipleting Talam in the distribution, the same has nothing to



do with the Objectors' claims as he belongs to another household and the person answerable to that claim is his mother, Rael Jepkemboi Maiyo.

10. The Petitioner deponed further that the Objectors have decided to engage in a fishing expedition by raising issues that do not affect them in any manner, that the said Kipleting Talam is now a fully grown up adult who can litigate on his own behalf and he has not instructed the Objectors to plead on his behalf as he is satisfied with the entire succession proceedings having been represented by his able mother, the said Rael Jepkemboi Maiyo, that the Court having knowledge of that fact did not find anything sinister and that is why it proceeded to confirm the grant. He admitted that he sold the shares at Standard Chartered Bank but claimed that he gave the proceeds to the 3 households hence he did not convert them as alleged by the Objectors. He then further deposed that the estate has not been fully allocated, that he has not withheld any information regarding the estate, that parcel number 4794/5 is a huge chunk of land and the process of subdivision is still ongoing to cater for the interest of the 3 households and also the people who purchased different portions thereof from the deceased, that the Objectors should be patient as everyone is waiting for the subdivision exercise to be concluded and they have not disclosed to this Court that they are currently utilizing 14 acres of the same land which they excised without seeking authority from other family members. The Petitioner then deponed that he does not know why the Objectors are in a panic mood whereas other family members are patiently waiting for the exercise to be concluded. He denied selling any portion of land excised from 4794/5 as he does not have the capacity to do so and he has never expressed a desire or interest to sell it, and that the Objectors have not annexed any sale agreement or listed the name(s) of person(s) he allegedly intends to sell the parcel of land to hence the allegations are based on falsehoods.
11. He further deposed that the Objectors have not disclosed that there is another Succession Cause filed at the Eldoret Chief Magistrate's Court over the estate of their late mother, Emily Jeel Maiyo (Deceased) and that although he has not been allocated any parcel of land, he has not raised any complaint. He added that the Objectors have not established a prima facie case against him to warrant this Court to annul the Grant, that the application is tainted with malice as the Objectors have not come out clear on their whereabouts since this matter was concluded almost 20 years ago and they were aware of the proceedings, that Courts should not entertain such fictitious litigants who are after disturbing the estate of a deceased which has since been concluded, that litigation ought to come an end and that the Objectors' application is only meant to cause commotion and uproar among family members and purchasers of the estate who have been co-existing peacefully for almost 20 years since the grant was confirmed.

Objectors' Further Affidavit

12. The Objectors filed a Further Affidavit on 12/5/2021 again sworn by the 1st Objector, Sarah Jeptoo Maiyo. She deponed that at the time of granting the administration rights to the Petition, the Objectors were of age and should have been made aware of the proceedings and updated on matters pertaining to the estate but this did not happen as there was no communication from the Petitioner, that although their mother was supposed to represent them in the proceedings, the Petitioner took advantage of their late mother's illiteracy to keep them in the dark about the administration of estate, that with the death of their mother in 2014, they are left without representation and the Petitioner has since used the opportunity to squander the estate to the Objector's detriment, that not all of them have been aware of the proceedings and at no time has the Petitioner called a family meeting to update them on the status of the administration, that all family meetings that have been held have not been instigated by the Petitioner, that the Objector has not involved them all along and that he has been making unilateral decisions without consultation.



13. She further deposed that the 5 acres in Kimumu, shares for Chipokaa Housing Limited, Sirgoi Holdings, Nganyemet, 3 (¼ f an acre plots) Eldoret Municipality/Block 21 (King'ong'o) 1913, 1911 and 1914 were missing from the initial Petition for confirmation of grant and which was concealment of a material fact, that the 5 acres of land in Kimumu was bought by their late father in 1986 as can be gleaned from the personal inventory of their late father, that the document attached in the Objector's Affidavit is for transfer of the property that the Objector did in 1994 after the death of their late father, that at the time of their father's death, 3 plots of ¼ each had not been deeded to anyone (Eldoret Municipality/Block 21 (King'ong'o)/1913, 1911 and 1914), that the Objector awarded himself Eldoret Municipality/Block 21(King'ong'o) 1913 and sold Eldoret Municipality/Block 21(King'on'go) 1911 without consulting anyone and that their late mother, Emily Jelet Maiyo, deeded Eldoret Municipality/Block 21 (King'ong'o)/1914 to her 3 sons, namely, David Kipkemei Maiyo, Stanley Kiprono Talam and Nicholas Kiprop Maiyo around 2003 and David Kipkemei Maiyo then and bought out his brothers.
14. She added that all parcels of land that were gifted by their late father were not listed in the Summons for Confirmation of Grant, that dividends for Chipokaa Housing Limited, Sirgoi Holdings have only been shared twice amongst all beneficiaries in 2014 after their mother's death and in the year 2020, that the Objectors are not aware of how much is paid out as dividends and the formulae used to divide the same as it is done unilaterally by the Objector, that it has also emerged that the Objector has since changed the shares of Sirgoi Holdings from the name of their late father into his name, that the their late mother had 10 children and it appears odd that she would leave out some of her children from the list, that it is also upon the Administrator under the law to ensure that all rightful beneficiaries are listed and presented before Court before such grant can be confirmed.
15. The 1st Objector deposed further that it is telling that the Objector alleges that he sold the shares at Standard Chartered Bank and gave the proceeds to the 3 households whereas the same were listed as his sole share in the Certificate for Confirmation of Grant, that no information has been supplied on what each household received if at all, that it is an admission/demonstration of failure and or inability on the part of the Objector of having not fully administered and distributed the estate 20 years since the Court confirmed the grant that whereas the process of subdivision has been ongoing, that the Objector has not provided any meaningful updates on the process and they fear that the subdivision may be concluded to their disadvantage.
16. She added that the Objectors have been patient for far too long and that they fear that a lot could be going on without their knowledge, that the claim that they they are utilizing 14 acres of the chunk of land is false as they have, in fact, tried to utilize 3 acres but they have faced a lot of difficulties and challenges from the Objector, that it was not possible for them to exhibit sale agreements or details of the persons the Objector intends to sell the land to as they are never made parties to such negotiations and also, they are illegal transactions done behind their backs, that the separate Succession Cause referred to by the Objector is not before this Court, that it is imperative to note that the Objector is the only one who has refused, without a justifiable cause, to give consent to the distribution of the said estate out of all the other beneficiaries.
17. The 1st Objector further deposed that they have information that the Objector is in negotiations with the County Government of Uasin Gishu to sell to them a water point in Turbo so that water may be piped to the community yet he has not involved the Objectors or informed them of these proceedings and that they only got to know this through third parties, that it is only fair that they seek to revoke the grant because the Objector has kept them in the dark and they are not clear about what is going on in the administration of the estate 20 years down the line, that it seems unfair that out of 10 siblings, the Objector is the only administrator and worse of all he has not done a good job at it and the fact



that he is objecting to such a fair move begs the question as to what he has to hide, that the Objectors have no malice other than seeking openness and have indeed been patient, but such patience may put their rights in jeopardy.

Petitioner's Further Replying Affidavit

18. Despite having already filed a Replying Affidavit and thereby exhausting his rights of response to the Application, the Petitioner again filed a Further Replying Affidavit on 24/5/2021. It is not clear from the record whether leave was obtained for this apparent irregular procedure of filing endless rejoinders.
19. Be that as it may, he deponed that their later mother being the matriarch in their household is the one who used to give them directions on their family dealings and she had all facts relating to their family assets within her knowledge hence it is not fair for the Objectors to claim that the Petitioner took advantage of their mother's illiteracy. He contended that in any event, his brothers have not come out to support those unfounded allegations since they are also parties to the Succession Cause. He added that he has never squandered any property belonging to their late mother and deponed that the Objectors have not come out with a list of properties or assets that they allege that the Petitioner squandered after the demise of their mother, that it does not serve the interest of justice for the 1st Objector to incite other co-Objectors to make a claim of not being represented in this Cause 20 years after confirmation of the grant, and that the Objector's application does not raise any cogent reasons to warrant this Court to grant the orders sought. He denied the Objector's averment that he has been making unilateral decisions without consultation. He deponed further that the inventory annexed to the 1st Objector's Further Affidavit is a forgery as its maker is unknown, that it is not the handwriting of their late father, and that the issues raised by the Objectors regarding dividends for Chipokaa Housing Limited and Sirgoi Holdings have been dealt with at family level where the other households have been involved.
20. He deponed further that the Objectors are engaging in a fishing expedition by wanting to know the parcels of land that were gifted so as to challenge them or establish a cause of action. He denied changing the shares of Sirgoi Holding from their father's name to his name and added that the said company has several shareholders and he is merely representing the interest of all the 3 households as it will not be practically possible for all the beneficiaries to be enjoined as shareholders. He reiterated that in these proceedings, their household was represented by their late mother and the then Judge correctly arrived at a decision of confirming the grant and it is not fair for the Objectors to blame the Court for confirmation of the grant yet their late mother appeared and took care of their interests. Regarding the shares at Standard Chartered Bank, he deposed that he merely held them as a trustee and after selling the same he made an equal distribution to all the 3 households and that none of the family members has ever challenged the manner in which he distributed them save for the 1st Objector who seems to be aggrieved over a matter that happened 20 years back.
21. He deponed further that the subdivision process is ongoing in land parcel No. 4797/5, that also the 1st Objector is currently utilizing 14 acres of the same land and she should be patient as all other family members are also waiting for the completion of the exercise and she will not be left out. He reiterated that he has never attempted to bar the Objectors or any other family member from utilizing any portion of the land parcel No.4794/5, and that the 1st Objector having developed a personal vendetta against him, deliberately avoided to involve him in their mother's Succession matter and that is why he could not append his signature. He also denied being involved in any negotiations whatsoever with the County Government of Uasin Gishu over the alleged issue of selling a water point in Turbo and added that in any event, the Objectors have not tabled any evidence to support those unfounded allegations.



Objectors' Supplementary Affidavit

22. As if the irregular filing of the Further Replying Affidavit by the Petitioner was not enough breach of procedure, the Objectors too, were not left behind in breaching procedure. They, too, also without indication of any grant of leave by the Court, also filed yet another Affidavit, a third one on their part, sworn by the 2nd Objector, Esther Jelagat Maiyo, titled "Supplementary Affidavit" and filed on 30/05/2022. It is as if the rival Counsels, who should know better in the first place, were in competition on who files more Affidavits than the other.
23. Be that as it may, the Supplementary Affidavit raises nothing new and only unnecessarily convolutes the record as all it does is to repeat the same matters already deponed in the Objector's Supporting Affidavit and in the Further Affidavit. For that reason, I will not belabour the contents of this additional Affidavit.

Hearing of the Application

24. It was agreed, and I directed, that the Application be canvassed by way of written Submissions. Pursuant thereto, the Objectors filed their Submissions on 19/09/2022 while the Petitioner filed on 6/10/2022.

Objectors' Submissions

25. The Objectors' Counsel submitted that their mother (1st wife-Emily Jelet Maiyo) had 10 children, including all the 5 parties herein, that in the Petition, the Petitioner excluded all his sisters (the Objectors herein), stepsisters and stepbrothers as beneficiaries, that the Petitioner failed to procure the consent of the Objectors in applying for the Grant and that it is only in the year 2016 that they became aware of the issuance of the Grant and that the Petitioner only shared the estate amongst his brothers, mother, and stepmother to the exclusion of all his sisters.
26. Counsel submitted that the proceedings were therefore defective in form and substance, that the Petitioner failed to notify the Objectors of his intention to apply for the grant and did not obtain their consent thereto and for confirmation, that Section 66 of the Law of Succession Act provides the hierarchy of persons entitled to apply for grants, with the spouse and children of the deceased having an equal right thereto, that consent goes to the root of the application and in instances where the consent of persons with equal rights was not sought, the grant should be revoked. He cited Rule 26(1) and (2) of the Probate and Administration Rules and added that pursuant to the said provision, the Objectors ought to have given their consent under Form 38, that however, the Objectors were neither consulted nor requested to attend to the same or for confirmation of the grant and schedule of distribution, that this is because the Petitioner procured the grant secretly and failed to notify them of its existence, that it was not until the year 2016 when they stumbled upon the document through one of their brothers, and that a perusal of the Petition reveals that there was no consent from the Objectors nor a renunciation of their right to apply for the grant. He cited the case of Antony Karukenya Njeru v Thomas M. Njeru [2014] eKLR in Meru Succession Cause No. 663 of 2011.
27. Counsel further submitted that consent was also not obtained for confirmation of the grant as espoused under Rule 40 (8) of the Probate and Administration Rules which requires that Summons for Confirmation of Grant must be filed together with Form 37 by which parties give consent thereto. He cited the case of Succession Cause No. 172 of 2008, Estate of Ibrahim Likabo Miheho (Deceased) [2020] eKLR and also the case of Civil Appeal No. 40 of 2018, Beatrice Mbeere Njiru v Alexander Nyaga Njiru [2022] eKLR. He also cited the case of Succession Cause No. 878 OF 2014, Estate of Aomo Oyowe (Deceased) [2017] eKLR.



28. On whether the Petitioner made false and misleading statements and concealed material facts, Counsel submitted that the Petitioner purposefully failed to include his sisters as legal dependants of the estate, that this is evidenced in the Chief's letter where only the brothers from both households are included, that the *Law of Succession Act* at Section 3(2) defines "child" without any discrimination on account of sex and yet the Petitioner outrightly excluded all his sisters as a malicious way of disinheriting them, and that even the repealed Constitution which at the time (1998-2001) was operational under Section 82 also outlawed discrimination of persons based on sex. Counsel also argued that the Petitioner failed to conform with Section 40(1) and (2) of the *Law of Succession Act* in the schedule of distribution effectively disinheriting the Objectors from benefitting in the inheritance and cited the case of *In Re Estate of Solomon Ngatia Kariuki (deceased) (2008) eKLR*. He submitted further that the Petitioner was aware of the Objector's interest but still chose to disregard it and disinherit them altogether and as such, this amounts to the concealment of information that is material. He cited the case of *Re Estate of Solomon Jirongo (Deceased) [2019] eKLR*.
29. In regard to the allegation of lack of diligence in administration, Counsel submitted that the Petitioner failed to include several of the deceased's properties and subsequently sold them for his sole benefit, that part of the properties that the Petitioner failed to include in the list of assets includes Uasin Gishu/Kimumu Scheme Parcel 42 and Eldoret Municipality Block 21 (King'ong'o), that both properties were later transferred to the Petitioner and they have already been sold off to a third party, that this was clearly elaborated in the Supplementary Affidavit by the Objectors containing the green cards of the properties and also containing a detailed inventory of the deceased's properties. Counsel further submitted that the Petitioner misleads the Court by stating that he bought the land Kimumu/Scheme/42 for value and produces a forged consent letter dated 9/6/1994 detailing the individual from whom the land was purchased, that what stands out as peculiar is that the said David Cheruiyot Singo'ei died before the deceased and could not have been present in 1994 to sell off the land to the Petitioner and that at the time (1994), the Petitioner was an unemployed individual with no means of purchasing the property and raising the quoted figure of Kshs100,000/=.
30. According to Counsel, the Petitioner has presented forgeries aimed at misrepresenting facts, that he has wittingly falsified a number of documents which he wishes this Court to rely on. He cited Lord Mansfield CJ in *Holman v Johnson (1775)*. He then argued that this is a case of unjust enrichment where the Petitioner has made a deliberate effort towards falsification of documents and disinheriting of his sisters, that this Court is being invited to sanctify a well-choreographed attempt to defraud the innocent Objectors of their well-deserved inheritance, and that a comprehensive inventory of the deceased's immovable properties is attached to the 1st Objector's Further Affidavit. He argued that the Petitioner mis-administered the estate by purposefully failing to include certain properties belonging to the deceased in the grant, that these circumstances left properties excluded vulnerable for misuse by the Petitioner, that since the Court does not envision a situation where the estate of a deceased is administered twice, the grant should be revoked on account of material non-disclosure of some of the deceased's properties. He cited the case of *In re Estate of Joseph Kilonzo Musyoka (Deceased) [2018] eKLR*.
31. Counsel further submitted that the Petitioner failed to give a full inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings. He cited the case of *In re Estate of the Late Mwaura Makuro (Deceased) [2021] eKLR* and the case of *re Estate of Reuben Mutuku Kiva (Deceased) [2021] eKLR*. He submitted further that delays by the Petitioner were intentional and purposefully intended to frustrate the Objectors' attempts at inheriting their father's wealth, that it is in the year 2016 that parcel number Uasin Gishu/Kimumu Scheme 68 transmitted to their brothers, that this then begs the question as to why the Petitioner had failed to register the grant and transmit



the properties 16 years from the date of confirmation, and that survey of LR No 4794/5 is yet to be completed 22 years from the date of grant. He cited Section 83(g) of the *Law of Succession Act*. According to Counsel it cannot be that the drafters of the Act envisioned 22 years as a reasonable timeline for completion of administration.

32. In conclusion, Counsel submitted that costs follow the cause or event and cited the case of Joseph Oduor Anode vs. Kenya Red Cross Society, Nairobi High Court Civil Suit No. 66 0F 2009; [2012] eKLR.

Petitioner's Submissions

33. On whether the Grant should to be revoked, Counsel submitted that the application does not meet the threshold set out, that the Objectors' consents to the Petition were obtained as their late mother, Emily Jeel Maiyo, represented the interests of the Objectors' households during the proceedings, that the deceased had 3 wives and all the 3 households were represented as required by the law, the late Emily Jeel Maiyo being the biological mother of the Objectors and the Petitioner represented their household, that all the family members in the 3 households through their representatives agreed by consensus that the Petitioner should be the Administrator of the estate, that this is a fact that the 1st Objector duly admitted to in her Further Affidavit, that is why they claim that family meetings to update the family on the status of the administration have been held even though they allege that the meetings have allegedly not been instigated by the Petitioner, that it is clear from the foregoing that the Objectors' allegation that they were kept in the dark is merely an afterthought meant to mislead this Court, that the Objectors having been represented by their late mother with their knowledge and/or consent cannot now turn back and claim that they were not consulted, that if they had any issue with the proceedings, then they ought to have brought it up with their late mother when she was alive but no such issue ever arose since 2001 until 2021 i.e. 20 years down the line, that the Objectors are hiding behind the back of their late mother to justify their silence all this time only because she is no longer alive and able to defend herself.
34. According to Counsel, the claim that the Objectors' consent was not procured ought to be disregarded as the Objectors renounced their right to participate in these proceedings to their mother as confirmed by the 1st Objector's own Affidavit, that the allegations are merely an afterthought meant to unnecessarily drag this matter in Court yet litigation ought to come to an end, and that the Judge correctly made a finding that all the 3 households were adequately represented and as such proceeded to confirm the grant.
35. On the allegation that the Petitioner made false statements and concealed material information by failing to include the 2nd - 5th Objectors as dependants of the deceased, Counsel reiterated that the Objectors renounced their rights to participate in the proceedings when they chose to be represented by their late mother, that they thought it fit to have their mother represent them in the proceedings, that they are/were the authors of their own misfortunes and as such, they cannot come to cry foul to this Court 20 years down the line. Regarding the issue of the Petitioner not procuring the consent of the Objectors for filing of the Petition, Counsel submitted that the same is untrue as it was not only the Petitioner's household who decided to appoint the Petitioner as the administrator, but that also the other 2 households chose the Petitioner to represent the entire family as the administrator. He added that merely being the administrator did not grant him any privileges over the other beneficiaries as all 3 households were adequately represented as per the findings of the judge who proceeded to confirm the grant.
36. On the allegations that the Petitioner disinherited the Objectors, Counsel submitted that it can clearly be seen in the schedule of distribution that Emily Jeel Maiyo, the Objectors' and the Petitioner's



mother, who represented the Objectors received 75 acres of land same as Rael Jepkemboi Maiyo who was the deceased's 2nd widow and who also received 75 acres, that Benjamin Tallam represented the interest of his mother's household and who was the 3rd wife who died before the deceased and received 50 acres for their respective households, that all the 3 households had their representatives who adequately represented the 3 households and catered for their interests, that as such, the Objectors cannot claim to have been disinherited. If the Objectors felt discriminated upon simply because their names were not included in the schedule of distribution, then they ought to have taken it up with their mother when she was alive considering that they were of age as at that time, that from 2001 to 2014 when their mother was still alive, they had the opportunity to ask her to furnish them with details, and that clearly, malice can be depicted from the Objectors' decision.

37. In regard to allegations that the Petitioner lacked diligence in administering the estate in that he allegedly failed to include several of the deceased's properties and subsequently sold them for his sole benefit, Counsel submitted that the Objectors' allegations are falsehoods, that land parcel Uasin Gishu scheme 42 which the Objectors claim was left out from the estate is the Petitioner's own parcel of land, that he bought the same with his own money that he earned when he was working at the Kenya Post and Telecommunication Corporation since 1980 until his retirement after which he received a "golden handshake" and his pension and which pension he still receives to date, that the Objectors cannot claim that the Petitioner had no means of purchasing the property, that in any case, the claim that the Petitioner had no financial capability to purchase the said parcel of land ought to be disregarded as these are new issues merely raised in the Submissions and were not raised before and neither have the Objectors proved the allegations, and that he who alleges must prove as the law of evidence requires. As regards the claim by the Respondent that the Petitioner never bought the said parcel of land from one David Cheruiyot Sing'oei in 1994 allegedly because the said David Cheruiyot Sing'oei died before their deceased father and could not have been present in 1994 to sell the land to the Objector, Counsel submitted that the said David Cheruiyot Sing'oei was alive as at 9/6/1994, physically appeared before the Land Control Board and gave his consent to the transaction, that the Objectors' allegations that the said David Cheruiyot Sing'oei was dead as at that time are mere allegations with no cogent evidence, that the Objectors have neither attached any Succession proceedings as regards the said David Cheruiyot Sing'oei's estate nor have they attached any death certificate proving their allegations.
38. Regarding Eldoret Municipality Block 21(King'ong'o) 1913, Counsel submitted that the Petitioner was gifted the same by the deceased prior to his death, that during that same period that the Petitioner was gifted the said land, other family members were also awarded various parcels of land, namely, Benjamin Cheruiyot Talam was gifted Eldoret Municipality/Block 21(King'ong'o)/1926, Rael Jepkemboi Maiyo was gifted Eldoret Municipality/Block 21(King'ong'o)1921, David Kipkemei Maiyo was gifted Eldoret Municipality/Block 21(King'ong'o) 1914 and the 2nd Objector was also gifted Eldoret Municipality/Block 21(King'ong'o) 1917 all measuring ¼ acre. He added that the 2nd Objector is not being truthful by failing to disclose that she was also a beneficiary and that is where she currently resides with her husband and children.
39. Regarding the allegation that the Petitioner has presented misrepresentations and forgeries or falsified documents, Counsel submitted that the Objectors have not furnished any document from the Criminal Investigation Department to support their allegations, that no report has ever been made to the police regarding the alleged forgeries, that forgery is a criminal offence punishable under the laws of Kenya and in the absence of any report to prove that the Petitioner has been charged with the offence of forgery, the Court should disregard the allegations.
40. Regarding the alleged inventory of the deceased's properties as exhibited by the Objectors in their Affidavit and alleged to be a list of assets kept by the deceased and updated on purchase of property,



- Counsel submitted that the same was not prepared by the deceased as the deceased was an illiterate person who died intestate, that the deceased had his own Advocates in Eldoret Town whom he could have gone to and had them prepare a proper inventory rather than what has purportedly been brought before this Court. He added that the alleged inventory is not executed by the maker, is not witnessed, is nor dated and does not also indicate when the alleged transactions were made or purchases done.
41. Regarding the allegation that the 2nd Objector was sold ¼ acre and that another ¼ acre was sold to one Rose, Counsel submitted that the allegations are mere falsehoods meant to mislead this Court, that the deceased never sold any parcel of land to his children but generously gifted them parcels of land, that in any case, the 2nd Objector has not attached any sale agreement or any document whatsoever to prove that she bought the same from the deceased. Counsel urged this Court to take a keen look at paragraph 16 of the 2nd Objector's Supplementary Affidavit sworn on 30/5/2022 in which she clearly states that the deceased had gifted Eldoret Municipality Block 21(King'ong'o) to them, that as such, it is clear that the 2nd Objector is peddling falsehoods, that "he who comes to equity must come with clean hands" and that in any case, the issues raised therein are new issues which were not captured in the Application and the Affidavit thereto.
 42. In regard to allegation that as at the time of their father's death, 3 plots of ¼ each had not been deeded to anyone, namely, Eldoret Municipality/Block 21(King'ong'o)1913, Eldoret Municipality/Block 21(King'ong'o)1911 and Eldoret Municipality/Block 21(King'ong'o)1914, Counsel submitted that the truth is that the owners of the said parcels of land had already been issued with title deeds in their names prior to the deceased's death hence there was no need to unnecessarily include them as beneficiaries as the same were already in the owners' names and not the deceased's, that in any case, the said allegations have not been proved by the Objectors. As for the land parcel Eldoret Municipality/Block 21(King'ong'o)1913, Counsel submitted that the deceased gifted the same to the Petitioner just the same way the 2nd Objector was gifted Eldoret Municipality/Block 21(King'ong'o)1917 and that she is tactfully avoiding to address this Court on the said gift. Regarding Eldoret Municipality/Block 21(King'ong'o)1911, Counsel submitted that the Petitioner notified the deceased's family of the decision to sell the same so as to enable him use the proceeds to do conveyancing on the deceased's parcels of land for the 3 households, that the Objectors are merely trying to paint the Petitioner in bad light so as to have the grant revoked by all means necessary since they are very much aware of the truth. He submitted further that the process of sub-division is still ongoing as it is a huge chunk of land and everybody's interests including that of the purchasers and the Objectors is being catered for in the subdivision process, that the Objectors should be just as patient as everyone else is still waiting for the sub-division exercise to be concluded. He also submitted that the Objectors have tactfully failed to disclose that they are currently utilizing 14 acres of the said land which they excised without seeking authority from other family members.
 43. Counsel submitted further that the Petitioner has never sold any portion of land excised from 4794/5 as he has no capacity to deal with it, that the Objectors have not annexed any sale agreement or listed the names of persons that the Petitioner or the other households have sold or intend to sell the said land to, that the same are mere speculations which ought to be disregarded, that there is an authentic list of the people who purchased land from the deceased and which purchases amount to 40 acres, that in addition, 68 acres has been consumed by public utilities thus leaving the remaining portion of land to be distributed amongst the 3 households which process is still ongoing.
 44. Regarding the allegation that the Petitioner and his step-mother recently attempted to sell off a water point to the County Government of Uasin Gishu, Counsel submitted that the allegation is false, that the Objectors have not come out clearly on which representatives of the County allegedly went to survey the area for purposes of sub-division, that the alleged letter which the Objectors' Advocates



wrote to the parties interested in the purchase is not attached/has not been availed and their names have also not been disclosed.

45. Regarding the allegations that the Objector changed the shares of Sirgoi Holding from the deceased's name to himself, Counsel submitted that the same is untrue, that the said company has several shareholders and the Petitioner having been issued with letters of administration, is merely representing the interests of all the 3 households as it will not be practically possible for all the beneficiaries of the estate to be enjoined as shareholders, and that in any case, the Objectors have not furnished any document from the Registrar of Companies to prove the allegations.
46. Regarding the shares at Standard chartered Bank, Counsel submitted that the Petitioner merely held the same as a trustee and after selling the same, he made an equal distribution to all the 3 households and none of the family members have ever challenged the manner in which he distributed the same save for the 1st Objector who seems to be aggrieved over a matter that happened 20 years ago and that the 1st Objector simply has a personal vendetta against the Petitioner hence her allegations are purely based on malice and falsehoods.
47. On whether the Petitioner failed to give a full inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings, Counsel submitted that the Petitioner gave a full inventory. He submitted that as regards land parcel No. 4794/5 which the Objectors claim that they are yet to get any update on, as aforesaid, the same is still undergoing sub-division as it is a huge chunk of land with many third parties who purchased land from the deceased and the remainder thereof is to be subdivided amongst the 3 households. As regards the claim that the Petitioner has met the Objectors' attempts at ploughing their land with threats of harm and physical confrontation, Counsel argued that the allegation is untrue. He reiterated that currently the Objectors and their family are utilizing 14 acres of the said land, and that an accurate account for the said land cannot be given when the process of sub-division is yet to be completed.
48. Regarding land parcel Uasin Gishu/Kimumu Scheme 68 transmitted to the Petitioner's brothers, Counsel submitted that the matter is being taken care of between the Petitioner and his brothers, that the Objectors are busybodies in a matter that does not concern them, that none of the said brothers have lodged any complaints whatsoever against the Petitioner regarding that parcel of land, that the Objectors have no authority or capacity to litigate on behalf of the Petitioner's brothers as they do not have instructions to do so and that the allegations amount to incitement with a view to getting more family members to gang up against the Petitioner.
49. On the allegation of not including one Kipleting Talam in this matter and not establishing a trust for him, Counsel submitted that the same has nothing to do with the Objectors' claims as the said Kipleting Talam belongs to another household and the person answerable to that claim is his mother, Rael Jepkemboi Maiyo, who took care of his interest as at the time of filing this matter the same way the Objectors' interests were taken care of by their mother, that furthermore, the said Kipleting Talam is now a fully grown up adult who can litigate by himself and he has not instructed the Objectors to plead on his behalf as he is satisfied with the entire Succession proceedings having been represented by his able mother, the said Rael Jepkemboi Maiyo.
50. Regarding the prayer for temporary injunction (prayer B) and the prayer that the Court cancels the subsequent alleged irregular and unlawful transfers resultant from the Grant (prayer C), Counsel submitted the prayers are untenable and the Objectors have not established a prima facie case to warrant granting of the same, that in any case, the Objectors have not addressed the said prayers and more so on which particular transfers they want to be cancelled, that the Court cannot just issue a blanket order without specifying which transfers are to be cancelled. As for the prayer that the Court issues



a fresh grant to the Objectors (prayer D), Counsel argued that the same is selfish and inconsiderate of the other 2 households as their interests will not be catered for, that the Petitioner was appointed by representatives of the 3 households as the administrator as they found him to be impartial and accommodative of the other 2 households, that none of the members of the other 2 households has challenged the grant as the Petitioner has always catered for their interest.

Determination

51. The broad issue that arises for determination in this matter is “whether the Grant issued herein to the Petitioner in the year 1997 and subsequently confirmed should be revoked and a fresh grant issued to the Objectors”.
52. From onset, it is clear that the Grant of Letters of Administration Intestate in this matter was issued on 8/7/1997 and this Succession Cause then concluded 23 years ago when the Grant was confirmed on 12/7/2001.
53. Regarding Revocation of a Grant, Section 76 of the *Law of Succession Act* provides as follows:

“Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any Interested Party or of its own motion—

 - (a) that the proceedings to obtain the grant were defective in substance;
 - (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
 - (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
 - (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
 - (e) that the grant has become useless and inoperative through subsequent circumstances.”
54. It is clear that the Objectors have come under sub-Sections (a), (b) and (c) cited above.



55. Regarding revocation and/or annulment of a Grant, Section 76 of the *Law of Succession Act*, provides as follows:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

56. In this matter, as earlier stated, the Objectors and the Petitioner are members of the same household (from the same mother). As it has now become common in large families upon the death of the family patriarchs, the survivors are engaged in a vicious battle over property inheritance and in the process, have created serious animosity against each other. It is clear that there are lengthy accusations and counter accusations touching on inheritance some bordering on personal vendetta. The magnitude of the animosity of the parties is demonstrated by the fact that the Objectors saw it fit to file 3 successive Affidavits, namely, Supporting Affidavit, Further Affidavit and Supplementary Affidavit while on his part, the Petitioner filed two successive Affidavits, namely, Replying Affidavit and Further Replying Affidavit.
57. The Objectors have challenged the Petitioner’s mode of administration of the deceased’s estate. They have faulted the entire process of administration by alleging that their respective consents were never obtained and that some of the assets belonging to the estate were not included at the time when the administrator petitioned for the Letters of Administration. The Objectors have also called out the Petitioner for mismanaging and unjustly transferring some of the deceased’s assets to himself. The Objectors basically feel that they have been left in the dark regarding administration of their father’s estate. The Petitioner on the other hand has maintained that he was not only nominated by members of his household to administer the estate but also got green light from members of the other 2 households forming the family of the deceased. The Petitioner’s position is that the Objectors being his sisters were adequately represented by their late mother, Emily Jelal Maiyo, and as such, cannot be heard to complain.



- 58. Both parties have also raised complaints against each other in regard to parcels of land that were allegedly gifted inter vivos to members of the family them before the demise of the deceased.
- 59. The parties in their own wisdom chose to canvass the matter by way of Affidavit evidence. Considering the respective convoluted pleadings on record, and in the absence of viva voce evidence, I find it impractical to make conclusive findings of fact on the question raised. Most the allegations and counter allegations levelled by the respective parties could only have been adequately addressed if the parties and perhaps their witnesses had tendered viva voce evidence. From where I sit, I cannot conclusively tell what are or were the accurate assets forming the deceased’s estate, what were the gifts given out and current status of the estate in terms of the administration.
- 60. However, I will nevertheless still address the matters raised.
- 61. The Objectors have stated that their consents to the filing of the Petition, appointment of the Petitioner as the Administrator and the subsequent confirmation of the Grant were never sought or obtained, that they were never made aware of the proceedings and that they only stumbled on the information on the same sometime in the year 2016. Regarding the issue of absence of consents signed by the Objectors, Section 51 of the Law of Succession Act and Rules 7(1)(e)(i) and 26(1) and (2) of the Probate and Administration Rules are relevant.
- 62. The framework for applications for grants of representation is set out in Section 51 of the Law of Succession Act. The relevant portions is subsection (2)(g), which provides as follows:

“ 51. Application for Grant

- (1)
- (2) Every application shall include information as to—
.....
- (g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;
.....

- 63. Rule 7(1)(e)(i) of the Probate and Administration Rules then provides as follows:
 - “7(1) where an applicant seeks a grant of representation to the estate of a deceased person ... the application shall be by a petition... containing... the following particulars-
 - (e) in cases of total or partial intestacy –
 - (i) the names, addresses, marital state and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child, like particulars of such person or persons who would succeed in accordance with Section 39(1) of the Act.”

64. On its part, Rule 26(1) and (2) provides as follows:

- “(1). Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.
- (2). An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equally or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.”

65. On the above provisions, Hon. Lady Justice Njuguna in the case of *In re Estate of Eston Nyaga Ndirangu (Deceased)* [2021] eKLR stated as follows:

- “18. Rule 7 of the Probate and Administration Rules 1980 provides that application for grant of representation in relation to an estate of a deceased person to whose estate no grant or no grant other than one under section 49 or a limited grant under section 67 of the Act has been made, the application shall be by petition supported by an affidavit. The said affidavit must contain amongst other details, the names, addresses, marital status and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child, like particulars of such person or persons who would succeed in accordance with Section 39(1) of the Act {Rule 17(e)(i)}.
19. Rule 26 provides that letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant. Further that in an application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.
20. The effect of the above provisions is that where a person is applying for a grant of letters of administration intestate, he must get consent from persons of equal or lower priority than him. The 1st and 2nd respondents having been brothers to the applicant and other beneficiaries, it therefore means that all the remaining beneficiaries ought to have consented to them being given the grant of letters of administration in relation to the estate herein. I have perused the court record and I note that consent to the making of a grant of letters of administration intestate which was filed contemporaneously with the petition was only made by two beneficiaries (being Joyce Ngithi Nyaga and Julius Kinyu) and wherein they were giving the consent to one John Ndi Nyaga, Kennedy Nyaga and Lucy Wanjiku Nyaga (3rd respondent). There is no consent as to the other brothers and sisters having consented to the grant being given to the 1st and 2nd respondent. It is my view therefore that the said grant was obtained pursuant to proceedings which were defective in substance. The respondents ought to have obtained consent from all the other brothers and sisters. In *Antony Karukenya Njeru –vs- Thomas M. Njeru* [2014] eKLR, a grant of letters of administration was revoked as persons with equal priority



did not consent to the petitioners therein applying for grant of letters of administration. (See also In the Matter of the Estate of Muriranja Mboro Njiri, Nairobi H.C. Succ. Cause No. 890 of 2003).

21. It is my considered view therefore that the failure by the respondents more so the 1st and 2nd respondents to obtain the consents from the other siblings makes the proceedings of obtaining the same to be defective in substance and the said grant ought to be revoked and a new grant issued to the applicants.”

66. There is also Rule 7(7) of the Probate & Administration Rules which deals with cases where a person with a superior right to seek representation is reluctant to do so. The Rule provides as follows:

“Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has—

- (a) renounced his right generally to apply for grant; or
- (b) consented in writing to the making of the grant to the applicant; or
- (c) been issued with a citation calling upon him to renounce such right or to apply for a grant. “

67. It is therefore clear that where representation is applied for by a person with equal or lesser right to others, the Petitioner is expected to notify these other persons of the filing of the Petition. These other persons would then be at liberty to participate in the proceedings or renounce their rights to administration or sign consents in Forms 38 or 39 acceding to the filing of the Petition. Where such consent or renunciation has not been filed, the Petitioner is required to file an Affidavit confirming that he/she duly notified these other persons. As aforesaid, the record available is incomplete and I do not even have a full copy of the Petition for Letters of Administration nor the Summons for Confirmation of the Grant. However, the Petitioner readily concedes that he did not file such consents.

68. Having made the above observations, the question now is whether the said omission is by itself sufficient to justify revocation of the Grant. This question arises because Section 76 of the [Law of Succession Act](#) is discretionary in that it gives the Court discretion whether to revoke or annul a grant. It is not therefore the position that any breach or violation must always or automatically lead to revocation of a Grant.

69. In his response, the Petitioner has explained that their late mother, Emily Jeel Maiyo, was fully involved and participated in all the Court processes and thus represented the interests of the Objectors during the proceedings, that the deceased had 3 wives and all the 3 households were represented, that the late Emily Jeel Maiyo being the biological mother of the Objectors and the Petitioner represented their household (1st house), and that all the family members in the 3 households through their representatives agreed by consensus that the Petitioner should be the Administrator of the estate. In regard to this allegation, the Petitioners have not expressly denied the same and I also observe that at paragraphs 4 and 5 of the Further Affidavit sworn by the 1st Objector, she has deponed as follows:

- “4. That at the time of granting the administration rights to the respondent, we were of age and should have been made aware of the proceedings and constantly updated on the matters of



the estate, but this did not happen as there was no constant communication as alleged by the respondent. Though our mother was supposed to represent us in the matters, the respondent herein took advantage of our late mother's illiteracy to keep us in the dark in the administration of our father's estate.

5. That with the death of our mother in 2014, we are left without representation and the respondent has since used the opportunity to squander the estate to our detriment.
6. That not all of us have been aware of the proceedings and at no time has the respondent called a family meeting to update us on the status of the administration and all family meetings that have been held has not been instigated by him". [Emphasis mine]
70. By making the above statements, it is clear to me that the Objectors have tacitly admitted that indeed their mother represented them and by extension, the rest of the members of the 1st house in matters relating to the administration of the estate. The statements also indicate that the Objectors were always aware of the Succession proceedings. My interpretation of the said statements above is that the Objectors' grievance is basically that since their mother died in the year 2014, the Petitioner has not been giving them "constant" updates on how the estate is being administered. The statements also confirm that there have been family meetings to discuss the status of the Administration even though such meetings may not have been convened by the Petitioner as would have been required of him as the Administrator.
71. Although therefore it is true that their consents may not have been sought and obtained, reliance on that ground appears to be an afterthought that was "kept to be unleashed as a secret weapon at an opportune time". Such opportune time seems to have conveniently finally presented itself in the year 2021 when the Objectors moved to file the instant Application.
72. While the consents may therefore not have been obtained or filed, this is one of those exceptional cases where I am prepared to excuse such omission. The exceptional circumstance is that going by the contents of the paragraphs of the Affidavit cited, I am persuaded that the Objectors must have given blessings to their mother to represent their interests during the time of filing the Petition and were throughout up to the time of confirmation of the Grant happy and satisfied with how everything was going. In view thereof I am unable to agree with the Objectors that they were not aware of the filing of the Petition. I am persuaded that the Objectors are simply feigning ignorance of the appointment of the Petitioner simply because their mother is not alive to set the record straight. It is highly unlikely that their mother participated in the Succession Cause from the time that the same was filed in 1997 until 2014 when she died, without the Objectors being aware.
73. Another exceptional circumstance is that the deceased died in the year 1993, 31 years ago and this Cause was itself filed in the year 1997, 27 years ago. The Grant was then given in the same year and was subsequently confirmed in the year 2001, about 23 years ago and the Succession Cause concluded. The said Emily Jejel Maiyo, mother to the Objectors and the Petitioner died subsequently in the year 2014, 10 years ago and long after conclusion of the Cause. I am not convinced that during all this time and throughout all these processes, the Objectors was not aware of these Succession proceedings and the orders given therein. Being Succession proceedings that involved all the 3 different households making up the family, I am not convinced that the Objectors are themselves being candid. I am constrained to agree with the Petitioner that if the Objectors had any issue with the proceedings and distribution of the estate, then they ought to have brought it up with their late mother when she was still alive. No explanation has been given for this inaction. I am therefore not swayed by the allegation that the Objectors were discriminated upon on the basis of their gender. To me, that argument has been introduced simply to appeal to the Court's emotions.



74. My finding is therefore that there has been unexplained and inordinate delay on the part of the Objectors in enforcing their rights, if at all. On this point, I reiterate that “equity aids the vigilant, not the indolent”.
75. For the said reasons, I do not think that it will be in the interest of justice to revoke the Grant and send the protagonists back to the drawing board on the ground of absence of the consents referred to.
76. I also notice that in the distribution of the estate, the major property was described as 20 acres of land at Tapsagoi and which was distributed as follows:

Emily Jeel Maiyo	1 st wife/house – Objectors and Petitioner’s mother	75 acres
Rael Jepkemboi Maiyo	2 nd wife/house	75 acres
Benjamin Tallam	Son of the 3 rd wife/house as the 3 rd wife was deceased	50 acres

77. The remainder of the said parcel of land was distributed amongst persons whom I presume to be purchasers thereof.
78. Looking at the above distribution schedule, it cannot be outrightly said that the same was inequitable. All 3 houses appear to have been fairly catered for. The 1st and 2nd houses got the larger share, each at 75 acres. As aforesaid, both the Objectors and the Petitioner come from the 1st house which got 75 acres. I believe the same was to be shared within the 1st house. It is the 3rd house that got the lesser acreage at 50 acres and if anyone were to complain therefore, it would have been the 3rd house.
79. The instant fight seems to be an intra-family dispute only within the 1st house over the 75 acres distributed to the 1st house through their late mother, Emily Jeel Maiyo. Since I gather that there are already proceedings relating to the estate of the mother, namely, Eldoret Magistrate’s Court Succession Cause No. 543 of 2018, in which coincidentally, the 4 Objectors herein are the Administrators, perhaps the battle herein should have been fought in that other Cause.
80. I also notice that in the exhibited copy of the Summons for Confirmation of Grant filed in the said Eldoret Magistrate’s Court Succession Cause No. 543 of 2018 - the mother’s estate - the Petitioner has been completely left out of the inheritance. If it is true that the Petitioner got a larger share in the father’s estate, then perhaps by leaving him out of the mother’s estate, the Objectors have now “settled the scores”.
81. Among the other grievances raised by the Objectors is that the Petitioner failed to include several of the deceased’s properties and subsequently sold them for his sole benefit. In response, the Petitioner termed such allegations as false. He explained that the land parcel Uasin Gishu Scheme 42 which the Objectors claim was left out from the estate is the Petitioner’s own parcel of land, that he bought the same with his own money that he earned when he was working at the Kenya Post and Telecommunication Corporation since 1980 until his retirement after which he received the golden handshake and his pension. On their part, the Objectors allege that the Petitioner never bought the parcel of land from one David Cheruiyot Sing’oei in 1994 as alleged, that this is because the said David Cheruiyot Sing’oei died before their deceased father and could not have been present in 1994 to sell the land to the Petitioner. In response, the Petitioner insisted that the said David Cheruiyot Sing’oei was indeed alive as at 9/6/1994, physically appeared before the Land Control Board and gave his consent to the transaction. The



Petitioner even exhibited supporting documents signed by the said David Cheruiyot Singoei including a copy of a Land Control Board Consent dated 9/06/1994.

82. The copy of the Green Card for the property as exhibited by the Objectors also does not anywhere indicate that the property was at any time owned by the deceased. The register is stated to have been opened in the year 1986 and the first owner is indicated as the Settlement Fund Trustees which apparently transferred the property to the Petitioner in the year 1995 and who was registered as the 2nd owner. The property was then later, in the year 2007, transferred to a third party. No evidence has therefore been adduced to lay a basis for treating the property as forming part of the estate of the deceased.
83. The Objectors have alleged that the documents presented by the Petitioner to support the claim that he purchased the property are forgeries or falsified documents. Again, no material has been placed before the Court to support these very serious allegations, not even evidence that the Objectors have made any report to the police for investigations. No handwriting expert's Report has also been presented to demonstrate forgery of the signatures.
84. The Objectors have also exhibited an alleged inventory of the deceased's properties and alleged the same to be the original copy of list of assets kept by the deceased including updates on properties purchased. The same is handwritten and is in the English language. According to the Objectors, the property, Kimumu Scheme/42 appears in the said list as part of the deceased's properties as one of those owned by the deceased. In response, the Petitioner averred that the alleged list/inventory could not have been prepared by the deceased as the deceased was an illiterate person. Upon perusing through the list/inventory, I observe that that the same does not disclose the identity of the maker, is not dated and is not signed. As such, its authenticity cannot be verified.
85. It is trite law of evidence and procedure that "he who alleges must prove". However, apart from mere allegations, the Objectors' assertion that the said David Cheruiyot Sing'oei was dead as at the material time or that the land sale or transfer documents produced by the Petitioner are forgeries has not been backed by any evidence. To this effect, Section 107-109 of the Evidence Act provide as follows:
- “ 107 Whoever desires any court to give judgment as to any legal right or liability
(1). dependent on the existence of facts which he asserts must prove that those facts
 exist.
- (2) When a person is bound to prove the existence of any fact, it is
 said that the burden of proof lies on that person.
108. The burden of proof in a suit or proceeding lies on that person who would fail
 if no evidence at all were given on either side.”
109. The burden of proof as to any particular fact lies on the person who wishes the
 court to believe in its existence, unless it is provided by any law that the proof
 of that fact shall lie on any particular person.”
86. In the circumstances, I find that the Objectors have failed to demonstrate that the property, Uasin Gishu Scheme 42 forms or formed part of the estate of the deceased for purposes of distribution of the estate. By extension, they have therefore also failed to demonstrate that the property ought to be or to have been included as part of the estate.
87. Another property alleged by the Objectors to have been left out of the estate is Eldoret Municipality Block 21(King'ong'o) 1913. In his response, the Petitioner has explained that the Petitioner was gifted



the property by the deceased prior to his death, that during that same period that the Petitioner was gifted the said land, other family members were also gifted other parcels of land, namely, Benjamin Cheruiyot Talam was gifted Eldoret Municipality/Block 21(King'ong'o)/1926, Rael Jepkemboi Maiyo was gifted Eldoret Municipality/Block 21(King'ong'o)1921, David Kipkemei Maiyo was gifted Eldoret Municipality/Block 21(King'ong'o) 1914 and the 2nd Objector was also gifted Eldoret Municipality/Block 21(King'ong'o) 1917 all measuring ¼ of an acre. He contended that the 2nd Objector is not being truthful by failing to disclose that she was also a beneficiary and that it is where she currently resides with her husband and children.

88. The Objectors have not made any serious attempts to controvert the Petitioner's allegations of having been gifted the said property. In any case, I observe that at paragraph 16 of the Supplementary Affidavit sworn by the 2nd Objector, she tacitly confirms that indeed, their father gifted properties to other family members, including herself. This is how she puts it:

“16. That in further response to paragraph 11 of the Respondent's affidavit dated April 2021, I wish to state that the Respondent was not gifted Eldoret Municipality Block 21 (Kin'gon'go) he encroached and lived on it way after our father's death Our father was in the habit of mentioning properties he had already gifted to us and he never mentioned anything concerning this particular parcel of land

89. The underlined statement, in my view, appears to be confirmation by the 2nd Objector that indeed, as alleged by the Petitioner, their father did gift a number of his properties to various members of the family, including the 2nd Objector.

90. The Objectors contend further that as at the time of their father's death, 3 plots had not been allocated to anyone, namely, Eldoret Municipality/Block 21(King'ong'o)1913, Eldoret Municipality/Block 21(King'ong'o)1911 and Eldoret Municipality/Block 21(King'ong'o)1914, that the Petitioner allocated himself Eldoret Municipality/Block 21(King'ong'o)1913 and sold Eldoret Municipality/Block 21(King'ong'o)1911 without consulting anyone and that their late mother, Emily Jelel Maiyo, allocated Eldoret Municipality/Block 21(King'ong'o)1914 to her 3 sons.

91. In his response, the Petitioner has claimed that the owners of the said parcels of land had already been issued with title deeds in their names prior to the death of the deceased hence there was no need to unnecessarily include them as beneficiaries yet the same were already in the owners' names and not the deceased's, that the deceased gifted Eldoret Municipality/Block 21(King'ong'o)1913 to the Petitioner just the same way that the 2nd Objector was gifted Eldoret Municipality/Block 21(King'ong'o)1917.

92. Regarding Eldoret Municipality/Block 21(King'ong'o)1911, the Petitioner claimed that he notified the deceased's family of the decision to sell the same and use the proceeds to cater for conveyancing charges for transmitting the deceased's parcels of land to the 3 households.

93. The two sides have therefore presented conflicting arguments. However, the Objectors being the side that is seeking relief, it is them who must prove their allegations. Unfortunately, apart from bare allegations, the Objectors have not presented any evidence to controvert the response given by the Petitioner. Since the matter proceeded on the basis of Affidavit evidence without viva voce testimony where witnesses could have been cross-examined, this Court is in no position to make a finding that what the Objectors have alleged is true. The allegations cannot therefore succeed.

94. The Objectors also alleged that the Petitioner had sold some portion(s) of land excised from 4794/5 which claim the Petitioner has denied. I again observe that, despite the burden of proof being on the Objectors, this allegation is not supported by any evidence. There is no sale agreement(s) or any other similar document produced nor have name(s) of the alleged purchasers been disclosed.



95. The Petitioner also responded that the Objectors have tactfully failed to disclose that they are currently utilizing 14 acres of the said land which they excised without seeking authority from other family members, that in any event, the process of sub-division is still ongoing as it is a huge chunk of land and everybody's interests including that of the purchasers and the Objectors is being catered for, that the Objectors should be just as patient as everyone else is still waiting for the sub-division exercise to be concluded.
96. As regards the claim that the Petitioner has blocked the Objectors' from ploughing their portion of the land parcel No. 4794/5 with threats of harm and physical confrontation, the Petitioner has denied the claim and has shot back with his own claim that currently the Objectors and their family are utilizing 14 acres of the said land parcel. More relevant however is the fact that there is no prayer in the Summons before Court pertaining to the Objectors' complaint of being blocked from such access. The parties are therefore arguing in a vacuum.
97. The Objectors have also alleged that regarding the land parcel Uasin Gishu/Kimumu Scheme 68, it was only transmitted to the beneficiaries (their bothers) in the year 2016, 16 years from the date that the Grant was confirmed. They claim that this begs the question as to why it took the Petitioner that long to transmit the properties to their brothers. It is not clear what the Objectors' complaint regarding this delay is. They are not beneficiaries of the said parcel of land and neither is there any portion to be transmitted to them. If anyone were to complain, it would be the brothers. This perhaps explains why the Petitioner has described the Objectors as pertains to their complaint herein, to be "busybodies in a matter that does not concern them", and that the allegations amount to incitement with a view to recruiting more family members to their side "to gang up against the Petitioner".
98. The same claim of the Objectors being busybodies has been made in regard to their claim that the Petitioner left out one Kipleting Talam, then a minor, from the list of beneficiaries. Although his relationship to the deceased has not been clearly explained, the Petitioner has claimed that the said Kipleting Talam is now a fully grown-up adult and this has not been denied. In the circumstances, I agree with the Petitioner that the issue has nothing to do with the Objectors as the said Kipleting Talam being an adult can litigate by himself and no evidence has been produced to demonstrate that he has instructed the Objectors to plead his case on his behalf or that he is even aware of the instant Application.
99. There was also the allegation that the Petitioner and his step-mother attempted to sell off a water point to the County Government of Uasin Gishu. Again, the Petitioner has denied this allegation and the Objectors have not adduced any evidence of any kind to support the allegation.
100. Yet another bare allegation made without production of any evidence is that the Petitioner changed the shares of Sirgoi Holding from the deceased's name to the Petitioner's name. No evidence whatsoever has been produced to support this claim.
101. Regarding the prayer for a temporary injunction (prayer B) and the prayer that the Court cancels the subsequent alleged irregular and unlawful transfers resultant from the Grant (prayer C), for the reasons that the Objectors have failed to prove the many allegations made by them, I agree with the Petitioner's Counsel that the Objectors have failed to establish a prima facie case to warrant granting of the orders. I also agree with Counsel that, in any case, the Objectors have not disclosed or mentioned the particular transfers that they are asking to be cancelled. As correctly observed by Counsel, the Court cannot just issue a blanket order without specifying the exact transfers that are to be cancelled. Assuming that the prayers were to be granted as prayed, in the absence of specific description and particulars of the affected properties, how will the Lands Office implement the order?



102. Regarding the Objectors' claim that the Petitioner sold shares held at Standard Chartered Bank, at least on this one, the Petitioner admitted selling the shares. He however claimed that he merely held the shares as a trustee and that after selling the same, he made an equal distribution to all the 3 households and that none of the family members has ever challenged the manner in which he distributed the same save for the 1st Objector. I note that the Petitioner has produced some Mpesa Statements indicating that indeed, he paid some amounts to some family members. The Court however has no way of verifying that indeed the payments were in distribution of the Standard Chartered Bank shares.
103. Another question not well answered by the Petitioner is the fate or progress of the sub-division and transmission of the land parcel No. 4794/5 to the beneficiaries or purchasers. Although the Petitioner claims that the sub-division has been ongoing, and that the same has taken long because that parcel of land is huge with many third-party purchasers involved, the Petitioner has not clearly given the status thereof.
104. There is therefore need for the Petitioner to give a full inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings pertaining to the estate.

Final Orders

105. In the premises, I hereby order as follows;
- i. The Summons for Revocation/Annulment of Grant, dated 12/02/2021 and filed by the Objectors is hereby dismissed.
 - ii. The Petitioner, John Kipkemboi Tanui Maiyo, who is also the sole Administrator herein is hereby directed to file, within a period of sixty (60) days from the date hereof, a full inventory of the assets and liabilities of the estate of the deceased herein and a full and accurate account of all dealings pertaining to the estate from the time that he was appointed the Administrator to the present date. He shall also attach supporting documents where applicable.
 - iii. This being a family matter, each party shall bear its own costs.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 21ST DAY OF JUNE 2024

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WANANDA J. R. ANURO

JUDGE

Delivered in the Presence of:

Ms. Omuya for Petitioner-Respondent

N/A for other parties

