



REPUBLIC OF KENYA



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In re Estate of of the Late Chepkulul Arap Mugun (Deceased) (Succession Cause 36 of 2018) [2024] KEHC 6346 (KLR) (3 June 2024) (Ruling)

Neutral citation: [2024] KEHC 6346 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 36 OF 2018
RN NYAKUNDI, J
JUNE 3, 2024
IN THE MATTER OF THE ESTATE OF THE LATE CHEPKULUL ARAP
MUGUN (DECEASED)**

BETWEEN

**CHEROTICH MUGUN 1ST PETITIONER
SAMSON KIBET RONO 2ND PETITIONER
JAMES KIPKOSGEI RONO 3RD PETITIONER**

AND

CHARLES KIPROTICH RONO OBJECTOR

RULING

1. Before me for determination are summons for revocation of grant dated 12th February, 2024 expressed to be brought under the provisions of Section 47 & 76 of the *Law of Succession Act* and Rules 44,49,73 & 76 of the *Probate and Administration Rules*. The applicant seeks the following reliefs:
 - a. Spent
 - b. That pending the hearing and determination of summons for revocation of grant a prohibitory order do issue to prohibit any dealings involving Nandi/kamoiywo/446 and all titles resulting from sub-division pending the hearing of this application inter parte.
 - c. That pending the hearing and determination of summons for revocation of grant, there be stay of distribution of the estate of the deceased and more specifically Nandi/kamoiywo/446.
 - d. That this honourable court proceeds to order a fresh hearing on the proposed mode of distribution of the Estate of Chepkulul Arap Mugun.



2. The application is grounded by an affidavit in support sworn by Charles Kiprotich Ronoh, the applicant herein where he deponed as follows:
 - a. That I wish to state that I am the son of the late Chepkulul Arap Mugun.
 - b. That on 15th December, 2020 the court delivered a ruling on the application dated 15th June, 2020.
 - c. That the ruling paved way summons for confirmation of grant.
 - d. That the summons for confirmation of grant were filed without my knowledge input nor consent.
 - e. That summons for confirmation of grant were confirmed without giving due consideration of the manner in which our late father had shared out the estate and given out possession.
 - f. That due consideration was not given on the developments I had carried out in the estate.
 - g. That I pray that this honourable court be pleased set aside the confirmed grant and to redistribute the estate more so Nandi/kamoiwo/446.
3. In response to the application, James Kipkosgei Rono, one of the administrators deponed that he is one of the administrators in this cause from the 2nd house where the objector is one of the beneficiaries. He stated that the objector has come to court with unclean hands since this succession cause was concluded on 30th of January, 2023 and certificate of grant issued on 8th day of May, 2023. He was of the view that the objector intermeddled with the deceased property prior to the filing of the succession by trying to dispose of the property of the deceased amidst serious protests from other beneficiaries.
4. That the other beneficiaries filed a caveat and wrote letters of protest to the intended purchaser and the objector and warned them of dire consequences should the attempt to enter into an illegal agreement. Due to the stubbornness of the objector and Joshua Kibet Choge (the intended purchaser), his brother Samson Kibet Rono obtained Limited Grant and instituted proceedings at the Environment & Land Court and obtained orders of injunction.
5. The respondent deponed that the said suit has not been determined as the orders of status quo were granted pending the hearing and determination of the succession. Upon filing the succession cause, Joshua Kibet Choge made an application to be admitted as an interested party but the application was dismissed. That the matter was concluded by the consent of all parties and the objector was present during confirmation in court and consented to the mode of distribution of the estate. He maintained that the projector was at liberty to file a protest prior to confirmation.
6. According to the respondent, the allegations that the estate had been distributed prior to the death of the deceased have no basis in law as the deceased did not leave or write a Will. The property/estate was shared equally among all the beneficiaries of the 2nd house where the objector belongs. He deponed that the estate cannot be distributed again as no beneficiary is willing to donate his/her share to the objector who desires to have a bigger share than the rest. He averred that the objector has never done any developments in the deceased estate, he left home after college and has never been back to date. In sum, he stated that there are no grounds to warrant the revocation of grant.

Determination

7. The main issue for determination is whether applicant has met the requisite threshold for revocation of grant within the meaning of Section 76 of the *Law of Succession Act*.



8. Section 76 of the *Law of Succession Act* provides for Revocation of grant. The grounds upon which the grant may be revoked have been well laid out therein. The said provision provides that revocation can either be at the instance of an applicant or can be by the court suo moto. However, it is a requirement that the conditions for revocation as set out under section 76 must be proved.

9. The *Law of Succession Act* provides for revocation of grants under section 76, which states as follows:

“76. 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.

10. In the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* (2015) eKLR the court highlighted circumstances when a grant can be revoked. The court observed:

“ 11. The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by



concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

11. Similarly, Section 76 was clearly expounded on by the court *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR where it was stated that:

“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.”

12. It is clear to me from the affidavit sworn by the applicant in paragraph 5 that he is aggrieved that when the summons for confirmation were filed, he was neither notified nor consented to the matrix of distribution. He went further to annex the ruling delivered by Olga Sewe J dated 15th December, 2020. The key prayers sought in that application were:

- a. That a conservatory order be issued restraining Cherotich Mugun, Samson Kibet Rono and James Kipkosgei Rono jointly and severally, by themselves, their employees and or agents, from interfering with the applicant’s peaceful and actual possession of an identified and demarcated portion of Land Parcel No. Nandi/kamoiywo/446, measuring 7 acres, pending the hearing and determination of the application.
- b. That a conservatory order be issued restraining Cherotich Mugun, Samson Kibet Rono and James Kipkosgei Rono jointly and severally, by themselves, their employees and or agents, from interfering with the applicant’s peaceful and actual possession of an identified and demarcated portion of Land Parcel No. Nandi/kamoiywo/446, measuring 7 acres, pending the hearing and determination of the Objection proceedings herein.
- c. That the petition for Grant of Letters of Administration to the estate of Chepkulul Arap Mugun made to Cherotich Mugu, Samson Kibet Rono and James Kipkosgei Rono be revoked or annulled on the ground that the petitioners wilfully and intentionally omitted the applicant, who is a beneficiary of the said estate

13. This issue of Land parcel No. Nandi/kamoiywo/446, measuring 7 acres, was extensively litigated before this court presided over by Sewe J and at the end of it all she pronounced herself to the effect that



the application seeking conservatory orders by Joshua Kibet Choge against Cherotich Mugun, Samson Kibet Rono and James Kipkosgei Rono jointly and severally as it relates to issuance of conservatory orders against the portion of land Nandi/kamoiywo/446, measuring 7 acres, be dismissed. The instant application, has been filed by Charles Kiprotich Rono, a son and a beneficiary to the deceased's estate. His main submissions revolve around the question of notice by the administrators and endorsement of the necessary consent which gave rise to the certificate of confirmation of grant of 8th May, 2023. Having signalled that, it means that a question which this court is bound to answer is in accordance with Section 76 of the [Law of Succession Act](#). A question of law which arises is whether there is doubt as to what the law is on the specific facts of the model of distribution adopted by the court in so far as section 38 and 40 of the [Law of Succession Act](#) is concerned. The revocation of grant is a matter of law. For a question to be one of law, the same must involve an examination of the probative value of the evidence presented by the litigants or beneficiaries for that matter. The resolution of distribution of an estate falls within the scope of sections 29, 35, 36, 37, 38, 40, 41 and 71 of the [Law of Succession Act](#). The test must rest solely on what the law provides on the given set of circumstances to that intestate estate. Once it is clear to the court that the threshold of the law has been satisfied, the issue whether one beneficiary for one reason or another has not consented to the proposed model of distribution is not a bar for the court to render its decision. The applicant has not delved into the veracity of the documentary evidence and truthfulness of the testimonial evidence presented during the hearing of the succession cause as to the summons of confirmation of grant, which controversy was resolved by the court by issuing certificate of grant of confirmation dated 8th March, 2023. As a further clarification to this issue, the question of consents being filed by the beneficiaries is mainly an opportunity given to the parties to canvass any distinguishing factor to be taken into account in the decision-making process tailored in the letter and the spirit of the law on distributions as stipulated in the Succession Act. The position I have taken is that once a certificate of confirmation of grant has been issued under Section 71 of the [Law of Succession Act](#), it is a final decree of that court. It is not impeachable by dint of section 76 of the [Law of Succession Act](#) by a litigant placing reliance on the concepts that 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. How is this jurisdiction exercised by the court? It is purely discretionary and must be hinged on the proceedings on a case-to-case basis as this court in another forum held in [Albert Imbuga Kisigwa v Recho Kawai Kisigwa](#) Succession Cause No. 158 of 2000 where Mwita J stated: -

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”

14. The drafters of the [Law of Succession Act](#), no doubt knowingly used the term “may” in section 76, implying that the exercise of this jurisdiction is discretionary. It must be emphasized that the discretion of this court is not a carte blanche for the court to interfere with every certificate of confirmation of grant. This discretion to my mind then is to be exercised in a manner that ascribes to the institutional architecture of the [Law of Succession Act](#). Why do I say so? The [Law of Succession Act](#), sets very clear timelines of adjudication of disputes arising out of a probate and administration petitions. First and foremost, a petition for grant of letters of administration has to be lodged with the government printer followed with an official gazette of the petition. Second, immediately upon gazette, thirty days' notice is provided for to allow any objection to the making of the grant of letters of administration. Third, if there is no objection, the court is obligated to issue form P&A 41 under



Rule 41(5) of the [Probate and Administration Rules](#). For purposes of this estate, the grant of letters of administration intestate was issued to Cherotich Mugun, Samson Kibet Rono and James Kipkosgei Rono on 17th June, 2019. That instrument triggered an history of litigation against this estate. Just for record, on 13th February, 2020 an application was filed under Rule 49(1) of the [Probate and Administration Rules](#) by one James Kipkosgei Rono seeking leave of the court to have the following orders granted:

- a. That the status quo prior to the death of the late Chepkulul Arap Mugun be maintained pending confirmation of the grant.
- b. That the 1st house Cherotich Mugun and her sons, William Cheruiyot Rono and Philip Some Rono their servants or agents be restrained by way of temporary injunction from evicting the applicant herein or in any other way interfering with his residence in parcel of land known as Nandi/kamoiywo/445 pending the confirmation of grant.

15. What is the effect of this application? From the Kenya Gazette on 2nd March, 2019 cause No. 36 of 2018 set to be administered by the applicant as a co-administrator ignored the timelines put in place of six months to confirm the grant in favour of the beneficiaries to the estate. This application of 13th February, 2020 at a glance is in violation of the law. The administrators and beneficiaries did not stop there. On 2nd June, 2020, another application was filed under Art 48 of the [constitution](#), Rule 40(1), 49, 63 and 66 of the [Probate and Administration Rules](#) seeking the following substantive orders:

- a. The Grant of Letters of Administration be amended to substitute the names of Cherotich Mugun (deceased) with Philip Some Rono and William Cheruiyot Rono ad Co-administrators of the estate of Chepkulul Arap Mugun (deceased).
- b. The amended Grant of Letters of Administration intestate to Philip Some Rono, William Cheruiyot, Samson Kibet Rono and James Kipkosgei Rono.

16. There is therefore in reality in the matter at hand that the administrators are still on a frolic of their own in matters concerning the administration of this estate. It follows therefore either by dint of ignorance of the law or sheer negligence, no enlargement on extension of time has been sought by either party appointed as administrators under Section 66 of the [Law of Succession Act](#). That due to exceptional circumstances, there is need to extend time for them to comply with the provisions of the Law. It is a worrying trend in the administration of the estates in Kenya where beneficiaries and the dependants spend quite a considerable period of time weaponizing the court with a vexatious litigation which is not focused on the premise of law. The probate court has a very limited jurisdiction, that is to identify the beneficiaries or dependants for that matter under Section 29 of the Act, the free movable and immovable assets survived of the deceased and have them distributed in accordance with the law. At this juncture, just to demonstrate the abuse of the court process, I take judicial notice that on 15th June, 2020 yet another application was filed for revocation or annulment of Grant under the provisions of Section 47, 76 of the [Law of Succession Act](#) and Rule 17 and 73 of the [Probate and Administration Rules](#) with the following orders *insitu*:

- a. That this honourable court issue a conservatory order in the nature that the petitioners herein be and are hereby jointly and severally by themselves, their employees and or agents be restrained from interfering with the objectors peaceful and actual possession of an identified and demarcated portion of land measuring 7 acres within Nandi/kamoiywo/446 in any way whatsoever pending the inter parties hearing of this application thereafter pending hearing and determination of this application.



- b. That this honourable court issue a conservatory order in the nature that the petitioners herein be and are hereby restrained from interfering with the objectors peaceful and actual possession of an identified and demarcated portions of land measuring 7 acres within Nandi/kamoiwo/446 in any way whatsoever pending the Interparties hearing and determination of this application thereafter pending the hearing and determination of the objection proceedings herein.
 - c. That the petition for grant of letters of administration to the estate of Chepkulul Arap Mugun made to Cherotich Mugun, Samson Kibet Rono and James Kipkosgei Rono be revoked or annulled on the ground that the petitioners wilfully and or intentionally omitted the applicant who is a beneficiary to the said estate.
17. I have noted elsewhere in this Ruling that the above application was dismissed by Sewe J for want of merit on 15th December, 2020.
18. This litigation is ad infinitum as demonstrated by a follow up application dated 23rd June, 2020 by one Philip Some Rono and William Cheruiyot Rono apparently beneficiaries to this estate without a doubt also moved this court seeking the following orders:
- a. That pending hearing and determination of this summons the 1st Respondent James Kipkosgei Rono be restrained from further erecting others fence and structures or any other way from dealing with the 5 acres in Nandi/kamoiwo/445 measuring approximately 11.33 Ha and be compelled to remove the erected fence.
 - b. That the respondent be restrained from inter-meddling with the 5 acres in Nandi/kamoiwo/445 measuring approximately 11.33 Ha.
 - c. That the respondent be committed and/or detained in prison for such term as the court may deem just for the disobedience and/or breach of the court's order issued on 18th February, 2020.
19. Similarly, on 12th February, 2021 a further summons under Section 47 of the *Law of Succession Act* and Rules 44, 59 and 73 of the *Probate and Administration Rules* was filed by Samson Kibet Rono seeking the reliefs as hereinunder:
- a. That the court be pleased to issue an order of temporary injunction to restrain the Respondent from entering, leasing, cultivating, sub-dividing, evicting the applicants, selling either by himself, his agents, employees or any other person acting under his instructions and or interfere with the peaceful and quiet enjoyment of land parcel Nandi/kamoiwo/446 measuring 7 acres pending distribution of the estate.
 - b. That OCS Mosoriot Police station to oversee compliance of the orders.
- It flows in response to this application, that an order of temporary injunction was issued to restrain further destruction of the structures on the suit property pending further orders on 1/3/2021.
20. In addition, in the matter of the estate of Chepkulul A. Mugun Grant of Letters of Administration Intestate were amended on 17th July, 2022 bringing on board Evelyne Jesang Keino as a co-administrator to the other three earlier appointed by the court. Given that background, summons for confirmation duly filed with a corresponding consent of the beneficiaries was admitted by this court and a certificate of confirmation of grant issued on 8th May, 2023 whose model of distribution is captured in the following matrix:

Schedule (1st House)



Name	Property	Shares of Heirs
Evalyne Jesang	Nandi/kamoiywo/445	7.291 Acres
Jane Jelagat	Nandi/kamoiywo/445	0.25 Acres
Hellen Jemeli	Nandi/kamoiywo/445	0.25 Acres
Christine Jepkorir	Nandi/kamoiywo/445	0.25 Acres
Estate Of Priscillah	Nandi/kamoiywo/445	0.25 Acres
William Cheruiyot Rono	Nandi/kamoiywo/445	7.291 Acres
Elijah Kimutai	Nandi/kamoiywo/445	7.291 Acres
Chepsongor Primary School	Nandi/kamoiywo/445	0.125 Acres

Schedule (2nd House)

Name	Property	Shares of Heirs
Ann Mugun	Nandi/kamoiywo/446	1 Acre
Samson Kibet Rono	Nandi/kamoiywo/446	11 Acres Shared Equally
Sarah Jepkemboi	Nandi/kamoiywo/446	11 Acres Shared Equally
Milkah Jepkoech	Nandi/kamoiywo/446	11 Acres Shared Equally
Charles Kiprotich Rono	Nandi/kamoiywo/446	11 Acres Shared Equally
Joyline Jerobon	Nandi/kamoiywo/446	11 Acres Shared Equally
James Kipkosgei Rono	Nandi/kamoiywo/445	4.94 Acres Shared Equally
Clara Jeruto	Nandi/kamoiywo/445	4.94 Acres Shared Equally
Solomon Rono	Nandi/kamoiywo/426	To Be Shared Equally
Eunice Chirchir	Nandi/kamoiywo/426	To Be Shared Equally
Magdaline Jeptum	Nandi/kamoiywo/426	To Be Shared Equally

21. As alluded to above, the essence of the matter before me is an application by the applicant for annulment of the Grant of Letters Administration for reasons that he did not consent to the summons for confirmation of Grant. In my evaluation, the applicant is not telling us that the administrators have wilfully and without reasonable cause omitted to exhibit an inventory or account of the



deceased properties capable of being distributed. There is also no evidence from his affidavit that the administrators have failed to distribute the deceased's properties to the beneficiaries rendering the certificate of confirmation of Grant useless and inoperative. As if that is not enough, no iota of evidence has been provided by the applicant that the administrators monopolized the deceased's properties and used them as their own or intermeddled with them in a manner which was prejudicial to his inheritance. Indeed, applying the provisions of sections 38 as read with Section 40, 41 and 42 of the Law of Succession Act, the full inventory of the properties of the estate was captured in the certificate of confirmation of the grant as well as distribution to the rightful heirs including the applicant. The real object which the court must always keep in view is the due and proper administration of the estate and the interests of the parties legally entitled thereto to benefit from the residual estate of the deceased. The applicant is not telling this court that the previous certificate of confirmation of grant issued on 8th May, 2023 discriminated against him under Art. 27 of the Constitution and the grant so improperly made in breach of this article should be revoked for the protection of his interest. Is there evidence that the impugned certificate of confirmation of grant is incapable of transmitting the estate of has become abortive? The answer is in the negative. The importance of disclosing all the material facts is for the administrators to ensure that any special interest that may exist prior to confirmation is taken into account and any departure from it explained within the ambit of the law. The applicant in this specific case has not shown that the confirmed grant was obtained fraudulently by the administrators by making of a false statement or concealment from court of something material to the cause.

22. In the course of hearing this application, although there is no mention of review of the primary certificate of confirmation of grant by the applicant the court needs to address two interrelated issues. First, whether by that certificate of confirmation of grant the court determined the rights of the parties in particular on issues to do with identification of beneficiaries and free estate of the deceased to be shared among the heirs falling within the category defined in Section 29 of the Law of Succession Act. In essence, reading and reading out of the instant application, as framed the issue of review of the impugned grant is apparent on the face of the record. Has the applicant met the threshold? In my judgment, the evidence presented fails to discharge the burden of proof vested with the applicant as stipulated in Section 107(1), 108 and 109 of the Evidence Act. How this might have been sorted out? It is by placing reliance on the principles laid down in the various case law. In *Haridas v Smt Usha Rani Banik*, Appeal (civil) 7948 od 2004, the court articulated the following pertinent principles: -

“There is a distinction which is real though it might not always be capable of exposition, between a mere erroneous decision which could be characterized as vitiated by ‘error apparent.’ A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

23. There is Article 50 (6) (a) and (b) of the Constitution which provides as follows:

“A person who is convicted of a criminal offence may petition the High court for a new trial if –

- a. The person's appeal, if any, has been dismissed by the highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed for appeal; and
- b. New and compelling evidence has become available.”



24. Although the shift here is more inclined to criminal law, there is a sense of the dominant review jurisdiction being addressed by these provisions. In this calculated judgment, the court is being asked to revoke the certificate of confirmation of grant and fundamentally alter the mode of distribution of the estate. That question constitutes review of the character of the certificate of confirmation of grant. It calls for the applicant to adduce new and compelling evidence which has become available and if admitted, reverses the decision on distribution of the estate. The power of review in civil law is exercisable under section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules. It is indeed instructive to note that it is exercisable in discovery of new and important matter of evidence. It may also be exercised where some mistake or error apparent on the face of the record is found. That is actually error of law apparent in the impugned judgment, ruling or order of the court. It may also be exercised on any analogous ground. In retrospect, it may not be exercised on the ground that the decision was erroneous on merit. The principle has been aptly summarised further in the case of *Independent Medico Legal Unit v Attorney General of the Republic of Kenya Application No. 2 of 2012* as follows:

“An application for review of judgement may be made to the court only if it is based upon the discovery of some fact which by its nature might have a decisive influence on the judgment if it had been known to the court at the time the judgment was give, but which fact, at that time, was unknown to both the Court and the party making the application, and which could not, with reasonable diligence, have been discovered by that party before the judgment was made or on account of some mistake, fraud or error on the face of the record ore because an injustice has been done.”

25. A review of a judgment is a serious step and a court of law must be reluctant to resort to it unless where there is a glaring omission or patent mistake or like grave error of law crept in earlier by judicial fallibility. A mere repetition by a litigant himself/herself or through different counsels or a second bite at the cherry, or arguments canvassed as a new cause of action from the whole are inconsequential imports to grant any review remedies. This is exactly the position in this matter as filed by the applicant.

26. This discussion about the applicant’s application would be incomplete without the court conveying the doctrine of res judicata to the applicant under section 7 of the Civil Procedure Act. The doctrine of res judicata is very fundamental to the smooth operations in the administration of justice. It assures the finality of court judgment and prevents matters from being relitigated on the same cause of action and within the same parties. In the case of *Njangu v Wambugu and another Nairobi HCCC No. 2340 of 1991* (unreported) the court held that:

“If parties were allowed to go on litigation forever and ever the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face lift on every occasion he becomes to court, then I do not see the use of the doctrine of res judicata....”

- i. What issued were really determined in the previous application.
- ii. Whether they are the same in the subsequent application and were covered by the decision.
- iii. Whether the parties are the same or are litigating under the same title and that the previous application was determined by a court of competent jurisdiction.”



27. From the above discussion, the applicant has not demonstrated that there will be significant manifest injustice if this court sustains the impugned certificate of confirmation of grant dated 8th May, 2023 in its original characterisation on distribution. If indeed the application satisfied that criteria, then this court could have relaxed the terms of the doctrine as defined in Section 7 of the Civil Procedure Act on res judicata. In the context of the succession cause as known in law is strictly speaking no cause of action has been established by the applicant to warrant this court to exercise jurisdiction on any matter to correct any injustice or prejudice caused by the earlier order or ruling on confirmation of grant. The law does not undertake a measure in vain and with this background of the case and the reassessment of it, if parties are allowed to approach the court on multiple occasions on the same matter hiding under the umbrella of agitating their constitutional rights, the potential vulnerable beneficiaries will suffer grave injustice. It is horrifying that the might of the law is being misused by litigants, beneficiaries or heirs to the estate to litigate and relitigate the same set of facts hiding under the provisions of Section 76 of the Law of Succession Act. It is only the courts of this republic who must rise up and stop these vexatious proceedings on succession matters which essentially infringes the rights of other beneficiaries' entitlement to the same estate. It is an abuse of process if parties manipulate or misuse the process of the court in succession matters so as to deprive other right holders the protection provided by the law by taking unfair advantage of technicalities that may only be so through their litigation lens.
28. The impression created that section 76 of the Act is a permanent provision bolstered to prosecute succession matters for eternity, then no jurisdictional point appears to have been taken within the spirit of the law itself as drafted by the legislature. That said, the application dated 12th February, 2024 attracts the wrath of this court by having it dismissed for lack of merit. As a consequence, the administrators to this estate are hereby ordered to transmit the estate underpinned on the Certificate of Confirmation of Grant dated 8th May, 2023 within 90 days from today's date. In default of compliance, the deputy registrar of the high court do exercise her ministerial powers to sign and endorse the distribution model captured in the impugned certificate of confirmation of grant and have the shares so identified transmitted to the *bonafide* beneficiaries.
29. It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 3RD DAY OF JUNE 2024

.....

R. NYAKUNDI

JUDGE

