



**In re Estate of Henry Chepnyonyei Arap Kimwei Also Known as
Henry Chepnyonyei alias Henry Kimwei (Deceased) (Succession
Cause 198 of 2014) [2024] KEHC 8094 (KLR) (5 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8094 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 198 OF 2014
JRA WANANDA, J
JULY 5, 2024**

**IN THE MATTER OF THE ESTATE OF HENRY CHEPNYONYEI ARAP KIMWEI
ALSO KNOWN AS HENRY CHEPNYONYEI ALIAS HENRY KIMWEI (DECEASED)**

BETWEEN

JUDITH CHEPTANUI 1ST APPLICANT

MARIAM CHEPKOSGEI MAGUT 2ND APPLICANT

AND

NICHOLAS KIPTOO MWEI RESPONDENT

RULING

1. This Ruling is in respect to two Applications as was agreed by consent when the parties appeared in Court on 18/07/2023.
2. The background of this matter is that the deceased, Henry Chepnyonyei, died intestate on 11/06/2011 at the age of 88 years. It is not in contention that he was married to 2 wives, Julia Chelimo Kimwei (1st house and also deceased) and Rebecca Cheptoo Mwei (2nd house) and had a big number of children, including the 1st Applicant, the Respondent and the 2nd Applicant's late mother. He also had a number of properties, including various parcels of land. The deceased was also said to have left behind a Will in which he appointed the said Rebecca Cheptoo Mwei (2nd house) to be the executor thereof. Pursuant thereto, the said Rebecca Cheptoo Mwei on 6/06/2014 filed a Petition seeking Probate of Written Will.
3. The Grant was then on 18/09/2014, given to the said Rebecca Cheptoo Mwei. However, the same was challenged by the other widow, Julia Chelimo Kimwei (1st house) but after protracted litigation, the matter was settled by consent and by the fresh Grant given on 7/09/2018, the two widows were appointed co-Administrators. The Grant was later confirmed on 25/03/2019 and the estate



distributed. From the record, the estate was divided between and/or along the lines of the 2 houses. The Grant was however amended on 7/03/2022. This amendment was challenged by the 2nd Applicant and her sisters through their Advocates, Ngeno, Ondieki & Co. but later, the parties entered into the consent dated 14/12/2022 in settlement thereof.

4. One result of the said consent is that the 1st widow, Julia Kimwei (1st house) who had died in the intervening period, was substituted as co-Administrator, with her son, the Respondent herein, Nicholas Kiptoo Mwei. The fresh Grant containing this substitution as well as the Further Amended Certificate of Confirmation were then given on 14/03/2023. Once appointed a co-Administrator, the Respondent on 28/03/2023 applied for Rectification of the Further Amended Certificate of Confirmation. This Application was allowed and the Further Amended Certificate of Confirmation issued on 30/03/2023. It is this further amendment that forms the basis of this Ruling.
5. Now before Court for determination are two respective Applications brought by way of the Notices of Motion dated 14/04/2023 and 15/05/2023, respectively.
6. The two Applicants and the Respondent are all scions of the 1st house in that the 1st Applicant and the Respondent are a daughter and a son, respectively, of the late Julia Kimwei, the matriarch of the 1st house, and the 2nd Applicant is a granddaughter of the same Julia Kimwei. The Applications are therefore in respect to disputes entirely within the 1st house. The 2nd house is not involved.
7. The 1st Application, dated 14/04/2023 is filed through Messrs Mandere Nyandoro & Co. Advocates and the prayers sought are as follows:
 - i. [.....] Spent
 - ii. [.....] Spent
 - iii. [.....] Spent
 - iv. That Further Amended Certificate of Confirmation of Grant dated 15/03/2023 be rectified in the following respect as provided under Section 43(1) of the [Probate and Administration Rules](#):
 - a. Removal of the name of Christopher Kipketer Yego and his 6.1 acres be redistributed to Judith Cheptanui
 - v. That the costs of this Application be borne by the Respondent.
8. The Application is premised on the grounds stated on the face thereof and is supported by the Affidavit sworn by the 1st Applicant, Judith Cheptanui. In the Affidavit, she has deponed that she is disabled and she feels that the Respondent has taken advantage of her disability to take a big share of the estate, that on 6/03/2023, the parties' Counsels on record in this matter, entered into a consent before Court without the knowledge of the 1st Applicant, that she does not object to the entire consent but to a part of it that is unfair and unequitable to the 1st Applicant and other beneficiaries, that she strongly objects to paragraphs 3 and 7 of the consent as the Respondent has taken a big share, 31 acres of the property known as Sergioit/Karuna Block 2 (Sergoit) 82 to the exclusion of other beneficiaries, that in paragraph 7, 3 acres have been set aside to be sold to one Christopher Kiplagat Yego to pay the legal and conveyance fees, that the decision to pay such fees through the sale of the 3 acres is exorbitant and done by the Respondent with the ill-motive of continuing to benefit more than the rest of the beneficiaries of the 1st house, that the decisions regarding the distribution of the estate was done with the blessings of all the beneficiaries trusting that the 1st Applicant was to carry out all the communication with the



- Advocates for the benefit of all the beneficiaries of the 1st house but he went out to take the lion's share of the estate.
9. She deponed further that as much as there is no equitable distribution of the estate, she agreed to keep her peace and accept her allocation but the outright exaggeration in terms of Advocates' fees and intermeddling of the estate by third parties has forced her to call out and seek the Court's assistance, that as per the Amended Certificate of Confirmation of Grant dated 15/03/2023, the said Christopher Kiplagat Yego has already been allocated 6.1 acres out of that parcel of land known as Nandi/Kokwet/12 which he acquired after the death of the deceased and before issuance of the Grant, that the person or beneficiary who sold land to the said Christopher Kiplagat Yego is unknown to her, that she strongly opposes the selling of the 3 acres to pay legal fees as the family has previously contributed and paid the Advocates' fees.
 10. The 2nd Application is filed through Messrs Chemwok & Co. Advocates and the prayers sought are as follows:
 - i. [.....] Spent
 - ii. That this Honourable Court do make an order vesting one of the 3 shops at Kapsabet town for the use and benefit of the Applicant herein M/s Mariam Chepkosgei Magut to use as a Chemist shop/business in plot No. 1181/72.
 - iii. That there be a stay of distribution and or survey work in the deceased's estate pending the hearing and determination of this Application inter partes and thereafter the final distribution of the estate.
 - iv. That the costs of this Application be borne by the Administrators herein.
 11. The Application is premised on the grounds stated on the face thereof and is supported by the Affidavit sworn by the 2nd Applicant, Mariam Chepkosgei Magut.
 12. In the Affidavit, the Objector has deponed that she is one of the beneficiaries of the estate herein through her mother, Naima Chebet (deceased), that she is a Pharmacist running a Pharmacy shop in Kapsabet town which was a rental unit, that the estate administration was agreed by consent that she be given 3 shops in LR No. 1181/72 being the consent dated 14/12/2022, that being satisfied that she had a fallback in business premises, shortly she was given notice to vacate her rental premises where she had her Chemist shop, that she did not ask for extension nor challenge the notice because she knew that she had 3 shops to occupy, that the consent had been adopted by the Court on 6/03/2023, that unknown to her, the Administrator had gone behind her back to apply to the Court to amend the consent without the Objector's involvement and removed the Objector from the 3 shops at Mosoriot vide the Further Amended Certificate of Confirmation dated 30/03/2023, that in addition, another further and further amendment has been done without her knowledge.
 13. She deponed further that having vacated the rental unit, she had taken all the medicine to her house risking her life and that of her children considering the hazardous nature thereof, that she is a single parent struggling to make ends meet for her own benefit and that of her siblings as well as her children who all depend on the Chemist, that grant of the orders will not prejudice any other beneficiary, that in any case, the only people who have been benefiting from the 17 shops has been the Respondent, Nicholas Kiptoo Mwei, and his 2 sisters from their house, that she sought for accounts, and that she is entitled to a fair remuneration from the estate but which has not been forthcoming.



2nd Applicant's Replying Affidavit in Support of the 1st Application

14. The 1st Application is supported by the 2nd Applicant, Mariam Chepkosgei Magut who swore the Replying Affidavit filed on 9/05/2023 through Messrs Chemwok & Co. Advocates. In the Affidavit, the 2nd Applicant deponed that she supports the 1st Application made by her aunt, the said Judith Cheptanui and concurred that there are issues of discrimination and that she has also raised red flags on the question of selling 3 acres for purposes of settlement of legal fees. She deponed that for purposes of transparency, the Advocate and the Surveyor do submit their Fee Notes for scrutiny. She contended further that the Respondent has used his position to benefit himself by taking 31 acres, that he has taken the late Tony Kiplimo's share which was initially to be given to her (2nd Applicant) for the benefit of the late Tony Kiplimo's children, that he is collecting rent from 17 units in Nandi/Kapsabet LR No. 1181/72 and distributes to a chosen few against the consent dated 14/12/2022, that he is changing the beneficiaries allocated positions at will to punish those he disagrees with, that the Respondent arrogates to himself all roles excluding others and forgetting that as an Administrator, consultation is key, that the Respondent has taken Surveyors to the farm without notifying beneficiaries, that he does not call meetings but makes decisions and amends consents at will, that as regards the issue of Lakewood Timber Preservative, the Lessor has not been disclosed and no account of the rent collected has been rendered, and that no account has also been rendered for other assets, including the family Tractor tiller, plough and trailer, motor vehicle registration No. KCC 920Q.

Respondent's Replying Affidavits in Opposition to the Applications

15. In opposition to the 1st Application, the Respondent, Nicholas Kiptoo Mwei, through Messrs Arap Mitei & Co. Advocates swore the Replying Affidavit filed on 9/05/2023. In the Affidavit, he deponed that it is not true that the 1st Applicant has been left out in the distribution of the estate since she is the biggest beneficiary, that the Amended Certificate of Confirmation referred to by the 1st Applicant is erroneous since the same was subsequently amended, that the 1st Applicant was during the confirmation of the initial Grant dated 29/03/2019 given parcel No. Nandi/Itigo/230 and on which the 1st Applicant has in fact put up her home, that in the Further Amended Certificate of Confirmation of Grant, the Applicant has also received an additional 3 acres of parcel No. Nandi/Kokwet/12 which she has already fenced off and started utilizing, that the 1st Applicant has also being given a share in Mosoriot plot 35 and in which the 1st Applicant is receiving rent from a petrol station, that as compared to other daughters of the deceased who only received 3 acres, the Applicant has received 9 acres, that the Application is mala fides insofar as it only targets the portion of Nandi/Kokwet/12 which has already been sold to the said Christopher Kiplagat Yego for payment of legal fees and other outgoings which the 1st Applicant is aware of, that the said Christopher Kiplagat Yego has since received his title deed, that the 1st Applicant has never paid any legal fees any legal fees as she alleges, and that the parcel No. Nandi/Kokwet/12 has since been subdivided and title deeds issued to the respective beneficiaries.
16. The Respondent has also opposed the 2nd Application vide his Replying Affidavit filed on 13/10/2023. In the Affidavit, the Respondent deponed that the 2nd Applicant has been provided for in the estate as per the Certificate of Confirmation by being allocated 3 acres of the property, Nandi/Kokwet/12 and rental premises and a Petrol Station at Mosoriot Parcel No. 35, that the 2nd Applicant has been catered for in the same manner as the other beneficiaries, that the consent referred to was erroneous and even contained some alterations which had not been agreed upon, including the assertion that beneficiaries were to get 3 shops which was never discussed and which was inserted by hand, that during the discussions, the parties agreed to have some beneficiaries including the 2nd Applicant to be given a share of the rental premises and petrol station at Mosoriot and others were to get a share in Kapsabet



as per the Grant, that the issue of the 2nd Applicant getting 3 shops was not discussed and the family is even surprised that the 2nd Applicant has identified the best shops, which have tenants, for herself, and which shows her selfish interest, that the issue of the 2nd Applicant having vacated her business premises is a personal matter and that she has never asked for help from the family. He added that he (Respondent) is not the only one who is receiving rent from the premises in Kapsabet as alleged since the other beneficiaries are the people who are receiving the rent on a monthly basis and which is then shared among the beneficiaries, that parcel number Nandi/Kokwet/12 has since been sub-divided and title deeds issued to the respective beneficiaries and that the 2nd Applicant's specific parcel number is Nandi/Kokwet/1491.

2nd Applicant's Supplementary Replying Affidavit

17. The 2nd Applicant, on 1/11/2023, filed what has been referred to as "Replying Affidavit" but which is actually a "Supplementary Replying Affidavit". In the Affidavit, the 2nd Applicant basically reiterated matters already touched on in her earlier Affidavits and which I will not therefore recite the.

Hearing of the Application

18. It was then agreed, and I directed, that the Applications be canvassed by way of written Submissions. Pursuant thereto, the 2nd Applicant's Counsel, Mr. Chemwok, filed his Submissions on 15/01/2024. Up to the time of concluding this Ruling, I had not come across any Submissions filed by or on behalf of the rest of the parties in this matter.

2nd Applicant's Submissions

19. The 2nd Applicant's Counsel submitted that after protracted disputes, several meetings were called to resolve the same and which culminated into the consent dated 14/12/2022, that this consent was the bedrock agreement that resolved the family differences and was signed by all the beneficiaries and the same was adopted on 6/03/2023. He stated that there are 5 Advocate law firms on record in the matter, namely, Messrs Arap Mitei & Co. Advocates acting for, among others, the Respondent (Nicholas Kiptoo), Messrs Ng'eno Ondieki & Co. Advocates acting for, among others, the 2nd Applicant's late mother (Naima Chebet), Messrs Chemwok & Co & Advocates acting for the 2nd Applicant, Messrs Bitok Sambu Co. Advocates for the widow of the 2nd house, the co-Administrator (Rebecca Mwei) - and finally, Messrs Nyando Mandere & Co. Advocates acting for the 1st Applicant, Judith Cheptanui.
20. According to Counsel, a mischief arose since upon adoption of the consent dated 14/12/2022, shortly thereafter, an Application was filed by Messrs Arap Mitei & Co. Advocates acting for, among others, the Respondent (Nicholas Kiptoo) seeking rectification of the Grant and which upon being allowed, omitted the 1st Applicant, the said Judith Cheptanui from the distribution, and a false allegation of mix-up of names for Mosoriot Plot No. 35 in LR No. 1181/72 was created. According to Counsel, in addition, the County Surveyor was already on the ground where no beneficiary was called, he reduced acres without any consultation, and he exchanged beneficiaries from the consent to what the Respondent wanted, that one Christopher Kiplagat Yego was introduced and given 3.1 acres than was agreed, that the property LR No. Nandi/Kamobo/1593 was excluded and later issued to one Charity Chepkorir when initially, the property was allocated to the said Charity Chepkorir and the late Julia Kimwei.
21. On alteration of a consent order, Counsel cited the case of *Kenya Commercial Bank Ltd v Specialized Engineering Co. Ltd* [1982] KLR 485 which, he submitted, affirmed the principles under which a consent order can be varied or set aside. According to him therefore, the consent that was initially entered into is still valid and binding. He also cited the case of *Hirani v Kassam* [1952] 19 EACA 131.



22. Counsel submitted further that when this Application was filed, an order of stay was granted but despite the stay order, the Respondent and the County Surveyor have since proceeded to issue title deeds for some properties in complete disrespect thereto. He cited the case of *Clarke and Others v Chadburn and Others* [1985] ALL ER 211 and submitted that an act done in wilful disobedience of a Court order is both a Contempt of Court Act and an illegal and invalid act which cannot effect any change in the rights and liabilities of others.

Determination

23. The issues that arise for determination in this matter can be summarized as follows:

“Whether the Further Amended Certificate of Confirmation of Grant issued herein on 30/03/2023 and arising out of the Summons for Rectification dated 28/03/2023 should be rectified and/or altered.”

24. The genesis of the two Applications herein was the Summons for Rectification dated 28/03/2023 filed by Arap Mitei & Co. under instructions of the Respondent. It is evident from the record that the Application was filed under Certificate of Urgency on the same 28/03/2023 and the same was placed before the duty Judge, who promptly allowed and granted it on the same date. It is this order that then resulted to the Further Amended Certificate of Confirmation of Grant issued on 30/03/2023.

25. As aforesaid, the dispute the subject of this Ruling is entirely within beneficiaries from the 1st house. It is about the share of the estate that was allocated to the 1st house. It is not in dispute that at all material times, the 3 law firms acting for the beneficiaries from the 1st house in this matter were as follows:

Ngeno, Ondieki & Co.	For the 2 nd Applicant	Mariam Chepkosgei Magut
Bitok & Sambu Advocates	For the Respondent	Nicholas Kiptoo Mwei
Arap Mitei & Co.	For the late widow	The late Julia Kimwei

26. It is therefore clear that the 3 said law firms, treated conjunctively, were in general, the Advocates on record for and representing all members of the 1st house. Up until then, there was no dispute within the 1st house over legal representation and all of them seem to have been happy and contented with the services rendered by the 3 law firms who from the record, seem to have worked quite seamlessly and in unison. It can be safely concluded that the members of the 1st family agreed to let the 1st Respondent represent their interests in matters relating to administration of the estate. This might explain why they all agreed that he be substituted and/or appointed the co-Administrator to replace or in place of their mother, Julia Kimwei when she died. In fact, at paragraph 9 of the Supporting Affidavit to her Application, the 1st Applicant expressly stated that “the decisions in the distribution of the estate was done with the blessings of all the beneficiaries trusting that the 1st Administrator (Respondent herein) was to carry out all the communication with the Advocates for the benefit of all the beneficiaries of the first house but he went out to take a lion’s share of the estate”.

27. It is therefore evident that for purposes of filing the Summons for Rectification of Grant dated 28/03/2023, the firm of Arap Mitei & Co. Advocates which was on record for the Respondent, as the representative of the 1st house, was a correct and proper law firm mandated to generally act for the beneficiaries from the 1st house.



28. It is only on 14/04/2023 that the 1st Applicant, Judith Cheptanui, a daughter of the deceased within the same 1st house parted company with the rest, went her separate way and appointed her own independent Advocates, Mandere Nyandoro & Co. The Advocates' first brief was to apply to challenge some portions of the said order made on 28/03/2023 and consequently, the Further Amended Certificate of Confirmation of Grant issued on 30/03/2023.
29. Similarly, it is only on 9/05/2023 that the 2nd Applicant, Mariam Chepkosgei Magut, a granddaughter of the deceased, also went her separate way and appointed her own independent Advocates, Chemwok & Co. and whose first brief was also to apply to challenge some portions of the same orders above.
30. In the circumstances, can the Applicants now turn around and disown an Application filed by Advocates erstwhile representing the interests of the same 1st house which she belongs to and which Advocates, by implication, had been authorized to act generally for all members of the same 1st house, including herself?
31. To answer this question, it is imperative to appreciate the extent of the mandate held by an Advocate lawfully appointed to represent and act on the client's behalf and the extent to which such Advocates' actions will bind the client. In the case of *Kenya Commercial Bank Ltd v Specialised Engineering Company* (*supra*), Harris J, stated further as follows:
- “A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.”
32. In *Kenya Commercial Bank Limited v Benjoh Amalgamated Limited & Another* [1998] eKLR the Court cited the passage in the Supreme Court Practice 1976 (Vol. 2) to the following effect:
- “Authority of Solicitor – a solicitor has a general authority to compromise on behalf of his client, if he acts bona fide and not contrary to express negative direction; and it would seem that a solicitor acting as agent for the principal solicitor has the same power.... No limitation of the implied authority avails the client as against the other side unless such limitation has been brought to their notice.”
33. Further, in the case of *Board of Trustees of NSSF v Michael Mwalo* (2015) eKLR, the Court of Appeal held as follows:
- “1.
2. A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.”
34. However, in the case of *Republic v District Land Registrar Nandi & another Ex-parte Kiprono Tegerei & another* [2005] eKLR, Musinga J (as he then was), stated as follows:
- “Although an advocate has ostensible authority to compromise his client's case, employment of such authority cannot be upheld where counsel consents to orders which are diametrically opposed to the express instructions which he has been given by a client in a matter. It is not easy to prove that there was fraud or collusion in recording of any consent orders between advocates in the absence of their instructing clients but where such orders



completely negate the interests of an instructing client and it is shown to the satisfaction of the court that the client was not even aware of the application that gave rise to those consent orders leave alone having consented to the recording of the orders, in the absence of any satisfactory explanation by the counsel who is accused of entering into the consent orders in question, a court of law would be entitled to conclude that there was fraud or collusion involved and will not uphold the consent orders issued."

35. It is therefore evident that an Advocate properly on record has the general authority to compromise an action on behalf of his client provided he acts bona fide, not contrary to express negative direction or reasonably and not in defiance on the client's direct and positive instructions. In this case, I am disturbed by some of the far-reaching material alterations brought about by the Summons for Rectification dated 28/03/2023 resulting into the Further Amended Certificate of Confirmation of Grant issued on 30/03/2023 and which need to be closely interrogated.
36. First, the 1st Applicant has alleged that the Respondent has taken a much bigger share for himself, namely, 31 acres of the property known as Sergoit/Karuna Block 2 (Sergoit) 82 to the exclusion of other beneficiaries, that in paragraph 7, 3 acres have been irregularly set aside to be sold to one Christopher Kiplagat Yego to pay legal fees and conveyance fees, that the decision to pay legal fees through the sale of the 3 acres is exorbitant and done by the Respondent with the ill-motive of continuing to benefit more than the rest of the beneficiaries. She has also termed the act of selling a whole 3 acres for the purposes of raising funds to settle Advocates' fees as outright exaggeration and also an act of intermeddling of the estate by third parties. According to her, as per the Amended Certificate of Confirmation of Grant dated 15/03/2023, the said Christopher Kiplagat Yego has already been allocated 6.1 acres out of that parcel of land known as Nandi/Kokwet/12 and which he acquired after the death of the deceased and before issuance of the Grant thus a case of intermeddling. She alleged further that the person who sold land to the said Christopher Kiplagat Yego is unknown to her. She also alleged that in any event, the family has previously joined hands and contributed funds to settle the Advocates' fees.
37. On her part, the 2nd Applicant alleged that the rectification of the Grant omitted the 1st Applicant, the said Judith Cheptanui from the distribution, created a false allegation of mix-up of names for Mosoriot Plot No. 35 in LR No. 1181/72, that, in addition, the County Surveyor immediately moved to the ground where no other beneficiaries were involved or even notified, and that the Surveyor reduced acreage and changed beneficiaries without any consultation, and that the said Christopher Kiplagat Yego was introduced and given 3.1 acres more than was agreed.
38. These allegations, as serious as they are, were not seriously denied by the Respondent. My assessment of the Respondent's Replying Affidavits is that he does not deny the above allegations but argues that the Applicants should be contented and not raise questions because, according to him, they have been properly and adequately catered and provided for. In the circumstances, I am persuaded to agree with the Applicants that although the 1st house had entrusted the Respondent with the obligation of representing them and overseeing their interests in matters concerning the estate, the Respondent seems to have misconstrued that mandate to amount to a carte blanche to single-handedly and unilaterally "run the show". He does not seem to believe that there is need to engage in consultations with the other beneficiaries and appears to assume that he is entitled to make decisions at will. The far-reaching nature of some of the changes made in the distribution of assets by the said Rectification of the Grant should have moved the Respondent to find it necessary to obtain express consents of the other beneficiaries before placing the Application before the Court. This he never did and neither does he even allege that he sought the opinion of the other beneficiaries. I am therefore persuaded that the Application should not have been granted without executed consents from the other beneficiaries or at least, those to be affected being presented.



39. Having found as above, the interesting twist is that both Applicants, even though strongly contending that they were in the dark thereon, are not seeking complete revocation or setting aside of the entire order that arose from the Application for rectification (Further Amended Certificate of Confirmation given on 30/03/2023), but have, instead, only applied for rectification or alteration of portions thereof. The reason for this is not easy to discern. Both Applicants were allocated some additional shares from the estate and would definitely want to retain those added shares even as they trash the same order. In law, this is referred to as approbating and reprobating at the same time and which is akin to the adage, “having your cake and eating it at the same time”. Is this acceptable? I think not.
40. If the orders were obtained irregularly, then they cannot stand in their entirety. Having been wholly impugned, the orders either stand in their totality or fall in their totality. In this case, having found that the orders were obtained out of a flawed process, the same cannot be sustained and must fall in entirety. The Application that led to grant of the orders definitely needs to be heard afresh and all beneficiaries given the opportunity to participate in its resolution. Since the Applicants still want to retain the benefit of the added shares, nothing stops them from sitting down with the Respondent and the rest of family and negotiate a “win-win” solution along such basis.
41. I also note that some of the portions challenged, particularly by the 1st Applicant, had in fact been already included and/or captured in the earlier consent dated 14/12/2022 and which had resulted into the Further Amended Certificate of Confirmation of Grant issued on 15/03/2023 and which earlier consent was never challenged. I will not therefore interfere with the said earlier Further Amended Certificate of Confirmation of Grant issued on 15/03/2023.

Final Orders

42. In the premises, the 1st Applicant’s Notice of Motion dated 14/04/2023 and the 2nd Applicant’s Notice of Motion dated 15/05/2023 partially succeed and to the extent and terms which I order as follows:
 - i. The order granted herein on 28/03/2023 allowing the Respondent’s Summons for Rectification of Grant, dated 28/03/2023, is hereby set aside in its entirety and/or vacated.
 - ii. Consequently, the Further Amended Certificate of Confirmation of Grant issued herein on 30/03/2023 is also hereby set aside, nullified, revoked and/or cancelled together with all actions or steps undertaken or implemented pursuant thereto or on the basis thereof.
 - iii. For avoidance of doubt therefore, the Grant that now remains in force or reverts to its validity is the Further Amended Certificate of Confirmation of Grant issued herein on 15/03/2023.
 - iv. The Respondent’s said Summons for Rectification of Grant, dated 28/03/2023, be now fixed for inter partes hearing.
 - v. The parties are however at liberty to enter into discussions with the aim of reaching a settlement over the matters or dispute herein.
 - vi. This being a family matter, I make no order on costs

DELIVERED, DATED AND SIGNED AT ELDORET THIS 5TH DAY OF JULY 2024

.....

WANANDA J. R. ANURO

JUDGE

Delivered in the Presence of:



Chemwok for 2nd Applicant – Mariam Chepkosgei Magut

N/A for other parties

Court Assistant: Brian Kimathi

