



In re Estate of Ahmed Ali Fareh Maktari (Deceased) (Succession Cause 245 of 1998) [2023] KEHC 664 (KLR) (10 February 2023) (Ruling)

Neutral citation: [2023] KEHC 664 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 245 OF 1998
RN NYAKUNDI, J
FEBRUARY 10, 2023
IN THE MATTER OF THE ESTATE OF AHMED ALI FAREH MAKTARI
(DECEASED)
AND
IN THE MATTER OF AN APPLICATION FOR REVOCATION OF
RECTIFIED GRANT ISSUED ON 22ND OCTOBER, 2018**

BETWEEN

**SOFIA MOHAMMED ALI 1ST OBJECTOR
FARIDA MOHAMMED ALI 2ND OBJECTOR**

AND

**ABDUL K. AHMED ALI 1ST ADMINISTRATOR
GHAYA AHMED ALI 2ND ADMINISTRATOR
ABDALLA AHMED ALI 3RD ADMINISTRATOR
SHARIFA AHMED ALI 4TH ADMINISTRATOR**

RULING

1. Before me are Summons dated 13th September, 2021 filed by the Objectors/Applicants herein in which they seek orders: -

- 1) Spent.
- 2) That the Honourable be caused to issue an order for stay of operation of the amended confirmed grant dated 16th October, 2018 and issued on 22nd



October, 2018 pending the hearing and determination of the application interpartes.

- 3) That the Honourable Court be pleased to issue an order of stay of operation of the amended granted dated 16th October, 2018 and issued on 22nd October, 2018 pending the hearing and determination of this cause.
 - 4) That the rectified granted dated 22nd October, 2018 issued to Abdul K. Ahmed Ali, Ghaya Ahmed Ali, Abdalla Ahmed Ali and Sharifa Ahmed Ali be revoked and or annulled and the Court be pleased to order for the inclusion of the beneficiaries in Eldoret Municipality/Block/5/221 in the cause herein.
 - 5) That a fresh valuation be carried out by a Government Surveyor on Eldoret Municipality/Block5/221 and the valuation report be filed before the Court to validate the sale to a third party and the proceeds of the sale be divided equally among the beneficiaries.
 - 6) That the Honourable Court be pleased to issue any further orders as it deems just.
 - 7) That costs of this application be provided for.
2. The application premised on the grounds therein and it is further supported by the affidavit sworn Sofia Mohammed Ali, on 10th September, 2021.

The Objectors’/ Applicant’s Case

3. The Objectors’ case is that they are daughters of the late Mohammed Ahmed Ali. That upon the demise of the deceased herein, the said Mohammed Ahmed Ali was a beneficiary of his estate.
4. The Objectors deposed that the family of the deceased herein carried out a comprehensive arbitration process vide the Muslim Association, Eldoret Mosque Committee and it was resolved on 10th February, 2005 that the late Mohammed Ahmed Ali, would have a share in parcel of land known as Eldoret Municipality/Block/5/221** which report was adopted by the Court.
5. The Objectors contend that the point of extraction of the confirmed and rectified grant of letters of administration that was issued on 8th February, 2017 and 16th October, 2018, their late father’s name, Mohammed Ahmed Ali was excluded and that their names were not substitute in place of their fathers and that they exclude from parcel of land known as Eldoret Municipality/Block/5/221 which was to be sold and the proceeds therefrom were to be shared equally amongst the beneficiaries of the deceased herein, the late father’s share being inclusive.
6. The Objectors maintain that confirmation or rectification of grant needs to be done when all the beneficiaries of the estate of the deceased are present in Court. They contend that they were informed by the Administrators herein despite of having been in communication with them.
7. The Objectors contend that the confirmation and rectification of grant of letters of administration issued on 8th February, 2017 and 16th October, 2018 respectively in respect to their grandfather’s estate were obtained through misrepresentation of material information by the Administrators herein regarding the said estate and the beneficiaries thereto and to their exclusion. That the Administrators herein removed the name of the Objectors’ father from the rectified grant, being the basis of their exclusion.



8. The Objectors further contend that as per the schedule in the amended certificate of confirmation of grant issued on 22nd October, 2018, Najib Mohammed Shamsan, who is their cousin was allocated a share as a beneficiary of the estate on behalf of his late mother Rukia Ahmed Ali but they excluded from their share in parcel of land known as Eldoret Municipality/Block/5/221 which was contrary to the arbitration report.
9. The Objectors further deposed that the Administrators herein are currently on the verge of selling the suit property which is contrary to the arbitration recommendation that were rendered by the Muslim Association Eldoret Mosque Committee which was tabled before the Kadhi's Court on 15th October, 1999.
10. The Objectors are apprehensive that the suit property will be sold off without their consent as equal beneficiaries of their late grandfather's estate. The Objectors want the Court to nullify the rectified grant and instead directed that a fresh mode of distribution to be issued as per the arbitration report.
11. The Objectors maintain that as per the order of priority that is envisaged by Section 29 of the Law of Succession, they automatically fit their deceased father's place as he was a son to the deceased herein.
12. The Objectors maintain that the grant and the confirmation was thus obtained by means of untrue allegation and concealment of facts essential to this succession cause. That where a grant was obtained through fraudulent means or concealment of material facts or making of false statements then the Court can on its own motion or by application by the parties revoke the said grant.

The 1st Respondents' Case

13. In response to the said application, Abdul K. Ahmed K, swore an affidavit dated in which he deposed that following the demise of the deceased herein, all the beneficiaries of the estate of the deceased signed a written resolution appointing the Administrators herein. That the Administrators herein were issued with the grant of letters of administration dated 3rd March, 2010.
14. He further deposed that on 21st March, July 1999 the Court directed that the issue of distribution of the estate of the deceased be referred for arbitration to Muslim Elders upon request being made by the beneficiaries herein.
15. The 1st Respondent maintains that the estate of the deceased was then distributed to the respective beneficiaries as per the arbitration proceedings of the Muslim Association dated 26th September, 1999 which was adopted by the Kadhi's Court on 15th October, 1999 in Eldoret Kadhi's Court Civil Suit No.4 of 1999. That the arbitration resolutions on distribution of the estate of the deceased was codified in the Muslim Association letter dated 10th February, 2005 which was addressed to the Registrar of this Honourable Court. That the distribution of the estate was also codified in the order of the Kadhi's Court dated 16th May, 2016.
16. The 1st Respondent further deposed that the parcel in dispute being Eldoret Municipality/Block/5/221 was distributed to four beneficiaries namely; Sharifa Ahmed Ali, Ghaya Ahmed Ali, Rukaya Ahmed Ali and Mohammed Ahmed Ali. That the said parcel of land is developed with rental houses and that rental income accruing therefrom ought to be shared equally between the following beneficiaries;
 1. Sharifa Ahmed Ali
 2. Ghaya Ahmed Ali
 3. 4 Children of the late Rukiya Ahmed Ali



4. Widow/Wife and 6 Children of the late Mohammed Ahmed Ali
17. The 1st Respondent further confirmed that Mohammed Ahmed Ali, the Objectors' father died on 25th January, 2016. That on 17th February, 2016, the 1st Respondent together with two other co-administrators being Abdalla Ahmed Ali, Sharifa Ahmed prepared and filed Summons for confirmation of grant as Ghaya Ahmed Ali, was away in Nairobi.
18. The 1st Respondent is surprised to learn that instead of pursuing the joint Summons for Confirmation Grant, Sharifa Ahmed Ali, the fourth Respondent herein decided to unilaterally and clandestinely prepare and file in Court different summons dated 17th February, 2016 without involving other Administrators which conduct was unprocedural, fraudulent and unlawful. That a perusal of the affidavit of Sharifa Ahmed Ali in support of the Summons dated 17th February, 2016, clearly confirms that she deliberately omitted to include the share of Mohammed Ahmed Ali over parcel of land know as Eldoret Municipality/Block/5/221.
19. The 1st Respondent contends that Sharifa Ahmed Ali clearly misled the court into issuing the impugned Certificate of confirmation of Grant dated 8th February, 2017 and the amended Certificate of Confirmation of Grant issued on 22nd October, 2018 which erroneously omitted the share of Mohammed Ahmed Ali, over the suit property.
20. The 1st Respondent maintains he was neither served with the Summons for Confirmation of Grant dated 17th September, 2016 filed by Sharifa Ahmed Ali nor was he served with Summons for rectification of Certificate of Grant dated 17th November, 2017 filed by Abdalla Ahmed Ali, and that he only came to learn of their existence upon being served with the Summons dated 13th September, 2021. That he was also not served with the any hearing notice for the Summons for Confirmation of grant and or Summons for rectification of the Confirmation of Grant.
21. According to the 1st Respondent, as an Administrator he has not been involved in the unlawful or fraudulent acts with respect to the administration and distribution of the estate of the deceased.
22. The 1st Respondent maintain that the estate of the deceased has been substantially distributed to the respective beneficiaries in view of the assets in Kenya and the only assets that are yet to be distributed are as follows;
- 1) 2 plots situated in Aden Sheikh Othman Saeed Street Yemen
 - 2) 18 plots situated in Sanaa, Yemen with titles in the custody of Kadhi's Court, Eldoret.
23. In addition, the 1st Respondent deposed that he is aware that most of the beneficiaries of the estate of the deceased have since disposed off their respective share to third parties.

The 2nd Respondent's Case

24. In response to the application, Ghaya Amhed Ali, swore a Replying Affidavit dated 22nd October, 2021.
25. The 2nd Respondent's position is that, she is a stranger to the averments by the Applicants herein.
26. The 2nd Respondent maintains that the Objectors herein have failed to disclose that they are not the only daughters of the late Mohammed Ahmed Ali. That the late Mohammed Ahmed Ali had other daughters namely; Leila Mohammed Ali, Dalila Mohammed Alia, Nuru Mohammed Ali and Khalila Mohammed Ali who are also beneficiaries of the estate of Mohammed Ahmed Ali.



27. The 2nd Respondent confirmed that the estate of the deceased herein was referred to the Muslim Association Eldoret Mosque Committee and a resolution was passed. That he actively participated in the said proceedings and that the Committee arrived at binding recommendations that were later adopted by the Kadhi's Court.
28. The 2nd Respondent contends that she never participated in any court proceedings for the issuance of the letters of grant, neither did he participate in the process of acquiring the Certificate for Confirmation of Grant. That a copy of the Summons for Confirmation of Grant was only given to her by one Nagib Mohammed Shamsan, sometime in the year 2017, after court proceedings were concluded. Further, that neither did she participate in the process of making the application for the rectification and or amendment of the Certificate of Confirmation of grant.
29. The 2nd Respondent however maintains that a perusal of the application for Confirmation of grant discloses that the Applicants therein had attached the binding resolution from the Muslim Association Eldoret Mosque Committee that the Honourable Court ought to have adopted.
30. According to the 2nd Respondent the omission of the name of the late Mohammed Ahmed Ali, from the share of Eldoret Municipality/Block/5/221 was an error on the part of the Court. That as evidenced in the said application it was only Abdalla Ahmed Ali, and Sharifa Ahmed Ali who made the purported application dated 17th November 2017 for rectification of grant and no other administrator was part of it. That the aforementioned Administrators alleged to court that they had the authority to file the said application on behalf of the other co-administrators without any evidence that they had obtained their consent to do so.
31. The 2nd Respondent's position therefore is that she therefore a stranger to the Applicant's allegations that the Certificate of grant dated 8th September, 2017 and the amended Certificate of Confirmation of grant dated 22nd October, 2018 was obtained through misrepresentation of material information regarding the estate of the deceased. The 2nd Respondent further maintains that she is not aware of the fraudulent removal of the late Mohammed Ahmed Ali's interest, neither is she aware of the fraudulent inclusion of Nagib Mohammed Shamsan.
32. The 2nd Respondent maintains that the Court ought to have called for the consent of the other beneficiaries of the estate of the deceased before issuance of the rectified grant dated 22nd October, 2018. That therefore, the process of issuance of the rectified granted dated 22nd October, 2018 is marred with irregularities that go to the very root of the matter thus calling for the revocation of the said amended grant.
33. The 2nd Respondent maintains that the Applicants herein have not proved any fraudulent actions on his part and such their averments remain to be mere allegations.
34. The 2nd Respondent faults the Court for having entertained the application for rectification and issuance of the purported Certificate of confirmation of grant without the consent of the other co-administrators. That the purported amended certificate of confirmation of grant dated 22nd October, 2018 ought to be revoked as due process was never followed.
35. According to the 2nd Respondent an error on the face of a document should not warrant the revocation of the Certificate of Confirmation of granted dated 8th February, 2017 but rather the Court only ought to rectify the same to include the interest of the late Mohammed Ahmed Ali in parcel of land known as Eldoret Municipality/Block/5/221. That the property in question has not been interfered with and that the 2nd Respondent is a stranger to the averments by Objectors that the Administrators herein are at the verge of selling it. The 2nd Respondent maintains that she is in possession of the original title and



has not been informed of any intention to sell. Further that there is a caution that has been place on the said property by Nagib Mohammed Shamsan. However, the 2nd Respondent maintains that attempts to conduct a search on the suit land so as to confirm its current status have been futile as the file cannot be traced at the Nairobi land Registry.

36. The 2nd Respondent further deposed that during the lifetime of the Mohammed Ahmed Ali, he collected rent from the suit property from the year 1999-2009 when Abdul Ahmed Ali took over the collection of the rent to the year 2012. That during his time for collection for about (10) years, the late Mohammed Ahmed Ali, did not render accounts to the rest of the Administrators with transparency neither did he distribute the rent collected therein to other beneficiaries of the property. That he only accounted for the period between 1999 to 2001 where he provided statement of accounts.
37. According to the 2nd Respondent, when she took over the collection in the year 2013, there was no increment in the rents charged and that he was only collecting kshs.347,000/= per year. The 2nd Respondent urged the Court to find that the late Mohammed Ahmed Ali's interest dissipated having collected the above sums of money from the year 1999-2009. That in fact he collected over and above his share and thus his heirs have no interest in the said property.
38. Finally, the 2nd Respondent deposed that currently the rent from the suit property is being collected by Sharifa Ahmed Ali. That in the year 2016, she opened a ban account in her names and served notice upon the tenants to pay the rent directly to her account. The 2nd Respondent contends that Sharifa Mohammed Ali, has been collected has been collecting rent from the said premises but has never rendered any accounts to him nor shared any proceeds arising therefrom. Further that she has been kept in the dark regarding the collection of the rent from the suit property and the distribution of the said proceeds.

The 4th Respondent's Case

39. The application is opposed by Sharifa Mohammed Ali, the 4th Respondent *vide* her Replying Affidavit dated 21st October, 2021.
40. According to the 4th Respondent, whereas the Objectors herein are daughters of the late Mohammed Ahmed Ali, they are not property clothed with the legal capacity to instate these proceedings as they have not taken any form grant representation for their father's estate.
41. The 4th Respondent contends that being a member of the family of the deceased, she never participated in the purported arbitration through the Muslim Association. That the said arbitration was never sanctioned by Court and that Succession proceedings were on going in Court and that some male beneficiaries bypassed the Court and rushed to the Muslim Association for arbitration. That the said arbitration was done by the following brother at the exclusion of the sisters;
 1. Said Ahmed Ali (Deceased)
 2. Mohammed Ahmed Ali (Deceased)
 3. Abdul Ahmed Ali
 4. Taher Ahmed Ali
 5. Abdalla Ahmed Ali
42. Further that the male beneficiaries signed for all the female beneficiaries.
43. The 4th Respondent maintains that at no point was the arbitration decision ever adopted by the Court.



44. The 4th Respondent maintains that the Objectors' father was adequately provided for under the Amended Certificate of confirmation of grant issued on 22nd October, 2018 in parcel of land known as Kakamega Municipality 1/24.
45. The 4th Respondent maintains that Nagib Mohammed Shamsan, is a son and an Administrator of the estate of Rukhaya Ahmed Ali, who is one of the beneficiaries allocated parcel of land known as Eldoret Municipality/Block/5/221 in equal shares with her and the 3rd Respondent.
46. The 4th Respondent contends that this Court is not bound by the decision of the Muslim Association which purported to allocate the Applicants' father two properties. Further the 4th Respondent maintains that the said decision was illegitimate as it reached by the Muslim Committee, a body that is not gazetted as quasi-judicial organ at the exclusion of the female beneficiaries.
47. The 4th Respondent maintains that this Court ordered that parcel of land known as Eldoret Municipality/Block/5/221 be valued and sold and that the proceeds therefrom be shared equally amongst the 4th Respondent, the 3rd Respondent and Nagib Mohammed Shamsan.
48. According to the 4th Respondent, the matters in issue before the Kadhi's Court were civil in nature and had nothing to do with the administration of the estate of the deceased herein.
49. The 4th Respondent maintains that from onset the Applicants' father was part of the entire process of obtaining the grant of letters of administration with respect to the estate of the deceased and that allegations of fraud, misrepresentation or concealment of facts ought to be proved by the Objectors herein. The 4th Respondent maintains that all the due processes were followed in obtaining the grant and in amending the Certificate of Confirmation of grant.
50. In view of the foregoing, the 4th Respondent urged that this instant application is therefore frivolous, vexatious and gross abuse of Court process and ought to be dismissed with costs.
51. The application was canvassed vide written submissions. The Objectors filed submissions dated 1st March, 2022. The 1st and 2nd Respondents equally filed their submissions dated 9th March, 2022 and 28th April, 2022 respectively.

Determination

52. The issue for determination herein is whether the Applicant's application meets the threshold for the revocation of a grant within the meaning of Section 76 of the *Law of Succession Act*.

Section 76 of the *Law of Succession Act* 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.”

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.”

53. A Petitioner for grant of Letters of Administration will be deemed *prima facie* to have obtained a fraudulently grant, with respect of the state if he or she fails to issue notice to any of the dependents or beneficiaries to the estate of the deceased, including obtaining their necessary consents as mandatory



provided in the Succession Act. Equally the grant of Letters turn out to be defective if the evidence shows that it was issued in error, misrepresentation of facts, concealment or nondisclosure of material evidence relevant and admissible for the making of the grant of representation.

54. The Applicants herein have invited the court to revoke the grant of letters of administration for the reasons that the Respondents obtained the confirmed and rectified grant by way of concealment of a material fact that their late father, Mohammed Ahmed Ali, was also a beneficiary in all that parcel of land known as Eldoret Municipality/Block 5/221 and that his name was omitted from the said share.
55. Section 29 of the Law of Succession clearly sets out an account on the definition and hierarchy of dependents of the deceased who are bound to benefit from the estate, subsisting at the time of his or her demise. Secondary, Section 35, 37, 38 and 39 of the said Act fundamentally and whether any contradictions sets out the order of priority of the persons entitled to inherit the deceased estate. The provisions point out first it is the spouse or spouses and their children. The Applicants are granddaughters of the late Ahmed Ali Fareh Maktari the deceased herein. Their late father Mohammed Ahmed Ali was one of the sons of the deceased and therefore they do not automatically come first in view of the hierarchy that was envisaged under Section 29 of the Law of Succession Act but they come in as the representatives of their late father's estate.
56. In the case of Elizabeth Wairimu Thimba & 2 others v Wilfred Njogu Mbutia & 2 others [2014] eKLR, Emukule J held that:

“In Law of Succession (Law Africa Publishers), William Musyoka expounds on the provisions of Section 41 in terms of the rights of grandchildren at page 102 -

“The rule of substitution of a grandchild for his or her parent in all cases of intestacy where the parent dies before the intestate is known as the principle of representation. The law on this is section 41. If a child of the intestate has predeceased the intestate or dies before attaining the age of eighteen years, then that child's issue alive or *en ventre sa mere* at the date of the intestate's death will take in equal shares per stirpes contingent on attaining the age of majority, or if female marrying under that age.

The term per stirpes is defined in the Black's Law Dictionary, 9th Ed to mean “proportionately divided between beneficiaries according to their deceased ancestor's share. “Therefore, the grandchildren of the intestate are only entitled to take between them equally the share which their parent would have received had he not predeceased the intestate but on condition that at the time of his death whether before or after the intestate, he had attained eighteen years or if female, married under that age. Therefore, reasonable provision as per the law refers to an equal share of what their parent's portion would have been.”

57. From the materials placed on record there is no doubt that this Court on 3rd March, 2010 appointed the following persons to be the Administrators of the deceased's estate;
58. It is also not in dispute matters relating to the distribution of the estate of the deceased herein were on 14th July, 2019, referred to the Muslim Elders/ Scholars at the Eldoret Jamia Mosque and a resolution was arrived at on how estate of the deceased was to be distributed amongst his beneficiaries.
59. The only bone of contention in this particular cause is the distribution of parcel of land known as Eldoret/municipality Block 5/221. I have carefully read the averments deposed by the various parties herein and one thing that is not dispute is that the late Mohammed Ahmed Ali, was equally a beneficiary of the estate of the deceased.



60. From the copy of Summons for Confirmation of Grant dated 17th February, 2016, filed by Sharifa Ahmed Ali being one of the co-administrators of the estate of the deceased, she clearly acknowledges in prayer (2) of the said Summons that the confirmation of the grant that was made on 3rd March, 2010 be as per the determination in the arbitration dated 10th February, 2005, that was done by the Muslim Association, Eldoret Mosque Committee Elders. The same position is further evidenced at paragraphs (3), (4), (5) and (6) of her affidavit in support of the said summons dated 17th February, 2016. However, surprisingly at paragraph (9) of said affidavit, there is a new turn of events, she deliberately omits parcel of land known as Eldoret/ Municipality/ Block 5/221 from part of the assets that were to be inherited by the late Mohammed Ahmed Ali. This being the genesis of the dispute that is currently before this court.
61. Following which the Court goes on to issue a Certificate of Confirmation of Grant on 8th February, 2017 in accordance with the proposal that had been made by Sharifa Ahmed Ali, excluding the late Mohammed Ahmed Ali from his share in parcel of land known as Eldoret/ Municipality/ Block 5/221.
62. With the grant of letters of administration issued on 3rd March, 2010 having been confirmed on 8th February, 2017, Abdalla Ahmed Ali, the 3rd Respondent now apply to court *vide* Summons dated 17th November, 2017 seeking to rectify the said grant. His application is solely anchored on two grounds namely; that the name of Rukiya Ahmed Ali, be substituted with name of Nagib Mohammed Shamsan as her legal representative and that the property known as Eldoret Municipality/Block 5/221 be disposed off upon valuation and the proceeds thereon be shared equally among the three beneficiaries as per the confirmation being: Sharifa Ahmed Ali, Ghaya Ahmed Ali and Nagib Mohammed Shamsan. Consequently, the Court issued an amended Certificate of Confirmation of Grant dated 22nd October, 2019.
63. I take judicial notice that this is a very old matter. From the evidence tendered before this Court, the deceased herein was survived by the following persons;
- 1) Taher Ahmed Ali – Son
 - 2) Abdul Khaliq Ahmed Ali- Son
 - 3) Mohammed Ahmed Ali – Son (deceased)
 - 4) Abdalla Ahmed Ali- Son
 - 5) Said Ahmed Ali- Son (deceased)
 - 6) Zahra Ahmed Ali – Daughter (deceased)
 - 7) Rashida Ahmed Ali – Daughter (deceased)
 - 8) Ghaya Ahmed Ali – Daughter
 - 9) Rukiya Ahmed Ali – Daughter (deceased)
 - 10) Shariffa Ahmed Ali- Daughter
 - 11) Meski Ahmed Ali – Daughter.
64. I have carefully perused the arbitration proceedings dated 26th, September, 1999, that were conducted by the Muslim Elders/Scholars at the Eldoret Jamia Mosque and I must point out that from the proceedings therein all the beneficiaries of the deceased were provided for and by that mean both male and female offspring.



65. While appreciating that equity does not necessarily mean equality at all times, the Muslim Elders made sure that each of the beneficiaries got a share of the said estate.
66. In this matter it surprising that although there are were (4) nominated administrators, only two seem to have been actively involved in the matter. At the point of confirmation of the said grant, there nothing to show that consent was in fact obtained from the rest of the beneficiaries of the deceased. Thus, in the circumstances of this case, I find it difficult to conceive how the Sharifa Ahmed Ali, the 4th Respondent went ahead to obtain Letters of Grant of Administration in absence of notice and consent to the rest of the administrators and the beneficiaries of the deceased.
67. The 4th Respondent, unilaterally omitted the name of the late Mohammed Ahmed Ali from his share in parcel of land known as Eldoret Municipality/ Block 5/221 without any justifiable cause. It is my finding therefore that the grant of letters of administration dated 3rd March, 2010 and confirmed on 8th February, 2017 and was rectified on 16th October, 2018, was obtained through misrepresentation of facts and material nondisclosure of facts relevant to this cause.
68. Regarding the allegations of fraud, no evidence has been tendered before this Court to support the said assertions.
69. The 2nd Respondent 's main contention is that the late Mohammed Ahmed Ali's interest in parcel of land known as Eldoret Municipality/ Block 5/221, has since been extinguished as he collected rent from the said premises but did not render accounts or distribute proceeds arising therefrom to the rest of the beneficiaries. The 2nd Respondent has also laid similar allegations against the 4th Respondent but has failed to substantiate any of the said allegations.
70. Bearing in mind that parcel of land known as Eldoret Municipality/ Block 5/221 is the only bone of contention in this matter. I hereby direct that the Objectors'/Applicants' being the representatives of the estate of the late Mohammed Ahmed Ali, shall represent him in his share in the property known as Eldoret Municipality/ Block 5/221, together with Ghaya Ahmed Ali, the 2nd Respondent, Sharifa Ahmed Ali, the 4th Respondent and Nagib Mohammed Shamsan.
71. In the end, I find merit in the Summons dated 13th September, 2021 and I thus hereby direct as follows:
- 1) The letters of the confirmed grant issued on 8th February, 2017 and rectified on 16th October, 2018 is hereby annulled on ground of an omission which left out the name of late Mohammed Ahmed Ali (deceased) from his share in parcel of land known as Eldoret Municipality/ Block 5/221. Therefore, the grant was obtained by making false statement and concealing material facts.
 - 2) Secondly, Sharifa Ahmed Ali, the 4th Respondent herein, shall render a true Probate account for the property known as Eldoret Municipality/ Block 5/221 to the court within six months as expressly provided for in Section 83 1 (G) of the *Law of Succession Act*.
 - 3) Thirdly, the proceeds arising from the management of parcel of land known as Eldoret Municipality/ Block 5/221 shall be used to pay a Government Valuer for purposes of undertaking valuation of the aforementioned property and a report shall be prepared and filed in Court within the next (60) days so as enable the Court make a determination on how the said property shall be distributed amongst the (4) beneficiaries of the deceased.



- 4) Fourthly, Ghaya Ahmed Ali, the 2nd Respondent shall surrender the title to parcel of land known as Eldoret Municipality/Block 5/221 in Court within the next (14) days from the date of this ruling for safe custody.
 - 5) Finally, status quo on parcel of land known as ELdoret Municipality/ Block 5/221 shall be maintained.
 - 6) Each party shall bear their own costs. This being a family matter involving family members.
72. It is noteworthy, to mention that issues of any cautions placed on parcel of land known as Eldoret Municipality/ Block 5/221 shall be addressed once the Government valuer has submitted his or her report in Court.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 10TH DAY OF FEBRUARY, 2023.

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R. NYAKUNDI

JUDGE

