



**In re Estate of Bernard Mwangi Wanjohi (Deceased) (Succession Cause 96 of 2013) [2023] KEHC 23491 (KLR) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23491 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 96 OF 2013  
JRA WANANDA, J  
OCTOBER 13, 2023**

**IN THE MATTER OF THE ESTATE OF BERNARD MWANGI WANJOHI**

**BETWEEN**

**WAIRIMU NGUGI ..... PETITIONER**

**AND**

**LUCY WANJIKU WANJUI ..... OBJECTOR**

**Misrepresentations during issuance of a grant of letters of administration not sufficient to justify revocation and order for re-distribution of the estate.**

*The case concerned an application for the revocation of a Grant of Letters of Administration that had been obtained by the petitioner/respondent and confirmed in 2014. The objector/applicant, a beneficiary of the estate and sister to the petitioner, challenged the administration of the estate, alleging fraud and misrepresentation by the petitioner. The court, after reviewing the case, found that the petitioner had indeed misrepresented the facts but did not revoke the grant due to exceptional circumstances, instead ordering an amended distribution of the estate.*

Reported by John Ribia

**Law of Succession** – grant of letters of administration – effect of misrepresentation of facts in grant of letters of administration – effect of not being active in succession proceedings – effect of inordinate delay in filing an objection to the grant of letters of administration - whether grant of letters of administration that was obtained through fraud, misrepresentation, or concealment of material facts was should be revoked - whether misrepresentations made in the process leading to issuance of a grant of letters of administration was by themselves sufficient to justify revocation of the grant and to order for re-distribution of an estate - what was the effect of inordinate delay by an objector in filing an application for revocation of grant of letters of administration - whether in succession proceedings, where an estate had multiple dependents but only two were active in succession proceedings, the court could award the estate to the active persons - Law of Succession Act (Cap 160) sections 47, 51, 66, 67, 68, and 76; Probate & Administration Rules, 2015 (cap 160, Sub Leg) rules 7(1)(e), 7(7), 17, 26, 44(1), and 73.



## **Brief facts**

The deceased died on December 31, 2003. A Grant of Letters of Administration was issued on June 6, 2013, and confirmed on November 6, 2014. The estate comprised two land parcels in Eldoret Municipality and in Kapsoya Estate, Eldoret. The petitioner and respondent were sisters and daughters of the deceased.

The Objector sought to annul the Grant, claiming that the petitioner had fraudulently obtained it by concealing the existence of other beneficiaries and misrepresenting the facts before the court. She also alleged that the petitioner intended to dispose of the property without consulting the other beneficiaries.

## **Issues**

- i. Whether grant of letters of administration that was obtained through fraud, misrepresentation, or concealment of material facts was should be revoked.
- ii. Whether misrepresentations made in the process leading to issuance of a grant of letters of administration was by themselves sufficient to justify revocation of the grant and to order for re-distribution of an estate.
- iii. What was the effect of inordinate delay by an objector in filing an application for revocation of grant of letters of administration?
- iv. Whether in succession proceedings, where an estate had multiple dependents but only two were active in succession proceedings, the court could award the estate to the active persons.

## **Held**

1. There were no consents signed by the objector acceding to the filing of the petition in breach of section 51 of the Law of Succession Act and rules 7(1)(e)(i), 26(1), and (2) of the Probate and Administration Rules.
2. Where representation was applied for by a person with equal or lesser right to others, the petitioner was expected to notify these other persons of the filing of the petition. The other persons would then be at liberty to participate in the proceedings or renounce their rights to administration or sign consents in Forms 38 or 39 acceding to the filing of the petition. Where such consent or renunciation had not been filed, the petitioner was required to file an affidavit confirming that he/she duly notified these other persons. The petitioner misrepresented the facts by stating that she was the only surviving child of the deceased, thereby excluding other beneficiaries such as the petitioner's mother, the objector and the other children of their deceased siblings.
3. The petitioner was required, by law, to have laid before the court the truth, the names of all survivors despite the existence of any wrangles, disagreement and reluctance from them to act, if at all. The court required truthful and full disclosure of information in order to reach a judicious decision. Instead, she deliberately deceived the court and committed perjury. The proceedings to obtain the grant were defective in substance.
4. Section 76 of the Law of Succession Act was discretionary in that it gave the court discretion whether to revoke or annul a grant. It was not the position that any breach or violation must always or automatically lead to revocation of a grant.
5. Although the petitioner misrepresented material facts, the court chose not to revoke the grant due to the substantial time that had passed since its issuance and the confirmation in 2014. The exceptional circumstances being that it had been 20 years since the deceased passed on and 9 years since the grant was issued. The court was not convinced that during all that time, the objector was never aware of the succession proceedings and the orders given therein. The objector resided in the homestead since their father died in the year 2013. The objector was not being candid. There had been unexplained and inordinate delay on the part of the objector in enforcing her rights. Equity aids the vigilant, not the indolent.
6. It will be in the interest of justice to revoke the Grant and send the protagonists back to the drawing board. However, the objector was entitled to inherit a portion of the estate. Since no other family



- member, apart from the objector had come forward to claim a share in the estate, it was fair to share out the estate between the petitioner and the objector.
7. Since the petitioner took the lead in safeguarding and protecting the estate over the years and had in the process, incurred and spent her personal resources, it would only be fair that she retained the bigger portion rather than sharing equally with the objector.
  8. The Court acknowledged that there had been a significant delay on the part of the Objector in asserting her rights but found that this did not preclude her from receiving a share of the estate.

*Application partly allowed.*

### **Orders**

- i. *The Grant confirmed herein on 6/11/2014 and/or the consequent Certificate of Confirmation arising therefrom was reviewed, rectified and/or amended in the following terms:*
  1. *The estate comprising of the parcels of land described as Eldoret Municipality and the house situated at Kapsoya Estate, Eldoret shall be shared out between the petitioner and the objector, with the petitioner retaining 60% thereof and the objector inheriting 40%.*
  2. *Before the amended or rectified Certificate of Confirmation was issued and since there were two properties, the petitioner and the objector were given a period of sixty (60) days from the date of the instant judgment, to discuss and agreed on the manner and/or formula in which they wished to implement the 60:40 distribution stated above. In the event of failure to agree, the court shall proceed to determine the same.*
  3. *At the time of reading of the ruling, a mention date was to be fixed for the above purpose.*
- ii. *Each party was to bear their own costs.*

### **Citations**

#### **Cases**

#### **Kenya**

1. *In re Estate of Eston Nyaga Ndirangu (Deceased)* Succession Cause 372 of 2012; [2021] KEHC 5065 (KLR) - (Followed)
2. *In re Estate of Prisca Ong'ayo Nande (Deceased)* Succession Cause 836 of 2013; [2020] KEHC 6553 (KLR) - (Followed)
3. *In re Estate of the Late Epharus Nyambura Nduati (Deceased)* Succession Cause 12 of 2019; [2021] KEHC 867 (KLR) - (Followed)
4. *Kisigwa, Albert Imbuga v Recho Kawai Kisigwa* Succession Cause 158 of 2000; [2016] KEHC 1528 (KLR) - (Followed)
5. *Pymto & another v Lyonn* Succession Cause 57 of 2010; [2014] KEHC 7543 (KLR) - (Followed)

#### **Statutes**

#### **Kenya**

1. Law of Succession Act (cap 160) sections 47, 51, 66, 67, 68, 76 - (Interpreted)
2. Probate & Administration Rules, 2015 (cap 160 Sub Leg) rules 7(1)(e)(i)(7); 17; 26(1)(2); 44(1); 73 - (Interpreted)

#### **Advocates**

None mentioned

## **RULING**

1. This deceased died on 31/12/2003. The grant was given on 6/06/2013 and was then subsequently confirmed on 6/11/2014. The estate comprises of two land parcels, namely, Eldoret Municipality/Block 11/695 and Plot No. HS situate at Kapsoya Estate, Eldoret.



2. Now, before court is the application brought by way of the Summons dated 8/02/2023 and which seeks the following orders:
  - i. Spent.
  - ii. That the grant of Letters of Administration confirmed herein be annulled and/or revoked forthwith.
  - iii. That any title deeds issued on the ground of misrepresentation and/or non-disclosure of material facts in favour of the petitioner and other beneficiaries be cancelled.
  - iv. That the honourable court be pleased to distribute the estate fairly and equitably.
  - v. That costs of this application be provided for.
3. The application is filed through Messrs Cherono J & Co. Advocates and is stated to be brought under section 47 and 76 of the Law of Succession Act and sections 26, 44(1) and 73 of the Probate & Administration Rules. The grounds of the application are as set out on the face thereon and it is supported by the affidavit sworn by the objector-applicant.
4. In her affidavit, the objector has deponed that she is one of the beneficiaries of the estate, being a daughter of the deceased, the petitioner is her biological sister, the grant was obtained fraudulently by the making of a false statements or by concealment from the court of some material facts, the grant was obtained by means of untrue allegations of facts essential in points of law to justify the grant, particularly that the petitioner failed to disclose or seek consent to apply for grant from the survivors who had priority to apply, the petitioner deliberately omitted/or overlooked the consent of the beneficiaries in the schedule of assets, the petitioner excluded their elderly mother, their late brother's children and the objector from getting a share in the estate, the objector has been residing on their late father's land together with the petitioner but the objector has recently noticed that some people have been frequently visiting the said land with the intention of buying the same from the petitioner and that if the petitioner disposes of the land which they are residing on, they will be left homeless.

### **Petitioner's Response**

5. The application is opposed by the petitioner vide her replying affidavit filed on 27/03/2023 through Messrs Seneti & Oburu Associates Advocates. In the affidavit, the petitioner conceded that indeed the objector is her sister and one of the surviving children of the deceased, upon the death of the deceased (their father), their old mother continued to take care of them, at the time, the title for the suit property had been deposited in court as security in a case in which their elder brother was facing, the title remained in the custody of the court for 10 years until the demise of the late brother, since the process of retrieving the title required spending of money, their old mother asked all of her children to raise the money but all them declined to do so and instead stated that they were not interested in the parcel of land, upon spending the money, the petitioner retrieved the title from the court, their mother then asked the petitioner to call all the siblings to arrange for succession, the objectors' whereabouts and contacts were unknown while their only surviving brother - Mainge - and their younger sister - Virginia Wanjiru Mwangi - stated that they were not interested in the family property, their eldest brother died without any child, the mother then told the petitioner to institute succession proceedings as she was too old to go through the process, she therefore gave the petitioner her blessings to commence the proceedings, the petitioner chose to commence the proceedings knowing well that 6 months after gazetteement any person aggrieved would show up, none of the family members raised any objections or protest to the proceedings.



### **Objector's Further Affidavit**

6. On 9/05/2023, with leave of the court, the objector filed a further affidavit in which she deponed that their mother left the matrimonial home before the petitioner was born and left the objector and other siblings with their late father, the mother came back later with children, including the objector when their father died, the objector is not aware of any money spent by the petitioner to retrieve the title deed, at no time were the siblings called upon to raise money for the alleged purpose, the petitioner has not attached any evidence to prove any money she spent, the court does not charge any money to get back a security deposited in court where the accused has died, the petitioner is being dishonest since she never reached out to the objector at any time concerning commencing the succession proceedings, the objector was married but her marriage failed thus she came back to her father's homestead during his lifetime and she is the one who took care of the father until his demise, there is no point in time where she has gone missing and/or her whereabouts being unknown to family members, in 2013 when the succession cause was commenced, she was very present and occupying her father's homestead but she was not aware that the succession cause had been instituted, her brother hassan mainge was equally not aware, even if the said mainge was not interested in the property, he had the right to participate in the proceedings and confirm his position to the court, the petitioner left out all the beneficiaries of the estate and lied to the court that she was the only surviving beneficiary and that she had only one brother, namely, Njenga, who had died, her late siblings – Njenga, Mwaniki and Nyambura – left children surviving them who should have been considered in the distribution of the estate as they are equally beneficiaries after the demise of their parents, the petitioners never informed the court nor included their mother in the list of beneficiaries, much as she alleges that their mother gave her the blessings to commence the succession proceedings, being the petitioner she had the duty to include all the beneficiaries including their mother even if she were elderly, the petitioner had depicted the objector in bad faith by assuming that the siblings would definitely get to know about the gazettelement when she never sought their consent yet they had an equal right.

### **Hearing of the Application**

7. The application was canvassed by way of way of written submissions. The objector filed hers on 26/04/2023 while the Petitioner filed hers on 8/05/2023. Subsequently, on 17/05/2023, the petitioner also filed supplementary submissions.

### **Objector's Submissions**

8. Counsel for the objector reiterated the matters already set out in the objector's supporting affidavit and cited section 76 of the [Law of Succession Act](#) on the issue of revocation of grants. He also cited the cases of [Re estate of late Epharus Nyambura Nduati](#) and [Re Estate of Eston Nyaga Ndirangu](#) [2021] eKLR and stated that, in her replying affidavit, the petitioner has confirmed that indeed there were other surviving beneficiaries, including their elderly mother whereas in the affidavit in support of confirmation of grant, she declared that she was the only surviving beneficiary which amounts to concealment of facts and thus the proceedings leading to confirmation of the grant were defective in substance.

### **Petitioner's Submissions**

9. On his part, the petitioner's counsel submitted that the petitioner rightfully and with colour of right applied to be appointed administratrix of the estate, the petitioner made all efforts to locate the objector for purposes of engaging her for discussions with regard to how the estate would be administered but all such efforts bore no fruits, the averment that the petitioner deliberately omitted and/or overlooked the consent of the beneficiaries in the schedule of assets presented is misplaced since it was just and prudent



for the petitioner as a beneficiary to petition the court so as to ensure that the same does not become prone to land grabbing for lack of administration. He cited the case of *Paul Rono Pymto & Another vs Giles Tarpin Lyonnet* [2014] eKLR and submitted that when the petitioner came to court, she did so in the interest of all the beneficiaries, the court issued the grant on 6/06/2013, the objector never raised any objections, she should never be given any audience before this court and that the objector was not serious in pursuing the claim when she was required to do so.

10. Counsel then, unprocedurally in my view, introduced matters that are not contained in the objector's affidavit. Such submissions are that the petitioner having known the whereabouts of the objector, approached the objector so as to have her sign the consent form, the objector refused to sign the consent, that therefore the objector never wanted to co-operate with the petitioner. for the reasons stated, i will disregard this portion of the summons since it is prohibited for a party to "sneak in" or introduce fresh facts at the submissions stage.
11. Counsel submitted further that the court should not fall into the trap of the objector who refused to exercise her legal rights and that the objector had ample time to file a protest against confirmation which right she did not exercise. He cited the case of *re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR and also *Albert Imbuga Kisigwa v. Recho Kisigwa* 158 of 2000 (eKLR) and submitted that there exists no clear evidence of any wrongdoing shown by the objector to invoke the court to give an order for revocation and/or annulment of the grant. He submitted that the objector had the right to lodge an objection once the same was published in the Kenya Gazette and cited rule 17 of the *Probate & Administration Rules* and also section 67 and 68 of the *Law of Succession Act*. He submitted further that the objector delayed for 10 years since 2013, "delay defeats equity" and "equity aids the vigilant, not the indolent" and that the objector slept on her rights.

#### **Petitioner's Supplementary Submissions**

12. As aforesaid, with leave of the court, counsel for the petitioner filed supplementary submissions. In the same however, he almost wholly reproduced the very same Submissions already contained in his initial Submissions, including the authorities and quotations. It does not appear to that there was any relevance or need to seek leave to file the supplementary submissions in the first place.
13. The only relevant new submission added is that the law is that he who asserts a fact must prove the existence of that fact, the objector asserts that the petitioner is not the biological daughter of the deceased but she has not tendered any evidence to prove the same and that the objector has no capacity or ability to know the paternity of the petitioner. however, again, the further submissions made by counsel on this issue of paternity are also not contained in the petitioner's affidavit. I will therefore also disregard the same.

#### **Analysis and Determination**

14. Upon examining the pleadings, affidavits, submissions and the entire record, i find the issue that arises for determination in this matter to be as follows:

"Whether the objector has demonstrated sufficient material to justify revocation of the Grant of Letters of Administration confirmed herein on 6/11/2014"
15. I now proceed to analyze and answer the said Issue.



16. Section 66 of the *Law of Succession Act* sets out the order of preference to be followed in determining petitions for grant of representation. The section provides as follows:

“When a deceased has died intestate, the court shall save as otherwise expressly provided, have a final discretion, as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference:

- a) Surviving spouse or spouses with or without association of other beneficiaries’
- b) Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- c) The public trustee; and
- d) Creditors;

17. In respect to revocation of grants, section 76 of the *Law of Succession Act* provides as follows:

“Revocation or annulment of grant

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

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

18. Section 76 was expounded upon by Hon. Justice W. Musyoka in the case of *Re Estate of Prisca Ong’ayo Nande (Deceased)* [2020] eKLR where he stated as follows:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration



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

19. Regarding the issue of the absence of consents signed by the objector acceding to the filing of the petition, I have already found that there was none. In regard thereto, section 51 of the [Law of Succession Act](#) and rules 7(1)(e)(i) and 26(1) and (2) of the [Probate and Administration Rules](#) are relevant.

20. The framework for applications for grants of representation is set out in section 51 of the [Law of Succession Act](#). The relevant portions, for the purpose of this application, is subsection (2)(g), which provides as follows:

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

21. Rule 7(1)(e)(i) of the [Probate and Administration Rules](#) then provides as follows:

“ 7  
 (1) where an applicant seeks a grant of representation to the estate of a deceased person ... the application shall be by a petition... containing... the following particulars-  
 (e) in cases of total or partial intestacy –  
 (i) the names, addresses, marital state and description of all surviving spouses



and children of the deceased, or, where the deceased left no surviving spouse or child, like particulars of such person or persons who would succeed in accordance with section 39(1) of the Act.”

22. On its part, rule 26(1) and (2) provides as follows:

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

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

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



Nyaga, Kennedy Nyaga and Lucy Wanjiku Nyaga (3<sup>rd</sup> respondent). There is no consent as to the other brothers and sisters having consented to the grant being given to the 1<sup>st</sup> and 2<sup>nd</sup> respondent. It is my view therefore that the said grant was obtained pursuant to proceedings which were defective in substance. The respondents ought to have obtained consent from all the other brothers and sisters. In *Antony Karukenya Njeru v Thomas M. Njeru* [2014] eKLR, a grant of letters of administration was revoked as persons with equal priority did not consent to the petitioners therein applying for grant of letters of administration. (See also *In the Matter of the Estate of Muriranja Mboro Njiri*, Nairobi H.C. Succ. Cause No. 890 of 2003).

21. It is my considered view therefore that the failure by the respondents more so the 1<sup>st</sup> and 2<sup>nd</sup> respondents to obtain the consents from the other siblings makes the proceedings of obtaining the same to be defective in substance and the said grant ought to be revoked and a new grant issued to the applicants.”
24. There is also rule 7(7) of the *Probate & Administration Rules* which deals with cases where a person with a superior right to seek representation is reluctant to do so. The rule provides as follows:

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

  - (a) renounced his right generally to apply for grant; or
  - (b) consented in writing to the making of the grant to the applicant; or
  - (c) been issued with a citation calling upon him to renounce such right or to apply for a grant. “
25. It is therefore clear that where representation is applied for by a person with equal or lesser right to others, the petitioner is expected to notify these other persons of the filing of the petition. These other persons would then be at liberty to participate in the proceedings or renounce their rights to administration or sign consents in Forms 38 or 39 acceding to the filing of the petition. Where such consent or renunciation has not been filed, the petitioner is required to file an affidavit confirming that he/she duly notified these other persons.
26. In this instant case, both in the petition and in the summons for confirmation of grant, the petitioner stated under oath that her late father had only two children, namely, her late brother Meshack Njenga and the petitioner. The petitioner then stated that her brother Meshack Njenga was deceased even as at that time and that therefore, the petitioner was the sole survivor. The Chief’s letter attached to the petition also advanced this same account and even went further to state that the deceased, the petitioner’s father, was not married although he had the said two children. In view of the above, no evidence of notification to any family member and no consent or renunciation from any family member was presented to the court since, according to the petitioner, there were no other surviving family members.
27. From the instant application filed by the objector and the affidavits exchanged, it has now turned out that the statements made by the petitioner above were in fact false and complete misrepresentations. It has now been established that the deceased was indeed married and had several other children,



including the objector, who were never mentioned by the petitioner. It has also been established that at the time when the petition was filed, the petitioner's mother, (also mother to the objector and also widow to the deceased) and who therefore had priority over the petitioner, was still very much alive.

28. The petitioner was required, by law, to have laid before the court the truth, the names of all survivors despite the existence of any wrangles, disagreement and reluctance from them to act, if at all, the court requires truthful and full disclosure of information in order to reach a judicious decision. Instead, she deliberately deceived the court and in fact, committed perjury. Having determined that the petitioner made false statements before the court, I find that the proceedings "to obtain the grant were defective in substance".
29. Having made the above findings, the question now is whether the transgressions committed by the petitioner in the process leading to issuance of the grant are by themselves sufficient to justify revocation of the grant and order for re-distribution of the estate. This question arises because section 76 of the *Law of Succession Act* is discretionary in that it gives the Court discretion whether to revoke or annul a grant. It is not therefore the position that any breach or violation must always or automatically lead to revocation of a grant.
30. In this case I find that due to the exceptional and/or unique circumstances arising in this matter, it will not serve the interest of justice to revoke or annul the grant.
31. The exceptional circumstances arising include the fact that the deceased died in the year 2003, 20 years ago and this cause was itself filed in the year 2013, 10 years ago. The grant was then given on 6/06/2013 and was subsequently confirmed on 6/11/2014, about 9 years ago. I am not convinced that during all this time, the objector was never aware of these succession proceedings and the orders given therein. This is more so because the objector states that she has been residing in the homestead since their father died in the year 2013. I am therefore also not convinced that the objector is herself being candid. There has been unexplained and inordinate delay on the part of the objector in enforcing her rights. On this point, I agree with the objector's submission that "equity aids the vigilant, not the indolent".
32. For the said reasons, I do not think that it will be in the interest of justice to revoke the grant and send the protagonists back to the drawing board. I am however persuaded that the objector has made out a case for her entitlement to inherit and/or get a share of the estate. Since no other family member, apart from the objector, has come forward to claim a share in the estate, I believe it will be fair to share out the estate between the petitioner and the objector.
33. Since however, it is clear from the evidence that it is the petitioner who took the lead in safeguarding and protecting the estate over all these years and has, obviously, in the process, incurred and spent her personal resources, I find that it will only be fair that she retains the bigger portion rather than sharing equally with the objector.

### **Final Orders**

34. In light of the above findings, the summons dated 8/02/2023 partially succeeds and I make the following consequential orders:
  - a. The grant confirmed herein on 6/11/2014 and/or the consequent Certificate of Confirmation arising therefrom is hereby reviewed, rectified and/or amended in the following terms:
    - i. The estate comprising of the parcels of land described as Eldoret Municipality Block 11/695 and Plot No. HS 4 situate at Kapsoya Estate, Eldoret shall be shared out between the Petitioner and the objector, with the petitioner retaining 60% thereof and the objector inheriting 40%.



- ii. Before the amended or rectified Certificate of Confirmation is issued and since there are two properties, the petitioner and the objector are hereby given a period of sixty (60) days from the date hereof, to discuss and agree on the manner and/or formula in which they wish to implement the 60:40 distribution stated above. In the event of failure to agree, the court shall proceed to determine the same.
  - iii. At the time of reading of this ruling, a mention date shall be fixed for the purpose stated above.
- b. This being a family matter, each party shall bear her own costs.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 13<sup>TH</sup> DAY OF OCTOBER 2023**

**WANANDA J. R. ANURO**

**JUDGE**

