In re Estate of MKK (Deceased) (Succession Cause 387 of 2012)
[2024] KEHC 13494 (KLR) (6 November 2024) (Ruling)

Neutral citation: [2024] KEHC 13494 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE 387 OF 2012

JRA WANANDA, J

NOVEMBER 6, 2024

IN THE MATTER OF THE ESTATE OF MKK (DECEASED)

BETWEEN

LAF ..... APPLICANT

AND

LCK ..... 1ST ADMINISTRATOR

JK ..... 2ND ADMINISTRATOR

RULING

1. The question whether to allow the extracting of samples, whether from a deceased person or from one who is alive, for purposes of conducting DNA tests to assist in establishing paternity continues to raise substantial debate, whether legal, cultural or religious.

2. A full viva voce trial was conducted in this matter in respect to Summons seeking revocation of the Grant of Letters of Administration issued herein. What was expected to follow was therefore the Court's Judgment thereon. However, it transpired, upon close of the trial, that there was a pending Application seeking, inter alia, exhumation of the body of the deceased for purposes of conducting a DNA test to assist in determining whether the Applicant was an offspring of the deceased. Since it is clear that if the Application were allowed, the results of the exhumation of the body and subjecting it to DNA test for purposes of establishing paternity may have a bearing on the outcome of the Judgment, it became necessary to first determine the Application.

3. The background of this matter is that the deceased, MKK, died intestate on 30/06/2011. On 23/11/2012, through Messrs Kimaru Kiplagat & Co. Advocates, the 1st Administrator/Respondent, as the widow and one FKB, as a brother to the deceased, jointly petitioned for a Grant of Letters of Administration over the estate. Listed as survivors were the widow (1st Administrator) and 2 sons and listed as the asset comprising the estate was only one property, namely, Kapsaret/Kapsaret

Block 10(Lamayuet)9X measuring 6.19 hectares. The Grant was then subsequently confirmed on 13/07/2017 by which time the said FKB had died and had been substituted with a son to the deceased, JK (2nd Administrator).

4. It was therefore about 3 years after the Grant had been confirmed as aforesaid, that on 21/10/2020, the Applicant, LAF, through the firm of Messrs B.I. Otieno & Co. Advocates, filed the Summons already referred to hereinabove seeking revocation of the Grant. As also already stated, before determination of the Summons, whose viva voce hearing was already underway with the Applicant having already called all his 5 witnesses and closed his case, the Applicant filed the Application now the subject of this Ruling, namely, the Chamber Summons dated 1/10/2023, seeking, inter alia, exhumation of the body of the deceased and subjecting the same to a DNA test. As further stated, and although the entire viva voce trial on the Summons for Revocation of the Grant is now closed, I first need to determine the Application.

5. The Application is dated 1/09/2023 and is filed through Messrs Emmanuel Kipkurui & Co., which had by then replaced Messrs B.I. Otieno & Co. as the Applicant's Advocates. The Application seeks the following orders:

   a. [.....] spent.

   b. The Honourable Court be pleased to order that the grave of the late MKK (deceased) situated at Kapsaret within Uasin Gishu County be opened to exhume his remains so that the samples may be taken for purposes of conducting Deoxyribonucleic Acid (D.N.A) tests so as to determine the existence of any generic relationship/paternity with the Applicant.

   c. The Honourable Court be pleased to direct the Kenya Medical Research Institute to undertake the disinterment and do obtain the necessary samples from the body of the late MKK and the Applicant for the aforementioned Deoxyribonucleic Acid (D.N.A). tests.

   d. On the alternative, the Honourable Court be pleased to order the 2nd Respondent, JK and the Applicant to avail themselves to the offices of the Kenya Medical Research Institute so as to provide samples for purposes of conducting Deoxyribonucleic Acid (D.N.A.) tests so as to determine the existence of any generic kinship between the 2nd Respondent and the Applicant.

   e. Parties be at liberty to conduct their own Deoxyribonucleic Acid (D.N.A). tests.

6. The Application is expressed to be brought under Article 159(d) of the *Constitution* of Kenya, 2010, Section 47 of the *Law of Succession Act*, Rules 49 and 73 of the *Probate and Administration Rules*, and "all other enabling legal provisions". It is then premised on the grounds stated on the face thereof and is supported by the Affidavit sworn by the Applicant, LAF.

7. In the Affidavit, the Applicant deponed that he is a biological son of the deceased and the late JLK(his mother), that his late mother told him that she gave birth to him when she was still in school, that when he was young, the deceased used to visit him and to take care of him together with his late mother, that the deceased was involved in the affairs of their home and provided financial assistance for food, clothing and school fees and together with the 1st Administrator, he even gave pocket money to the Applicant. He deponed further that all along, the 1st Administrator was very much aware that the Applicant was the biological son of the deceased and never at any time did she raise any issue, and that the deceased also introduced the Applicant to the brothers of the deceased (paternal uncles) as his son. He deponed further that when the deceased's health deteriorated, he visited the deceased in hospital in the company of the Applicant's late mother and a friend and neighbour, GNN, in the presence of the Administrators and their family members, including EC, the Applicant's grandmother

(the Administrators' witness), that later when the deceased was discharged, the Applicant regularly visited him at his home where he used to live with the 1st Administrator. He added that upon the demise of the deceased in 2002, the Applicant attended the burial at Kapseret in the company of the said friend and neighbour, GNN, and later had lunch at the home of the deceased in the presence of all the immediate and extended family of the deceased.

8. He deponed further that later when he completed high school, the 1st Administrator was of great assistance in helping the Applicant secure an Identity Card by connecting him with a sister to the deceased, one HC, who used to work at the offices of the District Commissioner, that the 1st Administrator also contributed financially during the Applicant's wedding to one EW and that the Applicant and his said wife also on several occasions visited the 1st Administrator. He added that during one of his such visits, the 1st Administrator told him that she would not give him his share of the inheritance because the Applicant had intimated her with the threat of a lawsuit were he to be sidelined in the distribution of the estate of the deceased, that he later informed his pastor, one Reverend PK, a cousin to the deceased, of these developments, that the Reverend attempted to intervene and later when the Applicant went to visit the 1st Administrator, she promised to buy the Applicant a piece of land and build a house which promise remains unfulfilled. He also deponed that later, through his Advocate, he learnt that the Administrators had applied for and obtained Letters of Administration and a Certificate of Confirmation of Grant, that in obtaining the same, the Administrators failed to disclose to the Court that the Applicant was a bona fide beneficiary of the estate, that he was unable to participate in the proceedings because he was never involved or notified and the same conducted in secrecy, and that the 1st Administrator has blatantly refused to give the Applicant his rightful share of the estate despite repeated requests and demands, even from the Provincial Administration. The Applicant contended further that the 1st Administrator has proceeded to sub-divide the property, Kapsaret/Kapsaret Block 10 (Lamwayet)/9X into 10 portions and transferred 9 to strangers in an obvious attempt to disinherit and deprive the Applicant of his share of the estate.

9. He deponed that in light of the foregoing matters, it is necessary for the exhumation of the remains of the deceased to be conducted for purposes of obtaining samples therefrom for DNA testing to settle the issue of paternity to facilitate true, just and fair distribution of the estate, and that justice will only prevail if the Court takes the approach of discovering the truth over the idea that the right to privacy and bodily integrity ought to be respected. He added that the DNA test will not cause substantial loss to those who will undergo the same save for probably minor inconveniences which are dwarfed by the greater need of establishing whether there actually exists a paternal or biological relationship between the deceased and the Applicant.

Replying Affidavit

10. The Application is opposed by the Administrators vide her Replying Affidavit sworn by the 1st Administrator and filed on 1/11/2023. In the Affidavit, she deponed that the Applicant's intention is to cause and hurt the Administrators' emotions and to awaken sad feelings over the loss of her husband and who is a parent to may, that the Applicant's desire to exhume a body buried over 20 years ago is not only malicious but in bad taste, that the issue of the Applicant's paternity has all along been denied, and that the matters raised have been addressed at the examination-in-chief and cross-examination of the Applicant and his witnesses. She contended that the intention of the Applicant is to re-introduce testimonies and evidence already addressed and which are subject of the Court's main proceedings and determination, that the Application is tantamount to the Applicant asking the Court to carry out an investigation and obtain evidence to assist the Applicant in his paternity questions, and that the Application is belated and will not serve any useful purpose as the Applicant has already closed his case. She deponed further that if there was serious or legitimate need for the conduct of DNA, the

same ought to have been brough earlier in the proceedings, that the Applicant has at no time presented before the Court any document to support his alleged relations with the deceased to warrant the prayers sought.

11. She denied that the Applicant visited the deceased at home or at least not in her presence and urged that even if it were true, that alone cannot be proof that there existed any paternal relationship between them, and that if it were for any person that visited the deceased when he was sick to claim paternity then there would be an endless list of objectors as the deceased was very social and welcoming. He termed it strange for the Applicant to refer to her as step-mother when he knows very well that they have no such relation, and deponed that many people attended the burial of the deceased and took meals at the home but that the same did not form a basis for them to claim that they are related to him. She deponed that the Applicant would not be the first one that she has helped to acquire an Identity Card or in so many other ways and her kindness cannot therefore be construed to be creating bad relation, that she has participated in many weddings and other ceremonies, both physically and personally, and that, again, her kindness cannot be taken to signify any relationship.

12. She wondered how the Applicant would expect her to include him in the Succession proceedings when he is a stranger and denied that she ever had a conversation with the Applicant over a land purchase or that she had ever made a promise that she would help the Applicant acquire property. She contended that they conducted the Succession proceedings in accordance with the law and that if there was any contestation thereof, then the same was addressed in the Applicant's case and cannot therefore be re-introduced through the instant Application. In conclusion, she deponed that the Application was brought intentionally to continue derailing this 2012 matter, that the Applicant should not be allowed to disturb the dead, and that the Applicant has not demonstrated why it took him over 18 years after the death of the deceased to bring his claim and even longer to bring the instant Application.

Applicant's Supplementary Affidavit

13. The Applicant then on 10/11/2023, filed a 23-paragraphed Supplementary Affidavit. Strangely, he basically repeated the same matters already deponed in his Supporting Affidavit and reiterated known general statements of law. The question is therefore whether it was even necessary to file the Supplementary Affidavit in the first place apart from only unnecessarily convoluting the proceedings and adding more work for the Judge. The only relevant additional matter deponed is the denial that the Application is meant to cause emotional hurt or pain and the submission that on 19/07/2023 before the Objector's case was closed, his Advocate made an oral Application seeking similar prayers but which the Administrators' Advocate objected to being made orally and that the Court therefore directed the Applicant to file a formal Application. He also deponed that he was a toddler when all the relevant documents pertinent to this case were in the possession of his late mother and that owing to the long passage of time that has lapsed, many of the said documents ended up being misplaced, and that he, too, wishes that the matter be concluded at the earliest opportunity so that he may finally move on with his life as he has been emotionally and psychologically scarred by the 1st Administrator's ill-intended efforts to disenfranchise and disinherit him.

Hearing of the Application

14. The Application was then canvassed by way of written Submissions. Pursuant thereto, the Applicant filed his Submissions 10/11/2023 while the Administrators filed theirs on 18/04/2024 through their new Advocates, Ledisha J.K. Kittony & Co. which had now replaced the firm of Kipkorir Cheruiyot & Kigen Advocates which firm had been so renamed in place of its earlier description of "Kipkorir Cheruiyot & Advocates" and which itself appears to have taken over conduct of the matter from the said Messrs Kimaru Kiplagat & Co., the Administrators' erstwhile Advocates on record.

Applicants' Submissions

15. Counsel for the Applicant submitted that there are two competing issues that emerge from the instant Application, namely, the desire to not disturb the bodies of deceased persons and the greater, overarching objective of the judicial process which is to uncover and shed light on the truth and to settle matters conclusively. He submitted that DNA samples need not only come from samples obtained from the remains of the deceased since it may also be obtained from his step-brother, the 2nd Administrator. He also appreciated that there is a societal demand to respect dead and buried persons but submitted that there exists a higher need to establish and ascertain the truth for a more just and equitable society, and that in this case, the question of paternity may be resolved through obtaining samples from the remains of the deceased. He cited the case of *Hellen Cherono Kimurgor versus Esther Jelagat Kosgei* and also the case of *In re Estate of Julius Kiragu Kiara (Deceased)* [2018] eKLR and then submitted that there exists a wide and unfettered discretion on this Court to grant the prayers sought. He also cited the case of *PWM (deceased)* 2016 eKLR. He reiterated that finding out the truth is a greater, more significant and is the raison d'etre (reason of being) of the entire judicial process, which is to establish the authenticity of every allegation and/or averment. He also cited the case of *Botha vs Dreyer (now Muller)* (4421/08) [2008] ZAGPHC 395, the case of *EWG-vs-JMN* [2017] eKLR, the case of *M.W & 3 Others -vs- D.N* [2018] eKLR and also the case of *Re Estate of Jacob Mwalekwa Mwambewa (Deceased)* 2018 eKLR.

Administrators-Respondents' Submissions

16. On the part of the Administrators, their Counsel submitted that the deceased whose remains are sought to be exhumed died on 9/03/2002, over 20 years at the time of the instant Application and that the Succession proceedings over his estate were duly conducted and concluded. She observed that the Application for DNA was brought long after the Applicant and his witnesses had already testified and closed his case and that the Administrators have also testified and closed their case. She pointed out that although the Applicant has sought for exhumation, and obtaining of samples from the body of the deceased or from the 2nd Respondent for purposes of conducting DNA tests, he has not told the Court what would happen to the tests results or what happens after the exercise. According to her, the results, whether positive or negative, would be zero due to the late timing of the Application, that it is now moot, having been overtaken by events and that the Court would otherwise be making hypothetical orders that are purely academic. She cited the case of Nbi HC Misc. Appl. E087/2021, *Samwel Kimani & Another -vs- Dominic Kamiri Karanja*.

17. Counsel added that the Applicant's intention is to cause and hurt emotions and to awaken sad feelings over the loss of a husband and a father, that the Applicant's desire to exhume the body buried over 20 years ago is extremely malicious and in bad faith. She cited the case of R N C and 2 Others v S M G and submitted that it is a natural wish of a person, regardless of religion, that his body be, not just properly buried after death or whatever cultural practice is applicable, but should remain undisturbed thereafter. She also cited the case of *Martin Luther Owuor (deceased)* [2018] eKLR and submitted that exhumation should only be allowed as a last resort and on a proper Application timeously made. She added that the Applicant has not only brought the Application late, after close of his testimony, but has also not sought any prayers for re-opening of the trial so as to implant the results of the tests if at all. She contended further that the determination of his evidence is pending in Court and that the blood nexus between him and the deceased is too remote and yet to be determined by the Court. She also cited the case of *SCW alias CWG*, Succession Case No. 1379 of 2006.

18. Counsel also submitted that the deceased died and was buried over 20 years ago hence the results may not reflect the correct position and contended that the probable question to ask is what would be the gain should the tests be negative and after the disturbing exhumation exercise? She cited the case of *E.M.M vs I.G.M and Another* [2014] eKLR, in which, she submitted that samples extracted from the deceased were found to have degenerated to the extent that it could not produce reliable DNA profiles for testing. In respect to the alternative prayer that the samples be taken the 2nd Respondent, Counsel submitted that there is no justification why the 2nd Respondent should be subjected to such exercise.

Applicant's Supplementary Submissions

19. I have come across purported Supplementary Submissions filed by the Applicant on 5/07/2024. I term the same as "purported" since the record does not indicate that at any time, the Applicant sought and/or obtained leave to file such Supplementary Submissions. The same is clearly therefore improperly on record and admitting it at this stage will be unjust and prejudicial to the Administrators who may not even be aware of it in the first place. For this reason, I decline to consider the same and swiftly proceed to expunge it from the record.

Determination

20. The issue herein is evidently "whether the Court should order for the conducting of DNA tests to establish whether the deceased herein is the biological father of the Applicant, and if so, whether the body of the deceased should be exhumed for purposes of taking samples therefrom for the said purpose, or whether, in the alternative, such samples should be taken from the 2nd Respondent, a son to the deceased".

21. Deoxyribonucleic acid (DNA) is a genetic material which every human being inherits from his/her father or mother. Needless to state, DNA tests give an almost 100% accurate results in determining paternity. It is a fact that although Kenyan law does not expressly donate to the Courts the power to order for extraction of samples from a person's body, whether deceased or alive, for the purpose of conducting DNA test, there is also no provision in our laws that prohibits the Courts from giving such orders. As a result, the Courts have routinely entertained such applications, some successful and others not. Along the way, the Courts have developed various principles to be considered before any such orders can be granted.

22. It is however agreed that for an order for DNA test to be issued, exceptional and compelling circumstances must be demonstrated. The Applicant must also lay a firm basis for grant of the order and also establish a strong nexus or linkage between him and the person whom the order is sought against. The Courts will however before issuing such order consider the impact of the order on the subject person's constitutional right to privacy. The Applicant must therefore demonstrate that in the circumstances of the case before Court, need to grant the order DNA test would be so important and necessary such that it would override the subject person's right to privacy. In regard thereto, Majanja J, in the case of *S.W.W. vs G.M.K.* (2012) eKLR held that:

> " Ordering the Respondent to provide DNA for whatever reason is an intrusion of his right to bodily security and integrity and also the right to privacy which rights are protected under the Bill of Rights. The Petitioner bears the burden of demonstrating to the court the right she seeks to assert or vindicate and which the court would consider as overriding the respondent's rights."

23. Similarly, in the South African case of *Bother vs Dreyer* (now Moller) High Court of South Africa (Trans Vaal Province) Case No.4421/08 (unreported), it was stated that:

> " In short, I agree with those judges and commentators who contend that as a general rule the more correct approach is that the discovery of the truth should prevail over the idea that the rights to privacy and bodily integrity should be respected …."

24. As aforesaid, an Applicant for an order for a DNA test bears the burden of demonstrating the nexus linking him, or the matters in issue, to the subject person. This was reiterated by Odunga J (as he then was) in the case of *R.M.K VS A.K.G & Attorney General, Petition No. 18 of 2013*, in which he put it as follows:

> " The Petitioner stated that the court should order a DNA test nevertheless as the facts in the deposition have not been challenged. As I have observed, the burden remains on the petitioner to establish by pleadings and evidence sufficient nexus between him and the respondent in order to persuade the court to grant the orders. In this case there is no evidence to support such a course."

25. Another principle widely applied is that DNA testing would only be allowed where it is demonstrated that the order will not cause substantial loss to the subject person. In connection thereto, M.W. Muigai J, in the case of *Wilfred Karenge Gathiomi vs Joyce Wambui Mutura & Another* (2016) eKLR stated as follows:

> " Therefore, since under our law Sections 107 108 & 109 of the *Evidence Act* Cap 80 mandates that he who alleges must prove; the Applicant is the one who raised the issue of paternity against the 1st Respondent. He did not prove. The 1st Respondent claimed in spite of the date contained in her ID card she was born in 1950. She did not prove the same. Therefore, the only option is to result to scientific method for conclusive results. Both parties should undergo a sibling DNA testing to confirm if they are of the same father or not.
>
> The court finds that the DNA testing will not cause substantial loss to the applicant, except inconvenience that is less important to finding a lasting solution to the issue raised in the first place .....
>
> In light of above-cited authorities that DNA is intrusive and interferes with the right to privacy, this court finds basis for the DNA testing. Paternity is central to the dispute at hand, whether the 1st respondent is one of the beneficiaries of the estate of the deceased's estate. It is the only way to resolve the paternity issue, the applicant raised and is now reluctant to pursue the matter to its logical conclusion. The DNA testing will not prejudice the Applicant's case pending appeal, as he has not advanced any proposal on how to resolve issue it was his word against his."

26. Regarding deceased persons, the most important principle, in my view, is that Courts should exercise extreme caution not to easily interfere with the peaceful resting of the departed ones if there is an alternative way or source or method of achieving the intended results.

27. One principle recognized is that an order for DNA testing on a deceased person would not be viable where it is brought too long after the death of the deceased. For instance, Ougo J, in the case of *R N C and 2 Others Vs S M G* [2017] eKLR, held as follows;

> "... an order for exhumation of a deceased person in order to have a DNA testing to carry out a paternity or maternity test of a child is a drastic order which must only be made in exceptional and compelling circumstances. The deceased was buried some 10 years ago and to make an order after the said years in my view would be a drastic order. His body should be left in the grave undisturbed."

28. An order for exhumation of a body for purposes of conducting DNA tests will also not be granted unless it is demonstrated that such order is "desirable or imperative", This is what Onyancha J held in the case of *HCK v EJK (Succession Cause 1129 of 2006*) [2008] KEHC 3895 (KLR) (Family) (17 November 2008) (Ruling), Onyancha, J, as follows:

> "29. From time immemorial it has been the natural desire of most men that after their death, their bodies should not only be decently and reverently interred, but should also remain in the grave undisturbed. This view should and is indeed respected by societal institutions including the courts of law. Occasions, however arise when unforeseeable circumstances make it desirable or imperative that a body should be disinterred for good reasons. While the court would usually be slow to make orders for disinterment, it nevertheless will not hesitate to do so in suitable cases. The court will, on the other hand, avoid placing any fetters on its discretionary power to do so. That is to say, the court will without fear make orders for disinterment whenever the circumstances of the case make it desirable or imperative to do so. This, in my view, is the tenor of the case of R*e Matheson (deceased)* [1958]1 AII E.R, 202."

29. Another consideration, in my view, will be the costly logistics involved in disinterring a body and conducting the DNA test, and also the psychological trauma likely to be caused to relatives by reminding them of the death of their loved one. After such episode, family members have been known to become so disturbed to the extent that they may require professional counselling services thus causing them to incur ever further expenses and to also experience mental and relationship instability in the lives.

30. As aforesaid, in this case, the deceased died on 9/03/2002 and I believe that he was buried a few days thereafter. The Application to exhume the body, having been filed on 1/09/2023, was therefore brought more than 21 years after the burial. The main Application, the Summons for Revocation, having been filed on 21/10/2020, it means that the Application for exhumation was brought more than 2 years after the Applicant had filed his action for Revocation of the Grant. The record is clear that the Administrators have all along denied the Applicant's claims of being the biological son of the deceased. The Applicant has therefore been fully aware, since the commencement of his action, what evidence he would need to compile and present to the Court to prove his case. Further, as aforesaid, the main Application has already been subjected to a viva voce trial where witnesses have already testified. The Applicant called 5 witnesses and closed his case on 19/07/2023. The Application for exhumation and DNA having therefore been filed on 1/09/2023, it means that the same has been brought after the Applicant had already presented all his witnesses and who had been cross-examined and the Applicant's case.

31. In the circumstances, I find that besides the Application having been brought after an inordinate long delay of over 21 years since the deceased was buried, the same has also been brought after the similarly long and inordinate delay of more than 2 years after the Applicant filed his action herein. No justifiable explanation having been tendered for these successive delays, I find that ordering for exhumation of the body for the purpose of taking samples therefrom for use in conducting DNA tests and/or even compelling the 2nd Administrator to submit himself to the taking of samples from his body for the same purpose, would be unjustified, undignified and ill-advised.

32. I agree with Counsel for the Administrators that if there was any serious and/or legitimate need for the conduct of DNA tests, the Application would have been brought it timeously and much earlier in the proceedings, not at this late stage.

33. I am no expert on the issue of DNA science but I also take judicial notice of the debatable view that, unless very well preserved, samples taken from the body of a deceased person who died a substantially long period of time ago, due to such long passage of time, and owing to the natural process of bodily degeneration, may not even necessarily be still capable of providing fit samples for proper and/or accurate DNA test. This observation was made and acknowledged by the Court of Appeal in the case of E*. M. M Vs I. G. M and Another* (2014) eKLR, where the Court stated as follows.

> " Turning to ground No. 3 on the DNA evidence, learned counsel submitted that the trial judge erred in relying on the DNA evidence whilst it had credibility gaps and was not conclusive. It is common ground that when the remains of the deceased were disinterred for DNA testing for purposes of determining whether the appellant was a biological son of the deceased, Mr John Kimani Mungai, the forensic expert at Government Chemist could not generate DNA profiles from the remains, due to degradation of the samples over time. The remains were sent to South Africa, where again it was confirmed that DNA samples could not be extracted."

34. Be that as it may, in the circumstances of this case, in recognition of the principle that exhumation and taking of DNA samples should only be ordered as a last resort, and particularly considering the inordinate delay by the Applicant to act as cited above, exhumation and/or taking of samples from either the body of the deceased or from the 2nd Administrator, at this belated stage, would not only be demeaning and degrading to the family of the deceased but may also awaken long-healed traumatic experiences and also unnecessarily torture all concerned.

35. I also agree that allowing the Application for exhumation of the body and/or extraction of samples from it, or even from the 2nd Respondent, for the purpose of conducting DNA tests after the Applicant's witnesses had all already testified and the Applicant closed his case would be tantamount to facilitating the Applicant to fill in presumed gaps which he may imagine to have arisen in his case after evidence-in-chief and cross-examination of his witnesses. The Administrators' Counsel is therefore right in her submission that allowing the Application will mean that there will re-introduction of testimonies and evidence already addressed during the viva voce trial. Under our rules of procedure, Courts are discouraged from permitting or entertaining such practice. This is for good reason, namely, that doing so will no doubt greatly prejudice the opposite party and would have to unnecessarily lead to re-opening of the case.

Final orders

36. The upshot of my findings is that I order as follows:

i. The Applicant's Chamber Summons dated 1/09/2023 is dismissed with costs to the Administrators.

ii. The Court shall now proceed to determine the main/substantive Application, namely, the Summons for Revocation, dated 21/10/2020.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 6TH DAY OF NOVEMBER 2024.

.....

WANANDA J. ANURO

JUDGE

Delivered in the presence of:

Mr. Kipkurui for Objector

Ms Kipseii for Petitioner

Court Assistant: Brian Kimathi