REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSES NOS. 417 OF 2005 AND 1345 OF 2014

IN THE MATTER OF THE ESTATE OF JULIUS MIMANO (DECEASED)

JUDGMENT

1. This cause relates to the estate of Julius Mimano, who died on the 12th November 2004. Two succession causes were initiated in respect of his estate, in HCSC Nos. 417 of 2005 and HCSC No. 1345 of 2014.

2. In HCSC Nos. 417 of 2005 representation was sought by Rose Mimano and Nigel Havergal Shaw, the executrix and executor, respectively, named in the will of the deceased allegedly made on 23rd January 1998, through a petition for grant of probate dated 17th February 2005. A grant of probate was made in the cause on 12th May 2005. The grant of probate was confirmed on 21st February 2006, vide an application dated 14th November 2005.

3. On 7th December 2010, a summons was lodged in HCSC Nos. 417 of 2005 by Ian Mimano, a son of the deceased, hereinafter referred to as the applicant, premised on sections 26 and 83(h) of the Law of Succession Act, Cap 160, Laws of Kenya, and rule 45 of the Probate and Administration Rules, seeking reasonable provision and injunctions to restrain the executors from dealing with the entire estate. The applicant complained that the will of the deceased had not made adequate provision for him, and that the executors had mismanaged the estate to his detriment. He complained that the executrix, the widow of the deceased and also the applicant's mother, had sold assets and removed him as a director of some of the companies contrary to the wishes of the deceased. The said application was withdrawn on 21st December 2010.

4. The applicant filed another application herein on 25th June 2014, principally seeking revocation of the grant of probate dated 12th May 2005, among other orders. The said application was premised on sections 26, 27, 45, 53, 66, 76, 83, 94 and 95 of the Law of Succession Act. He complained that the will the subject of the cause had not adequately provided for him, and that he was not involved in the process leading up to the confirmation of the grant. He stated that the estate was being plundered by the executrix in collaboration with strangers, and he was seeking to have it protected from wastage, and to have it strictly distributed in accordance with the Kenyan will. He complained that he had been completely excluded from the management of the estate. He further claimed that there was a foreign will, disposing of property in London, which had not been disclosed.

5. The executrix responded to the application vide her affidavit sworn on 8th December 2014. She conceded that there was a foreign will, but said that there was no free property abroad which could be dealt with under that will, and in any event the deponent had not been made an executrix or trustee of that will. She added that even if there was a dispute about the foreign will, this court would have no jurisdiction on its provisions. She stated that even though the applicant had alleged that some property had been left out of in her papers, he had not given any particulars of the alleged property. The response also dealt in detail with some of the other issues raised in the application of 25th June 2014.

6. The applicant filed another summons for revocation of the grant of probate of 12th May 2005. The same was dated 2nd July 2015, and was lodged at the registry in HCSC No. 417 of 2005. He sought several other orders besides the principal prayer for revocation of grant. He essentially challenged the validity of the will, which he said was not disclosed to him until 2007. He claimed that the will bequeathed property to the children, and then revoked the bequest. He further claimed that the will left out a considerable number of assets of the estate. He claimed that he did not know the persons who attested the will, and that the signatures alleged to be of the deceased were inconsistent, and were manifest forgeries. He accused the executrix of exercising undue influence on the deceased so as to make a will which made her the sole and exclusive beneficiary of the estate. He claimed that the will did not reflect a true representation of the true and final testament of the wishes and intentions of the deceased. He also alleged that the will was inconsistent, contradictory and self-defeating as to raise grounds of authenticity. He said that the will did to make reasonable provision for all the children of the deceased. He asserted that the proceedings to obtain the grant were defective to the extent that they were based on an invalid will. His other claim was that the executrix had proceeded with administration to the exclusion of the executor. He accused the executors of failing to furnish him with an inventory and full account of the assets and liabilities of the estate of the deceased. He complained that should the executrix be not restrained she would plunder the estate.

7. To that summons the executrix swore an affidavit on 25th January 2016 in reply. She stated that the applicant was aware of the said will way back in 2004 when she and the applicant discussed the will after the deceased died, and he never complained that the same had made her

the sole beneficiary. She averred that the applicant had even executed a deed of appointment in 2009 to substitute Nigel Shaw as executor. She denied that the deceased had given oral instructions with regard to his estate. She asserted that the applicant was aware of the probate proceedings as far back as 2005, and was guilty of laches in contesting the validity of the will ten years later. She stated that the will made her a sole beneficiary, and in the event she predeceased the deceased, the applicant and her siblings were to share the estate in the manner stated in the will. She asserted that the will did not leave out any assets, and that the deceased, at the time he made the will, had a good reflection of the property he owned, and he got into great detail on how he wished his estate to be distributed and administered. She stated that when he made the will in 1998, all his children were adults. She stated that the fact that the witnesses to the will were unknown to the applicant, or even to her, was not good ground for invalidation of the will. She denied that the signatures on the will were not genuine, and that she had exercised undue influence on the deceased at the time of making the will. On rendering of accounts, she asserted that as the will made her a sole beneficiary, there was no requirement that she should account to anyone, the estate had been fully administered and therefore the call for accounts was coming too late in the day.

8. HCSC No. 1345 of 2014 was initiated by the applicant. He caused a citation dated 19th May 2014 to issue directed at the executrix, Charlotte Mimano and Yvonne Mimano. In the affidavit he swore on 19th May 2014, he averred that the citees were not cooperating with him to take out a grant of letters of administration in respect of the estate of the deceased. He averred that they had declined or refused to sign the necessary consents or to discuss any issue relating to the estate. He averred that the estate was going to waste for lack of representation, and was being plundered by strangers, and that there was need for a grant of letters of administration of the estate to issue to facilitate protection and preservation of the estate. He also lodged a summons dated 16th June 2014, seeking to be allowed to administer the estate, and also seeking a variety of other prayers, including that a grant of probate letters of administration if any already issued to the citees be annulled.

9. Of the three citees only the executrix entered an appearance to the citation, dated 17th June 2014. She swore an affidavit in reply on 18th June 2014. She disclosed that the deceased had died testate having made a will, and probate of that will had been granted in HCSC No. 417 of 2005, and confirmed. She averred that the citor was aware of the proceedings in HCSC No. 417 of 2005, as he had even filed an application in that cause sometime in 2010, which he subsequently withdrew. She accused the citor of withholding that information from the court.

10. Directions were given on 18th June 2014 on the basis that the citees although served had failed to attend court. The citor was authorized to petition the court for full grant of letters of administration intestate within a specified period of time.

11. The first citee, the executrix, reacted to those directions through an application dated 19th June 2014. The citee averred that she had entered appearance, and filed an affidavit in response. The matter was not on the main cause list for 18th June 2014, and that explained why she did not did not attend court. Later that day she learned that there was an addendum to the main cause list where the matter was listed, but by then the same had been placed before the Judge and orders made. She sought stay and setting aside of the said orders. The application has not been heard to date, and no grant has been made in the matter as the citor has to date not lodged a petition. The said cause would appear to be in limbo as at the date directions were made for the two files to be put together.

12. Directions were given on 9th December 2014 that the two applications, dated 25th June 2014 and 12th May 2015, filed in HCSC No. 417 of 2005, would be disposed of simultaneously by way of oral evidence.

13. The oral hearing began on 13th July 2013, with the applicant, taking the stand. He testified that after the deceased died the family tried to discuss the estate but he was not able to get a clear status of the same. He stated that sometime in 2009 he wrote to the executors of the will seeking a meeting to discuss the issue relating to the Karen property. He said that he saw the will, and its contents were brought to his attention. He stated that the persons who attested the will were unknown to him. He said that the will did not provide for the children of the deceased. He stated that clause 10 of the will had gifted him with a property known as LR 10095/4 and Plot No. 41-43 Baba Ndogo. He complained that the said property had not been transferred to him by the executrix. Clause 13 on the other hand provided that LR 10095/3 Karen was to be held in trust for the deceased's grandchildren according to him, although he later said that the same had been bequeathed to the executrix. He stated that Nyeri/Aguthi/899 had not been bequeathed to him by the said will. He conceded that he was asked to sign an annex to the will after the executor resigned, which document was meant to bring him in as a trustee. He stated that the daughters of the deceased were not provided for under the will, adding that they were not complaining as they were being taken care of by the executrix. He stated that the deceased had during his lifetime severally stated his wishes over the assets, saying that it was ridiculous for the executrix to assert a will that made her the sole beneficiary. He stated that there was a foreign will made on 25th June 1998, which disposed of foreign property. He stated that LR 10095/4 had been acquired before his birth, and registered in the names of the deceased and the executrix as joint tenants. He asserted that he was unaware that the principle of survivorship applied to it, which would have made the executrix the sole owner thereof. He stated that clauses 10 and 13 of the will needed to be implemented. He asserted that clauses 5 and 6 of the will made provisions that were confusing and it was for that reason that he was inviting the court to interpret the will. He said that the will was disorganized, which did not, in his view, reflect the character of the man. He said he got to know of the will a month or so after the demise of the deceased. He discussed it with the executrix and she gave him a copy of it. He said that those were the circumstances under which he got to know about it. He stated that the executrix and his sisters mourned for rather long, he left them to heal, and took a job overseas. He was, therefore, not in the picture for a long time on what was happening with regard to the estate. He said that he was not party to the reading of the will by the advocates. He also adduced evidence geared to support his case for the other prayers in his applications.

14. The next on the stand was Charles Mathai Matu, a brother-in-law of the deceased and a brother of the executrix. He testified that the deceased was close to him. He described him as a man of detail, who did everything strictly. He was said to have had loved his children equally, adding that the applicant had not abandoned him during illness. A few days before he died, he allegedly sent the witness to Nyeri to call his brother, Karue. After he died, the executrix was said to have kept everybody off. He contacted her and asked her whether the deceased had left a will. She reportedly said that there was none, and that she did not have the time to search for it. She reportedly only produced the will in 2009 after the applicant took her to court. He stated that he enquired as he believed that there was a will. He said that he did not believe that the deceased would have left everything to his wife. He stated that the distribution of the property was not done properly.

15. The next on the stand was Livingstone Karue Mbuthia, the deceased's brother. He testified that the deceased had called him to his home

two weeks before he died. The deceased allegedly told him that he had made his wish clear both orally and in writing, and that he had distributed his property amongst his wife and children. He allegedly said that he had left a will with his lawyer. He stated that the deceased did not wish to disinherit his children, adding that that would have been against tradition and culture. He said that the deceased did not leave a valid will. During cross-examination, he said that the deceased had said that all he wanted done had been put down in a will written in 1998. He said that he never saw the 1998 will.

16. Julius Mwangi Macharia followed. He was a farm manager for one of the estates agricultural assets. His testimony did not touch on the evidence around the making of the will, but largely revolved around the property that he managed.

17. The applicant's last witness was Mohamed Nyaoga. He was an advocate of this Court who had acted for the applicant at one point in the matter. He said that he had seen the will, and had read clause 5 thereof. He confirmed that the will of the deceased had made the executrix the beneficiary of the estate. He conceded that he had prepared and filed, on instructions of the applicant, an application dated 6th December 2010, for reasonable provision out of the estate, on grounds that the executrix had been made a sole beneficiary and the applicant had not been adequately provided for. He stated that the application also sought interpretation of the will, but did not challenge the authenticity of the will. He stated that he withdrew the application after the parties expressed willingness to negotiate. He said that the withdrawal was also informed by his feeling that it was not wise for the parties to fight it out in court.

18. On the part of the respondent, only one witness testified, the executrix herself. She stated that the deceased had told her about the will before he died, but she did not see it until two weeks after the burial. She later said that she accompanied the deceased as he went to see his advocates, Kaplan & Stratton. The deceased had told her that he was going there to sign a will. She could not recall the date, but she said that she did see him sign the will. When shown a copy of the will she identified the deceased's signatures on the document. Two women were invited to attest his signature, and he saw them sign on the will. She was allegedly shown the will by an advocate called Mr. Nigel Jeremy, but she did not read it. She later said that she knew the contents of the will as the deceased had come home the previous day with a copy, she read it and he explained its contents to her. The said Mr. Jeremy called her to get the will after the deceased died. She said that she sent the applicant to go and met Mr. Jeremy over the will, and the applicant did go and met Mr. Jeremy. She said that she did not call a family meeting to discuss the will. The two daughters were not keen on talking about it, even though they had said that they were aware of the will for the deceased had told them about it. She stated that the applicant shortly left the country to work abroad, and was away when she initiated the instant cause. She said that she had been informed by the deceased about the visit to him by her brother and brother-in-law two weeks before his death. She said that she was not told about what they discussed, and said that she did not discuss with them about the will after the deceased's death. She conceded that she did not discuss with the applicant about the application for representation, nor about confirmation of the grant. She asserted that the will made her a sole beneficiary of the estate. She stated that the deceased, in the will, identified the assets that he gave to his children and grandchildren. She conceded that she had not given effect to the gifts to the children. She also gave evidence on the other aspects of the application, relating to wastage of the assets, accounts, injunctions, among others.

19. At the end of the oral hearing, the parties were directed to file written submissions. Both parties herein complied. The written submissions were highlighted on 15th October 2018.

20. I have looked at the pleadings, the recorded evidence and the written submissions lodged by both sides. the issues that emerge for determination revolve around validity of the will on record. The determination of the rest of the issues will depend on the outcome of the resolution of the question of the validity of the will.

21. I will first deal with the issue of the validity of the alleged will. The validity of a will is dependent on two principal factors, namely the capacity of the testator to make a will at the material time and compliance with the formal requirements for the making of a will.

22. Section 5 of the Law of Succession Act, deals with capacity to make a will, and of testation. The relevant provisions state as follows -

> '5(1). … any person who is sound of mind and not a minor may dispose of his free property by will …
>
> (2) …
>
> (3) Any person making or purporting to make a will shall be deemed to be of sound mind for the purpose of this section unless he is, at the time of executing the will, in such a state of mind, whether arising from mental or physical illness, drunkenness, or from any other cause, as not to know what he is doing.
>
> (4). The burden of proof that a testator was, at the time he made any will, not of sound mind, shall be upon the person who so alleges.'

23. The essentials of testamentary capacity were laid out in *Banks vs. Goodfellow* (1870) LR 5 QB 549, where the court stated that -

> 'A testator shall understand the nature of the act and its effects, shall understand the extent of property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties-that no insane delusion shall influence his will in disposing property and bring about a disposal of it which if the mind had been sound, would not have been made.'

24. In this instant suit, the issue of testamentary capacity was not raised. It was not argued that the deceased did not have the requisite soundness of mind for the purpose of making the impugned will. The matter of the state of mind of the deceased at the time he allegedly made the impugned will in 1998 was, therefore, not relevant. Evidence was led as to the fact the deceased was ill, had been to London for treatment and died after three days of hospitalization, however that evidence related to 2004, the year of his death rather than 1998 when the

will was allegedly made. The provisions of section 5 of the Law of Succession Act, which relate to soundness of mind, are not altogether relevant for the purpose of what I have to determine.

25. The other provision related to testamentary capacity is section 7 which states –

> 'A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, or has been induced by mistake, is void.'

26. Section 7 covers situations where the testator at the time of making the will is of the requisite testamentary capacity. That would be to say that the testator was of age and of sound mind at the material time, but the circumstances of the making of the will detract from or undermine its validity. Fraud would arise in cases where the making of the will is procured by deceit or similar underhand methods. Coercion would refer to circumstances where a person is literally forced to make a will in a certain way, either under duress or threats to life or limb. The will, though made by the deceased himself, in terms of the same being executed by him, would not reflect his will or wishes or intentions in the circumstances, but those of the person driving him to make it in that particular way. Importunity refers to what is often described as undue influence. In such cases there would be no coercion or force or duress as such, but pressure would be brought on the testator of such nature that he cannot resist. He would bend to the pressure, not so much because he is persuaded or convinced that he should make his will in such manner, but because he would be tempted to rid himself of the pressure by capitulating to it. Mistake would refer to cases where the testator signed the wrote document, such as that meant for someone else believing it to be meant for him.

27. From the material before me, it is plain that the applicant anchored his case on section 7 of the Law of Succession Act, more specifically on the allegation that the will was made under suspicious circumstances. The allegation that a will was made under a cloud of suspicion raises the question of fraud. The fact that the circumstances of the making of a will were suspicions would suggest that the making of the will was procured by fraud or fraudulent means. The principle being that a testator must not only know the contents of the document that he signed as his will, he must also have approved of those contents. The approval being indication that it reflected his wishes and intention. The suspicion would arise if it appears from the circumstances that the testator did not either know of the contents or, knowing of the contents, did not approve them. It would particularly arise in cases where the person propounding the will takes a substantial benefit under the will.

28. The applicant has cited several decisions to support his contention. The Court of Appeal stated the principle on knowledge and approval in *John Kinuthia Githinji vs. Githua Kiarie and others* civil appeal number 63 of 1984, where it was said that where, on the face of it, the will appears to have been properly executed by a person of age and sound mind, a presumption of due execution arises, but that presumption may be displaced by circumstances emerging from the evidence adduced which tend to counterbalance the presumption. On the other hand, the principle of suspicious circumstances has been stated and applied in several local decisions such as *Vijay Chandrakant Shah vs. The Public Trustee* civil appeal number 63 of 1984, *Mwathi vs. Mwathi and another* (1995-1998) 1 EA 229, *Susan Wangui Gakuha vs. Stephen Gakuha* (2016) eKLR, *Wanjau Wanyoike and four others vs. Ernest Wanyoike Njuki Waweru and another* High Court civil case number 147 of 1980, among others. According to the court in *Karanja and another vs. Karanja* (2002) 2 KLR 22 and *In the Matter of the Estate of James Ngengi Muigai* High Court succession cause number 523 of 1996, the burden of proof lies with the person alleging lack of knowledge and approval, and existence of suspicious circumstances.

29. What emerges from the cases cited above is that the question of lack of knowledge and approval, and execution of a will under suspicious circumstances, would usually arise in cases where the testator is in a weakened condition or state caused by either old age, illness, disease, intoxication or the like. In *Vijay Chandrakant Shah vs. The Public Trustee* (supra) the will had been made in hospital where the testator had been hospitalized, and when he was very sick with syphilis and diabetes. The suspicion arose from the circumstance of the propounder of the will playing a key role in the execution of the will by the testator while in such condition several days before he died. In *Wanjau Wanyoike and four others vs. Ernest Wanyoike Njuki Waweru and another* (supra), the testator was elderly, ninety years old, and the propounder of the will played a key role in execution of the will, in which he was named a principal beneficiary, three days before the testator died. The circumstances in *Mwathi vs. Mwathi and another* (supra) were similar, a sickly testator being shuffled around just days to his death and made to make a will under those circumstances.

30. The testator must be in a weakened or feeble condition, and therefore easily amenable to manipulation. It also bespeaks undue influence. For a person raising the issue to succeed, it must be established that the testator was in a weaken position on account of old age or disease or intoxication, he made a will while in that condition, and the propounder of the will played the central role in the process of the execution of the will. That role would include being the person in general control of the testator, being the one who took him around, being the person who prepared the will or procured his own advocate to do it, or the person who took him to an advocate of his own choice for that purpose.

31. In the instant case, the applicant did not adduce any evidence as to the condition of the deceased as at the time of the execution of the will. The testimonies of the applicant's witnesses only talked of the deceased's illness in the period just before his death. None referred to the condition he might have been in 1998. Indeed, it would appear that in 1998, the deceased was in no weakened or feeble physical or mental condition on account of either old age or disease or intoxication arising from consumption of either alcohol or drugs. It would appear that he was in full control of his faculties at the time, and therefore not disposed to manipulation or undue influence or undue pressure from any quarter, of such nature that he could not resist. Indeed, nothing on record suggests that he was in such a condition in 1998 as to be overly dependent on others for decision-making, and general mobility and locomotion.

32. The other concern is that the principle revolves around the circumstances of the making of the will. It is the circumstances of the making of the will that are suspicious or ought to raise suspicion. The focus should not just be on the large benefit accruing to the propounder of the will, but rather to both the large benefit and the circumstances of the making of the will. The argument should be that the benefit was large because the will was made in circumstances where manipulation or fraud or undue influence or pressure or even coercion was brought to bear on the testator. There must be evidence of the intimate details of the making of the will, in terms of what exactly transpired at the event of the making of the will.

33. In the instant case, the applicant pointed essentially at the fact that the executrix was the sole beneficiary of the will. He pointed too at the fact that executrix accompanied the deceased to the advocates' chambers for execution of the will, and that the deceased disclosed the

contents of the will to her. In the first place, I reiterate that there is no evidence that the deceased was at that point weak due to old age or disease or intoxication. The advocate who prepared the will was not shown to have been the executrix's advocate, but that of the deceased himself. Secondly, it was not demonstrated that it was the executrix's idea that the deceased made a will, and, in a particular, suggested the advocate to draft the will and took the deceased to that advocate. It would appear that the executrix merely accompanied her husband, the deceased, to the execution ceremony. There was nothing pointing to the deceased being manipulated or coerced or pressurized by the executrix in anyway in the whole process. Indeed, the applicant led no evidence at all on what exactly transpired at the chambers of the advocates where the will was executed. The only available evidence, according to the record, is that from the executrix, and from what I have on record I do not find anything extraordinary about the circumstances that would raise eyebrows.

34. The applicant pointed at the fact that the will did not provide for the children of the deceased, and especially himself, being the only son of the deceased. According to him that was unusual, and raised suspicion. Section 5 of the Law of Succession Act gave the deceased freedom of testation, to dispose of his property as he pleased to whomsoever he pleased. It was within his freedom or discretion to determine who was to benefit from his bounty. The mere fact that a will leaves out children from benefit and benefits the spouse substantially should not be ground for invalidation of a will. A party aggrieved by such provision has a remedy in section 26 of the Law of Succession Act, but not in the nullification of the will.

35. He called his uncles to adduce oral evidence on the thinking of the deceased as at about the date of his death. The two witnesses did not refer to any concrete detail of what they discussed with the deceased about disposal of his estate. What was clear from one was that the deceased told him that he had organized his affairs by making a will, while the other did not appear to have been told something similar, but appeared to strongly believe that the deceased had died testate, and that a will existed. Their evidence was that the 1998 will was inconsistent with Kikuyu norms, traditions and culture. I am not aware that the fact of such inconsistency would be a ground for invalidating a will. I have not been directed to any law, whether in statute or judicial precedence, that would support that proposition. In any event, whatever oral wishes the deceased might have expressed to them in 2004 could not, in view of section 10 of the Law of Succession Act, override the provisions of the written will of 1998.

36. The other issue raised was that there were inconsistencies and contradictions in the body of the will. The applicant and his witnesses sought to portray the deceased as a person who was very organized, and suggested that he could not possibly have made the will which they described as disorganized. I have had occasion to peruse through the said will. It was professionally drawn by an advocate, and was executed in his presence. I have carefully read through it and I have not come across any contradictions. In any event, the mere fact of inconsistencies in a will does not render it invalid. Neither can the same be said to be *prima facie* evidence of lack of knowledge and approval or existence of suspicious circumstances. Any issue surrounding interpretation of clauses of a will is matter to be resolved by the court through construction of the provisions, not invalidation thereof. The Law of Succession Act carries elaborate provisions, in the First Schedule, on construction of wills. There is also wealth of case law.

37. On the formal requirements of validity of a will, the law is in section 11 of the Law of Succession Act. It states -

> '11. No written will shall be valid unless-
>
> > (a) The testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;
> >
> > (b) The signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;
> >
> > (c) The will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.'

38. The applicant herein disputed the validity of the will on the grounds that the signatures on the will purported to be those of the deceased were not his. He further asserted that the two persons who signed the will as attesting witnesses were unknown to him or even the family. The executrix herein defended the will, she testified that she was present at the execution of the will, and witnessed as the deceased and the attesting witnesses signed it. She did not call any witnesses to adduce evidence on the execution and attestation of the will. I found that surprising, given that the purpose of having attesting witnesses is to get evidence on the process of the making of the will should its validity be challenged. It is not clear why the executrix chose not to call them nor the advocate who drafted the will, and before whom the will was executed.

39. It is the applicant's contention that the signatures on the will were forged and did not belong to the deceased. He did not call a document examiner to give expert opinion on the said signatures. The applicant did not express himself to be a qualified document examiner, or handwriting expert, whose word on the matter could be given some weight. Section 109 of the Evidence Act, Chapter 80 of the Laws of Kenya placed the burden of proof on him. The provision states that: -

> 'The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie in a particular person.'

40. The applicant did not lead any evidence to demonstrate that the said signatures were not made by the deceased or that they were forged. The burden fell on him to lead such evidence. The only evidence I have before me is that that was given in court by the executrix. Her testimony was that she saw the deceased sign the document in her presence, and that of the attesting witnesses. Her testimony was not shaken, in my view, on cross-examination. I am alive to the fact that the applicant submitted that there were inconsistencies and

contradictions in her oral testimony. I have noted the said inconsistencies, but in my view the same were minor. The overall picture that emerged was that she accompanied the deceased to his advocates sometime in 1998 for execution of his will, and he signed the same in her presence. She got to know the contents of the will either before or after the execution. I have taken note of the fact that the executrix was an elderly woman, and she was discussing events that happened some twenty years ago.

41. In re Estate of Samuel Ngugi Mbugua (Deceased) [2017] eKLR, the court was of the view that

> 'The allegation that the said signature was not that of the deceased amounts to a claim that the signature was forged or that fraud was exercised in the procurement of the alleged will. That is to say that someone other than the deceased had affixed that mark on the will with the intent of passing the same as the signature of the deceased. Forgery is a criminal offence. The applicant is in fact imputing criminal conduct on either the person propounding the will or those who were involved in the operation that is purported to have been its execution. The burden of proving forgery lies with the person alleging it. In Elizabeth Kamene Ndolo vs George Matata Ndolo Nairobi Court of Appeal civil appeal number 128 of 1995 it was stated that the charge of forgery or fraud is a serious one, and the standard of proof required of the alleger is higher than that required in ordinary civil cases.'

42. The allegation of forgery placed a heavy burden upon the applicant to prove beyond reasonable doubt, or at least beyond balance of probability, that indeed the signatures were forged. He led no evidence on the alleged forgery. It is clear, therefore, that he failed to discharge the burden of proof and thus his allegation of forgery cannot succeed. It was said in *Karanja and another vs. Karanja* (supra_ that where a will is regular on its face with an attesting clause and the signature of the testator, a rebuttable presumption of due execution or *omnia esse riteatta* arises. In the context of the instant case, I am satisfied that the will before me was regular on the face of it and the presumption applied to it, but the applicant did not rebut the presumption through concrete evidence.

43. There was also the claim that the persons who attested the execution of the will were not known to the applicant. From the face of the will it would appear that the two attesting witnesses worked as secretaries in the law firm where the will was drawn. The fact that the applicant did not know them did not in any way affect the validity or the will. Indeed, it is not a requirement of the law, section 11 of the Law of Succession Act, that the attesting witnesses ought to be persons who were known to the deceased or his family. Nothing therefore turns on this.

44. The applicant claimed that he had not been provided for in the will as a son or child and for that reason, the will should be declared null and void. The court in *Curryian Okumu vs. Perez Okumu & 2 others* [2016] eKLR was of the view that -

> 'The legal position is clear however that failure to provide for a beneficiary in a Will does not invalidate a Will. Section 5(1) of the Act gives a testator testamentary freedom as follows:
>
> "Subject to the provisions of this Part and Part III, every person who is of sound mind and not a minor may dispose of all or any of his free property by will, and may thereby make any disposition by reference to any secular or religious law that he chooses …"
>
> … This freedom of a testator to dispose of his free property by will is however is not absolute. The Court can after the death of the testator alter the terms of a will following an application under Section 26 of the Act. Section 26 provides:
>
>> "Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased's estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased's net estate."'

45. The same emphasis was laid in *James Maina Anyanga vs. Lorna Yimbiha Ottaro* & 4 others [2014] eKLR where court held that

> 'Failure to make provision for a dependant by a deceased person in his will does not invalidate the will as the court is empowered under Section 26 of the Law of Succession Act to make reasonable provision for the dependant.'

46. It is true that the deceased had a freedom to dispose of his estate in a manner that was suitable to him. The freedom is the essence of testate succession, and the fact that the will did not provide for some beneficiaries does not, and cannot, invalidate the will. The remedy available to the applicant is to move to court appropriately under the provisions of section 26 of the Law of Succession Act, seeking for a reasonable provision out of the estate.

47. In the upshot, the applicant failed to prove the grounds he alleged to invalidate the will and as such I hold that the will was valid.

48. When determining issues of revocation and annulment of grants, the courts ought to be guided by the provisions of section 76 of the Law of Succession Act which say as follows: -

> 'A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by an 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 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

e. ue 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 has ordered or allowed; 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 has produced any such inventory or account which is false in any material particular; or

f. The grant has become useless and inoperative through subsequent circumstances.'

49. In Jesse Karaya Gatimu Mary Wanjiku Githinji [2014] eKLR, the court was of the view that -

'The grounds upon which a grant may be revoked or annulled are thus statutory and it is incumbent upon any party making an application for revocation or annulment of grant to demonstrate the existence of any, some or all of these grounds, whatever the case may be.'

50. The Court of Appeal in *Matheka and Another vs. Matheka* (2005) 2 KLR 455 laid down the following guiding principles revocation of grant either on application by an interested party or by the court on its own motion. It was stated that even when the revocation is by the court upon its own motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate. The Court of Appeal affirmed the positon *in Joyce Ngima Njeru & another vs. Ann Wambeti Njue* [2012] eKLR where it held that

'The central core of the ingredients required to be established under section 76 of the L.S.A. is that it is meant to be used as a vehicle to attack and fault the process of either obtaining the Grant or inactive use of the Grant after being lawfully obtained in circumstances where it has become useless. It is not meant to fault the decision on the merits.'

51. It was the applicant's case that the grant of probate made herein on the 12th May 2005 and confirmed on the 21st February 2006 to the executors ought to be annulled on the ground that the same was obtained fraudulently. In her testimony the executrix stated that the deceased had left a will and thus his estate was subject to testate succession. Having found that the deceased died testate, and that therefore the will on record was valid, l find that the executors were the proper persons to apply for probate. I cannot fault whatever they did. I shall therefore decline to revoke the grant.

52. The applicant alleged intermeddling on the part of the executrix, and restraining orders were sought to restrain the same. The law on intermeddling is set out in section 45 of the Law of Succession Act, which provides as follows -

'45. (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall -

a. be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine imprisonment; and

b. be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.'

53. According to section 79 of the Law of Succession Act, the estate of a dead person vests in the personal representatives. In this cause, the deceased died testate. He named executors in his will, who have obtained probate to the will. It is the said executors in whom the assets of the estate vested by virtue of section 79 of the Act. By virtue of the said vesting the said personal representatives became entitled to exercise the powers that are set out in section 82 of the Law of Succession Act, which are akin to those of an owner of the property. They can sue or be sued over the property, they can sell or enter into contracts in respect to it, among others. The personal representatives have authority from the grant of representation they hold, whether it is one of probate or of letters of administration, to handle estate property. In so handling it, in view of section 79 of the Act, it cannot be said that they intermeddle with such property. In this cause the executrix holds a grant of probate, the assets vest in her by virtue of section 79 of the Act. I note that her grant has been confirmed. She is entitled in law to handle the assets, and therefore the issue of her intermeddling with the estate does not arise.

54. There is a prayer for production in court of an original foreign will, or, at any rate, a will the deceased made to dispose of his foreign estate. The executrix conceded that there was such a will. She appeared to be unwilling to have the said will brought forth on grounds that there was no free property to be dealt under it, and that the said will had not appointed the applicant executor or trustee thereof.

55. The matter before me relates to the estate of the deceased herein. The applicant is an undisputed child of the deceased. In intestacy, he would be entitled automatically to a share in the estate of the deceased, whether the assets making up the estate were in Kenya or abroad. In testacy, even though there is freedom of testation, he would be justified to apply for reasonable provision out of the estate should he be inadequately provided for from the will of the deceased. The applicant herein has a stake in the estate of his late father, and is entitled to information relating to the said estate including being furnished with a copy of any will that disposes of the deceased's assets abroad, regardless of whether the said assets are free for distribution or whether the will appoints him executor or trustee.

56. The applicant prayed for stay of other proceedings relating to the same estate, including HCSC No. 1345 of 2014. The parties did not place before me pleadings in respect of any other cause or suit apart from the two files before me. I have perused through the documents lodged in HCSC No. 1345 of 2014. The said cause was lodged in court during the pendency of the instant cause. The two causes relate to the estate herein, yet in HCSC No. 1345 of 2014 the applicant did not disclose that there pended another cause on the same estate, where a grant had been made and confirmed. The applicant was privy to that information as he had filed court process in the cause. No doubt, HCSC No. 1345 of 2014 was filed in abuse of court process. It ought not have been filed in the first place. I note I did not make any orders for its consolidation with HCSC No. 417 of 2005. I shall accordingly not stay it, instead I shall order that the same be consolidated, for whatever it may be worth, with HCSC No. 417 of 2005.

57. The applicant sought that the executrix accounts for her administration of the estate. On her part, the first administrator took the view that she was the sole beneficiary under the will of the deceased, and therefore the duty to account did not arise. She was therefore not obligated to render accounts.

58. The personal representative of a deceased person holds a unique position in law. The property of the dead person is vested in them by virtue of section 79 of the Law of Succession Act. The effect of section 79, read together with section 82 of the Act, is that the same puts the personal representative on the same footing with an owner of the property, in the sense that he exercises the powers that the legal owner of the property would have exercised were they alive, and suffered the same burden of duties and obligations over the property as the legal owner would have been under were they to be alive. Yet, the property, although vested in them by law, would not be theirs. Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of intestacy. They would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and, indeed, the Trustee Act, Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned, and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over estate property when the same vests in the personal representative to hold on behalf of the beneficiaries.

59. Secondly, personal representatives administer estates on the strength of legal instruments made to them by the probate court. The vesting of the estate of the deceased on the personal representatives by virtue of section 79 of the Act, flows from the instrumentality of the grant of representation. Upon representation being made, the grant holder then becomes entitled to exercise the statutory powers conferred upon personal representatives by section 82 of the Act and incurs the duties imposed on them by section 83 of the Act. Additional powers flow from and duties are imposed by other statutes, such as the Trustee Act. Under section 82 of the Act, there are powers to enforce and defend causes of action on behalf of the estate, to sell or convert estate assets, to assent to vesting of bequests and legacies on the beneficiaries, among others. Acts done or actions taken on behalf of the estate or for the benefit of the estate would have to be accounted for. In other words, the personal representatives are bound to account for every action they take on behalf of the estate, for they exercise the powers on delegation.

60. Section 83 of the Act imposes duties on personal representatives to pay for the expense of the disposal of the remains of the deceased, to get in or gather or collect the assets of the estate, to pay for the expenses of the administration of the estate, to ascertain and pay out all debts and liabilities, and eventually to distribute the assets amongst the persons beneficially entitled. The discharge of these duties would naturally attract an account, in terms of the personal representative stating whether they discharged the said duties and disclosing the expenses that they incurred in the process of discharge. In addition, section 83 of the Act has imposed a positive duty on personal representatives to specifically render accounts at two stages. The first instance is in the first six months of the administration. It is at this stage that they ought to account as to whether the spent any funds from the estate for the purpose of disposing the remains of the deceased and, if so, how much. State whether they got in or gathered or collected or brought together all the assets that make up the estate. The getting in of the estate is critical, it should precede settlement of debts and liabilities and distribution of the assets. Indeed, these duties can only be discharged if there are assets sufficient to settle debts leaving a surplus for distribution. It would also be from the assets collected that the estate would have a pool of resources for administration expenses. Section 83(e)commands the personal representatives to produce in court a full and accurate inventory of the assets and liabilities, no doubt generated from the exercise of getting in the assets and ascertaining the debts of the estate. There is also an obligation to render an account of all their dealings with the assets and liabilities up to the point of the account. The second occasion for rendering accounts is at the completion of administration. The duty is stated in section 83(g) of the Act. The object of the second and final account is to give opportunity to the personal representative to demonstrate that they have complied with the duty in section 83(f) of distribution of the estate to the beneficiaries. The duty to account on those two occasions is imposed by statute. It envisages an account to the court, not even to the beneficiaries. The powers exercised by the personal representative's flow from a court instrument, the court is entitled to know whether those powers have been properly exercised, and whether the duties imposed have been properly discharged. Being a statutory duty to account to the court, the personal representative does not have to wait for a court order directing them to render account, they must render the accounts as a matter of course. The matter of the duty to render accounts is so critical that default to do so is listed in section 76(d)(iii) of the Act as one of the grounds upon which the court may consider revoking a grant.

61. The point being made here is that the law commands rendering of accounts by personal representatives whether the deceased died testate or not. I have not seen any exception extended to any person or in respect of any circumstances. Whether the will the subject of the proceedings named only one beneficiary that would not preclude the personal representative in that case from complying with section 83(e)

(g) of the Act. He must, even then, render accounts as required by that provision.

62. In the instant matter, the executrix does not appear to have rendered any accounts. She has therefore not complied with section 83(e)(g) of the Act. She should comply with it by rendering an account in terms of section 83, disclosing whether or not she has discharged all the duties set out in section 83(a)(b)(c) and (f) of the Act. Crucially, from my perusal of the will, which I have found to be valid, the executrix is not a sole beneficiary of the estate under the will as she claimed. The will does not convey any property to her absolutely, as it largely places the estate in her hands as trustee on behalf of the children of the deceased, who shall ultimately take the same as tenants-in-common in equal shares. The executrix relates to the property or the estate, according to the terms of the will, in much the same way a surviving spouse enjoys a life interest in the net intestate estate in accordance with section 35(1)(a) of the Act, and upon determination of the life interest the property devolving upon the children to be shared equally amongst them in terms of section 35(5) of the Act. For all practical purposes, the executrix is a trustee and must render accounts in accordance with the law.

63. I note that the executor, Nigel Shaw, renounced probate in October 2015 or thereabouts. The grant herein was made in 2005, and was confirmed in 2006. It is to be presumed that the executor has been in office all this while. He is bound to render accounts for the period that he has been in office. I am indeed disappointed that there is default in rendering accounts in this case yet the executor is an advocate of this court, who is to be presumed to have knowledge of the legal requirements of section 83(e)(g) of the Act. He should have held the hand of the executrix so far as these matters were concerned.

64. The applicant dealt at length with the matters around management and administration of estate assets, specifically with an intention to demonstrate that the executors had neglected and misapplied assets of the estate. I shall avoid venturing to address the matter of wastage of estate assets at this stage before accounts are first rendered by the executors as it should be from that account that the court would be in a position to know the extent of the estate after the executors have placed before the court a list of the assets and liabilities that they have ascertained, a list of the assets of the estate that they have gathered or collected or got in, an account of the income or revenue from income-generating assets of the estate, and an account of the monies that they have expended from the estate on the deceased's burial, estate administration and settlement of debts and liabilities. It would be only after that that the court would be able to tell whether or not the executors properly executed their mandate as such. Further orders and directions on the next course of action, including whether the executrix should be removed as a personal representative, should follow after accounts have been rendered in accordance with section 83 of the Act.

65. I have stated above that the will of the deceased largely created trusts and appointed the executrix trustee thereof. I have also observed that the trusts are akin to the continuing trusts that arise under intestacy with regard to a surviving spouse. Whereas section 83 of the Act envisages an account at only two instances, after the first six months of the administration and at the conclusion of the administration, where there is a continuing trust, and therefore where it might take a longer period of time before administration is completed, the personal representatives may have to render accounts on more than two occasions. Indeed, I venture to say that they ought to do so on a continuing basis, at any rate after every six months that they continue in administration beyond the timelines set by the Law of Succession Act in section 83.

66. The other issue that the applicant raised related to reasonable provision. He argued that the will bequeathed the entire estate to the executrix, and did not provide for the children of the deceased. The claim by the applicant that the children were not provided for in the will is not borne out by the provisions of the will. The design of the will is that the estate is conveyed first to the executrix during her lifetime to hold in trust, and then thereafter to the children in equal shares. There is also the provision that in the event the executrix predeceased the deceased, the property would devolve upon the children in the terms specified in the will. Therefore, the will envisages two scenarios. The first would be where the widow, the executrix, were to predecease the deceased, then the entire estate would be dealt with in terms of clauses 6 to 16 of the will, where the property would be disposed of item by item amongst the three children. Should the executrix survive the deceased, then the second scenario would apply as set out in clauses 2, 3, 4 and 5. It transpired that the executrix survived the testator and therefore the clauses of the will that applied were clauses 2, 3, 4 and 5, and not clauses 6 to 17 of the will.

67. For avoidance of doubt, clause 3 disposes of Aguthi/Gatitu/899 to the executrix upon trust for life and upon her death to the applicant absolutely. Clause 4 places the rest of the estate into the residue, and puts the same in the hands of the trustees, and under clause 5 of the will the residue is to be held upon trust by the executrix for her own use and benefit absolutely. Clause 16 of the will provides that the residue, or the Residuary Kenyan Estate, to use the terms of the will, is to be held upon trust for the three children of the deceased.

68. Quite clearly, it cannot be accurate for the applicant to claim that he and his siblings were not provided for under the will of their father. They are clearly provided for and named in the will as beneficiaries, only that their benefits were not immediate as the children would only access the estate upon the demise of their mother. They are entitled to equal shares of the entire estate at her decease, meaning that the applicant is entitled to one third of the entire estate should his mother pass on. In the circumstances there cannot be any foundation to mount an application under section 26 of the Law of Succession Act for lack of adequate provision. In any event, the applicant has to contend with section 30 of the Act, which provides that such an application can only be made before the grant was confirmed. The grant was confirmed in 2006, the prayers for reasonable provision were therefore overtaken by events. The applicant has not demonstrated that there is room for extension of the period for filing such an application after grant has been confirmed.

69. In view of what I have stated in paragraphs 66, 67 and 68 aforegoing, it is quite clear to me, that the applicant has been adequately provided for from the will of the deceased. He is entitled to a third of the estate at the demise of the executrix. The problem appears to be that he is impatient and unwilling to wait for the bequests made to him to mature.

70. The third application that I am to determine is dated 2nd July 2015. It seeks censure of the executrix for threatening witnesses and intimidating them. The witnesses in question are the applicant and the farm manager, Julius Mwangi. It is said that the applicant was removed as director of one of the companies where the deceased had shares as a measure intended to harass and intimidate him, while Julius Mwangi was said to have been dismissed from employment at about the time that he was due to give evidence in this matter on the side of the applicant.

71. I have perused through the material placed before me by both sides on this. Regarding Mr. Mwangi's case, there is a matter that has been

filed at the Employment and Labour Relations Court over the incident. The pleadings in that matter have not been placed before me. The issues raised in the application and the labour matter are intertwined, it is about Mr. Mwangi being dismissed from employment due to fact that he was to be called as a witness in this matter. The matter before the labour court is a substantive suit, while what is before is an interlocutory application. I would refrain from venturing to deal with matters herein which might embarrass the Employment and Labour Relations Court at the during determination of the dispute before it. I should leave it to the Employment and Labour Relations Court to deal with the matter.

72. Regarding the applicant's case, I have been urged by the executrix that the matter related to company affairs, which are governed by a different piece of legislation or set of laws, and that being the case I should refrain from wading into the matter. It was submitted that the applicant has the option of raising the matter with the Commercial Division of the High Court if he was aggrieved with his removal as director of the company or companies.

73. The concern raised is that the events complained about arose so close to the dates when the two were due to testify as to be interpreted to mean that the actions were designed to intimidate the two witnesses. The coincidence would be too much that the executrix targeted the two individuals who were due to attend court as witnesses for removal as director and employee, respectively, so close to the date when they were due to attend court as witnesses against her.

74. The applicant has urged me to treat the same as contempt of court and to deal with the executrix in terms of the relevant contempt law. Contempt of court is a criminal offence, whether it arises in civil or criminal proceedings. It can be dealt with in either civil or criminal proceedings. The offence of intimidating witnesses is defined in both in the Penal Code, Cap 63, Laws of Kenya, and in the Contempt of Court Act, No. 46 of 2016. Where the charge is brought under the Penal Code the contemnor would be tried in ordinary criminal proceedings. Where the same is brought under the Contempt of Court Act, the same would then be initiated in the procedure prescribed for civil contempt, similar to that reserved for judicial review, by Motion supported by a statement and a verifying affidavit. I note that the applicant has not approached the court by such a process. The sanctions provided for for contempt of court are criminal in nature. The standard of proof should be above that in civil cases, and close to that in criminal cases. Due process is expected to be followed at all times in criminal matters. That would mean that the applicant ought to present a clear case of intimidation. I am not satisfied that the application before me would be an appropriate process for dealing with the complaint in question.

75. In the upshot, the final orders to be made in this matter are as follows -

a. That I hereby declare that the will of the deceased on record, executed on 23rd January 1998, is genuine and valid;

b. That I hereby declare that the applicant herein is adequately provided for under the terms of the said will;

c. That I hereby direct the executors of the said will, inclusive of Nigel Havergal Shaw, to, within forty-five (45) days of date of this judgment, file a full and accurate inventory of the assets and liabilities of the estate and an account of their handling of the estate of the deceased in keeping with section 83 of the Law of Succession Act;

d. That upon the filing of the inventory and accounts referred to in (c) above, the applicant shall be at liberty to move the court appropriately for other or further orders arising from the said account;

e. That the executrix shall furnish the applicant, within thirty (30) days of the date of this judgment, with a copy of the will of the deceased which disposes of his foreign estate;

f. That there shall be no order as to costs; and

g. That any party aggrieved by the orders made herein shall be at liberty to challenge the same at the Court of Appeal within twenty-eight (28) days.

PREPARED, DATED AND SIGNGED AT KAKAMEGA THIS 31st DAY OF January, 2019

W. MUSYOKA

JUDGE

DATED, SIGNED and DELIVERED at NAIROBI this 15th DAY OF February, 2019

ASENATH ONGERI

JUDGE