REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

SUCCESSION CAUSE NO. 12 OF 2018

IN THE MATTER OF THE ESTATE OF PETER SIMEL MUSE LENGAKAH ALIAS PETER SIMEL MZEE ALIAS OLE KISIO ALIAS PETER S.M LENKANAH ALIAS PETER SIMEL M.LENKAKASH (DECEASED)

GRACE NDUTA MWENDIA.....1ST APPLICANT

MOSES ALEX MUIRURI.....2ND APPLICANT

VERSUS

PURITY HANNAH WANJIKU SIMEL.....1ST RESPONDENT

MARY NASERIAN MUTHEE.....2ND RESPONDENT

JUDGEMENT

Background

The Applicants brought this Application to revoke the grant of letters of administration issued to the Respondents herein on the 11th day of June 2018 on the main ground that the same was obtained fraudulently and by the concealment of material facts from the court.

The 1st Applicant's claim is that she is the 2nd wife to the deceased while the 2nd Applicant is her son with the deceased. 1st Applicant claims that she has been married to the deceased for a period of 24 years stretching from the date of his death backwards. She claim the said marriage resulted in two issues. Initially, there is no despite regard the marriage between the 1st Respondent and the deceased. This marriage was blessed with three issues.

These two families lived in separate homes. The 1st Applicant claims that these two families are well known to each other while the 1st Respondent claims not to have known of the 1st Applicant and her children before the death of her husband. She further claims that they came into picture after the death of her husband just to benefit from his estate. The Respondents reiterated that no marriage existed between the 1st Applicant and the deceased.

The Applicants filed supporting, supplementary affidavits and exhibits annexed thereto as well as submissions in support of their case. The same was vehemently opposed by the Respondents by way of several affidavits and as well as written submissions filed before this court.

The Applicant's Case

The Applicants' case is captured in the supporting affidavit of Grace Nduta Mwendia sworn on the 11th September 2018 and her own *viva voce* evidence. She stated that she is a well-known 2nd wife to the deceased and their marriage was blessed with two issues namely: Moses Alex Muiriru Lenkakash and Levina Naipanoi Lenkakash. She annexed their birth certificates which depict the deceased as the father of the said two herein mark as **"GNM 4(a) & (b)".**

She averred that the deceased owned several properties as particularly set out in the 1st Respondent's affidavit in support of the Petition for Letters of Administration intestate over the estate of the deceased. She claims that during the life time of the deceased, he had allowed her to collect rent from tenants living in one of the deceased properties, namely Plot No.C.0617.

It was further averred and state in court that before his burial, a family meeting was conducted on 5th of February, 2018 which was attended by among others, the 1st Respondent and elders where it was agreed that the above mentioned plot which 1st Applicant had been benefiting

from would remain in her possession and control as it was the only means of her livelihood together with her children, one of which is a school going minor. (Annexure "GNM 7" is a copy of the minutes).

The 1st Applicant stated that it came to her knowledge that the 1st Respondent/Petitioner had filed a Petition in the High Court at Kajiado seeking grant of letters of administration intestate over the estate of her deceased without including children and her on the list of beneficiaries. That a temporary grant of letters of administration was issued on 11th June, 2018 which is awaiting confirmation. ("GNM 8 is a copy of the grant".

That on the 11th day of September, *2018* the 1st Respondent wrote to the tenants of the aforementioned plot which the Applicant has been depending on, directing that from henceforth they be depositing the rent into her personal account and further informing them that she had appointed the firm of Jokima Ventures to manage the said plot to collect rent bank slips. (Annexure marked as **"GNM 9(a) & (b**).

The 1st Applicant deponed that the actions of the 1stRespondent were contrary to the agreement which was reached at the said meeting held by the family members referred to above. That during the 24 years she has been married to the deceased, the 1st Respondent had never collected rent from the subject property. Further that she also used to pay County Government plot rates in the name of the deceased. She annexed copies of rates payment receipts herein marked as "GNM 10". She further stated that the actions of the 1st Respondent are aimed at depriving her family of the only source of their livelihood and likely to render them destitute and it is unless the Court grants the orders sought in the Application, the Respondents threatens and intends to carry out the acts of eviction.

The Respondent's Case

The application was opposed by the replying of **Purity Hannah Wanjiku Simel** herein the 1st Respondent who stated that she had lived with the deceased for 36 years and that she had never seen the Applicant in the deceased's home and even during family gatherings. She stated that the deceased never informed her that he had a 2ndWife nor children with another woman. She questioned that if the deceased had indeed lived with the Applicant for 24 years she ought to have had a home of her own.

She recognized the existence of polygamous marriages in the maasai customs and that the same is allowed. She then stated that the Applicant never come out to introduce herself to the family after the death of the deceased. She also states that she saw the names and the birth certificates of the 1st Applicant's children for the first time and the same bears the names of the deceased as their father.

The 1st applicant pointed out that Moses Alex Muiruri bears names that are not from her husband's clan and he was born before the year the 1stApplicant claims to have been married. That the parents of the deceased were Francis and Elizabeth and there was no way her husband would have refused to give the same names to the children in accordance with the customs.

The Respondent also stated that the letter referred to by the applicant in her affidavit was brought to their attention by some old men who forced her to sign before her husband is buried. She alleged that the 1st applicant threatened that no burial was to be conducted if she is not given a car and a house.

That made her to sign the documents due to threats and fear that she might not lay the deceased to rest in a dignified manner. The 1st Respondent stated that she bought the properly Plot No. C0617 formerly 347B at Kware with her own money from one mama Martin who is still alive and ready to testify. She further stated that she gave her husband (deceased) the priority to place every property they had in his own name since she did not know that the applicant or any other person would claim a share of the estate.

The 1st Respondent stated that she got money from the stones she used to sell at Kware. Further that, the Applicant must be having properties somewhere which she acquired during the period she claims she was married to the deceased. Further that, throughout her marriage with her deceased husband, he had never slept outside the matrimonial home.

She reiterated that the Applicant is not entitled to any inheritance and should not be given any share as she is not a beneficiary of the deceased estate. She also stated that the motor vehicle registration number KBW 319A was her late husband car. That the logbook has not been handed to her hence she was not able to include as one of the assets in absence of registration document. The respondent also questioned the aunthencity of the birth certificates and also all documents relevant to obtaining birth certificates of the children.

Law and Analysis

The deceased herein died without having made a will hence this is a matter of intestate succession. The question as to who is entitled to the property of the estate of the deceased is determined by intestate administration. Certain provisions are made by the Law of succession Act to cater for both monogamous and polygamous situations and the manner in which property devolves upon intestacy depends on whether the deceased was polygamous or monogamous. I'm alive to **Section 29** of the **Law of Succession Act** which provides:

> **"For the purposes of this Part, "dependant" means –**
>
> **(a) The wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;**
>
> **(b) Such of the deceased's parents, step-parents, grandparents, grandchildren, step children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death;…"**

In light of the foregoing provision of law, one can easily deduce that the spouses and children of the deceased have priority to inherit his estate. It is not in dispute that Peter Simel Musee Lenkakash died intestate on the 2nd of February, 2018 and buried on 8th February, 2018.

The question to ponder is as to who stands to benefit from the free property which constitute the estate of the deceased. That is the main issue in dispute in this particular case which I now endeavor to interrogate.

The administrators (Respondents) herein petitioned for grant of letters of administration on the 26th day of February, 2018 and the grant was granted on the 11th day of June, 2018. Subsequently, an objection was filed on the 19th of September, 2018 against the issuance of the said grant seeking: (a) Fonservatory orders restraining the respondents herein from intermeddling with the estate of the deceased pending hearing and determination of the application dated 31st August, 2018. (b) For revocation and/or annulment of the letters of administration intestate granted to the 1st and 2nd Respondents.

The 1st Applicant claims that she has been married to the deceased for 24 years and they were blessed with two issues. It is on that basis that she brought summons for revocation of the grant issued to the Respondents citing that the said grant was fraudulently obtained by making false statements or by deceit or by concealment from the court issues which were material to the court. It is in that regard that she claims that she and her children ought to be included to the list of beneficiaries and the estate be distributed in accordance with the provisions of **Section 40** of the Law of Succession Act. In that respect the 1st Applicant is claiming that she is a wife for the purposes of succession. I'm alive to the provisions of **section 3(5)** of the **Law of Succession Act** which provides thus:

> **"Notwithstanding the provisions of any other written law, a woman married under a system of law which permits polygamy is, where her husband has contracted a previous or subsequent monogamous marriage to another woman, nevertheless a wife for the purposes of this Act, and in particular sections 29 and 40 thereof, and her children are accordingly children within the meaning of this Act."**

If the Applicants succeeds in proving that they are beneficiaries by virtue of them being a wife and children of the deceased, they stand to benefit from the deceased's estate by dint of **section 29** and **40** of the Law of Succession Act, Laws of Kenya and the rules set out in **section 35** to **38**. On the other hand, the Respondents denied having known the 1st applicant and her family. The 1st Respondent was adamant that she only came into the picture when she demanded for the deceased's plot and car.

The foregoing brings to the first issue for determination herein which is an interrogation of the question as to whether or not there existed a valid marriage between the Applicant and the deceased before his death.

This is a hotly contested issue by the parties herein. The Applicant claims to have stayed with the deceased for 24 years. She claims that in 1997, she was married under Kikuyu Customary Law where certain steps were undertaken by the deceased to ratify the marriage. Further that the marriage in contention was blessed with two issues. It was stated that even though the Deceased was a Maasai, he could not marry her under the Maasai Customary Law since it is the custom of the bride and not of the bridegroom which dictates the customary marriage to apply.

It is important at this juncture to put to test the steps that the Applicant alleges to have been taken vis-à-vis the ingredients of a valid Kikuyu Customary Law. It is important to note that customary law marriages have essential ingredients which must be fulfilled and it is critical to determine if the deceased fulfilled them in the instant case.

Eugene Cotran's "Case Book on Kenya Customary Law" sets out the essentials of a Kikuyu Customary marriage at page 30 as follows:

> *1) **Capacity:** the parties must have capacity to marry and also capacity to marry each other.*
>
> *2) **Consent:** the parties to the marriage and their respective families must consent to the union.*
>
> *3) **Ngurario**: no marriage is valid under Kikuyu Customary Law unless the Ngurario ram is slaughtered.*
>
> *4) **Ruracio**: there can be no valid marriage under Kikuyu customary law unless a part of the **ruracio** (dowry) has been paid.*
>
> 5) **Commencement of cohabitation:** the moment at which a man and a woman legally become husband and wife is when the man and woman commence cohabitation. That is under the capture procedure when the marriage is consummated after the eight days' seclusion, and nowadays when the bride comes to the bride grooms home.

The parameters set out in abovementioned book were restated by the Court of Appeal (Nambuye, Kiage & Murgor, JJ A) in the case of ***Eva Naima Kaaka & Another vs. Tabitha Waithera Mararo [2018] eKLR***. It was observed therein that:

> **"When the particulars of the alleged ceremony are compared with the 'essentials of a Kikuyu customary marriage' as described by Eugene Cotran, and Gituanja vs. Gituanja [1983] KLR 575 it is plain to see that certain basic elements necessary for a Kikuyu customary marriage were absent.**
>
> ***For instance, the*** ngurario **is an integral part of the ceremony that signifies the existence of a Kikuyu Customary Marriage. But our reevaluation of the evidence does not point to a** ngurario **having taken place. This is because a fundamental component of** ngurario **is the slaughtering of a ram or goat.**

> **During the visit to Nyeri in 2011, no slaughter of a*ngurario* *ram was evident…From the above it becomes apparent that, no ram or goat was slaughtered to mark the coming into existence of a marriage. Without the presence of the central feature of the* *ngurario* *ceremony, it cannot be said that a valid Kikuyu customary marriage came into existence between Waithera and the deceased.***
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> ***It is also worth noting that Waithera did not provide any description or particulars of the alleged ceremony; her evidence is clear,*** "…there was no marriage…" **Essentially, her testimony was limited to 2008 when the deceased, together with one Joseph and Karanja, who are elders and his friends, visited her parents to introduce the deceased as the person who intended to marry her. It would seem that it remained just that: an intention, to marry. The learned judge erroneously concluded that Waithera was married to the deceased under the Kikuyu-Maasai Customary Law, despite the cogent evidence that the essentials of such a marriage were not satisfied. In our view, this omission negated the existence of a Kikuyu customary marriage, and we so find."**

Therefore, on the essentials of a valid kikuyu marriage, Cotran concludes that:

> **"No marriage is valid under Kikuyu law unless the ngurario ram is slaughtered" and that *"there can be no valid marriage under Kikuyu law unless a part of the ruracio has been paid."***

In applying the foregoing to the instant case, l shall turn to the supplementary affidavit dated 18th day of October 2018, the Applicant labored to show the steps that were taken by the deceased to solemnize his marriage with the 1st Applicant. She averred and stated that the deceased in company of his brother PW2 and other elders visited her parents' home in 1997 and he paid Kshs. 10,000/= to "know the home" and another Kshs. 15,000/= to "place a Marker" also known as *Kuhanda ithigi* and told the steps he was to follow to solemnize the marriage. I have a memo dated 2nd August, 1997 to that effect herein marked as "GNM1". She told the Court deceased later delivered two goats (known as *Mwati and Harika"*), paid dowry of Kshs. 100, 000/=, Kshs. 10,000/= for elders'bear, Kshs. 5, 000/= for women's soda and 36 shawls *(shukas)* for women. She annexed a hand written note dated 29th April, 2017 herein marked as GMN 2.

She also testified and averred that both occasions were attended by the relatives of the deceased, among them Mary Naserian, who is a surety in the Respondents' Petition. Daniel Lemayan Ole Kisio affirmed the first applicant's claim that she conducted a customary marriage with the deceased. In his statutory statement dated 28th October, 2018 he stated that he accompanied his brother together with some elders to pay dowry to her parents in Elburgon in 2017.

In light of the foregoing account on the steps that were taken by deceased in a bid to solemnize his marriage with 1st Applicant, it is important to note that Customary Law cannot be expected to be static over time. Since it is a human invention, it is certainly dynamic and keeps evolving from generation to generation. The evidence on record suggest that the deceased family visited the 1st Applicant's family for introductions. One of the key ingredients of Kikuyu customary marriage is *ruracio* (dowry) and there can be no valid marriage under Kikuyu law unless a part of it has been paid. I have noted that negotiations were made and families of two consented to the marriage. This can be inferred from the fact that the parties proceeded to agree on the dowry which was partly paid. Thus, in my view dowry can only be paid by the groom's family and accepted by the bride's family after negotiations on the same have been conducted and an agreement has been reached upon on the manner in which it is to be paid.

In the instant case dowry was paid by the deceased's family to the family of the 1st Applicant. The steps taken by the deceased herein to solemnize his marriage cannot be faulted hence this court finds that the 1st Applicant was duly married to the deceased under the Kikuyu customary law.

Having made the above finding that a Kikuyu customary marriage existed between the Deceased and the 1st Applicant, I shall proceed to comment some of the issues that were raised by the Respondents.

The Respondents in their replying affidavit as well as their written submissions question the 1st Applicant's marriage to the deceased. It was contended that if indeed she was married to the deceased for 24 years, she ought to have made an effort to know the deceased's other family. Further that she ought to have made an effort to ensure that the deceased's children know the other family members who are their step-brothers and sister.

In the event that I'm found wrong that I did not analyse and evaluate this fulfilment of customary law, then I ask the question as to whether the facts of this case may satisfy the principles of presumption of marriage. The doctrine of presumption of marriage has its genesis in **Section 119** of the **Evidence Act**, Cap. 80 of the Laws of Kenya which states that:-

> **"The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case".**

I find useful guidance in the Bromley Family Law, 5th Edition 64 says: -

> **"If a man and woman cohabit and hold themselves out as husband and wife, this in itself raises a presumption that they are legally married and when it is challenged, the burden lies on those challenging it to prove that there was in fact no marriage, and not upon those who rely on it to prove that it was solemnized."**

The same also commented on by the former Court of Appeal for Eastern Africa in the case of **Hortensiah Wanjiku Yawe -versus- The Public Trustee, Civil Appeal No. 13 of 1976** (*unreported*) stated as follows: -

> **"The presumption does not depend on the law or a system of marriage. The presumption is simply is an assumption based on very long cohabitation and repute that the parties are husband and wife.**"

In the words of **Bosire J.A**., as he then was, in the unreported case of **Mary Wanjiku Githatu vs. Esther Wanjiru Kiarie, Civil Appeal No. 20 of 2009 Court of Appeal at Eldoret** the Learned Judge correctly stated that *'in circumstances where parties do not lack capacity to marry, a marriage may be presumed if the facts and circumstances show the parties, by long cohabitation or other circumstances, evinced an intention of living together as husband and wife..'*

More recently, the Court of Appeal in the case of **Joseph Gitau Githongo -vs- Victoria Mwihaki (2014) eKLR** stated as follows: -

> **"It (presumption of marriage) is a concept born from an appreciation of the needs of the realities of life when a man and woman cohabit for a long period without solemnizing that union by going through a recognized form of marriage, then a presumption of marriage arises. If the woman is left stranded either by cast away by the "husband", or otherwise he dies, occurrence which do happen, the law subject to the requisite proof, bestows the status of "wife" upon the woman to enable her to qualify for maintenance or a share in the estate of her deceased "husband".**

In the case of ***GOODMAN V GOODMAN (1859) 28 LJ CH. 742.*** A Jewish man cohabited with a Christian woman for 28 years, there was general reputation that they were married and their children were baptized as Christians of both "husband", "wife" the husband's relatives declined to recognize the marriage the Court held that there was a presumption of marriage and the onus was on the person denying it.

I place further reliance ***in HALSBURY'S LAWS OF ENGLAND 3RD EDITION VOL. 19 PAR 1323*** says: -

> **"Presumption from Cohabitation**
>
> **Where a man and woman have cohabited for such a length of time and in such circumstances as to have acquired the reputation of being man and wife, a lawful marriage between them will generally be presumed, though there may be no positive evidence of any marriage having taken place and the presumption can only be rebutted only by strong and weighty evidence to the contrary".**

I have also taken refuge in the Court of Appeal decision in **Beth Nyandwa Kimani vrs Joyce Nyakinywa Kimani & others (2006) eKLR** where the Court held as follows: -

> **"For it matters not whether statutory or customary marriage requirements are strictly proved in marriage. The Court must go further and consider whether, on the facts and circumstances available on record, the principles of presumption of marriage was applicable in the appellant's favour. Such was the situation following the predecessor of this Court in Hortenesiah Wanjiku Yaweh vrs Public Trustee, Civil Appeal No. 13 of 1976 where Mustafa J.A in his leading judgment stated**
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> **"I agree with the trial Judge that the onus of proving that she was married to the deceased was on the appellant. But in assessing the evidence on the issue, the trial Judge omitted to take into consideration a very important factor. Long cohabitation as man and wife gives rise to a presumption of marriage in favour of the appellant. Only cogent evidence to the contrary can rebut such a presumption."**

In light of the above, it is crystal clear that a marriage by way of presumption requires proof of cohabitation for a length time and that the two have acquired the reputation of being a wife and husband. In this objection proceedings the evidence on record shows that the 1st Applicant and deceased had lived together for 24 years which is quite a long period of time. They were also blessed with two issues during the time they were lived together. The question to be answered is whether this cohabitation resulted into a presumed marriage. According to the **Black's Law Dictionary**, 9th Edition at page 296,***'cohabitation'*** is defined as follows: -

> **"The fact or state of living together, esp. as partners in life, usu with the suggestion of sexual relations."**

In terms of **section 2** of the the **Marriage Act**, to ***'cohabit'*** means:

> **"to live in an arrangement in which an unmarried couple lives together in a long-term relationship that resembles a marriage."**

Thus, in my view ***Cohabitation*** as a central issue in presumed marriages therefore entails a length and continuous living together of a couple holding themselves out as a husband and wife but in the absence of any formal marriage. The capacity of the 1st Applicant and deceased to marry is not in doubt. In the instant case, the 1st Applicant averred that she had been continuously married to the deceased for 24 years. They were blessed with two issues during that time, one of which is over 24 years. The evidence of Daniel Ole Kisio is that he has known the 1st Applicant as a wife to his deceased brother since on or about 1994 when they started living to gather. He affirmed the 1st Applicant's claim that she sired two children during the subsistence of her marriage with the deceased. Further that the 1st Applicant and the 1st Respondent are the 1st family.

Further, the testimony of Paul Kimani Gichuri and that of Steven Karanja Njoke corroborates the 1st Applicant's position. They both acknowledged that they have known the 1st Applicant and the deceased as husband and wife. Steven Karanja Njoke who claimed to be a

family friend to the deceased family also stated that the 1st Applicant used to manage the deceased business at Kileleshwa where her late husband owned a butchery and a grocery shop. They lived together at Kware in Ongata Rongai.

He further stated that as a family friend he used participate in almost all their family and social activities both at the 1st Applicant's home in Ongata Rongai and at her parents' home in Elburgon. He also gave an account on what transpired prior to the burial of the deceased. He stated that he was the chairman of the burial committee which represented both families, to wit, Grace and Purity's families. That the burial committees drafted the death announcement which was to appear in the daily newspapers comprising both wives and their children. He was surprised on the 8th of February, 2018 the day after the burial, to find out that another death announcement in the Daily Nation Newspaper which excluded the names of Grace and those of her children.

One of the objections raised by the 1st Respondent in the instant case is that the 1st Applicant was not known either or the rest of her family. In an Africa marriage of a polygamous nature the duty to bring the other spouses to interact as family unit is vested in the husband during the subsistence of the marriage. The rights of any one spouse shall not be extinguished upon demise of the husband for the reason that she was not introduced to the other surviving spouses.

I refer to the applicant's supplementary affidavit dated 18th October, 2018. It lists several instances which show that the 1st applicant and her children were well known and part of the deceased family. Several photographs were also annexed which depicts a visit by the deceased's sister Hanna Moijoi (deceased). Annextures marked as **GNM 9(a)** to **(e)** are several photographs which were also taken by the deceased. I note that this evidence is uncontroverted by the respondents. As the widow of the deceased the 1st applicant as demonstrated by way of photographic evidence their life and history of cohabitation with the deceased.

I therefore discount the argument advanced by the 1st Respondent in this succession cause that the Applicant was a stranger and a busy body for the reason that she was not known to her prior to the death of deceased. The applicant cannot also be faulted that in accordance with the new marriage act, that she had not registered her customary marriage with the registrar of marriages. For the Kenyan people the provisions of the new Act is yet to sink in their minds that a marriage which has been in existence for decades without any interference ought to be regulated by the state. In my view, the legitimacy or legality of the marriage is not dependent solely upon registration.

Having answered the issue as to whether there was a marriage in the affirmative, I now endeavour to address the same within the parameters of **section 76** of the law of succession act. On whether the Grant of Letters of Administration issued to the Respondents on 11th June, 2018 is a valid instrument capable of being revoked, the Applicants resorted to **section 76** of the Law of Succession Act which provides for revocation and annulment of grant and the same provides as follows:

76. Revocation or annulment of grant

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

a. that the proceedings to obtain the grant were defective in substance;

b. that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

c. that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

d. that the person to whom the grant was made has failed, after due notice and without reasonable cause either-

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court 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 or has produced any such inventory or account which is false in any material particular; or

e. that the grant has become useless and inoperative through subsequent circumstances."

In view of the above provisions of law, I find that the 1st Applicant and her children ought to have been involved in the distribution process of the deceased estate, thus the administrators should have notified her to be part of the dependants who will benefit from deceased's estate. Therefore, the fact that the Respondents proceeded without having informed the Applicants, the same amounts to concealment or misrepresentation of material fact. Thus, the Respondents herein are guilty of non-disclosure of material facts in their process of applying for the grant of letters of administration.

Having taken into account the application, the affidavits and exhibits brought before court in support of each part's account as well as the relevant law and judicial precedents I hereby make the following orders:

a. That the grant issued to the Respondent on the 11th June 2018 is hereby revoked.

b. That a new grant of letters of administration be issued to the parties whereby the 1st Applicant be appointed as a co-administrator with the 1st Respondent.

c. That the proceedings of the succession subject to this matter to started de novo.

d. Costs be borne by either of the parties.

e. Leave for each party to apply

It is so ordered.

DATED, DELIVERED AND SIGNED IN OPEN COURT AT KAJIADO THIS 7TH JUNE, 2019.

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R. NYAKUNDI

JUDGE

Representation:

Ms. Gulenywa for the respondents

Mr. Kimemia for the applicants