



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2820 OF 2002

IN THE MATTER OF THE ESTATE OF NG'OMBE WAMBIRI (DECEASED)

JUDGMENT

1. Ng'ombe Wambiri, the deceased, died on 1967. A petition for letters of administration intestate was filed herein, and a grant was made to Wambiri Ng'ombe and Regina Wangui Wambiri, hereinafter referred to as the 1st administrator and the 2nd administrator, respectively.

2. A summons dated 10th September 2003 was lodged herein by Margaret Nduta Kibe and Margret Mukami Warui, hereinafter referred to as the applicants, seeking, that the said grant be revoked and that the administrators be restrained from entering, selling, disposing of or in any other manner interfering with the subject property, known as Loc. 11/Gaitega/87. The applicants cited grounds, *inter alia*, that the administrators had obtained the said grant fraudulently by making false statements or by concealment from the court of facts material to the case. The applicants deposed in their affidavits, sworn on 9th September 2003, that they were granddaughter and widow of the deceased, respectively.

3. The reply to the application took the form of a replying affidavit, sworn on 24th September 2003, by the 1st administrator, wherein he deposed, that the deceased had two wives and 6 children as follows:

(1) Muthoni Ng'ombe – 1st Wife

(a) Wangai Ng'ombe (deceased);

(b) Wanjohi Ng'ombe (deceased, survived by his wife, Mary Wanjohi);

(c) Wanjiru Ng'ombe (now deceased, married to Jonathan Kang'ethe); and

(d) Wambiri Ng'ombe (1st administrator)

(2) Wanjiku Ng'ombe – 2nd Wife

(a) Wambiri Ng'ombe (deceased, survived by his wife, the 2nd administrator) and

(b) Warui Ng'ombe (deceased).

4. The 1st administrator stated that the 2nd applicant was married to the said Warui Ng'ombe, but asserted she deserted her matrimonial home and went back to her parents way before 1953, and that she had never been seen anywhere near the deceased's land ever since. He denied that the 2nd applicant was a wife to the deceased, and that the deceased was ever married to one Jane Nyambura, as was deposed by the 1st applicant. He stated that the said Jane Nyambura was a wife to his deceased brother, Wangai Ng'ombe, now deceased, and that the 1st applicant was their daughter. The 1st administrator further deposed that the 1st applicant, as a daughter, was not even a beneficiary of the deceased's estate as she was married to one Stephen Kibe. The 1st administrator further denied that the assertion by the 1st applicant that the 2nd administrator was his wife.

5. The 1st applicant filed a supplementary affidavit, sworn on 13th October 2003, deposing that her advocate on record mixed up the lineage of the family of the deceased. She deposed and admitted that Wangai Ng'ombe was her father and that Wambiri Ng'ombe, the deceased, was the husband of the 2nd administrator and not the 1st administrator as she had deposed in her earlier affidavit. The 1st applicant further admitted that the 2nd applicant was the wife to Warui Ng'ombe and not the deceased. The 1st applicant further deposed that the deceased had allocated land in Mugoiri to the 1st administrator, the land in Maragi to Wambiri Ng'ombe, the husband of the 2nd administrator and in Maragi to Wanjohi Ng'ombe and Loc. 11/Gaitega/87 to Wangai Ng'ombe, the 1st applicant's father and Warui Ng'ombe, husband to the 2nd

applicant in equal shares. The 1st applicant stated that the 2nd applicant never moved away from the property as was alleged by the 1st administrator as their matrimonial home was located in the property and they had children. The 1st applicant added that it was the 2nd administrator and her husband who chased the 2nd applicant from her matrimonial home after she refused to be inherited by the 2nd administrator's husband. The 1st applicant added that her mother, Jane Nyambura, remained in her portion of Loc. 11/Gaitega/87, but was ailing and thus the 1st applicant took her to her home in Gikindu Location for care.

6. The administrators filed a notice of preliminary objection on 29th October 2003, citing that the court had no jurisdiction to entertain the applicants' application as they had no *locus standi* to lodge such a claim on behalf of deceased persons without authority in law.

7. The applicants filed a statement of issues on 28th March 2006, where they listed the issues for determination as follows:

- (a) whether the deceased had distributed his properties in Mugoiri, Maragi and Loc. 11/Gaitega/87 to his four sons prior to his death;
- (b) whether the deceased allocated property Loc. 11/Gaitega/87 to the widows of his two deceased sons, that is Jane Nyambura Wangai, the widow of Wangai Ng'ombe and the 2nd applicant, the widow of Warui Ng'ombe, in equal shares;
- (c) whether the 2nd applicant is the widow of Warui Wang'ombe and if so, whether she is entitled to a half share in property Loc. 11/Gaitega/87;
- (d) whether a meeting of elders decided that property Loc. 11/Gaitega/87 be shared out equally between the two applicants after the death of Jane Nyambura Wangai, the mother of the 1st applicant;
- (e) whether the administrators are guilty of obtaining the Grant fraudulently by concealing from the court the interest of the applicants;
- (f) whether the administrators are entitled to any share of the deceased's estate;
- (g) whether the proceedings to obtain the grant were defective in substance and, if so, whether the same should be struck out; and
- (h) what orders are to be made on costs.

8. The 2nd administrator died on 23rd July 2016 and her case was taken over by Benson Kimani Wambiri, who had obtained grant *ad litem*, made to him on 7th April 2017 by the Chief Magistrate's Court in Murang'a. The matter proceeded by way of *viva voce* and affidavit evidence.

9. The deceased died in the year 1967, which was before the commencement of the Law of Succession Act on 1st July 1981. The scope of the Law of Succession Act is stated in Section 2 thereof; as follows: -

"2(1). Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of persons dying after the commencement of this Act and to the administration of estates of those persons.

(2) The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act."

10. Section 2(2) of the Law of Succession Act is, therefore, categorical that the substantive provisions of the said Act are not applicable to the estates of persons who died before the said Act commenced, instead it is the written laws and customs that applied as at the date of the death of the deceased that would apply to estates of such persons. Consequently, the devolution of the deceased's estate will be governed by written laws and customs in force as at the time of his death in 1967. See *In Re Estate of Nduati Mbuthia (Deceased)* [2015] eKLR and *In re Estate of Mwangi s/o Ngamba Alias Mwangi Ngamba (Deceased)* [2015] eKLR).

11. From the names of the parties hereto, it would seem that they are from the Kikuyu community and, during the course of the hearing, references were made to Kikuyu customary law. This would mean that the devolution of the estate of the deceased is governed by Kikuyu customs which were applicable at the time of his death in 1967, and not the Law of Succession Act. However, caution is to be exercised when applying customary law which has a tendency of being patrilineal and, more times than not, goes against the constitutional tenets of Article 2(4), 10 and 27 of the Constitution of Kenya, 2010. See *Atemo vs. Imujaro* (2003) KLR 435).

12. A summary of the issues to be determined in light of the statement of issues filed by the applicants on 28th March 2006 and the facts were of the filings herein and the oral evidence are as follows:

- a) whether the applicants are surviving of the deceased and beneficiaries of the estate;
- b) whether the applicants are entitled to Location 11/Gaitega/87; and

c) whether the grant made to the administrators on 31st July 2003 ought to be revoked.

13. I will start by considering the first issue, whether the applicants are survivors of the deceased and beneficiaries to his estate. As stated here before, the 1st applicant deposed and testified that she was a granddaughter of the deceased, as she was the daughter of Wangai Ng'ombe, a son to the deceased, who predeceased the deceased. Joseph Miako, a grandchild of the deceased and a son of the 1st administrator, corroborated that in his testimony. Dismas Nduati Mukabi, another witness, stated that the deceased was his uncle, being the elder brother of his father. He added that the 1st applicant was a child of one of the children of the deceased called Wangai. The 1st applicant further deposed that the 2nd applicant was a daughter-in-law of the deceased as she was the wife of Warui Ng'ombe, a son to the deceased. Joseph Miako testified that by the time he was born in 1967 and came of age, Warui Ng'ombe had since died and he never met the 2nd applicant, who, as per his witness statement, had deserted Warui Ng'ombe. Joseph Miako added that he did not know how they related to the 2nd applicant, but said that Warui Ng'ombe was her husband. Dismas Nduati testified that he only knew the 2nd applicant as a friend of Warui Ng'ombe. He added that when Warui Ng'ombe died, he did not leave behind a wife, adding that the 2nd applicant was not Warui Ng'ombe's wife. He further testified that Warui died in 1952 and that he did not know whether the administrators chased the 2nd applicant away from Warui's home. He reiterated that he was alive during Warui's lifetime and that the 2nd applicant was not a wife to Warui. He further testified that the 2nd applicant lived in her father's land. He testified that there were no customary rites for the 2nd applicant so as to make her a wife under customary law, adding that she was not a member of the family.

14. In her own testimony, the 2nd applicant stated that the deceased was her father-in-law and that Warui Ng'ombe was her husband, and that he died in 1963. She added that at the time of Warui's death, she was living at her husband's home in Gaitega. She stated that after the death of Warui, she was chased away by one of the sons of the deceased but she could not remember the son's name, and that she went back to her parents' home. She testified that her husband was Warui Ng'ombe but she could not recall when he married her. The court noted that the 2nd applicant did not answer to the comment that she had no child with Warui Ng'ombe at the time of his death. She admitted that she had a child called Irungu after Warui died and that she had two other children thereafter, but that she did not know the fathers of those children. The court further noted that the 2nd applicant did not respond to the question that she had never applied for letters of administration of the estate of Warui Wang'ombe. The 2nd applicant testified that she did not recall telling her advocate to swear her affidavit on 9th September 2003. She further stated that she knew Jane Nyambura as a co-wife but she never had a case with her. She added that Warui died without having children and that she could not recall where Warui was buried, although she stated that she had attended the funeral. The 2nd applicant stated that she could not tell the number of sons the deceased had and, at the close of cross-examination, she stated that she was not married to Warui. However, on re-examination she stated that Warui was her husband and that she had one child with him but the child died. I find the testimony of the 2nd applicant contradictory and not credible.

15. From the evidence above, it is clear that the 1st applicant was a grandchild of the deceased and therefore a survivor of the deceased and a beneficiary to his estate. The contention that the 1st applicant, being a woman, is not entitled to inherit property as per Kikuyu customary law is discriminatory and offensive to the Constitution of Kenya, 2010 and more specifically the principle of equality before the law, and the right to equal protection and equal benefit of the law. Men and women have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. As per Article 2(4) of the Constitution of Kenya, 2010, any law, including customary law, which is inconsistent with the Constitution, 2010, is void to the extent of the inconsistency. Therefore any customary law that discriminates against women in inheritance is inconsistent with the letter and spirit of the Kenyan constitution, and, therefore, null and void.

16. On the other hand, I find that the 2nd applicant is more of a stranger than a daughter-in-law to the deceased. The 2nd applicant's evidence is not convincing, that she was a wife to Warui Ng'ombe, who was a son to the deceased. She even conceded, at some point, that she was not married to the Warui and that she did not have any children with him. The weight of evidence from herself, and the other witnesses, is clearly against her with respect to the matter of her alleged marriage to Warui, which, in my view, was not proven. I find that she was not a survivor of the deceased and therefore she cannot be a beneficiary to his estate.

17. Let me now advert to the second issue, whether the objectors/applicants are entitled to Loc. 11/Gaitega/87.

18. Having found that the 2nd applicant is a stranger to the estate of the deceased, it follows that she cannot be entitled to Loc. 11/Gaitega/87. The question as to whether the 1st applicant, being a granddaughter of the deceased, is entitled to a share of Loc. 11/Gaitega/87 has been answered in the affirmative.

19. The 1st applicant stated that the deceased had during his lifetime allocated half of Loc. 11/Gaitega/87 Gaitega farm, hereinafter the suit property, to her mother, Jane Nyambura, as a widow of Wangai Ng'ombe. She stated that the 1st administrator had been allocated a farm at Mugoiri, whereas Wambiri Ng'ombe, the husband of the 2nd administrator had been allocated a farm at Maragi. In her testimony, the 1st applicant stated that her mother, Jane Nyambura, used to stay in that portion of the suit property allocated by the deceased and that the 1st administrator took it away. The 1st applicant added that she used to cultivate on the suit property and her mother had a house there, and that was where her mother was buried. On cross-examination, she stated that she was claiming the suit property on behalf of her deceased father, adding that she did not have a grant of letters of administration intestate in respect of the estate of her father or mother. She stated that she left the suit property for Gikindu in 1978, after the administrators took away the land. She asserted that she was claiming the suit property because she took care of her mother and that it was her mother's wish that she should be given the said portion. On re-examination, she stated that the 2nd administrator was buried in the suit property.

20. Joseph Miako stated that the 1st administrator, who was his father, farmed on the suit property, and that the 1st administrator allowed him, and his brother, Wanjohi, to also farm there. He denied that that the Mugoiri land belonged to the deceased. On re-examination, he stated that the children of the 2nd administrator live on one side, and that he and his brother farmed on the other side. Dismas Nduati Mukabi testified that he was present when the deceased shared out his property amongst his children, and that he had two farms which included the suit property. He added that he did not know that the deceased had a farm at Mugoiri.

21. In *Dan Ouya Kodwar vs. Samuel Otieno Odwar & another* [2016] eKLR, it was said as follows:

“There are only two types of gifts in law. There are those gifts made between living persons (gifts inter vivos) and those gifts made in contemplation of death (gifts mortis causa). The application of the two gifts were ably and exhaustively dealt with by Her Ladyship Nyamweya, P. in Re Estate of the Late Gedion Manthi Nzioka (Deceased) (2015) eKLR when she expressed herself as follows:

‘For gifts inter vivos, the requirements of law are that the said gift may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way resulting trusts or the presumption of. Gifts of land must be way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing. Gifts inter vivos must be completed for the same to be valid. In this regard it is not necessary for the donee to give express acceptance, and acceptance of a gift is presumed until or unless dissent or disclaimer is signified by the donee. See in this regard Halsbury’s Laws of England 4th Edition Volume 20(1) at paragraph 32 to 51.

In Halsbury Laws of England 4th Edition Volume 20(1) at paragraph 67 it is stated as follows with respect to incomplete gifts:

“Where a gift rests merely in promise, whether written or oral, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it, except in circumstances where donor’s subsequent conduct gives the donee a right to enforce the promise. A promise made by deed is however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which according to the nature of the property comprises in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do.”

Coming to the present application and protest, the Court notes that it is not stated nor was any evidence given by the 3rd Administrator as to when the said gift was made by the deceased to Joyce Mathei Nziuko. The evidence of the said gift was that it was made at a family meeting whose date is not known and which the protestors have disputed. In her submissions it is also submitted that the said gift was made by the beneficiary’s mother.

It is therefore my findings that section 31 of the Laws of Succession Act is inapplicable as it has not been established that the deceased made the said gift in contemplation of his death. The said gift therefore can only have treated by this Court as a gift inter vivos. In addition, a person cannot gift that which he or she does not own, and the beneficiaries’ mother could not gift property that belonged to the deceased without any evidence to show that the same had been gifted to her, or that the deceased had instructed her to gift the property known as Syokimau farm.’”

22. The aforementioned case is similar to this one. The suit property was registered and thus if the deceased desired to gift any of his children that property, then the same ought to have been in writing. There is no evidence of any deed of transfer or any instrument in writing by the deceased that gifted the 1st applicant’s father or mother the suit property. Consequently, there it cannot be said that the 1st applicant’s mother gifted the 1st applicant that which she did not own without any evidence that she was gifted the said property by the deceased. It is my finding that the deceased did not gift either Wangai Ng’ombe, the 1st applicant’s father or Jane Nyambura, the 1st applicant’s mother the suit property. The 1st applicant’s claim to the suit property based on the ground of a gift *inter vivos* fails for want of proof.

23. However, there was evidence by the 1st applicant that her mother was buried in the suit property. That evidence was not controverted by the administrators. There is evidence that the 2nd administrator was buried in the suit property and that her children live there. There is further evidence that the 1st administrator and his children farm in the suit property as well. There is no evidence on record as to the ownership of the Mugoiri and Maragi farms to ascertain whether they belonged to the deceased, and if that was the case, whether there was a gift *inter vivos* to any of his children. Based on the fact that the 1st applicant’s mother was buried in the suit property and being a granddaughter of the deceased, I find that she has a stake and is entitled to a share of the suit property.

24. I now turn to the third issue as to whether the grant made to the administrators on 31st July 2003 ought to be revoked.

25. The application dated 10th September 2003 seeks revocation of the grant that was made to the administrators on 31st July 2003, based on the grounds that the said grant had been obtained fraudulently by the making of false statements or by concealment from the court of facts material to the case. The applicants added that the proceedings to obtain the grant were defective in substance.

26. Section 76 of the Law of Succession Act 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 order or allow; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.”

27. In *Lucy Njoki Kamanja vs. Ezekiel Muenja Ngure* [2017] eKLR it was said that:

“...This was a material non-disclosure and concealment of something material to the case. By stating, that he was the only survivor, the respondent made a false statement.

As held – *Re: Estate of Philip Kiprono Bett (Deceased [2005] eKLR*, non-disclosure of all beneficiaries is therefore a defect that goes to the root of the administration of the estate. Where there is no disclosure, the grant whether or not confirmed cannot stand.”

28. In *In re the estate of Alexander Muchemi Kiago (Deceased)* [2017] it was remarked that:

“I find that the petitioners failure to include the objectors in the succession proceedings is tantamount to non-disclosure of material facts and have satisfied the requirement of Section 76(b) as such this court revokes the Grant of letters of Administration granted by this court.”

29. In *In re Estate of Ndinguri Karugia (Deceased)* [2017] eKLR, it was said that:

“From the detailed chronology of the documents that the Respondent lodged for grant of letters of administration intestate, she did not disclose all children and family of the deceased.

The non-disclosure of all beneficiaries of the deceased's estate amounted to concealment of material facts. The grant of ... confirmed on... were fraudulently obtained by means of an untrue allegation of a fact essential in point of law to justify the grant ... In the case of *Albert Imbuga Kisigwa vs. Recho Kawai Kisigwa, Succession Cause No.158 Of 2000, Mwita J.* in a decision rendered on 15th November, 2016, noted thus:

‘[13] Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.’

Therefore, the beneficiaries of the estate of the deceased were excluded contrary to Section 51 (2) (g) of the Law Succession Act and Rule 7(1) Probate & Administration Rules.

Consequently, non-disclosure of all other beneficiaries pre-empted the required written consents to be availed to petition of grant of letters of administration and confirmation of grant.

Secondly, non-disclosure of the deceased as a polygamous man made the grant of letters of administration intestate and the confirmed grant to be processed in contravention of Section 40, Section 58 and Section 84 of the Law of Succession Act Cap. 160.”

30. In *re Estate of Wahome Mwenje Ngonoro Deceased* [2016] eKLR, it was said that:

“It is trite law that if a grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case; or that the grant was obtained by means of untrue allegation of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently, such a grant can be revoked or annulled ... The evidently deliberate failure by the Respondent to involve the applicants at the time of filing these proceedings, failing to list them among the beneficiaries or seek their consent or renunciation was in view in bad faith and amounts to concealment of material facts. My conclusion is that the proceedings leading to the issuance of the grant are defective in substance and that material information was not disclosed to the court in that had the court been made aware that there were other beneficiaries who were interested in the deceased's estate, the court would have hesitated to issue the grant ... No consent was obtained from the applicants at the time of filing the petition. To me the petition was filed contrary to Rule 26 of the Probate & Administration Rules which states: -

“26(1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same

degree as or in priority to the applicant.

(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require”

The effect of failure to comply with Rule 26 of the Probate and Administration Rules was ably discussed by the court in Al-Amin Abdulrehman Hatimy vs. Mohamed Abdulrehman Mohamed & another[2013]eKLR where the court held that the law of succession by virtue of Rule 26 requires that any application for issue of a Grant must be accompanied by a consent duly signed by all persons entitled in the share in the same estate.”

31. In this case, the administrators indicated in their petition for the grant of letters of administration intestate that they were the only survivors of the deceased, a fact which evidence has revealed to be untrue, as there are other survivors of the deceased, and beneficiaries to his estate, who were still alive. As the authorities cited above have shown, failure to disclose all the beneficiaries of the estate amounted to concealment of material facts and as such the grant cannot stand. I hereby find that the applicants have satisfied the requirements of section 76(a) and (b) of the Law of Succession Act, and as such the grant on record ought to be revoked.

32. In conclusion, I find that the 2nd applicant is not a beneficiary of the estate as she was never married to Warui Wang’ombe, a son to the deceased. I find that she is a stranger to the estate and as such she is not entitled to any share of it. On the other hand, I find that the 1st applicant is a beneficiary to the estate as she is a granddaughter of the deceased. I further find that as a granddaughter, she is entitled to a share of the estate, and, in this case, directly as both of her parents are dead, and as such she is entitled to what her parents would have inherited from the deceased. I find that the administrators are guilty of material non-disclosure and concealment of facts from the court which warrants the revocation of the grant made to them on 31st July 2003. The upshot is that the applicants’ application dated 10th September 2003 is merited and should be allowed to the extent indicated in this paragraph.

33. Rule 73 of the Probate and Administration Rules saves the inherent power of this court. It reads:

“Nothing in this rule shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the court.”

34. Section 47 of the Law of Succession Act spells out the jurisdiction of the High Court in the administration of estates in these terms:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”

35. I am cognizant of the fact that this is an old case, spanning close to sixteen years, and that the parties are elderly and sickly. That being the case, I am inclined to make the following orders:

(a) that the grant of letters of administration intestate issued to Wambiri Ng’ombe and Regina Wambui Wambiri on 31st July 2003 is hereby revoked;

(b) that I hereby appoint Wambiri Ng’ombe, Benson Kimani Wambiri and Margaret Nduta Kibe as administrators of the estate of the deceased, and a grant of letters of administration intestate shall issue to them accordingly;

(c) that I direct the administrators, appointed in (b) above, or either of them, to file an application for confirmation of their grant within the next thirty (30) days, listing all children or survivors of the deceased or the beneficiaries of the estate, and the mode of distribution thereof, but excluding Margaret Mukami Warui the 2nd applicant herein;

(d) that whoever shall not agree with the proposals to be made in the application contemplated in (c) above, shall be at liberty to file an affidavit or affidavits of protest;

(e) that the matter shall be mentioned after 45 days for compliance and further directions;

(f) that as the estate comprises of assets situated exclusively within Murang’a County, this cause shall be transferred to the High Court of Kenya at Murang’a for finalization;

(g) that each party shall bear their own costs; and

(h) that any party aggrieved by the orders made herein shall be at liberty to move the Court of Appeal appropriately within twenty-eight days.

DATED AND SIGNED AT KAKAMEGA THIS 8th DAY OF October 2019

W MUSYOKA

JUDGE

DELIVERED DATED AND SIGEND IN OPEN COURT AT NAIROBI THIS 22nd DAY OF October 2019

A. O. MUCHELULE

JUDGE