REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE NO. E148 OF 2024

IN THE MATTER OF THE ESTATE OF FRANCIS KIPKOECH CHEPTOO ALIAS KIMOSO (DECEASED)

JOSEPH YATICH ……..1ST EXECUTOR

MICHAEL KWAMBAI ……2ND EXECUTOR

VERSUS

MARGARET JEPKEMBOI KIMOSO …… 1ST PROTESTOR

ABRAHAM KIPKOSGEI KIMOSO …….. 2ND PROTESTOR

MARK CHIRCHIR TAIWA …… 3RD PROTESTOR

NICHOLAS KIPROP KIPKOECH …… 4TH PROTESTOR

RUTH JEMELI KIMOSO …… 5TH PROTESTOR

AMOS TAIWA CHERUIYOT TAIWA …… 6TH PROTESTOR

Coram: Before Justice R. Nyakundi

M/s Mutai Oduor & Co. Advocates

M/s Isiaho Sawe & Co. Advocates

M/s Songok & Co. Advocates

RULING

1. The deceased herein died on 18th November, 2012. The executors of the deceased's last Will and testament drawn on 12th July, 2011 petitioned the Court for letters of administration of the estate of the deceased with Will annexed. The Will has however been challenged by the Protestors herein through affidavits sworn by the 1st Objector on 9th July, 2025 and 2nd – 6th Objectors sworn on 22nd May, 2025.
2. In objection, the 2nd Objector to the 6th Objector filed an affidavit whose contents can be summarized as hereunder:
3. The deponents are biological children of the deceased from his second house. The deceased was polygamous, having married two wives during his lifetime. From his first marriage to Magdalene Francis, he had eleven children including Maurice Kipchumba Kimoso, Christopher Kibowen Kimoso, Margaret Jepkemboi Kimoso, Raymond Biwott Kimoso, Caroline Kimoso, Robert Kiplimo Kimoso, Grace Jerono Kimoso, Charity Jebichii Kimoso, Kiptanui Kimoso, Kenneth Kimoso, and the late Julius Kimoso. His second marriage to Catherine Chepyator Francis produced nine children: Jane Jelagat Kimoso, Abraham Kosgei Kimoso, Mark Chirchir Taiwa, the late Luka Korir, Nicholas Kiprop Kipkoech, the late Thomas Kipng'etich, Ruth Jemeli Kimoso, Amos Cheruiyot Taiwa, and Judith Jepkoech. A copy of the Chief's letter dated 5th March 2024 confirming these particulars has been attached.
4. The late Luka Korir died on 14th January 2025, leaving behind his widow Everline Jepkoech Kiprotich and five children aged between 9 and 25 years. The late Thomas Kipng'etich, though unmarried at the time of his death, sired a son named Cornellius Kipruto Ng'etich who is now sixteen years old. The entire family, including the deceased, knew about this child, and he was placed in the custody of the second widow at the age of one year. He currently lives with Jane Jelagat Kimoso.

5. During his lifetime, the deceased provided for his families personally but never identified specific assets comprising his estate to any beneficiary. When he died on 18th November 2012, both families participated jointly in organizing his medical and funeral expenses. He was subsequently buried on his father's land, L.R No. Irong/Iten/1.

6. According to the Protestors, at the time of burial, rumours emerged from Jane Kimoso that the deceased had left behind a Will. Before revealing its existence, she indicated she needed to seek details of what their father had stated concerning his burial site. However, Jane was involved in a road traffic accident shortly before the burial and was admitted to Moi Teaching and Referral Hospital with serious injuries. She therefore did not attend her father's burial. The families conducted a commemoration forty days after the burial in accordance with the deceased's Catholic faith, but members of the first house, including Maurice Kipchumba Kimoso, did not attend.

7. About two months after the commemoration, the Chief of Chebaror location, Joseph Limo, informed them that a Lawyer was scheduled to read the alleged Will. A family meeting was organized, and on the appointed date some family members attended while others did not. Both Widows were still alive at this time. The meeting required tight police security due to tensions within the family. The two Executors also attended.

8. During the meeting, Mr. Christopher Arap Mitei, advocate, was introduced by the area Chief and read out the contents of a Will dated 12th July 2011. After the reading, Counsel Mitei sought the position of the Widows regarding the contents. Both Widows vehemently disputed the alleged Will on several grounds. First, they argued that since they were both alive, they were best placed to administer their late

husband's estate. Second, they proposed that the estate should have been divided between the two houses, after which each widow would determine how to apportion her house's share to her children. Third, they took issue with the fact that not all the children had been considered as beneficiaries. Fourth, the Widows disputed allegations in the Will that some of the children were never sired by the deceased. Counsel took notice of these objections but stated he had completed his obligation as instructed by the deceased.

9. Acrimony arose after the reading, particularly when Maurice Kipchumba Kimoso, Robert Kiplimo, and Raymond Kimoso forcefully took possession of all parcels of land constituting the estate and ploughed them, save for the ancestral home. That these beneficiaries began actualizing the provisions of the disputed Will even before it had been properly propounded as required by law. The deponents note that their father was ailing when he allegedly drew the Will, undergoing dialysis for diabetes, and was therefore not in a position to make sound decisions.

10. When tensions persisted, a family meeting was convened and the family resolved to divide the deceased's assets comprising parcels of land and machinery, equally between the two houses. This resolution was implemented on the ground peacefully, with each house utilizing its allocated share. A subsequent meeting was held at the second house where specific shares were allocated to individual members for utilization pending succession proceedings. That the Executors attended this meeting and are privy to the resolution reached. The allocation to members of the second house was enforced at the Chief's Office, chaired by Chief Joseph Limo himself. Minutes confirming this

arrangement have been annexed. The families continued utilizing their respective shares peacefully without interference.

11. When the first Widow died in 2015, having already been allocated her share, it was unanimously agreed that she be interred next to the deceased on the ancestral land without any objection. At that time, the second Widow was in use and possession of the ancestral land. After the second Widow passed away in 2019, Maurice Kipchumba Kimoso reverted to the contents of the Will and began harassing the second house members through the local administration and police, relying on the alleged Will as proof of ownership.

12. In 2021, members of the second house were forcefully removed from their allocated share after being intimidated by Maurice Kipchumba, Raymond Biwott, and Jane Jelagat Kimoso, who then allocated themselves the shares as provided in the alleged Will. The deponents maintain that the beneficiaries started implementing the alleged Will in December 2021, long before it had been given any legal effect. They argue that if the Will was authentic, the opposing parties would not have accepted the subsequent equal distribution of the estate between the two houses.

13. The Protestors largely dispute the authenticity of the Will based on the grounds raised by the Widows. They state that certain beneficiaries have been completely disinherited and that one of the Executors, Joseph Yatich, has been compromised and has taken sides in support of the impugned Will, repeatedly asserting that some of them were never sired by the deceased. They have sworn the affidavit in strong protest of the mode of distribution proposed by the Executors in the disputed Will. In the interest of justice, they urge the Court to exercise

its powers to revoke the Will and allow the distribution of their late father's estate to proceed as an intestate succession.

14. In the related proceedings *Succession Cause No. E036 of 2024*, which have now been consolidated, the 1st Protestor herein, Margaret Jepkemboi Kimoso, filed a supporting affidavit dated 9th July 2025. In this affidavit, the 1st Protestor, who is a daughter of the deceased from the first house, deposes that she is well acquainted with her late father's handwriting and signature, having interacted with him on numerous occasions during his lifetime in various formal and informal matters. She states that she has seen and carefully examined the document purporting to be the Last Will and Testament of the deceased, and believes that the signature appended thereto is not the authentic signature of her late father.

15. To support her contention, the 1st Protestor avers that she has in her possession a document being a Transfer of Motor Vehicle form that was duly executed by the deceased in his lifetime, which bears what she believes to be his genuine signature. A copy of this transfer document has been annexed to her affidavit for purposes of comparison. The 1st Protestor prays that this Honourable Court be pleased to order that both the alleged Will and the said motor vehicle transfer document be submitted for forensic handwriting analysis by a Government Document Examiner or such other qualified expert, for purposes of determining the authenticity of the signature on the Will. She submits that it is in the interests of justice that the said documents be subjected to expert analysis and a forensic report filed in this Honourable Court to assist in the just determination of the validity of the purported Will.

16. In response to the 1st Protestor's supporting affidavit, Maurice Kipchumba Kimoso filed a Further Affidavit in **Succession Cause No. E036 of 2024**. In this Further Affidavit, Maurice deposes that he has read and understood the contents of Margaret Jepkemboi Kimoso's affidavit sworn on 9th July 2025. He contends that the affidavit does not respond to the issues raised in their application but rather creates a different rhetoric. He asserts that the issue before the Court is whether the signature on the Will is his late father's authentic signature.

17. Maurice argues that his sister Margaret is not a forensic handwriting analyst and that, in fact, a cursory look at the signatures in question reveals that they resemble each other to a great extent, save for what he describes as far-fetched disparity created by the documents now presented which appear folded to create some distortion. For purposes of clarity and fairness, Maurice states that he has attached some more documents signed by their late father for comparison and analysis. These documents include, among others, an Agricultural Finance Corporation loan offer dated 15th May 2009 in the name of Francis Kipkoech Cheptoo for Kshs. 3,300,000.00 for growing 300 acres of wheat, together with accompanying loan acceptance documents bearing the deceased's signature dated 27th May 2009, and a KCB Classic card issued in the name of Francis Kipkoech Cheptoo.

18. The contrasting positions advanced by the 1st Protestor and Maurice highlight the central dispute: whether the signature on the purported Will dated 12th July 2011 was genuinely executed by the deceased or whether it is a forgery.

19. I have read through the submissions as filed by both Counsel, which largely speak to the validity of the Will.

Analysis and determination.

20. The central question before this Court is whether the purported Will dated 12th July, 2011 should be admitted to probate as the last valid Testamentary instrument of the deceased, Francis Kipkoech Cheptoo alias Kimoso. This question, however, cannot be answered in the affirmative unless and until the Court is satisfied that the document meets the statutory requirements for a valid Will and was indeed executed by the deceased with Testamentary intention. The Protestors have raised serious objections to the validity of the Will on multiple grounds, chief among them being the capacity of the deceased to make a Will as at the time it was made. In **Bowes v Friedlander N. O. and Others 1982** (2) SA 504 (C) at 509 C-E the Court held:

> *"The onus of proof is plain. The Will being complete and regular on the face of it, Plaintiff must establish that it is more probable than not that the Will was not signed by the witnesses at the same time as the Testator signed it, but on another occasion, and in his absence. No higher degree of proof is required than that which is required in any other case of a civil nature. But there exists a presumption that the Will was witnessed in the manner prescribed by the law and this presumption has to be rebutted by Plaintiff before the Will can be declared invalid. Authority for all this Will be found in* ***Kunz v Swart and Others*** *1924 AD 618;* ***Sterban v Dixon and Others*** *1968 (1) SA 322 (C);* ***Ley v Ley's Executors and Others*** *1951 (3) 186 (A) and* ***Yassen and Others v Yassen and Others*** *1965 (1) SA 438 (N)".*

21. Before delving into the specific objections raised, it is instructive to set out the legal framework governing the validity of Wills in Kenya. **Section 11** of the **Law of Succession Act, Cap 160, Laws of**

Kenya, provides the essential requirements for the due execution of a Will. The Section stipulates:

> *"No 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."*

22. The questions which must be observed and answered as to the validity of last Testamentary of the deceased concerns the requirements for due execution. The question is whether a Will is properly executed if the order of events is: (a) The Testator signs in the presence of a witness, (b) The witness 1 attests the Will, (c) Witness 2 then comes into the room and the Testator acknowledges his or her signature in the presence of both witnesses and (d) Witness 2 attests the Will. That

should be an ideal situation. The witnesses who attested the Will must acknowledge his signature besides the drafter of the Will. The broad interpretation of our Section 11 of the applicable law is that at the very minimum the criteria set out must be complied with without default.

23. In the course of a Judge hearing arguments in consonant with Section 11 of the Law of Succession Act there are certain other requirements surrounding the making of a Will which must be tested by material evidence. It must be shown that the Donor must have albeit subjectively a good reason to anticipate death in the near future from an identified cause, although the contemplated cause and the actual cause of death need not align themselves. While the contemplation of death can either be express or inferred from the circumstances of a given situation which has high impact on the right to life of the Donor as guaranteed by our Constitution in Article 26, it cannot be inferred from the attempted execution of Wills that fail to comply with the Act. In my view the good reason to anticipate death may include but not exhaustive the following factors; (a) Aggressive cancer, (b) seriously ill of the Donor in and out of the hospital severally, (c) incurable diseases, (d) the Donor has underwent a potentially fatal surgical operation after a serious accident, (e) inoperative pancreatic cancer and (f) frailty of age etc.

24. There are many aspects under our legal system in succession matters on Testamentary freedom that the beneficiaries are allowed to challenge the making of the Will hence calling upon the Court to undertake scrutiny and analysis of both the procedural protocols and the substantiveness on devolution of inheritance rights from the Donor to the members of his or her family or otherwise in any event. The Court's primary objective when interpretating a Will is to determine the

Testator actual intention. This is confirmed through extrinsic evidence to interpret the manifestation of the intention in that impugned Will and where there is ambiguity to construe them in a manner to render justice to the probate estate. This is done so to avoid reliance solely on the technical legal meaning of the words used.

25. It is not the purpose of the Law of Succession Act to provide legacies and rewards for meritorious conduct of a family member who might be expecting that the Donor or the maker of the last Testamentary should give him or her a larger share of the disposable assets in comparison with the rest of the heirs. Sometimes one hears echoes of demands, I took care of my aging father and mother during their lifetime and therefore it is time for compensation during the distribution of the estate survived of the deceased. One thing is very clear in the law that subject to the Court's power and jurisdiction under the Law of Succession Act and to fiscal demands a Kenyan man or woman still remains at liberty at his death to dispose of his or her own property in whatever way he or she pleases or if he or she chooses to do so to leave that disposition to be regulated by the laws of intestate succession. In order to enable the Court to interfere with and reform or review those dispositions it must be in my judgement be shown not that the deceased acted unreasonably but that looked at objectively the impugned Will which dealt with disposition of the estate produces discrimination results stipulated in Article 27 (4) of the Constitution. If the impugned Will also is successfully challenged only the conduct of the Testator that in his or her disposition or lack of it in disposing the various assets he or she acted unreasonably and the outcome of it was an improper or unreasonable distribution of the estate an Applicant or a spouse is at liberty to apply for the Court to exercise its judicial

discretion on those particular provisions in the aforesaid impugned Will. However, it must be borne in mind that the Court has no *Carte Blanche* jurisdiction or powers to review and reform the deceased's disposition in his or her last Testamentary.

26. The Succession Act of Kenya is a measure of social interest and in its widest application the issues involved revolve around the legal, social, constitutional and ethical validity of the inheritance itself within the various class of persons legitimately entitled a share or a financial provision from any of those assets of the deceased. This implies two claims; the right of free testation and unrestricted right to take by way of inheritance which sometimes is viewed as discriminatory. It has often been argued and stated before this Court during the pendency of succession proceedings that although free testation is a natural right and a necessary incident of property rights devolution or transmission but again it is untenable with the recognition of the daughters of the deceased who have since been married over moved to their second home of ancestry and should not be allowed to claim any share to the original birthed heritage. It is sometimes said and submitted that such a constitutional clause promotes inequality of wealth. In appreciating the evidence of this succession discourse there is a contestation having regard to the interests of dependents and anyone named as a beneficiary by the Will of the Testator. The Court in assessing the entire spectrum with respect to the Testator's fortune and social status it is unfortunate that one of his sons is yet to be buried one year down the line and the promoters of that typology of non-interment place reliance on the provisions of the impugned Will. Something along these lines would be troublesome that even with the entitled provision no graveside can be ascertained to inter their loved one. What should

be known to the beneficiaries is that at an opportune time depended upon certain other factors if the validity of the Will is not in dispute the Court is only allowed to alter a Testator's disposition of his or her property only so far as is necessary and on compelling evidence and interpretation of the law for the proper maintenance and support of the heirs. The Kenyan jurisprudence on this matter is well settled that the Applicant is vested with the standard burden of proof to illustrate in which manner the discretion conferred upon the Court has to be exercised under Section 107 (1), 108 and 109 of the Evidence Act. In Kenya a Testator's freedom to dispose of his or her estate in contemplation of death is significant but not absolute. The Testator's wishes can be challenged on specific grounds outlined in the Law of Succession Act and also in furtherance of the constitutional principles more so Article 27 (1) and (4) of the Constitution. This includes Testamentary capacity, undue influence or failure to make reasonable financial provisions for dependents.

27. The litigation in our Courts have taken the view that standard of proof on a balance of probabilities must establish that the factors of rendering the Will invalid are foundational in terms of probative and cogent evidence. In the case of **Re Potter's Will Trust** [1994] Ch 70 at 77 Lord Greene stated that:

> *"It is a fundamental rule in the interpretation of Wills that effect must be given, so far as possible, to the words which the Testator has used. It is equally fundamental that apparent inconsistencies must, so far as possible, be reconciled and that it is only when reconciliation is impossible that a recalcitrant provision must be rejected …"*

This is also the position taken by the Court in **Grey v Pearson** [1843]-60 All ER Rep 21 at 36, Lord Wensleydale, who preferred the literal approach to construing Wills, stated what came to be known as the "golden rule" when he stated that;

> *"... In construing Wills, and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity or inconsistency, but no further. The interpretation of a Will is in principle no different from that of any other communication. The question is what a reasonable person, possessed of all the background knowledge which the testatrix might reasonably have been expected to have, would have understood the testatrix to have meant by the words she used..."* ***(****See* ***Charles v Barzey [2002] UKPC 68).***

28. Therefore one thing should be very clear that judicial decisions in so far as construing the Will is concerned is an aid to that function to help the Court draw a parallel as to whether words are clear and unambiguous and whether the intention of the Testator is not in doubt. From what has been said in evidence there can be no doubt that the last Testamentary of the deceased was never brought to the attention of the beneficiaries within a reasonable time following his death, but that alone does not mean this Court doubts the intention or taking issue with the construction of the Will. What is of fundamental importance is whether that conduct of the drafter of the Will not convening a meeting of the beneficiaries is something likely to impact

the process of the making of the Will in contemplation of death. I consider this to be a moot question. First it is beyond debate that where a Testator seeks to attach an absolute gift as a condition or qualification that may characterized as repugnant, such a condition precedent or qualification may not be allowed to take effect notwithstanding that in the result the intention of the Testator Will be defeated. The Court in **Re Whitrick** [1957] 1 WLR 884 Jenkins LJ said at page 887:

> *"...The reading of words into a Will as a matter of necessary implication is a measure which any Court of construction should apply with the greatest caution. Many Wills contain slips and omissions and fail to provide for contingencies which, to anyone reading the Will, might appear contingencies for which any Testator would obviously wish to provide. The Court cannot rewrite the Testamentary provisions in Wills which come before it for construction. This type of treatment of an imperfect Will is only legitimate where the Court can collect from the four corners of the document that something has been omitted and, further, collect with sufficient precision the nature of the omission..."*

29. As regards the questions and arguments surrounding the making of the Will the Court should lean towards an interpretation which disposes whole interests in the Testate estate within the framework of the law as now settled in Kenya. Therefore the questions of capacity as alluded to by some of the beneficiaries cannot go unanswered and it is for those reasons that a forensic documentary audit in the making of the Will be precisely executed as per the law established. The disputed signatures of the deceased be subjected to a Forensic Document Examiner based at the Directorate of Criminal Investigations at Kiambu

Road to ascertain whether it was made by the very same Testator. The real question to be addressed at this stage is not what the document means but whether the deceased intended it to be his Will at all. For the grant of relief sought by the Respondents a Court must be satisfied beyond peradventure that the deceased person who drafted through his Legal Counsel or executed the document in question intended to be his last Testamentary. The Court must also establish that the intention must have existed concurrently with the execution or drafting of the document.

30. From the foregoing statutory provision, it is clear that for a Will to be valid, these essential requirements must be satisfied cumulatively. These requirements are mandatory. Their purpose is to safeguard against fraud, undue influence, and forgery, and to ensure that the document truly reflects the Testamentary intentions of the deceased.

31. In probate matters, the Court must be satisfied that the Will propounded is the last Will of a free and capable Testator. The propounder must prove the Will by establishing that the Testator had Testamentary capacity, that he knew and approved of the contents of the Will, and that the Will was duly executed in accordance with the statutory formalities.

32. Testamentary capacity requires that at the time of making the Will, the Testator must understand the nature of the act of making a Will, comprehend the extent of the property being disposed of, understand and appreciate the claims of those who might expect to benefit from the estate, and not be suffering from any disorder of the mind that would poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties in disposing of his property by Will. In common law, the essentials of Testamentary capacity were laid out

in **Banks v Goodfellow (1870) LR 5 QB 549**, where the Court stated:

> *"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."*

33. In the case at bar, the Protestors have challenged the Will on several grounds: first, that the signature on the Will is not the authentic signature of the deceased; that the deceased lacked Testamentary capacity at the time the Will was allegedly made because he was ailing and undergoing dialysis for diabetes; that the mode of distribution in the Will is unjust and discriminatory, disinheriting some children entirely and questioning the paternity of others; and that the conduct of the parties after the deceased's death, including the initial consensual distribution of the estate equally between the two houses is inconsistent with the existence of a valid Will.

34. Of these grounds, the question of signature authenticity stands as the threshold issue in such a circumstance. If the signature on the Will is not that of the deceased, then the Will fails at the most fundamental level like it was never executed by the Testator at all. No amount of compliance with other formalities can salvage a Will that was not signed by the Testator or on his behalf in accordance with law. As such, this Court must first determine whether the signature on the

purported Will is genuine before proceeding to examine other grounds of objection.

35. For that reason, this Court is satisfied that it is necessary and appropriate to order a forensic examination of the purported Will by a qualified expert before proceeding to determine its validity. The signature dispute cannot be resolved on the basis of conflicting lay opinions. Scientific evidence Will provide an objective, empirically grounded answer to the question of whether the signature on the Will was executed by the deceased. This, in turn, Will inform the Court's ultimate determination on whether the Will should be admitted to probate.

36. Once the Forensic Report is received, this Court Will be in a position to make findings on the authenticity of the signature. If the signature is found to be genuine, the Court Will then proceed to examine the other grounds of objection raised by the Protestors, including whether the deceased had Testamentary capacity at the time of execution, whether he knew and approved the contents of the Will and whether the Will was duly witnessed. If, on the other hand, the signature is found to be forged or not that of the deceased, the Will must necessarily fail, and the estate Will fall to be distributed in accordance with the intestacy provisions of the Law of Succession Act.

37. 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."

38. From the above, I find it appropriate to forward the last original Will to the Forensic Document Examiner to address the real question surrounding the objection to the making of the last Testamentary of the deceased. For purposes of this undertaking, it is apposite for the following orders to flow:

a. *That the original Will in custody of the Deputy Registrar of this Court shall be transmitted to the Document Examiner at the Directorate of Criminal Investigations through the County Criminal Investigation Officer, Uasin Gishu within 7 days of this ruling.*

b. *That the Administrators of the estate and the Protesters shall, within 7 days of this ruling, avail to the County Criminal Investigation Officer at least samples of the three original documents bearing the known signatures of the deceased.*

c. *That the Document Examiner thereafter shall file a comprehensive report with this Court within 45 days from the date of receiving both the Will and the specimen signatures.*

d. *That a declaration is made under Section 58 (b) & (c) of the Civil Procedure Act under Article 159 (2) (c) of the Constitution that the issue of interment of their sibling who has been in mortuary for quite sometime now be unfrozen from these proceedings.*

e. *That from now henceforth in the interim period this case docket shall be monitored for compliance by the Deputy Registrar of the High Court until the 19th January 2026.*

f. *That the costs of the examination shall be borne by the estate.*

g. *That a status conference shall be held on **19th January 2026** for further directions based on the Examiner's Report.*

39. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 14TH DAY OF NOVEMBER, 2025

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R. NYAKUNDI

JUDGE