



**In re Estate of Joshua Fredrick Ogola (Deceased) (Succession Cause  
5 of 1982) [2025] KEHC 16901 (KLR) (21 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16901 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 5 OF 1982  
JRA WANANDA, J  
NOVEMBER 21, 2025**

**BETWEEN**

**MILCA JEPKOECH OGOLA ..... APPLICANT**

**AND**

**TOM FELIX OGOLA ..... 1<sup>ST</sup> ADMINISTRATOR**

**THOMAS ODHIAMBO OGOLA ..... 2<sup>ND</sup> ADMINISTRATOR**

**DICKSON OMONDI OGOLA ..... 3<sup>RD</sup> ADMINISTRATOR**

**RULING**

1. I captured the background of this matter in my Ruling dated 21/02/2025 in the following terms:

“1. This Succession Cause filed 43 years ago in 1982 was long concluded but keeps “popping back” thanks to the numerous successive Applications being filed herein every now and then. Now before the Court for determination, the latest in a series of Applications filed over the years, is an Affidavit of Protest said to be challenging a Confirmation of Grant concluded in this matter in the year 2016, itself 8 years ago.

2. This is a very old file but from what I can decipher, the deceased, Joshua Fredrick Ogola, died intestate on 9/10/1981 at the age of 51 years old. He was alleged to have been a polygamous man who had about 7 wives and left behind over 40 survivors. Thereafter, pursuant to the Petition filed herein on 13/05/1982 through Messrs A.G.N. Kamau & Co. Advocates, a Grant of Letters of Administration in respect to his estate was issued on 11/08/1992 to one Peter Adoyo Ogola described as the eldest son of the deceased, as the sole Administrator, and which Grant



was then confirmed on 1/11/1999. By virtue thereof, a portion measuring approximately 102.5 acres of the parcel of land known as L.R. No. 11041/Growel Farms Ltd, which portion was said to be the share of that parcel of land owned by the deceased, as a shareholder in the company owning the parcel of land, was distributed amongst about 45 beneficiaries, and also some portions reserved for settlement of some expenses.

3. Subsequently however, the Cause then degenerated into protracted and lengthy litigation involving and arising from disagreements between family members, alleged purchasers of portions of the said property and other claimants. Several Applications seeking, inter alia, revocation of the Grant, rectification, review of the distribution, re-distribution, amendments to the Grant, and replacement of deceased beneficiaries and/or substitution of parties, were regularly and consistently filed.
4. Of relevance to this Ruling however is that on 11/09/2016, the said Peter Adoyo Ogola (then the sole Administrator) having been reported to have died on 13/10/2007, the current 3 joint Administrators, namely, Tom Felix Ogola, Dick Omondi Ogola and Thomas Odhiambo Ogola, were appointed to take over the administration of the estate. Thereafter, the estate was on 31/10/2016, redistributed amongst 6 beneficiaries and a fresh Certificate of Confirmation issued. There is however no mention of the fate of all the other beneficiaries who had been listed in the initial Confirmation of Grant given earlier on 1/11/1991.
5. Be that as it may, subsequently, on 21/02/2019, the distribution was reviewed further, ostensibly to provide for road reserves that had been overlooked in the earlier Grant, and the Certificate of Rectification of Grant issued on 28/03/2019. It is the above re-distribution conducted on 31/10/2016 as read with the Rectification done on 21/10/2019 as aforesaid, that seems to have triggered the current Protest filed by one Milca Jepkoech Ogola Adoyo, the subject of this Ruling.”

2. Regarding the purported Protest the subject of that Ruling I stated as follows:

- “6. The Affidavit of Protest is filed through Messrs Mukabane & Kagunza Advocates. In the Affidavit, the Protester deponed that she is a daughter-in-law of the deceased, Joshua Fredrick Ogola, being a widow of a son of the deceased, the initial Administrator, the late Peter Adoyo Ogola, and that she is also his legal representative. She deponed that she is opposed to the Confirmation of Grant that was conducted on 31/10/2016 because it prejudices the heirs and disinherits a large proportion of the estate herein, including her late husband, her children and herself. She then deponed that at the time of his death, the deceased left behind 6 dependents (I notice the names given are the same 6 listed in the impugned Certificate of Confirmation), that



however, not all beneficiaries consented to the mode of distribution adopted by the Court. According to her, the Petition for Letters of Administration was secretly and fraudulently filed without her knowledge or consent of all beneficiaries, included strangers as beneficiaries, and also failed to disclose all properties of the estate. She urged further that the Petition failed to disclose that her late husband, Peter Adoyo Ogola, was the son of the deceased and thus a beneficiary, that she learnt of these proceedings when strangers started laying claim to properties that were being utilized by her late husband, that the Administrators have been intermeddling with the estate by wasting and secretly selling estate land to third parties, including to one Vitalis Kibiwott Ngelechei, and leasing other portions, and that she craves to be appointed a co-Administrator of the estate of the deceased to protect the estate of her late husband.

7. She urged further that she should be included in the distribution, that her late husband did not consent to the distribution, there is need to take accounts and all assets to be included, and that the current Administrators are unfair, discriminatory and unacceptable to majority of the beneficiaries. In conclusion, she deponed that she should be declared to be entitled to a share of the estate and that the Certificate of Confirmation of Grant be amended to apportion to her a share of 32.5 acres of the property.”

3. In striking out the purported Protest, I made the following observations:

“17. From the foregoing, it is clear that the filing of a Protest is an avenue that only arises during Confirmation of Grant proceedings. In other words, an Affidavit of Protest is to be filed where a person is challenging a Summons for Confirmation of a Grant. Is that therefore the case herein?

18. In this case, as aforesaid, the initial Petitioner who filed this Cause in the year 1982 and who was then 10 years later, in the year 1992, appointed the sole Administrator of the estate, was the Protester’s husband, the late Peter Adoyo Ogola. He is the same one who then caused or applied for the Confirmation of the Grant that was conducted in 1999. It is after he died in the year 2007, that the current Administrators took over.

19. It is therefore evident that Confirmation of Grant proceedings was initially conducted and finalized in this matter on 1/11/1999 when the said Peter Adoyo Ogola was still alive and was the sole Administrator. As further stated, after his death, a fresh Confirmation of Grant proceedings were conducted and finalized on 31/10/2016, upon which a fresh Certificate was issued. This Certificate of Confirmation of Grant was then later rectified on 8/03/2019. To this extent therefore, it is clear that, as regards the Affidavit of Protest, the Court is long functus officio. The “horse bolted” a long time ago.

20. If therefore the Protester is seeking the remedy of re-distribution of the estate, what she needed to do was to apply for Revocation of the Grant, or for some sort of Review, or even lodge an Appeal, not by filing an Affidavit of Protest. That stage of “protest” was long passed and the door closed when the Grant was confirmed on 31/10/2016.



21. ....:
22. In light of the foregoing, I will strike out the Protest, rather than dismiss it.
4. In declining to make any determinations on the substantive issues, I stated that:
- “23. Having found as above, I could have still, nonetheless, perhaps provided closure on the matter by also interrogating the claim on merits. I will however not do so. This is because the Protester may possibly wish to return to Court with a competent Application. Commenting on the merits of her claim may therefore prejudice the Application that may be brought subsequently. I also consider that I have expunged the “Affidavits” filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Administrators and which means that I do not have the benefit of their side of the story. It is also not very clear whether the Administrators are in support of the Protester’s claim or not. They have not come out expressly. In view thereof, if a fresh competent Application is filed, the Administrators may, in response thereto, also wish to file proper Affidavits deponed with clarity.
24. There is a further reason why I will desist from commenting on the merits of the Application. My understanding of the Protester’s prayer is that one Vitalis Kibiwot Ngelechei, one of the beneficiaries listed in the Certificate of Confirmation herein, be dispossessed of the 22.5 acres of the property allocated to him vide the Certificate, and that the same be, instead, re-allocated to her (Protester). Under the rules of natural justice, the said one Vitalis Kibiwot Ngelechei, no doubt needs to be notified of the claim, and be also invited to respond to the prayer made or participate in the proceedings. Litigating on the share long allocated to him without his knowledge is against rules and procedure. Unfortunately, I have not come across any evidence to demonstrate that he has been served with any notice to respond to the claims made against him. Apart from the said Vitalis Kibiwot Ngelechi, I have also not come across any evidence that the rest of the beneficiaries were also served. Being named as beneficiaries, they may be affected parties.”
25. For the said reasons, I will refrain from commenting on the merits of the Protester’s claim lest I prejudice or prejudice proceedings that may still be brought here.”
5. In respect to material matters that the parties had failed to address the Court on, I stated as follows:
- “26. One issue that may I wish to touch on before I pen off, is that in the event that the Protester will return with a proper and competent Application, then it will be necessary for the parties to address the Court on the fate of the initial distribution of the estate that was conducted and adopted on 1/11/1999. This was during the “reign” of the Protester’s husband, the late Peter Adoyo Ogola, as the sole Administrator. This is the Certificate of Confirmation of Grant that had more than 40 beneficiaries. This issue needs to be addressed because the beneficiaries appearing in the current Certificate of Confirmation are only 6 yet none of the parties has addressed this question. What happened to that distribution of 1/11/1991? Did the beneficiaries take possession of their shares as given therein? Was the subsequent distribution adopted on 10/11/2016 a



review of the distribution made on 1/11/1999? What informed the reduction of the beneficiaries from more than 40 to now just 6? This being a very old file, the answers to these questions are not apparent from the Court file and the parties would need to bring the Court to speed.”

6. Apparently taking a cue from the Court’s sentiments above, the Applicant has now returned to Court, this time through a different law firm, namely, AK Advocates LLP, with the unnecessarily very lengthy Application, namely, the Summons for Revocation of Grant dated 25/02/2025. The prayers are also unnecessarily too lengthy and verbose and the grounds listed in support aggregate to almost 40! For these reasons, I will not strive to reproduce them, save to say that, apart from the new Advocates seeking leave to come on record, which prayer I already granted on 20/03/2025, what is sought is basically revocation of the Grant made herein on 11/07/2016, and also of the Confirmation thereof made later on 31/10/2016, and subsequently rectified on 21/02/2019. As a consequence, titles of parcel of land processed pursuant to the impugned orders are also sought to be revoked, and an order that all those same revert to the estate. The grounds alleged are that the Grant or orders were obtained by concealment of material facts and generally, that the proceedings were defective.
7. In her, again, very lengthy Affidavit in support thereto, the Applicant basically repeated the background that she had already given in her earlier struck out Application as captured in the Ruling cited above. She then urged that after the death of her husband, Peter Adoyo Ogola, the initial Administrator herein in 2007 before transmitting the estate to the beneficiaries as had been stipulated in the Certificate of Confirmation of Grant issued on 1/11/1999, she did not follow-up on the substitution of the deceased Administrator as she assumed the estate had already been transmitted. She stated that she thus released the title to the estate parcel of land, namely, L.R. No. 11041/1 Growel Farm to one Joyce Songa Ogola, the 2<sup>nd</sup> Administrator’s mother, to enable the Administrators complete the Succession. She stated that she only learnt of the fresh Certificate of Confirmation of Grant issued on 31/10/2016 and rectified on 21/02/2019 when strangers began invading the land. In summary, she then urged that the distribution contained in the fresh Certificate of Confirmation of Grant and the Rectification disinherited her and her children, and also many other beneficiaries. She also poked legal irregularities in the whole process.
8. The Application is opposed by way of the 2<sup>nd</sup> Administrator’s Replying Affidavit sworn on 3/04/2025 filed through Messrs Chepkwony & Co. Advocates. In summary, he denied that the Applicant has been disinherited as alleged, and deponed that the Applicant was settled on an 80 acres parcel of land at Kongoni Scheme in Lugari District, which had been given to one Jane Ogola, one of the 8 widows/wives of the deceased herein, to share with her children, one of whom was the Applicant’s late husband, Peter Adoyo Ogola. He stated that each of the 8 wives/widows received sufficient inheritance to share with her respective children, and he then proceeded to describe the nature and extent of each such inheritance. He stated that after subsequent family agreements and re-arrangements brought about by change of circumstances, premature sale of land by some family members, and conflicting claims, including from third parties, a review of distribution was undertaken thus leading to the issuance of the fresh Certificate of Confirmation of Grant in 2016 and the Rectification made in 2019. He deponed further that the Applicant’s late husband had himself also unlawfully sold some parcels of land thus committing acts of intermeddling. In the end, he deponed that the Applicant is guilty of laches, and her prayers have also been overtaken by events as the estate has changed hands to third parties who are not parties to these proceedings, and cannot thus be condemned unheard.
9. The Applicant then, with leave of the Court, in response to the Replying Affidavit, filed another very long pleading, the 72-paragraph Further Affidavit. Having gone through the same, I observe that, in purporting to respond to the Replying Affidavit, it simply repeats the same matters already



deponed in the Supporting Affidavit save that it only expounds much more on the same in a longer but repetitive manner, and unnecessarily raises argumentative but contested facts and arguments of law. For all intents and purposes, the Further Affidavit offends the purpose and spirit of what leave to file a Further or Supplementary Affidavit entails, which is simply to briefly respond to matters raised in a Replying Affidavit. Leave to file a Supplementary Affidavit does not at all mean a carte blanche opportunity to raise new matters or repeat, and reproduce arguments already made in the Supporting Affidavit and/or to inundate the Court with fresh verbose and lengthy pleadings. It should also never introduce new matters not touched on in the Supporting Affidavit. Further, it should never at all take the place of final Submissions. Advocates engaged in litigation practice may find it appropriate to learn and appreciate the difference between different pleadings as there is a reason why each is stipulated to be filed at a specific stage of litigation. Each serves a specific and distinct purpose which Advocates must familiarize themselves with. For the above reasons, I would have expunged the Further Affidavit but will, in the interest of justice, not do so. I will however not recount its contents as it does not, in my view, apart from its verbosity, add much value or affect the gist of what has already been deponed in both the Supporting Affidavit and the Replying Affidavit.

10. In respect to the guide that pleadings should generally be brief and concise, I advise practicing Advocates to familiarize themselves with the Court of Appeal cases of *Ondieki v Omoi & 3 others* [2025] KEHC, the case of *Robinson Kiplagat Tuwei v Felix Kipchoge Limo Langat* [2020] eKLR, and the case of *Kenya Ports Authority v Threeways Shipping Services (K) Limited* [2019] eKLR. These cases, although about drafting of Grounds of Appeal, aptly highlight the importance of brevity and the dangers of verbosity or numerous, repetitive arguments that can obscure the main issues.
11. The parties then filed written Submissions. The Applicant's is dated 10/04/2025 while the Respondent's is dated 12/06/2025.

### **Appellant's Submissions**

12. In summary, Counsel restated the law of revocation of Grants as provided in Section 76 of the *Law of Succession Act*, and also cited authorities. He then reiterated that the Administrators, while making the fresh Application for Confirmation of Grant in the year 2016, and for Rectification in the year 2019, failed to disclose to the Court that the estate was already distributed in 1999, and that what was remaining was distribution. He then submitted that since the earlier Certificate was never revoked, there are now two parallel existing Certificate of Confirmation of Grant which is untenable. He submitted that in any event, many other beneficiaries were never notified of the fresh proceedings nor were they involved, nor their consents obtained, and that as a result of the fresh distribution mode, many beneficiaries, including the estate of her late husband, Peter Adoyo Ogola has been disinherited. Counsel submitted further that the fresh proceedings breached Section 66 of the Law of the Succession Act on the hierarchy or order of priority of the persons to apply as Administrators of an estate, and that in this case, the persons with the higher hierarchy were not the Administrators, but the surviving wives of the deceased. The rest of the Submissions, apart from citing authorities, is merely, once more, a repetition of the Supporting Affidavit and Further Affidavit.

### **Administrators' Submissions**

13. Counsel for the Administrators, too, basically restated the contents of the Replying Affidavit as already set out above, including, denying that the Grant of 2016 was obtained by concealment of facts and reiterating that the deceased, before his death, had settled all the 8 houses (wives/widows) in specific parcels of land. She, too, then restated the law of revocation of Grants as provided in Section 76 of the *Law of Succession Act*, and also cited authorities. Counsel then invited the Court to carefully peruse the alleged Grant of 1999 which she claimed is evidently defective as it was never signed or confirmed by



the Court. She then submitted that only the Growel Farm, the parcel of land the subject hereof, was not dealt in the distribution and urged that and after a family agreement, the same was also distributed as adopted in the Certificate of Confirmation of 2016. In conclusion, she reiterated that the Applicant is guilty of laches, having delayed to come to Court, and that other beneficiaries and third parties have not been served to participate in this matter. She stated further that substantial part of the land having now passed to the third parties, this Court no longer has jurisdiction to deal with the issues raised. He cited Article 162(2) and (5) of *the Constitution*, and also authorities.

### Determination

14. The issue for determination in this matter is evidently “whether the Court should revoke the Certificate of Confirmation of Grant issued on 31/10/2016 and Rectified on 21/02/2019, and/or the orders leading thereto, and thus also cancel and/or revoke all land titles or land sub-divisions made under, or out of the parcel of land described as L.R. No. 11041/1, Growel Farm.”
15. Revocation of Grants is governed by Section 76 of the *Law of Succession Act* which provides as follows:

“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.”
16. It is clear that the grounds under which the Application is brought are sub-Sections (a) and (b) above, that is, that the orders were allegedly obtained fraudulently by concealment of material facts, and thus that the proceedings were generally defective.



17. Section 76 above was expounded upon by W. Musyoka J, in the case of *Re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR, in which he stated as follows:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

18. In this case, the specific grievance raised by the Applicants is that the initial Grant having been confirmed in 1999 when her late husband was still the sole Administrator, after he died in 2007, the Respondents, in 2016, without her knowledge, applied for and obtained a fresh mode of distribution and thus, a fresh Certificate of Confirmation of Grant, which they also caused to be rectified in 2019. She however does not explain coherently why it has taken her almost 10 years to apply for revocation. The closest she came to giving an explanation is the statement in her Supporting Affidavit that after the death of her husband (the sole Administrator), she did not follow-up on the substitution of the deceased as Administrator as she assumed the estate had already been transmitted. She stated that she thus released the title to the estate parcel of land, namely, L.R. No. 11041/1 Growel Farm, which title was hitherto in her late husband's custody, to one Joyce Songa Ogola, the current 2<sup>nd</sup> Administrator's mother, to enable the Administrators complete the Succession. She claimed that she only learnt of the fresh Certificate of Confirmation of Grant issued on 31/10/2016 and rectified on 21/02/2019 when strangers began invading the land. First, she does not disclose when these so-called strangers invaded the land as she alleges. The explanation that she handed over the title document to the current 2<sup>nd</sup> Administrator to conclude the Succession is also not clear as she also does not disclose when she made such hand-over. Her husband having been the sole Administrator, it beats my understanding how and why she would hand over the title document to the current 2<sup>nd</sup> Administrator's mother to allegedly complete the Succession yet the Applicant was very much aware that the 2<sup>nd</sup> Administrator's mother had never at any time been appointed an Administrator? How and under what capacity was the current 2<sup>nd</sup> Administrator's mother to complete the Succession?
19. Again, if she was still having custody of the title in her possession, how could she have still been of the belief that the transmission of the parcel of land had been completed yet she had never surrendered the title to the Lands Office? Her husband having been the sole proprietor, what made the Applicant



believe that he had concluded transmission of the estate to the beneficiaries before he died in 2007? Were they not at all in contact as husband and wife? Why does she appear to have been completely out of touch with what was happening in the estate yet her husband was the sole Administrator? From the Affidavits of the Administrators and the annexures thereto, it is evident that so much activity has been going in the said parcel of land since 2016 to implement or execute the fresh Certificate of Confirmation of Grant. How come the Applicant missed out on all these activities? Where was she? Her admission that since her husband died way back in 2017, she has never moved or followed-up to seek his substitution as Administrator of the estate because, allegedly, she assumed that the estate had already been transmitted is proof enough of the extent to which she has been out of touch with the happenings of the estate, and her complete lack of interest thereon. To now suddenly wake up, almost 10 years later, from her slumber and attempt to send everyone, including numerous third parties, back to the drawing boards cannot be justified.

20. Considering the sheer length of the grounds of the Application, and of the Applicant's Affidavits, I would have expected her to have clearly addressed the above questions and by extension, made efforts to explain her delay of almost 10 years. The delay is for such a long time that the Court cannot just overlook it. In the absence of any coherent explanation, it becomes very difficult for this Court to exercise its discretion in favour of the Applicant. From the above observations, I am convinced that the Applicant was fully aware of the orders of 2016 but for reasons that she has not disclosed, deliberately refrained from taking any action. She is, in my view, simply feigning ignorance. This matter having been commenced in 1982, about 43 years ago, it will definitely take exceptional circumstances to re-open it for litigation.
21. Having found as above, I find that there has been an inordinate delay to seek revocation of the impugned Certificate of Grant. I refuse to accept the argument that simply because the *Law of Succession Act* does not stipulate a time limit for applying for revocation of a Grant, an Applicant who approaches the Court after an inordinate delay has no obligation to explain such delay. On this view, I refer to the Court of Appeal case of *Ali Omar Ali Abdulrahman v Mohamed Ali Abdulrahman* [2020] eKLR, in which the Applicant sought extension of time to file an Appeal to challenge the High Court's refusal to revoke a Grant. Sitting as a single Judge, and in declining the Application, Murgor JA, held as follows:

“With respect to whether any prejudice would be occasioned to the respondent, it is apparent that the application for revocation relates to a grant that was confirmed way back in 1992. This is clearly a very old succession matter. The question would arise as to whether the revocation sought would serve any useful purpose this late in the day.

All factors considered, I am not persuaded to exercise my unfettered discretion to allow the application, which I accordingly dismiss. Considering that this is a family dispute, I order each party to bear their own costs”.

22. Similarly, Achode J (as she then was), in the case of *Monica Wangui Kimani & Another v Josphat Mburu Wainaina* [2015] eKLR, stated as follows:

“16. Indeed Section 76 of the *Law of Succession Act* states that a grant may at any time be revoked, or annulled by the court if it finds that it was obtained fraudulently by making of false statements, or concealing material facts. This may appear to place no time limit within which an application for revocation may be brought. The Probate Court is a court of Equity and has very wide



discretion to aid the interest of justice. However, Equity aides the vigilant and not the indolent .....

23. Like the Judges above, I, too, find that, in this case, revocation of the Grant, if allowed at this late stage, will severely prejudice the estate as it will unnecessarily send all parties back to square one, without any just cause. Indeed, “equity aides the vigilant and not the indolent”.
24. Further, in the quote cited from my said earlier Ruling, I stated that my understanding of the Protester’s prayer is that one Vitalis Kibiwot Ngelechei, one of the beneficiaries listed in the Certificate of Confirmation herein, be dispossessed of the 22.5 acres of the property allocated to him vide the Certificate, and that the same be, instead, re-allocated to her (Protester). I then stated that under the rules of natural justice, the said one Vitalis Kibiwot Ngelechei, no doubt needs to be notified of the claim, and be also invited to respond to the prayer made or participate in the proceedings as litigating on the share long allocated to him without his knowledge is against rules and procedure. I then observed that there was no evidence to demonstrate that the said Vitalis Kibiwot Ngelechi has been served with any notice to respond to the claims made against him. I stated further that apart from the said Vitalis Kibiwot Ngelechi, there was also no evidence that the rest of the beneficiaries were also served yet being beneficiaries, they too, are affected parties. It is also clear that the Applicant’s claim is based on the fact that, besides herself and her children, the re-distribution of 2016, also disinherited many “other beneficiaries”. These so-called “other beneficiaries” have also not been disclosed, nor is there any evidence that they have themselves complained, or have moved to take any action, or have even been notified of the instant Application. The Applicant cannot therefore purport to be speaking on behalf of these unnamed “other beneficiaries”.
25. The principle that no one shall be condemned unheard is a fundamental rule of natural justice, enshrined in Article 50(1) of the Kenyan Constitution. This principle guarantees the right to a fair hearing before a Court of law. The principle, also described as audi alteram partem, affirms the position that a person must be given prior notice of allegations made against him and an opportunity to be heard, or to respond to those allegations before a decision thereon is made.
26. The above counsel seems to have been ignored by the Applicant since, again, there is no evidence that the “affected parties” referred to above have been served or even notified of the instant Application. This Court cannot therefore make decisions in the absence of parties who will be obviously directly affected by such decisions when such persons have not been afforded a chance to respond, particularly as herein, where the Court has previously made the same observations but the same seems to have been ignored.
27. Further, it is generally agreed that Section 76 of the *Law of Succession Act* is discretionary in that it gives the Court discretion whether to revoke or annul a grant. It is not therefore the position that any breach or violation must always or automatically lead to revocation of a Grant.
28. Further, it is generally agreed that Section 76 of the *Law of Succession Act* is discretionary in that it gives the Court discretion whether to revoke or annul a grant. It is not therefore the position that any breach or violation must always or automatically lead to revocation of a Grant. To this end, Mwita J in the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] eKLR, stated as follows:
  - “ 13. Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a 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.”

29. In exercising my discretionary power judiciously and on sound grounds, not whimsically or capriciously, and taking into account the interests of all beneficiaries to ensure that the action taken will be for the interest of justice, I am not satisfied that, in this case, it has been established or demonstrated that revocation of the Grant is the best alternative that will serve the interest of justice.
30. While the instant Application is not prohibited by law or barred by limitation, the adage that “litigation must come an end” must also be recognized. The inaction by the Applicant for all these years must have convinced the Administrators, and given them the belief that the Applicant was satisfied with the mode of distribution adopted. This, in essence, is one clear instance where the principles of “estoppel”, “waiver” and/or “acquiescence” must surely apply against the Applicant.
31. I note that the Applicant also argues that the current Administrators, while making the fresh Application for Confirmation of Grant in the year 2016, and for Rectification in the year 2019, failed to disclose to the Court that the estate was already distributed in 1999, and that what was remaining was distribution. What makes the Applicant believe
32. For the above reasons, I find no reason to address the substantive matters alleged, and I accordingly decline the invitation to revoke the impugned Grants or orders in respect thereto.

#### **Final Orders**

33. In the end, I dismiss the Application dated 25/02/2025.
34. As this is a family matter, each party shall bear his/her own costs of the Application.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 21<sup>ST</sup> DAY OF NOVEMBER 2025.**

.....

**WANANDA JOHN R. ANURO**

**JUDGE**

**Delivered in the presence of:**

Ms. Chumba for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents

Ms. Chepkwony for the 2<sup>nd</sup> Respondent

Court Assistant: Brian Kimathi

