



invading the parcels of land, and reiterating that she was simply residing there as her matrimonial home. In the end, she urged that her children are heirs to the estate and should be considered beneficiaries, just like the children of her co-wife, the said **Hellen Jepkosgei**.

4. The Administrator then filed the Further Affidavit which she swore on 12/11/2023, in which she denied that the Objector is “a wife” to her (Administrator’s) son, **Nicholas Kipchoge**, and stated that although there was an intention for a marriage engagement ceremony, none took place, since **Nicholas Kipchoge**, instead, married the said **Hellen Jepkosgei** with whom he was blessed with 3 children. She however admitted that her late son had an affair with the Objector, which resulted into the birth of 2 children, all of whom were born out of wedlock. She maintained that at no time did the Objector and **Nicholas Kipchoge** ever live together, and that no dowry was ever paid. She also reiterated that the Objector forcefully entered into the parcel of land, **Turbo East/Sosian Block 1(Sugoi)/1** and refused to leave, and that after the end of the Objector’s love affair with **Nicholas Kipchoge** in 2003, the Objector got married to one **Nathan** with whom the Objector got one child, and that **Nicholas Kipchoge** died on 7/11/2009, 6 years after his love affair with the Objector ended in 2003. She further observed that by the time **Nicholas Kipchoge** died, his father, the deceased herein, was still alive as the deceased died later on 11/01/2011. She further denied that the house in which the Objector lives is her matrimonial home, and contended that the house was constructed as a sleeping structure for the Administrator’s sons.
5. Be that as it may, the record shows that the Grant was subsequently confirmed on 31/07/2015 and a Certificate of Confirmation of Grant issued, with the Administrator named as the sole beneficiary of the entire said 2 parcels of land. Matters then went silent until 3 years later when the Objector filed the Summons for Revocation dated 24/05/2018, the subject hereof.
6. The Summons for Revocation is filed through **Messrs Isiaho Sawe & Co. Advocates** and is dated 24/05/2018. The orders sought are premised as follows:
  - i) [.....] spent
  - ii) [.....] spent
  - iii) **That the Grant of Letters of Administration issued on 4<sup>th</sup> March, 2014 and subsequently confirmed on 2<sup>nd</sup> September, 2015 be annulled and/or revoked forthwith.**

- iv) **That the Objector herein be made a Co-Administratrix and beneficiary of the estate of the deceased herein, AGUI CHUMO upon determination of this summons in her favour.**
  - v) **That the title deeds issued on the ground of misrepresentation and/or non-disclosure of material facts by the Petitioner be cancelled in the best interest of justice.**
  - vi) **That costs of this application be provided for.**
7. In her Affidavit in support of the Summons, the Objector deponed that the Grant was obtained fraudulently, and by concealment from the Court of material facts, particularly as to the true legal beneficiaries and dependants of the estate of the deceased, and that consents by persons of equal or lesser priority were not obtained from all beneficiaries and dependants of the estate. She urged that this concealment of facts has led to a miscarriage of justice as she and her children have been disinherited. She averred that she has always had problems with the Administrator since she married her son, **Nicholas Sawe**, hence the bad faith on her part, and that the letter from the Chiefs' letter used by the Administrator to obtain the Grant did not disclose all the beneficiaries of the deceased. She thus termed the letter a forgery as it bears a name that is different from the correct name of the Chief. According to her, the legitimate Chief of Sosiani Location is one **Gilbert Songok**, and not **David Songok** as indicated in the letter presented by the Administrator. She urged that the said legitimate Chief, **Gilbert Songok** confirmed that she (Objector) is the widow of the late **Nicholas Cheboiywo Sawe**, and one **Hellen Jepkosgei** is her co-wife. She thus insisted that the deceased herein is her father-in law thus making the Administrator her mother-in-law.
8. She further deponed that her late husband, **Nicholas Cheboiywo Sawe** is a beneficiary of the father's estate. She then contended that the proceedings herein were filed and concluded without her inclusion. She also exhibited copies of her children's respective Certificates of Birth and health cards indicating the late **Nicholas Cheboiywo Sawe** as the children's father. She contended further that the Administrator, upon being registered as a trustee, upon confirmation of the Grant, moved to the **Environment and Land Court (ELC)** and filed **Eldoret ELC Case No. 133 of 2016** seeking orders to evict the Objector from the parcel of land, **L.R. No. Turbo East/Sosiani Block L (Sugoi)/12** which forms part of the estate, which, according to her, was a miscarriage of justice. She then exhibited a copy of the Judgment rendered in the said **ELC** case on 17/04/2017 whereof the Administrator was declared the owner of the said parcel of land and the Objector a trespasser, and a permanent **Eldoret High Court P&A Cause No. 226 of 2013**

injunction issued restraining the Objector from intermeddling, interfering, trespassing and/or in any other way adversely dealing with the land. The Objector contended that the Administrator misled the ELC by purporting that the said parcel of land was jointly purchased by the Administrator and the deceased, which fact the Administrator knew to be untrue. She deponed further that she has a life interest in her husbands' estate, and that the trial Court was not informed of the beneficiary interest of her children in the estate during confirmation of the Grant hence leading to a miscarriage of justice, and that the Court was also not informed that her Application for Injunction dated 4/09/2013 had not, by the date of confirmation of the Grant, been heard and determined. According to her therefore, the status quo orders issued on 20/05/2014 are still in force herein. She however deponed that she is not opposed to her late husband's estate being divided between her house and the house of her co-wife, the said **Hellen Jepkosgei**.

9. The Administrator in her Affidavit filed in response to the Summons for Revocation, and which she swore on 6/08/2018, contended that the Summons has been filed by a person who lacks the *locus standi* to the estate of her late husband, and contended that the Objector is not her co-wife and she thus cannot apply to be appointed a co-Administratrix to the estate of the deceased herein, the Administrator's late husband. She reiterated that the Objector is a stranger as she is not a member of the family of the deceased, and also that the fact that the Objector had a love affair with the Administrator's son does not entitle her to make a claim in the estate. She also urged that her son, **Nicholas Kipchoge**, did not survive the deceased, and that is why his name was not included in the Petition. She further insisted that the Objector never got married to her son, and observed that the Objector's name did not even appear in the burial programme. She averred that in obtaining the Grant of Letters of Administration, she followed the requisite procedure to the latter, and that the Objector participated by filing objections which were unsuccessful. She confirmed that, as the Administrator and sole beneficiary, she has been registered as the owner of the 2 parcels of land and title deeds issued as such.
10. The parties also filed respective Witness Statements. I will briefly recount the same as they were adopted at the trial as the Witnesses' evidence-in-chief.

#### Objector's Witness Statements

11. The Objector, **Nelly Jebor**, filed the Witness Statement dated 24/05/2025 whose contents I do not deem it necessary to recount as it is basically a restatement of her case as already presented in her Affidavits and other pleadings referred to above.

**12. Gilbert Songok** filed the Statement dated 24/05/2018, in which he stated that he is the Chief, Sosiani Location since the year 2001. He confirmed that the deceased and the parties herein are from his Location, and are personally known to him, and that the deceased died by suicide. He stated that the deceased was married to 2 wives, namely, the Objector herein as the 1<sup>st</sup> wife, and **Hellen Jepkosgei** as the 2<sup>nd</sup> wife, that the Objector and the deceased lived together as a couple, and that the Objector and the Administrator herein, her mother-in-law, have always had differences on various issues. He also stated that he at one time got both the late **Nicholas Kipkoech** and the Objector arrested for neglecting and/or abandoning their children at the Chief's office after having personal disputes.

**13. Michael Kimaiyo Kitur** filed the Witness Statement also dated 24/05/2018, and stated that the parties herein are personally known to him being his neighbours. He also stated that the late **Nicholas Kipkoech** was his good friend and married the Objector, that he attended the couple's traditional marriage engagement ceremony as his best man, and that he is one who "talked him" to get married because he was drinking alcohol too much. He contended that the couple were blessed with 2 children and that the 1<sup>st</sup> born was born to them even before the engagement ceremony, and that **Nicholas Kipkoech** later married the said **Hellen** as a 2<sup>nd</sup> wife. He stated further that **Nicholas Kipkoech** resided with the Objector on land pointed out to them by the deceased herein, and it is when the couple differed and the Objector returned to her parent's home that the Administrator took advantage of the situation and caused **Nicholas Kipkoech** to marry **Hellen** as a 2<sup>nd</sup> wife.

#### **Administrator's Witness Statements**

**14.** The Administrator, **Priscila Jesondin Chumo**, filed the Witness Statement dated 22/06/2018 whose contents are basically also a restatement of her case already presented in her pleadings. For this reason, I will not recite the same. She however pronounced her doubts over the paternity of the Objector's children and proposed the conduct of a DNA test. She also reiterated that the letter from Chief **Gilbert Songok** relied on by the Objector is not true as that particular Chief has an interest in the parcel of land herein which he wants to purchase. She also pointed out that it is the same Chief who had written for her the letters which she relied on to file the Petition herein. Regarding **Hellen Jepkosgei** appearing in her list of beneficiaries, she maintained that **Hellen Jepkosgei** is her last-born child.

**15. Elisha Kipkorir Biwott** who stated that the Administrator is his aunt, filed the Witness Statement dated 22/06/2018. He denied that **Nicholas Sawe Chebaiywo**, whom the Objector

is claiming to have had children with married the Objector as no dowry was paid, the two never stayed together, and also that from 2013, the Objector has been residing on the Administrator's land illegally. He, too, stated that the Chief's letter relied on by the Objector is not true as that particular Chief has an interest in the matter.

**16. Henry Kiptoo Murei** who stated that he is a neighbour to the Administrator since 1970, filed the Witness Statement also dated 22/06/2018. He stated that the Objector was in Court when the Grant herein was issued to the Administrator, and also denied that the Objector was married to the Administrator's son, **Nicholas Sawe Chebaiywo**. He, too, stated that he has no certainty that the Objector's children were sired by **Nicholas Sawe Chebaiywo**. He stated that no ceremony was conducted in respect to the Objector's alleged marriage, and that the Objector came to the parcel of land the subject hereof in 2013. He, too, stated that the Chief whose letter the Objector relies on is a friend of the Objector.

**17. Kipkosgey Talam** filed the Witness Statement also dated 22/06/2018 in which he stated that he is a brother to the deceased herein, **Agui Chumo**. He denied any knowledge of the Objector, whom he also denied was married to the Administrator's son, or had any children with him. He stated further that they informed the Objector about this Succession Cause upon which she filed an Objection which was dismissed. He insisted that the Administrator's son had only one wife, namely, **Hellen Jepkosgei**, and he, too, contended that the Objector never stayed with the Administrator's son, nor was any dowry paid for her.

#### **Hearing of the Summons for Revocation**

**18.** It was then directed that the Summons for Revocation be set down for *viva voce* trial, which trial then commenced before me on 20/06/2023. The Objector called 3 witnesses while the Administrator called 4.

#### **Objector's Witnesses' Testimonies**

**19. PW1** was the Objector, **Nelly Jebor**. Led by her Counsel, **Ms. Isiaho**, she adopted her Witness Statement and basically restated her case as already captured above. She maintained that the deceased was her father-in-law, and testified that her 2 children with her husband, the late **Nicholas Kipkoech**, were born in 2003 and 1995, respectively. She maintained that she was never notified of the filing of this Succession Cause, and was never involved in applying for the Letters of Administration. She then produced her supporting documents. Under cross-examination by **Ms. Mutai**, she insisted that the Administrator, as her mother-in-law, was present at her marriage engagement ceremony with **Nicholas Kipkoech**

conducted in 2001, and fully participated therein, although she agreed that no cows were given out as dowry as the Administrator later changed her mind. She also insisted that she and **Nicholas Kipkoech** lived together on land belonging to the deceased, and stated that she gave birth to her 1<sup>st</sup> born child with **Nicholas Kipkoech** even before they got married, although the Administrator knew about the birth. She also reiterated that **Gilbert Songok** was the genuine Chief of the area, and denied being involved in any romantic relationship with him. In re-examination, she stated that even before the engagement ceremony, an earlier “**introduction**” ceremony known as “**show-up**” had already been conducted, in which the Administrator also fully participated.

**20. PW2** was the said **Gilbert Lelmengit Songok**, who reiterated that he is the Chief, Sosiani Location since 2001, and who, too, adopted his Witness Statement. He confirmed that he was the author of both the letters dated 2/05/2014 and 4/08/2015, respectively, presented by the Objector. He agreed that in one of the letters, he stated that the said **Nicholas Kipkoech** had 2 wives, namely, **Nelly Jebor** and **Hellen Jepkosgei**, and both live on land belonging to the deceased. He also reiterated that he once solved a marital dispute between the Objector and the **Nicholas Kipkoech** as husband and wife, in respect to neglect of their children. In cross-examination, he denied being involved in any romantic relationship with the Objector.

**21. PW3** was the said **Michael Kimaiyo Kitur** who, too, adopted his Witness Statement. He clarified that the late **Nicholas Kipkoech** was also known as “**Nicholas Cheboiywo Sawe**”, and reiterated that he was the best man during the “**engagement**” ceremony for **Nicholas Sawe** and the Objector, and that according to Kalenjin customary law, which they all belong to, after “**engagement**”, which is known as “**koito**” in the Kalenjin language, a woman is considered a wife, and after the ceremony, the couple goes home together. He agreed that **Nicholas Kipkoech** later married a 2<sup>nd</sup> wife. In cross-examination, he reiterated that he is a neighbour to the family of the deceased. He could not however recall how many people were present at the “**engagement**”, or who spoke, or give a clear narrative of how the ceremony was conducted. He could not also not tell the number of children that the deceased had. He then agreed that **Nicholas Kipkoech** and the Objector already had children by the time of the “**engagement**”.

#### Administrator’s Witness Testimonies

**22. DW1** was the said **Elisha Kipkorir Biwott**. Led by the Administrator’s Counsel, **Ms. Mutai**, he adopted his Witness Statement whose contents he basically recounted. He reiterated that the Administrator is the wife to his uncle, the deceased herein. He termed the

Objector as only a co-habiter, and stated that she was never officially married, as only a “*show-up*” ceremony was conducted, and that they never lived together. She stated that the Objector and **Nicholas Kipchoge** were residing at the local centre, and not on **Nicholas Kipchoge’s** father’s land. He also stated that the Objector never attended **Nicholas Kipchoge’s** burial as they were living apart before he died after briefly cohabiting, and that the Objector only returned about 5 years after his burial, and forcefully evicted the 2<sup>nd</sup> wife, **Hellen**, from the house. Under cross-examination by **Ms. Isiaho**, he agreed that he lives in Nandi while the family of the deceased lives in Sugoi, thus far away. He also confirmed that **Hellen Jepkosgei** is **Nicholas Kipchoge’s** 2<sup>nd</sup> wife, and not the Administrator’s daughter as alleged in the Petition.

23. **DW2** was the Administrator, **Priscilla Chumo**, the wife to the deceased herein, **Chumo Agui**. She, too, adopted her Witness Statement and reiterated the matters stated therein, including her denial that the Objector was a wife to her late son. She reiterated that the only wife to his son was the said **Hellen** in respect to whom all marriage ceremonies were conducted. She reiterated that for the Objector, they only went for a “*show up*” and thus they never paid any dowry. About describing “**Hellen Jepkosgei**” as her daughter, she stated that she has 2 children who share that same name, one her biological daughter, and the other adopted. In cross-examination, she agreed that **PW3** was a close friend to her late son **Nicholas Kipchoge**, and that since her son was an alcoholic, she asked **PW3** to speak to him about getting married. She also agreed that the Objector got 2 children with her said son even before the alleged “marriage”, and that they lived together. She however reiterated that only a “*show up*” ceremony was conducted in respect to the Objector, which was hosted and held at the home of the Objector’s uncle. She also agreed that she did not include the Objector’s 2 children sired by her son in the list of beneficiaries. About some of her own children being left out in her list of survivors, she stated that it is the Chief who omitted the names of her dead children, including **Nicholas Kipchoge**. Regarding **Hellen Jepkosgei**, she conceded that although she was listed as her daughter, she was in fact her daughter-in-law. About the Chief’s letter she relied on bearing the name “**David Songok**” as the Chief, and not the correct name “**Gilbert Songok**”, she stated that she could not explain that discrepancy but confirmed that **PW2** who testified herein was the Chief who gave her the letter. About her son and the Objector being arrested by the Chief, she stated that the reason was the fighting between them. At this point, I recorded that the witness appeared evidently evasive in answering some questions. When she continued, she maintained that the Objector was simply a girlfriend to her son, and that after they stopped dating, the Objector got married to another man. She however acknowledged that the Objector’s 2 children were

sired by her son, and she also seemed to further acknowledge that her son did marry the Objector. She also agreed that it is the Objector who currently resides in the subject parcel of land. She then urged the Court to uphold the Judgment of the ELC in which she obtained orders directing the Objector to give her vacant possession thereof. She stated that the 2 children sired by her son will be entitled to inherit her son's share of the estate once she distributes the same. In re-examination, she maintained that the Objector and her son were simply friends as they never got married. She also pointed out that this Succession Cause is about the estate of the deceased herein, **Agui Chumo**, and not **Nicholas Kipkoech**. Regarding the cause of disagreements between her son and the Objector, she eventually agreed that it was because of neglect of their children, but she denied any further knowledge of the matter as it was the deceased who reported the matter to the Chief.

24. **DW3** was the said **Henry Kiptoo Murei** who also adopted his Witness Statement and reiterated that he is a neighbour to the family of the deceased. In cross-examination, he reiterated that the Objector and **Nicholas Kipkoech** were living with some children at the local Centre where they were operating a hotel. He denied that he had been promised any share of the land by the Administrator or that he had any interest in the matter. He termed a “*show-up*” ceremony as simply a preliminary “*introduction*” ceremony which may not necessarily end up into a marriage, and that it is “*koito*” which is the main marriage ceremony. According to him therefore, “*show-up*” without “*koito*” has no meaning. In response to a question from the Court, he stated that he could not tell whether the children he referred to as living with the couple were the couples.

25. **DW4** was the said **Simeon Kipkosgei Talam**. He adopted his Witness Statement and reiterated that he is a cousin to the deceased, and that, therefore, the Administrator is his sister-in-law. In cross-examination, he stated that he could recall the Objector reporting **Nicholas Kipchoge** to the Chief and he denied any knowledge of what it was all about. He also denied any knowledge of the “*show-up*” or whether the couple had any children, or whether they lived on land belonging to the deceased. According to him however, **Nicholas Kipkoech** had rented a house at the Centre but he could not tell whether he lived there with the Objector. He agreed that before this Succession Cause was filed, a family meeting was convened to discuss the estate but agreed that the Objector did not attend as she was not notified about it. He however eventually agreed that the Objector was married to **Nicholas Kipkoech** and was actually the 1<sup>st</sup> wife, and **Hellen** the 2<sup>nd</sup> wife. He, too, denied that he had been promised a share of the land by the Administrator, or having any interest in the matter. In re-examination, he reiterated that the Objector only moved into **Nicholas Kipkoech's**

house after his death, and reiterate that **Hellen Jepkoech** was the only wife **Nicholas Kipkoech** married.

### Written Submissions

26. Upon close of the trial, the parties filed Written Submissions. The Objector's is dated 20/06/2025 while the Administrator's is dated 22/06/2025.

### Objector's Submissions

27. Counsel for the Objector stated that they had abandoned prayers 2, 4 and 6 of the Summons for Revocation. Since prayer 2 was an interlocutory prayer which is now spent, and prayer 6 is only on costs, it means that the only substantive prayer abandoned is prayer 4 which seeks that the Objector be appointed a co-Administratrix of the estate of the deceased herein. Although the prayer also includes the plea that the Administrator be declared a beneficiary of the estate, I do not think that the abandonment extended to that portion of prayer 4. Counsel then reiterated that the Grant of Letters of Administration and its subsequent confirmation were obtained fraudulently and/or by concealment of material facts, particularly as to the Objector and her children being beneficiaries of the estate. She also contended that the Chief's letter relied on by the Administrator was a forgery as it was issued by a fictitious person. She reiterated that the Objector got married to a son of the deceased, **Nicholas Kipchoge**, in the year 2001 under Kalenjin customary law and were blessed with 2 children as evidenced by the Certificate of Birth and health cards produced. Counsel also urged that the Administrator's oral testimony was at variance with the contents of her Witness Statement and Replying Affidavit, particularly in regard to her late son **Nicholas Kipkoech** and the Objector cohabiting as husband and wife and getting 2 children, the Administrator's attendance at the Objector's "**show-up**" traditional ceremony, the fact of the **Nicholas Kipkoech** having 2 wives, namely the Objector as the 1<sup>st</sup> wife, and the fact of the Objector currently residing in the a parcel of land belonging to the deceased herein. He also termed the testimonies of the Administrator's other witnesses as hearsay. On whether the Objector is **Nicholas Kipkoech's** widow, Counsel relied on the principle of presumption of marriage arising from long cohabitation by a "couple". She cited several authorities and submitted that the Administrator admitted that the Objector was staying with her late son, **Nicholas Kipkoech** before his death, that they begot 2 children from the relationship, and that they lived on a parcel of land belonging to the deceased during the deceased's lifetime.

She thus maintained that the Objector has proved her “dependency” to the estate of the deceased. in accordance with the provisions of **Section 29** of the **Law of Succession Act**, and also observed that under the interpretational provision of the Act, namely, **Section 3** thereof, “**wife**” includes a wife who is separated from her husband and that the terms “**husband**” and “**spouse**”, “**widow**” and “**widower**” shall have corresponding meaning.

### **Respondent’s Submissions**

28. Counsel for the Administrator, too, cited **Section 29** of the **Law of Succession Act**, and also the case of **In Re-Estate of M’Muthania Mwendwa (Deceased) (2016) eKLR**, and contended that the Objector does not fall in any category thereof as a “**dependant**” as she was not “**a wife**” nor “**a former wife**” of **Agui Chuma**, the deceased herein, and she did not also produce any evidence to demonstrate that her children - the deceased’s grandchildren - were being maintained by the deceased prior to his death. She submitted that in law, it is not the mere relationship that matters but proof of “**dependency**” She cited several cases, including **Amina Munini v Margaret Nzambi [1984] eKLR** and also **Hortensiah Wanjiku Yawe vs The Public Trustee**. Regarding the Objector’s allegation of long cohabitation, Counsel cited the Objector’s testimony that she began cohabiting with the deceased's son from 21/10/2001, and that they resided in a parcel of land belonging to **Agui Chumo**, the deceased herein. She averred that **Nicholas Kipchoge Sawe** did not own that parcel of land, and that the Objector should therefore direct her claims to the estate of the son, **Nicholas Kipchoge**. Regarding the prayer for revocation of the Grant, Counsel cited the provisions of **Section 76** of the **Law of Succession Act**, and observed that the Summons for Revocation, as crafted, appears to challenge distribution of the estate, and not the process of issuing the Grant itself. She however denied that there was any misrepresentation on the Administrator’s part, and if any, the same was not about a point of law or fact essential to the Grant, and that all requisite procedures were followed. She cited the case of **In re Estate of Musa Rengo Nabiswa (Deceased)**, and also **In re Estate of Prisca Ongayo Nande (Deceased) (2020) eKLR**. According to her therefore, the Objector has failed to prove that the Grant was obtained by making of false statements. She also submitted that at the time that the Grant was confirmed, all the beneficiaries were present in Court, and the Objector was also present, and thus, the prayer for revocation thereof is an afterthought.

### **Determination**

29. The broad issues that arise for determination herein are evidently the following:

- i) **Whether the Objector is entitled to share in distribution of the estate of the deceased herein as a daughter-in-law.**

**ii) Whether the Grant of Letters of Administration issued and confirmed herein should be revoked**

30. It is apparent that the Objector's claim that she was "*a wife*" of a son of the deceased having undergone a customary marriage under the Kalenjin traditions has been strenuously refuted by the Administrator. The Objector admits that no dowry was paid out as no "*koito*" ceremony was conducted but insists that other preliminary customary marriage rites were conducted and which qualify her to be referred to as a "*wife*". Although she also relies on the principle of presumption of marriage on the basis of long co-habitation, it appears that she only co-habited with the deceased's son, **Nicholas Kipkoech**, for about 2 years, namely, between the year 2001 and 2003, although it has been stated that they got their 1<sup>st</sup> child in the year 1995. To demonstrate that her 2 children were sired by **Nicholas Kipkoech**, the Objector produced one Certificate of Birth and several health cards which bear the name of **Nicholas Kipkoech** as the father. I may also say that neither the legitimacy of these documents nor the contents thereof were challenged.

31. Be that as it may, the fate of the validity of a claim by a daughter-in-law to inherit as a beneficiary in the estate of her father-in-law now been settled. The position is that the wording of **Section 29** of the **Law of Succession Act** does not include "daughters-in-law" of a deceased as being among beneficiaries of his estate. Daughters-in-law are not children of the deceased and therefore they do not fall within the category of the phrase "*children of the deceased*" as used in the said provision. A daughter-in-law can only therefore make a claim, not in her own right as a direct beneficiary, but as a legal representative of the estate of a son of the deceased, her husband. Regarding this issue, **Odunga J (as he then was)**, in the case of **In Re Estate of Catherine Nduku Malinda (Deceased) (2020) eKLR**, held as follows:

**"176. In my view a daughter in law may lay a claim as a beneficiary not in her own right but as a legal representative of a deceased son. In other words, the legal representatives of a deceased's dependants may properly stake a claim to the estate of a deceased person on behalf of legally recognized dependants. However, that is not the Protestor's claim in these proceedings. My view is reinforced by the decision in the case of Re Estate of Munyua Mbeke (Deceased) [2015] ....."**

32. Similarly, **W. Musyoka J**, in the case of **In Re Estate of Cecilia Wanjiru Kibicho (Deceased) (2016) eKLR**, stated that:

**“20. .... I should also add that a daughter-in-law is not listed in section 29(b) of the Act as being among persons who may move the court under section 26 for reasonable provision and who the court may declare to be a dependent.**

.....

**26. The applicant in the confirmation application is a daughter-in-law of the deceased, by dint of her having had married the deceased’s son, .... She is not a blood relative of the deceased. She, therefore, does not qualify to be among the survivors of the deceased as defined in Part V. She is, consequently, not entitled to a share in the deceased’s estate. However, her children with the deceased’s son would be blood relatives of the deceased in their capacity as grandchildren of the dead.**

.....

**28. However, in view of what I have stated with respect to the applicant, the fact that the protestor had been married to the deceased’s son may not be a relevant fact in determining whether she was a survivor of the deceased in terms of Part V of the Act. She was not a blood relative of the deceased, and the fact of having been a spouse of the deceased’s son does not make her a survivor of the deceased. She is therefore not entitled to a share in her estate. However, her biological children with the deceased qualify automatically to be survivors of the deceased, by virtue of being the biological grandchildren of the deceased.”**

**33. W. Musyoka J, again, in the case of In re Estate of Francis Andachila Luta (Deceased) (Succession Cause 875 of 2012) [2022] KEHC 16900 (KLR) (23 December 2022) (Judgment), went even further by stating as follows:**

**“29. One of the sons of the deceased is dead, and that is to say the husband of the protestor. I have mentioned section 41 above, in connection with how the share of a dead child of a deceased parent is to be handled. When a child of the deceased dies, and is survived by offspring, their entitlement is not extinguished or diminished. It should go to their offspring or to his/her estate. Section 41 says that the offspring step into the shoes of their dead parent, and take the share that is due to such dead parent. That share should be equal to the shares taken by the surviving children of the deceased. More importantly, section 41 talks of the offspring of the dead child of the deceased and not the spouse of the dead child. In intestate succession, the estate passes to the kindred of the deceased, that is to say the blood relatives of the deceased, except for the surviving spouse of the deceased. In-laws, be they parents-in-laws or children-in-laws, are not blood**

relatives of their children-in-law or father-in-law. They have no right or entitlement to the intestate estate of their dead in-law. The Law of Succession Act does not recognize them or their rights. Indeed, the Law of Succession Act does not even mention them. They can only claim on behalf of others. A daughter-in-law, for example, can only claim the share due to her late husband, otherwise she has no direct right. For her to access the share due to her late husband, she has to obtain representation to his estate first, by way of a grant of letters of administration intestate. Pursuing the interest due to her late husband without first obtaining the grant in his estate would amount to intermeddling, and her activities would run afoul of section 45 of the Law of Succession Act.  
.....”

30. The protestor is not a child of the deceased. She is a daughter-in-law. In terms of rights or entitlement to a share in the estate, she had none at all. She is not in the same league with the applicant nor the son, Andrew Muchenditsi. Nor any of the other daughters of the deceased. She has zero right or entitlement. It is her children, with her late husband, who have right or entitlement to a share of the estate, by dint of section 41, by way of stepping into the shoes of their late father. The protestor can only agitate a claim on behalf of her late husband, and she can only agitate the same upon obtaining a grant of representation to his estate, for it only that grant that would clothe her with authority to speak on behalf of her husband, speaking for her husband without obtaining a grant to his estate amounts to intermeddling into his estate, which is a criminal offence under section 45(2) of the Law of Succession Act. The mere fact that she is his surviving spouse clothes her with no authority whatsoever to claim that which accrues to her late husband. The protestor has not provided any proof that she holds such a grant with respect to the estate of her husband.”

34. I fully agree and associate myself with the above judicial sentiments. I, too, find that the Objector, claiming as a daughter-in-law, is so far removed from, and is too remote to the estate of the deceased to claim as a direct heir thereof. The law does not recognize a daughter-in-law to be a direct beneficiary in the estate of her father-in-law. As aforesaid, she can only sustain a claim, as a legal representative, on behalf of her children since it is only they, the children, who are permitted in law, to “*step into the shoes*” of their late father, and claim his share of the inheritance. The Objector therefore lacks the requisite *locus standi* to sustain a claim on behalf of the estate of Nicholas Kipkoech.

35. In this case, the estate in issue is that of **Agui Chumo**, and not **Nicholas Kipkoech**, his son. The Objector has not alleged that she holds any Grant of Letters of Administration entitling her to manage the estate of **Nicholas Kipchoge**, the late son of the deceased, and whom she claims to have been married to. Indeed, she has not produced any. She cannot therefore purport to agitate a claim for, or on behalf of the estate of **Nicholas Kipchoge** as she is not the legal representative of that estate. She cannot also directly stake a claim in the estate of **Agui Chumo**, her alleged father-in-law, Her claim therefore falls flat at this preliminary stage, and I deem it academic and thus unnecessary to determine whether or not she was indeed married to **Nicholas Kipkoech**.

36. It is also not in dispute that the Administrator, upon obtaining the Certificate of Confirmation of Grant herein in 2015 and procuring a title deed in her name, proceeded to sue the Objector in **Eldoret ELC Case No. 113 of 2016** seeking Judgment that the Objector be ordered to give to her vacant possession of the parcel of land known as **Turbo East/Sosian Block 1(Sugoi)12**. The record does not show that the Objector at any time applied for stay of the **ELC** proceedings to await the outcome or determination of her claims in this Succession Cause, and the **ELC** case thus proceeded unabated to conclusion culminating into the Judgment rendered on 17/04/2017 (**M.A. Odeny J**). By the said Judgment, the **ELC** declared the Administrator to be the lawful owner of the said parcel of land, and that the Objector is a trespasser thereon. The **ELC** thus ordered the Objector to give vacant possession within 45 days of the Judgment, and also issued a permanent injunction barring her from, among others, trespassing into that parcel of land. That remains a lawful and valid judicial pronouncement which has to be recognized. As the Grant herein was confirmed in 2015, at which time the Objector was a party to this Succession Cause, there is no explanation why she waited until 2018, 3 years later and long after the **ELC** case had also been concluded, to apply for Revocation of the Grant herein. No reason has been given why this Court should disregard the **ELC** Judgment and give a decision herein that would, for all intents and purposes, serve as a nullification of that **ELC** Judgment.

37. Regarding a claim by “*a wife*” or “*a former wife*” as a “*dependent*”, the relevant provisions of **Section 29** of the **Law of Succession Act** is premised as follows:

“(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;

38. The “*deceased*” in the context used above refers to the deceased whose estate is the subject of the distribution before Court. It is therefore clear that the above provision cannot also come to the Objector’s claim for the reason that the estate under consideration in this matter

is that of **Agui Chumo**, and not the estate of **Nicholas Kipkoech** his son, whom the Objector claims to have been married to. **Section 29** does not therefore apply to the Objector's case herein.

39. Regarding inheritance by the Objector's children, as grand-children of the deceased, the first port of call will be **Section 41** of the **Law of Succession Act**, which provides as follows:

**“41. Property devolving upon child to be held in trust**

**Where reference is made in this Act to the "net intestate estate", or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.” (emphasis mine).”**

40. The question of whether grand-children can inherit from their grandfather's estate was addressed by the Court of Appeal in the case of **Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others [2014] eKLR** in which it was held as follows:

**“Although Section 35 and 38 of the Law of Succession Act is silent on the fate of surviving grand children whose parents predeceased the deceased, the rate of substitution of a grandchild for his/her parent in all cases of intestate known as the principle of representation is applicable. The Law is section 41. If a child of the intestate has pre- deceased the intestate then that child's issue alive or in centre as mere on that date of the intestate's death will take in equal shares per stirpes contingent on attaining the age of majority. Per stirpes means that the issue of a deceased child of the intestate take between them the share their parents would have taken had the parent been alive at the intestate's death”.**

41. On the same question, **Hon. W. Musyoka J**, in the case of **Re Estate of Wahome Njoki Wakagoto (2013) eKLR**, also held as follows:

**“Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1<sup>st</sup> July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. Eldoret High Court P&A Cause No. 226 of 2013**

**The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents."**

42. Similarly, **H.K. Chemitei J** in the case of **In re Estate of Hellen Wangari Wathiai (Deceased) [2021] eKLR**, found as follows:

**"52. The evidence on record suggest that the Applicant herein brought these proceedings on behalf of his father; Abdi Ibrahim Hassan (deceased) who was the beneficiary to his father's estate. The Applicant's interest emanates from the fact that his father was a beneficiary to the suit property, thus the Applicant being dependent to his father Abdi Ibrahim Ibrahim's estate within the provisions of Section 29 of the Law of succession Act, he acquires an interest in his grandfather's estate; the suit property by virtue of his father's share. Therefore, in the court's view, the instant Application is properly before this court.**

**53. In my humble view, therefore, it is clear that the applicant had the locus standi and he was rightfully before the court to fight for the interests of the estate of his late father with regard to the deceased grandmother's estate. The fact that he was a grandchild of the deceased taken care of by his deceased grandmother prior to her death and a dependant of his father's estate has not been disputed.**

**54. This therefore supports the fact that he and his sister acquired interest over the deceased's grandmother's estate and thus he had the necessary locus standi. ...."**

43. It is therefore evident that **Section 41** of the **Law of Succession** Act provides that where one of the children of the deceased is himself/herself deceased, and such deceased child is survived by a child or children of his/her own, then the share due to him/her ought to devolve to his/her said child, and where they are more than one, the children would take equally.

44. In this case however, the Objector's claim is all about herself as a direct heir, not her children. Throughout the case and even at the trial, she strived to demonstrate that she is a wife to **Nicholas Kipkoech**, and thus entitled, on her own behalf, to make a claim in the estate of **Agui Chumo**, her alleged father-in-law. Never at all did she allege that she has brought the case for, and/or on behalf of the children. In fact, the Summons for Revocation

has no prayer of that nature. It is only at the Submissions stage that her Counsel, perhaps realizing the folly, tried to mutate the claim into one made for, or on behalf of her children. It was too late to make such attempt. It is true that the Objector led evidence to show that she got 2 children with **Nicholas Kipkoech** and even produced copies of one Certificate of Birth and several health cards. She however did this, not to demonstrate that her claim was for, or on the children's behalf, but to buttress the point that she was "*a wife*" who even gave birth. In any event, even if the Objector's case was to be deemed to be one made on behalf of her children, still she would not legally be capable of agitating on her children's behalf as she does not hold any Letters of Administration over the estate of **Nicholas Kipkoech**.

45. Further, the children are said to have been born in 1995 and 2003, respectively. This means that they are now 30 years and 22 years of age, respectively. They are now therefore adults and thus capable of agitating their case on their own. They were however not joined in this case as Claimants, and no evidence whatsoever was led on whether they were even interested in claiming a share. The allegation raised by the Administrator, that the Objector, upon parting with **Nicholas Kipkoech in 2003** or thereabouts, later got married to another man by the name **Nathan** was also never denied or responded to by the Objector. No evidence was however led on whether any provision has been made for the children under that other family arrangement, or whether the said **Nathan** may have taken them in as his own. In short, the Court has not been presented with sufficient particulars to make a determination on the children's status and wishes, if any. For this reason, even if the Objector had surmounted the earlier hurdles of holding of the relevant Grant of Letters of Administration, and, secondly, crafting her claim as one made for and/or on behalf of her children, still, on substantive considerations, she would still fail.

46. Having found as above, it is clear that there are no grounds to justify return of a verdict that the Administrator was guilty of non-disclosure of material facts at the time that she applied for and obtained the Grant of Letters of Administration herein, or failure to disclose the complete list of beneficiaries. The prayer for Revocation of the Grant cannot therefore succeed, and the same also applies to the prayer for cancellation of title deeds obtained on the strength of the Certificate of Confirmation of Grant issued herein.

### **Final Orders**

47. In the end, I make the following orders:

- i) The Objector's Summons for Revocation of Grant, dated 24/05/2018 is hereby dismissed.

- ii) As this is a family matter, I find it fit that each party bears her own costs, and it is so ordered.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 15<sup>TH</sup> DAY OF DECEMBER 2025**

.....  
**WANANDA JOHN R. ANURO**  
**JUDGE**

**Delivered in the presence of:**

**Ms. Isiaho for the Objector**

**Mr. Chepkwony for the Administrator**

**Court Assistant: Brian Kimathi**