

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE NO. 193 OF 2003

IN THE MATTER OF THE ESTATE OF THE LATE VINCENT KOMURGOR
- DECEASED

GRACE CHEPKOSGEI KIPROTICH 1ST OBJECTOR
BEN KIMUTAI ROTICH 2ND
OBJECTOR
DAVID KIBET ROTICH 3RD OBJECTOR

VERSUS

IGNATIUS KIPKEMEI ROTICH 1ST
PETITIONER
LOUIS M. KIPRUGUT ROTICH 2ND
PETITIONER
MARK KIPLAGAT ROTICH 3RD
PETITIONER

Coram: Before Justice R. Nyakundi
M/s Munyaga Githaiga Advocates LLP
M/s Warigi & Company Advocates

RULING

Background

1. This matter has its origins in the death of Dr. Vincent Komurgor Kiprotich, who died intestate on 25th May 2003. Following his demise, his widow, the late Anna Chepchirchir Kiprotich, instituted succession proceedings by filing the instant succession cause. In her petition for letters of administration intestate, Anna indicated to the court that the deceased had died leaving behind herself as the surviving widow and three sons, namely Ignatius Kipkemei Rotich, Louis M. Kiprugut Rotich, and Mark Kiplagat Rotich, as dependants and beneficiaries of the estate. This

Honourable Court granted her letters of administration intestate on 5th April 2004, which grant was subsequently confirmed on 7th April 2005 by Justice George Dulu. At that time, no other persons came forward to challenge these proceedings or to assert claims to the estate.

2. The estate of Vincent Komurgor comprised substantial immovable properties including:
 - a. *Eldoret Municipality Block 14/73 measuring approximately 0.9439 hectares;*
 - b. *Kakamega/Sergoit/148 measuring approximately 25.5 hectares;*
 - c. *Nandi/Kiminda/736 measuring approximately 0.08 hectares, and*
 - d. *Nandi/Olessos/1476 measuring approximately 2.009 hectares,*
3. In addition to various movable assets comprising shares, life insurance policies, bank accounts, and a motor vehicle. Upon confirmation of the grant, the entire estate of Vincent Komurgor devolved to Anna Chepchirchir Kiprotich as the widow and administratrix. The titles to the immovable properties were duly transferred from the name of the deceased into the name of Anna Chepchirchir Kiprotich, who thereafter managed and utilized these properties. From the record before the court, the administration of this estate proceeded to completion without challenge or objection from any quarter.
4. Anna Chepchirchir Kiprotich herself passed away on 25th September 2009. Following her death, the three sons who had been identified as dependants in the first succession instituted fresh succession proceedings for their mother's estate. They petitioned this Honourable Court for grant of letters of administration intestate to the estate of Anna Chepchirchir Kiprotich, leading to the filing of Succession Cause No. 317 of 2009. The grant to Anna's estate was issued on 28th January 2010 and confirmed on 14th February 2011. The properties scheduled in Anna's estate were the same properties that had devolved to her from Vincent Komurgor's estate, and which now also included additional value in the form of proceeds from

commercial exploitation, including a Safaricom telecommunication lease on the Eldoret Municipality property.

5. Through this chain of succession across the two succession causes, the estate that had originally belonged to Vincent Komurgor in 2003 had, by 2011, been transmitted and distributed to his three sons being Ignatius Kipkemei Rotich, Louis M. Kiprugut Rotich, and Mark Kiplagat Rotich. The properties were distributed among them, with some held jointly in equal shares and others allocated individually. Titles were duly registered in their names, and they exercised control and management over the estate properties. The record indicates that Succession Cause No. 193 of 2003 had proceeded to its conclusion with confirmation of grant and full distribution of the estate to Anna Chepchirchir, who in turn had passed on the properties to her sons through the subsequent Succession Cause No. 317 of 2009. From the Petitioners' perspective, both succession matters had been properly concluded in accordance with the law, all assets had been lawfully distributed, and the succession process had reached finality.
6. It was against this backdrop of what appeared to be completed succession proceedings that Grace Chepkosgei Kiprotich, Ben Kimutai Rotich, and David Kibet Rotich came forward, asserting that they too were biological children of the late Vincent Komurgor. These Objectors contended that they had been excluded from the succession process and alleged that their late mother, Esther Cheboi, had been a second wife to Vincent Komurgor. They maintained that they were entitled to inherit from their father's estate as his dependants under the law of intestacy. The Objectors' position was that Anna Chepchirchir Kiprotich had obtained the grant to Vincent's estate without disclosing the existence of other potential dependants, thereby resulting in the entire estate devolving first to herself and subsequently to her three sons, while the Objectors remained entirely excluded.
7. The Petitioners, on their part, disputed these claims in their entirety. They maintained that their mother Anna had been the only lawful wife of the deceased, and that they were the only biological children entitled to inherit from their father's estate. They questioned the authenticity of the

documents presented by the Objectors and challenged the veracity of their claims to be children of the deceased. The matter thus presented sharply contested factual and legal issues centered on fundamental questions of biological relationships, family structure, and the validity of the succession process that had already been concluded.

8. Given the nature and intensity of the dispute, and recognizing that the questions of biological relationships lay at the heart of the controversy, the parties ultimately consented to scientific DNA testing to establish definitively the biological relationships among the various claimants. Samples were collected and submitted to the Kenya Medical Research Institute (KEMRI) for comprehensive analysis, with all parties agreeing that the DNA results would provide objective scientific evidence to inform the court's determination of the rightful beneficiaries of Vincent Komurgor's estate.
9. On 23rd December 2024, this court delivered a ruling in Succession Cause No. 193 of 2003 that addressed the Objectors' summons for revocation of the grant that had been issued to the late Anna Chepchirchir Kiprotich. The court undertook a detailed analysis of the DNA evidence and other materials that had been placed before it. The DNA forensic testing conducted by KEMRI revealed that Grace Chepkosgei Kiprotich and Ben Kimutai Rotich shared biological relationships with the three Petitioners at a probability of 99.9%, a finding which established them as siblings sharing common parentage from Vincent Komurgor. The testing also indicated that David Kibet Rotich, while testing positive for siblingship with some parties, did not share the same paternal lineage as the other children. The court made the following declarations:
 - a. *The grant of letters of administration issued to the late Anna Chepchirchir Kiprotich on 14th March 2005 and confirmed on 7th April 2005 is hereby declared inoperative by reason of her death, as such the invocation of Section 76 of the Law of Succession Act is of necessity.*
 - b. *Answering one of the most contested issues on kinship, the court finds the DNA forensic testing placed Grace Chepkosgei*

Kiprotich and Ben Kimutai Rotich at 99.9% as against the Petitioners.

- c. The Chief Land Registrar and the Land Registrar, Uasin Gishu County shall within thirty (30) days of this order file a comprehensive report detailing the status of all immovable properties registered as part of the estate of Vincent Komurgor, including any encumbrances, charges, or transfers effected pursuant to the Certificate of confirmation of Grant.*
- d. The beneficiaries are hereby directed to file, within thirty (30) days of this order, their proposals for appointment of administrators who shall represent their interests in this succession. The proposals shall identify not more than four (4) and not less than two (2) persons to serve as joint administrators under Section 66 of the Law of Succession Act.*
- e. Upon appointment, the newly appointed administrators shall, within forty-five (45) days of this order: File a full and accurate probate account detailing all movable and immovable properties comprising the estate of the deceased, including any proceeds, income, or benefits derived therefrom since the date of death.*
- f. Any person claiming interest in or control over any asset of the estate is hereby restrained pursuant to section 40 of the Civil Procedure Rules as read with Rule 73(1) of the Probate and Administration Rules from dealing with such asset pending confirmation of the fresh grant.*
- g. Each party shall bear its own costs.*

10. On the same date, the petitioners lodged a letter through their Counsel Mr. Warigi in which they brought to the attention of this court that the said ruling was done in exclusion of Succession No. 317 of 2009 which was the lead file. Counsel expressed concerned that the revoked Grant does not exist in law and as such the court should review the two files and give directions.

11. On the same date of delivery of the ruling, the Petitioners through their Counsel, Mr. Warigi, lodged a letter bringing to the court's attention an important concern regarding the scope of the ruling. Counsel pointed out that the ruling had been rendered with reference only to Succession Cause No. 193 of 2003 without express consideration of Succession Cause No. 317 of 2009, which related to the estate of Anna Chepchirchir Kiprotich. Counsel raised the issue that from a legal and practical standpoint, Succession Cause No. 193 of 2003 had been fully concluded when the grant was confirmed and the entire estate devolved to Anna Chepchirchir, who then held the properties in her own right. The grant to that estate had, in counsel's submission, been fully executed and therefore no longer existed as a legal instrument capable of being revoked. Counsel expressed concern that the orders made by the court appeared to re-open an estate that had been closed and fully administered, without addressing the subsequent transmission of those same properties through Succession Cause No. 317 of 2009.

12. The Petitioners subsequently filed an application for review dated 22nd May, 2025 expressed to be brought under the provisions of section 1A, 1B, 3 and 3A of the Civil Procedure Act and Order 45 Rule 1 and 2 of the Civil Procedure Rules. The applicant seeks orders as follows:

- a. *That the honourable court be pleased to review and set aside order dated 23/12/2024 for the reason that the court revoked a non-existent grant in succession No. 193 of 2003 the Grant having fully been executed and despite the file being consolidated with Succession 317 of 2009 which was the lead file.*
- b. *That there be stay of execution pending hearing and determination of this application.*
- c. *A temporary injunction be and is hereby issued restraining the objection either acting by themselves, servants and or agents from alienating, advertising for sale, offering for sale, selling, taking possession of, leasing, trespassing, transferring and or otherwise disposing off land parcels known as ELDORET*

MUNICIPALITY/BLOCK 14/73 and KAKAMEGA/SERGOIT 148 pending the hearing and determination of this application inter-parties.

d. *Costs be in the cause.*

13. The application is anchored by an affidavit in support by Louis M. Kiprugut Rotich and on grounds enumerated as follows:

- a. The Honourable Court made a Ruling on the 23rd December, 2024 whereby it revoked the Grant issued in Succession No. 193 of 2003.
- b. That the Grant that was revoked was non-existent for the reason that the estate had already been transferred to the late ANNA CHEPCHIRCHIR KIPROTICH.
- c. That after the said ANNA CHEPCHIRCHIR KIPROTICH passed on the beneficiaries filed a succession cause No. 317 of 2009.
- d. The Court by issuing the said orders disadvantages the petitioners/applicants for the reason that the said grant does not exist.
- e. There are sufficient reasons to justify a review of the said order due to revocation of a Grant that does not exist and the failure by the Honourable Court to consider file succession cause No. 317 of 2009 that was the lead file.

14. In response to the application, the 1st Objector swore a replying affidavit dated 20th June, 2025, which averments are captured as hereunder verbatim:

- a. That I am the 1st Objector/Respondent herein and the child of the Late Vincent Komurgor, conversant with the facts of this case, hence competent to swear this affidavit.
- b. That the instant application is devoid of merit, frivolous, vexatious, brought in bad faith on the basis of misconceived and malicious allegations and as such the application must fail with costs to the Objectors/Respondents.
- c. The instant application now before this court is unfounded, an afterthought and should not be allowed for want of merit.

- d. That the petitioners/applicants' application for review should fail for the reason that the ground or grounds on which the review is being sought have not been disclosed.
- e. That there is no error apparent on the face of the record or new and compelling evidence warranting a review.
- f. That further, the application has been brought with unreasonable delay and in abuse of the court process.
- g. That from the court's record, the handwritten notes by Hon. Justice Nyakundi J, on 17th October 2022, the court gave directions that the matter was slated on 19th October 2022 to queue Succession Cause No. 317 of 2009 with the present cause.
- h. That the present cause in this case is deduced to mean succession cause no. 193 of 2003.
- i. That on 19th October 2022, the court was indisposed and the matter was given a later date on 23rd January 2023.
- j. That on 23rd January 2023, the Coram was as follows: Mr. Isingi was holding brief for Mr. Walubengo for the objectors and Mr. Warigi for the petitioners. On this date, the court directed that Succession Cause No. 193 of 2003 be assorted with Succession Cause No. 317 of 2009.
- k. That the objectors/respondents deduced that Succession Cause No. 193 of 2003 was the lead file since their claim had its substratum on the Estate of Vincent Komurgor, which is featured under Succession Cause No. 193 of 2003.
- l. That the objectors/respondents abandoned Succession Cause No. 317 of 2009 because we have no claim to the Estate of Anna Chepchirchir Kiprotich.
- m. That the petitioners/applicants' prayer seeking stay is fatally defective and ambiguous for lack of enabling provisions on stay.

- n. That further, the prayer seeking a stay is premature for the reason that the administration process is not complete, as we were at the stage of filing the proposed mode of distribution.
- o. That the petitioners/applicants have brought an application for stay, but the application has been brought with unreasonable delay, as the ruling was delivered on 23rd December, 2024.
- p. That this dispute arose from the administration of the estate of Vincent Komurgor for the reason that the administrator in the estate obtained the grant of letters of administration intestate fraudulently by concealing material facts.
- q. That I am advised by my advocates, whose advice I verily believe to be true, that the issues in Succession Cause No. 193 of 2003 cannot be addressed in isolation of the issues in Succession Cause No. 317 of 2009, because if the same is done, it results in the disinheritance of some of the beneficiaries to the estate of Vincent Komurgor.
- r. That Vincent Komurgor died intestate on 25th May 2003 and was survived by the following dependants: -
 - a) Late Anna Chepchirchir Kiprotich – Widow
 - b) Ignatius Kipkemei Rotich – son
 - c) Louis M Kiprugut Rotich – son
 - d) Mark Kiplagat Rotich - son
 - e) Grace Chepkosgei Kiprotich – daughter
 - f) Ben Kimutai Rotich – son
 - g) David Kibet Rotich – son
- s. That on 5th April 2004, the late Anna Chepchirchir Kiprotich obtained grant of letters of administration intestate to the estate of Vincent Komurgor, which was later confirmed on 7th April 2005.
- t. That the late Anna Chepchirchir Kiprotich, knowing very well of the existence of the Objectors/Respondents, obtained the

grant and confirmed the grant of letters of administration fraudulently and by concealing the material facts.

- u. That in obtaining the aforementioned grant of letters of administration intestate to the estate of Vincent Komurgor, the late Anna Chepchirchir Kiprotich fraudulently misrepresented to this Honourable Court that her children, Ignatius, Louis and Mark, were the only dependants.
- v. That in the schedule of the certificate of confirmation of grant dated 7th April 2005, the following properties were listed as the free properties of the late Vincent Komurgor.

- a) Eldoret/Municipality/Block 14/73
- b) Segorit Scheme Plot No. Kakamega/Sergoit/148
- c) Lessos 1 Plot '50X100'
- d) Nandi/Olessos/185
- e) Shares with Nation Media 8424 A/C No. 02390
- f) KCB Shares 216 A/C No. 83703
- g) Alico Association Company Limited Life Policy No. 2102463
- h) Canon Assurance Company Limited Life Policy
- i) KCB A/C No. 073-270-642-033
- j) Motor Vehicle Registration Number KLR 863 Mazda.

- w. That the entire estate of the late Vincent Komurgor devolved to the Late Anna Chepchirchir Kiprotich.
- x. That on 25th September 2009, Anna Chepchirchir Kiprotich died and was survived by the following dependants:

- a) Ignatius Kipkemei Rotich - son
- b) Louis M Kiprugut Rotich - son
- c) Mark Kiplagat Rotich - son

- y. That Petitioners/Applicants obtained a grant of letters of administration intestate of the estate of Anna Chepchirchir

Kiprotich on 28th January 2010 and was later confirmed on 14th February 2011.

z. That in the schedule of the certificate of confirmation of grant dated 14th February 2011, the following properties were listed as the free property of the late Anna Chepchirchir Kiprotich.

a) Land Parcel No. Eldoret Municipality Block 14/7

b) Land Parcel No. Kakamega/Sergoit/148

c) Land Parcel No. Nandi/Kiminda/736

d) Proceeds from Safaricom Ltd (Lease)

aa. That the entire estate of Anna Chepchirchir Kiprotich devolved to Ignatius Kipkemei Rotich, Louis Kiprugut Rotich and Mark Kiplagat Rotich.

bb. That the certificate of confirmation of grant confirmed by Justice George Dulu on 7th April 2005 under Succession Cause No. 193 of 2003, deprived Grace Chepkosgei Kiprotich, Ben Kimutai Rotich and David Kibet Rotich of the right to the enjoyment of their rights as such dependants of the Late Vincent Komurgor.

cc. That Succession Cause No. 317 of 2009 relating to the estate of Anna Chepchirchir Kiprotich, the dependants are: Ignatius Kipkemei Rotich, Louis Kiprugut Rotich and Mark Kiplagat Rotich.

dd. That I am advised by my advocates, whose advice I verily believe to be true, that under intestacy, the children of the deceased have a right to inherit from their parents irrespective of the circumstances of their birth.

ee. That the revocation of the certificate of confirmation of grant in Succession Cause No. 193 of 2003 was a procedural correction that did not diminish or alter our underlying legal claim to inherit from the deceased's estate, as those rights existed before and independent of the revoked certificate.

- ff. That from the foregoing paragraphs, the objectors/respondents are entitled to inherit under Succession Cause No. 193 of 2003 relating to the estate of Vincent Komurgor.
- gg. That the petitioners'/applicants' prayer seeking a temporary injunction is fatally defective for lack of enabling provisions for the grant of a temporary injunction.
- hh. That the objectors/respondents have not been intermeddling with the estate of the deceased Vincent Komurgor but have been utilising it.
- ii. That as per the ruling delivered on 17th March 2014, Justice G.W. Ngenye-Macharia directed that the objectors/respondents shall till/cultivate/use Parcel Number Kakamega/Sergoit/148 and the same orders have never been varied or set aside.
- jj. That I am informed by my advocate that the petitioners/applicants, having made an application for equitable remedies must approach this court with clean hands which they have not, as they furthered the illegality perpetrated by the late Anna Chepchirchir Kiprotich who concealed from this Honourable Court that objectors/respondents are dependants of the late Vincent Komurgor.
- kk. That the petitioners/applicants have not established a prima facie case against the objectors/respondents.
- ll. That the petitioners/applicants will not suffer irreparable harm that cannot be compensated by damages if the order is not granted and the balance of convenience is in favour of the objectors/respondents.
- mm. That Succession Cause No. 193 of 2003 and Succession Cause No. 317 of 2009 relate to similar properties originating from the Estate of Vincent Komurgor.

- nn. That the ruling dated 23rd December 2024 under succession cause No.193 of 2003 revoking the certificate of confirmation of grant dated 7th April 2005 made any subsequent grants to lack legs to stand on and therefore they stand revoked.
- oo. That I am advised by my advocates, whose advise I verily believe to be true, that this Honourable Court has the power to direct the Registrar of Land to rectify the entries made in the Register of Land in respect of the subject properties and cancel the current titles and revert the properties to the Estate of the Late Vincent Komurgor.
- pp. That it is in the interest of justice that this Honourable Court recognises that objectors/respondents are dependants of the late Vincent Komurgor and should be able to enjoy our inheritance ex debito justitiae.
- qq. That this court should not condone the injustice and illegality perpetrated by the late Anna Chepchirchir Kiprotich and furthered by the Petitioners/Applicants herein.

Petitioner's written submissions

- 15.** The Petitioners through Mr. Warigi, Learned Counsel filed written submissions in support of the application dated 22nd May, 2025. Mr. Warigi identified one issue for determination being: whether the petitioners have met the threshold set for review of Judgments/Ruling.
- 16.** It is submitted for the petitioners that the Grant was revoked is non-existent in law and that the estate was fully administered leaving nothing to be revoked. Further that the two succession files being Succession No. 317 of 2009 and 193 of 2003 were consolidated for the reason that they are intricately intertwined. In support of their argument, Learned Counsel placed reliance on the provisions of section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules. He also cited various decisions being: *Republic v. Public Procurement Administrative Review Board & 2 others (2018) eKLR*, *Sarder Mohamed v. Charan Singh Nand Sing and Another (1959) EA 793*, *Ajit Kumar Rath vs. State of Orisa & Others*, *Tokesi Mambili and others Vs. Simion Litsanga* and *In Republic v. Advocates*

Disciplinary Tribunal Ex parte Apollo Mboya (2019) eKLR High Court of Kenya Nairobi Judicial Review Division Misc. Application No. 317 of 2018.

Respondents'/Objectors' written submissions

- 17.** Learned Counsel Mr. Githaiga filed written submissions dated 20th June, 2025 in which he couched four issues for determination being:
 - a. Whether the court should review on the Ruling/Order dated 23rd December, 2024.
 - b. Whether the applicant has met the threshold for Granting a temporary injunction.
 - c. Whether this court should Grant stay of execution of Ruling/Order dated 23rd December, 2024.
- 18.** On the issue of whether the court should review the Ruling/Order dated 23rd December, 2024, learned counsel submitted that at the outset, the application before the court does not disclose in the body of the notice of motion the ground or grounds upon which the review is being sought. Counsel submitted that the power of review must be exercised within the framework of Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules, 2010.
- 19.** Learned counsel relied on the case of **National Bank of Kenya Limited v Ndungu Njau [1997] KECA 71 (KLR)** which held that a notice of motion did not comply with the mandatory requirements of Order L r 3 of the Civil Procedure Rules according to which every notice of motion must state in general terms the grounds of the application, and that it is not enough to say that the notice is grounded on the grounds or evidence contained in the aforesaid affidavits.
- 20.** Counsel further submitted that there is no discovery of any new and important matter or evidence. He noted that the Petitioners/Applicants were aware that Succession Cause No. 193 of 2003 and Succession Cause No. 317 of 2009 were consolidated by the Honourable Court, and that this information was within their knowledge since 23rd January 2023, when the court directed that Succession Cause No. 317 of 2009 be assorted with the present cause.

21. In support of this submission, learned counsel cited the case of **Paul Mwaniki v National Hospital Insurance Fund Board of Management [2020] eKLR** which held that mere discovery of new or important matter or evidence is not sufficient ground for review, and that the party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
22. Counsel submitted that similarly, there is no mistake or error apparent on the face of the record. It was submitted that from the proceedings of 23rd January, 2023, the court directed that Succession Cause No. 193 of 2003 was the lead file since the claim of the Objectors/Respondents had its substratum on the estate of Vincent Komurgor, which is featured under Succession Cause No. 193 of 2003. In sum, counsel submitted that the application does not meet the threshold for an order of review and is thus devoid of merit and should be dismissed.
23. On the issue of whether the Applicant has met the threshold for granting a temporary injunction, learned counsel submitted that the Petitioners/Applicants made an application for orders that the Objectors/Respondent be restrained from alienating, advertising for sale, offering for sale, selling, taking possession of, leasing, trespassing, transferring and or otherwise disposing off land parcels known as ELDORET MUNICIPALITY/BLOCK 14/73 and KAKAMEGA/SERGOIT 148. Counsel submitted that the application is unprocedural and fatally defective for lack of enabling provisions supporting the grant of the orders of injunction sought, and the same should fail.
24. Learned counsel submitted that it is trite law that an injunction is an equitable remedy, and a party seeking it must satisfy the three-fold test laid down in **Giella v Casman Brown & Co. Ltd EA 358** which includes: that the party seeking an injunction must establish a prima facie case with a probability of success; the party must demonstrate that they will suffer irreparable harm that cannot be compensated by damages; and if in doubt, the court must determine the matter on a balance of probabilities.

- 25.** Counsel submitted that the Petitioners/Applicants are in occupation of land parcel known as ELDORET MUNICIPALITY/BLOCK 14/73, whereas the Objectors/Applicants were in occupation and utilizing land parcel known as KAKAMEGA/SERGOIT 148, in accordance with the ruling delivered on 17th March 2014 by Justice G.W. Ngenye-Macharia directing that the Objectors/Respondents till/cultivate/use Parcel Number Kakamega/Sergoit/148, and the same orders have never been varied or set aside.
- 26.** It was submitted that the Petitioners/Applicants have not established a prima facie case. Counsel noted that the succession proceedings are still pending before the Honourable Court, and the rights of parties as to the subject properties have not been determined. Further, being a succession proceeding, the parties are bound by section 45 of the Law of Succession Act, and therefore, there is no need for a temporary injunction pending determination of the proceedings.
- 27.** Learned counsel relied on the case of **Nguruman Limited vs. Jan Bonde Nielsen & 2 Others [2014] eKLR** which held that in an interlocutory injunction application, the applicant has to satisfy the triple requirements: establish his case only at a prima facie level, demonstrate irreparable injury if a temporary injunction is not granted, and allay any doubts as to (b) by showing that the balance of convenience is in his favour. Counsel submitted that for an injunction to be granted, the three principles must be established and followed in a logical order, and that the Petitioners/Applicants have failed to establish a prima facie case, making it unnecessary for the court to consider whether the other two remaining conditions for the grant of injunctions have been met.
- 28.** On the issue of whether this court should grant stay of execution of the Ruling/Order dated 23rd December, 2024, learned counsel submitted that the prayer seeking stay of execution is unprocedural, fatally defective, and ambiguous for lack of enabling provisions supporting the grant of the orders sought, and the same should fail.
- 29.** Counsel submitted that an application for stay of execution should be made without unreasonable delay. In the present case, the

Petitioners/Applicants made this application with unexplained and unreasonable delay, as the application is made more than six months after the ruling/order was made. Counsel noted that in the present application, the Petitioners/Applicants have not set out any justified reasons to explain the delay.

30. Learned counsel concluded by submitting that the Petitioners/Applicants have not met the threshold for issuance of orders of review, temporary injunction, and stay of execution, and as such, the present application should be dismissed with costs.

Probate Account

31. Amidst the proceedings and prosecution of this application, the court, in seeking clarity on the available estate for distribution and the interlocking issues between the two estates in question, directed the filing of a comprehensive probate account. In compliance with this direction, the Petitioners filed a Probate Account of Distribution dated 4th November, 2025, which was prepared and sworn by Louis Michael Kiprugut Rotich, one of the administrators and beneficiaries of both estates. The probate account traces the transmission of assets from the estate of the late Dr. Vincent Komurgor Kiprotich to the estate of the late Mrs. Anna Chepchirchir Kiprotich, and ultimately to the current beneficiaries. The pertinent features of this probate account are captured as hereunder:
32. The Probate Account of Distribution addresses two interconnected succession causes, namely Succession Cause No. 193 of 2003 relating to the estate of the late Dr. Vincent Komurgor Kiprotich, and Succession Cause No. 317 of 2009 relating to the estate of the late Mrs. Anna Chepchirchir Kiprotich. The account was filed pursuant to Section 83 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, with the stated objective of enabling this Honourable Court to determine whether there is any viable net estate remaining that is capable of being distributed.
33. The account reveals that Dr. Vincent Komurgor Kiprotich died intestate on 25th May 2003. At the time of his death, he owned four principal immovable properties being Eldoret Municipality Block 14/73 measuring

approximately 0.9439 hectares, Kakamega/Sergoit/148 measuring approximately 25.5 hectares, Nandi/Kiminda/736 measuring approximately 0.08 hectares, and Nandi/Olessos/1476 measuring approximately 2.009 hectares. Additionally, the estate included various movable assets comprising shares in Nation Media and KCB, life insurance policies with Alico and Canon Assurance companies, bank accounts, and a motor vehicle. Following his death, his widow, the late Anna Chepchirchir Kiprotich, obtained a grant of letters of administration intestate on 5th April 2004, which grant was subsequently confirmed on 7th April 2005 by this Honourable Court.

- 34.** Upon confirmation of the grant, all the properties from Vincent Komurgor's estate were transmitted to and vested in the late Anna Chepchirchir Kiprotich as the widow and administratrix of the estate. The probate account demonstrates that all titles to the four immovable properties were transferred from Vincent Komurgor's name to Anna Chepchirchir Kiprotich's name, and she held, managed, and utilized these properties at her discretion until her death on 25th September 2009.
- 35.** Following the death of Anna Chepchirchir Kiprotich, the three petitioners herein, being Ignatius Kipkemei Rotich, Louis M. Kiprugut Rotich, and Mark Kiplagat Rotich, who were identified as her only surviving dependants, petitioned this Honourable Court for grant of letters of administration intestate over her estate. The grant was issued on 28th January 2010 and confirmed on 14th February 2011. The probate account shows that the properties listed in Anna's estate were essentially the same properties she had inherited from Vincent Komurgor, comprising the same four parcels of land being Eldoret Municipality Block 14/73, Kakamega/Sergoit/148, Nandi/Kiminda/736, and Nandi/Olessos/1476, together with proceeds from Safaricom Limited arising from a telecommunication mast lease on the Eldoret Municipality property.
- 36.** The probate account further details the administration of Anna Chepchirchir's estate by the three petitioners. According to the account, during the administration period, the estate generated total income of Kenya Shillings 3,033,441.60 from various sources including the Safaricom

lease proceeds. Against this income, the estate had liabilities totaling Kenya Shillings 2,171,000.00 and incurred administration expenses of Kenya Shillings 31,038,784.75. The account values the total assets from Vincent Komurgor's estate at Kenya Shillings 50,000,000.00. When the liabilities and expenses are deducted from the total value of assets plus income generated, the account reflects a deficit of Kenya Shillings 8,176,343.15.

- 37.** The probate account states that this deficit of Kenya Shillings 8,176,343.15 was settled by the three petitioners from their own personal funds in order to preserve and retain the family properties. The account emphasizes that the proceeds from the Safaricom booster went into the maintenance and management of the estate, including payment of security services and land rates for the properties. The account further shows that upon confirmation of the grant to Anna's estate, all the properties were distributed among the three sons. Specifically, Eldoret Municipality Block 14/73 was distributed jointly to Ignatius Kipkemei Rotich, Louis M. Kiprugut Rotich, and Mark Kiplagat Rotich in equal shares of 33.33% each. Similarly, Kakamega/Sergoit/148 was distributed to the same three beneficiaries in equal shares of 8 hectares each, representing 33.33% each. The property Nandi/Kiminda/736 was distributed solely to Ignatius Kipkemei Rotich as a gift, while Nandi/Olessos/1476 was distributed jointly to all three sons in equal shares of 33.33% each.
- 38.** The probate account concludes by asserting that all properties from both estates have been fully distributed and are currently registered in the names of Ignatius Kipkemei Rotich, Louis M. Kiprugut Rotich, and Mark Kiplagat Rotich, either jointly or as specifically allocated. The account emphasizes that there is no undistributed or free estate remaining pursuant to the definition of free estate as stipulated under Section 3 of the Law of Succession Act, and that the entire estate has been transmitted and distributed as shown in the account. The petitioners maintain that they have acted in good faith throughout the administration of both estates.

Response to the Probate Account

- 39.** In response to the probate account filed by the Petitioners, the Objectors through their Counsel M/s Munyaga Githaiga Advocates LLP filed a Replying Affidavit dated 4th December, 2025, sworn by Grace Chepkosgei Kiprotich, the 1st Objector herein. Grace Chepkosgei deposes that she is the daughter of the late Vincent Kimurgor and therefore a beneficiary of his estate, thus conversant with the facts of the case and competent to swear the replying affidavit. The objectors' response fundamentally challenges the veracity and accuracy of the probate account on several critical grounds.
- 40.** At the threshold, the Objectors characterize the probate account of distribution as untruthful, vexatious, and brought in bad faith based on misconceived and malicious allegations, and as such contend that it should be disregarded by this Honourable Court. The Objectors point out a significant discrepancy between the schedule of liabilities presented in the affidavit that was filed in support of the petition for grant of letters of administration to the estate of Anna Chepchirchir Kiprotich and the liabilities now outlined in the probate account. According to the Objectors, these liabilities do not match, raising questions about the accuracy and consistency of the Petitioners' financial disclosures.
- 41.** The Objectors further contend that the liabilities outlined in the probate account are exaggerated and unrelated to the administration of the estate. Specifically, they challenge the liability figure of Kenya Shillings 2,171,000.00, asserting that this amount has not been properly itemized or detailed in terms of how these liabilities were settled. The Objectors argue that the Petitioners have failed to provide any breakdown or supporting documentation to substantiate this substantial claim of liabilities.
- 42.** More significantly, the Objectors take issue with the claimed expenses of Kenya Shillings 31,038,784.75, which they describe as exaggerated and unrelated to the administration of the estate. The Objectors point out that this expense has been particularized in the probate account, but there is no evidence of how the Petitioners or respondents arrived at this figure. The Objectors further state that the Petitioners have failed to disclose

when and how this expense of Kenya Shillings 31,038,784.75 was incurred, making it impossible to verify the legitimacy of this claim.

- 43.** The Objectors specifically dispute the Petitioners' contention that proceeds from the Safaricom booster went into the maintenance and management of the estate. According to the Objectors, this assertion is false and misleading. The Objectors provide their own account of the management of the properties, deposing that they were in actual occupation of the Eldoret Municipality Block 14/73 property until 2023, during which period they were actively managing and securing the property. The Objectors go further to depose that they renovated the house on the Eldoret Municipality Block 14/73 property to a habitable state, incurring expenses of approximately Kenya Shillings 5,000,000.00 in the process.
- 44.** The Objectors take strong exception to the current status of property ownership as reflected in the probate account. They depose that all the immovable properties of both estates have devolved to the Petitioners to the complete exclusion of the Objectors, which they characterize as fundamentally unjust given that they are also dependants of the late Vincent Komurgor with equal rights to inherit from his estate under the law of intestacy.
- 45.** Furthermore, the Objectors invoke the court's equitable powers, deposing that this Honourable Court has the power to direct the Registrar of Land to rectify the entries made in the Register of Lands in respect of the subject properties and direct that the Registrar revert the properties in the names of the Late Vincent Komurgor for a fresh distribution of the estate. That the revocation of the certificate of confirmation of grant in Succession Cause No. 193 of 2003 was a procedural correction that did not diminish or alter their underlying legal claim to inherit from the deceased's estate, as those rights existed before and independent of the revoked certificate.
- 46.** In conclusion, the Objectors argue that the probate account fails to present an accurate picture of the estate administration and does not justify the exclusion of the Objectors from their rightful inheritance as biological children and dependants of the late Vincent Komurgor. The

Objectors pray that the court reject the probate account and make appropriate orders to ensure that they receive their lawful share of their father's estate.

Analysis and determination

47. I have considered the application before me, the affidavits sworn by both parties, the written submissions of learned counsel, the probate account together with the objections raised against it, and the entirety of the court record. The matter raises considerable issues touching on the proper administration of succession estates and the court's jurisdiction to intervene in estates that have proceeded through successive stages of devolution. The question I must resolve is whether the ruling delivered on 23rd December 2024 can be sustained, or whether the circumstances disclosed warrant its review.

48. Section 80 of the *Civil Procedure Act* Cap 21 provides as follows: -

Any person who considers himself aggrieved—

a. By a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

b. By a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

49. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -

“(1) Any person considering himself aggrieved—

a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order,

may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

50. In Republic v Public Procurement Administrative Review Board & 2 others [2018] eKLR it was held: -

“Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”

51. Discussing the scope of Review, the Supreme Court of India in the case of Ajit Kumar Rath vs State of Orisa & Others, 9 Supreme Court Cases 596 at Page 608. had this to say:

“the power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression “any other sufficient reason” means a reason sufficiently analogous to those specified in the rule”

52. The Objectors have resisted this application with considerable vigour. Learned Counsel Mr. Githaiga submits that no error appears on the face of

the record, and that the Petitioners had full knowledge of the consolidation of files from as early as 23rd January 2023. It is further submitted that the Objectors understood Succession Cause No. 193 of 2003 to be the lead file given that their claim originates from the estate of Vincent Komurgor. The question is not which file ought properly to have been designated as primary, but whether two succession causes dealing with substantially identical properties could lawfully be determined without regard to their interdependence.

- 53.** The central difficulty with the ruling of 23rd December 2024 lies in both what it attempted to accomplish and the legal instrument through which it sought to do so. The ruling revoked the grant of letters of administration issued to the late Anna Chepchirchir Kiprotich and confirmed on 7th April 2005. Yet Anna Chepchirchir died on 25th September 2009. Upon her death, that grant ceased to operate as a living instrument of law. The grant did not remain in some state of suspended animation, awaiting eventual revocation. It had been executed in full, the estate had vested in the administratrix, and she held and managed those properties in her own right until her demise.
- 54.** The complexity deepens when one considers the onward transmission of these identical properties through Succession Cause No. 317 of 2009. After Anna Chepchirchir's death, her three sons sought and obtained letters of administration to her estate on 28th January 2010, confirmed on 14th February 2011. The properties scheduled in that succession: Eldoret Municipality Block 14/73, Kakamega/Sergoit/148, Nandi/Kiminda/736, and Nandi/Olessos/1476, were the very properties that had earlier comprised Vincent Komurgor's estate. These properties were then distributed to the three Petitioners, registered in their names through fresh titles, and have been held by them for over a decade.
- 55.** As a matter of emphasis, the court in *Republic vs Advocates Disciplinary Tribunal Ex-parte Apollo Mboya* (2019) eKLR the Court set out the principles to consider in the review of its own decisions. It was observed:
- *A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.*

- *The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.*
- *An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.*
- *An erroneous order/decision cannot be corrected in the guise of exercise of power of review.*
- *A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.*
- *.While considering an Application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.*
- *Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.*
- *A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.*
- *Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule*

- *The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.*

- 56.** Having in a summation manner captured the executive extract of the two case dockets and juxtaposed them on the impugned ruling on revocation which was kind of creating some legitimacy of rights on inheritance to the objectors it is now immediately discernible that there is no net estate capable of being inherited until and unless those root titles from the late Vincent Komurgor, and thereafter on his demise to his wife Annah Jepchirchir and with finality to her children I have been cancelled by the appropriate forum the probate court has nothing to distribute.
- 57.** This sequence gives rise to a genuine legal puzzle. If the grant in Succession Cause No. 193 of 2003 is declared inoperative and revoked, what becomes of the subsequent grant in Succession Cause No. 317 of 2009? Can a grant that was fully executed and had exhausted its legal function be retrospectively undone without addressing the fate of properties that passed through it into a second estate? These are not questions of abstract legal theory. They bear directly on the rights of persons who now hold titles to land, on the validity of transactions that may have been entered into over the years, and on the practical enforceability of any orders this court makes. This court's ruling of 23rd December 2024, by confining itself to Succession Cause No. 193 of 2003 and significantly addressing DNA issues, left these questions unaddressed.
- 58.** The Objectors argue that because the Petitioners knew of the consolidation of files, there is no new matter that would justify review. The issue is not whether the Petitioners were aware that Succession Cause No. 317 of 2009 existed. Plainly they were, having been petitioners in that very succession. The issue is whether the court, in crafting the ruling of 23rd December 2024 and in isolation of Succession Cause No. 317 of 2009, gave adequate consideration to the implications of that second succession for the orders being made in the first.
- 59.** In my assessment, what emerges from the record is an error apparent on its face. The phrase "error apparent on the face of the record" has been

interpreted consistently to mean an error that is self-evident, requiring no elaborate process of reasoning to establish. The error here is manifest. In the case of **National Bank of Kenya Limited v Njau [1997] KECA 71 (KLR)**, it was held that:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

- 60.** The orders were made affecting properties and grants in Succession Cause No. 193 of 2003 without considering that those same properties had been transmitted through Succession Cause No. 317 of 2009, and without any findings or directions concerning that second succession.
- 61.** The practical ramifications of this omission are substantial. The ruling directed beneficiaries to file proposals for appointment of administrators to represent their interests in this succession. Having considered the two files and the devolution of the estate properties, the question one must ask: which succession? If the reference is to Succession Cause No. 193 of 2003, how are administrators to be appointed to an estate that had concluded its administration full circle, with all properties having passed to Anna Chepchirchir who held them until her own death?
- 62.** These are not questions of drafting or form. They concern the intelligibility and enforceability of judicial orders. Courts bear a responsibility to ensure their pronouncements are not merely legally sound in the abstract, but capable of practical implementation. Where a ruling generates fundamental ambiguity about what is being ordered and in relation to which estate those orders apply, that ambiguity amounts to an error requiring correction.

- 63.** My conclusion on this point is reinforced by the probate account subsequently filed by the Petitioners in compliance with court directions. That account addresses both Succession Cause No. 193 of 2003 and Succession Cause No. 317 of 2009, recognizing them as interconnected. It traces the devolution of properties from Vincent Komurgor through Anna Chepchirchir to her three sons. These two estates are not parallel matters proceeding on separate tracks. They represent a single chain of transmission, with the properties of the first estate forming the entirety of the second estate.
- 64.** The Objectors maintain that their claim to inheritance arises from their status as biological children of Vincent Komurgor, and that this biological relationship was conclusively established through DNA evidence which this court accepted in its ruling of 23rd December 2024. They argue that this finding on kinship is definitive and forms the foundation for their entitlement to inherit from their father's estate. The Objectors further contend that the revocation of the grant in Succession Cause No. 193 of 2003 was a procedural correction that did not alter their substantive rights to inherit. On this point, the Objectors maintain that what is required is not a review of the DNA findings or the determination on kinship, but rather a proper consideration of how those findings should be given effect in light of the transmission of properties through two succession causes.
- 65.** Let me at this stage clarify that this ruling on review shall not revisit the findings on biological relationships that were made on 23rd December 2024. The DNA evidence was thoroughly examined in that ruling, and the court made specific findings regarding the siblingship between Grace Chepkosgei Kiprotich and Ben Kimutai Rotich on the one hand, and the Petitioners on the other hand. Those findings on kinship, established through scientific evidence, are not the subject of this review. The question before me is not whether certain persons are or are not biological children of the deceased Vincent Komurgor. That question has been answered. The question is whether the orders made on 23rd December 2024, crafted in relation to Succession Cause No. 193 of 2003

alone, can be implemented given the subsequent transmission of the entire estate through Succession Cause No. 317 of 2009.

- 66.** The practical difficulties with implementation become apparent when one examines the orders made in the December ruling. The court directed that proposals be filed for appointment of administrators to represent the beneficiaries' interests. It is a fundamental to state that in succession law, once an estate has been distributed and titles have been issued to beneficiaries, those beneficiaries acquire vested rights in the properties. They cease to hold the properties as assets of a deceased estate and begin to hold them in their own right. This transformation from estate assets to personal property is not merely technical. It has profound legal implications for what a court can subsequently order in relation to those properties. When the three Petitioners received their shares of Anna Chepchirchir's estate and obtained titles registered in their names, they acquired ownership rights. These are not contingent rights pending some future confirmation. They are present, vested interests protected by law.
- 67.** The Objectors, through their counsel, submit that this court has the power to direct the Registrar of Land to rectify entries in the land register and revert properties to the name of Vincent Komurgor for fresh distribution. While it is true that courts possess equitable jurisdiction to correct fraud or fundamental irregularities in land registration, that jurisdiction must be exercised within recognized legal parameters. A court cannot simply unwind completed succession proceedings and invalidate titles that have been lawfully issued without addressing the legal basis upon which such drastic action would be taken. If the titles held by the Petitioners are to be challenged, that challenge must account for the fact that those titles did not issue directly from Vincent Komurgor's estate, but rather from Anna Chepchirchir's estate through Succession Cause No. 317 of 2009.
- 68.** This brings me to the heart of the difficulty with the December ruling. By addressing only Succession Cause No. 193 of 2003, this court attempted to intervene in the administration of Vincent Komurgor's estate in isolation of the existing second estate for Anna Chepchirchir. The estate of Vincent Komurgor no longer exists as a separate entity capable of administration.

Its assets have been transmitted through a second estate and are now held by ultimate beneficiaries. One cannot therefore administer an estate that has ceased to be. One cannot appoint administrators to manage properties that are no longer estate assets. One cannot file a probate account for a deceased person whose entire estate passed to another person who has herself died, and whose estate has been fully administered.

- 69.** Before formulating the appropriate orders to address the complexities arising from these two interconnected succession causes, it is necessary for this court to comment on the conduct of the Objectors and the manner in which they have prosecuted their claim. From the examination of the court record in both Succession Cause No. 193 of 2003 and Succession Cause No. 317 of 2009, it is evident that the question of the Objectors' identities and their relationship to the deceased has been contentious from the outset. The Petitioners raised serious allegations that the Objectors had forged their identity documents, and these allegations were not mere afterthoughts but formed part of the substantive disputes in these proceedings which later culminated to orders directing DNA testing.
- 70.** Furthermore, the record reveals that at certain stages of these proceedings, the Objectors appeared to advance their claim not solely on the basis of biological kinship with Vincent Komurgor, but rather on an assertion that they had resided with and been maintained by the late Anna Chepchirchir Kiprotich for an extended period, thereby seeking recognition as dependants. More significantly, the Objectors made no attempt to assert their rights when Anna Chepchirchir Kiprotich filed the initial petition for letters of administration in 2004, nor when that grant was confirmed in 2005, nor when she subsequently administered and managed the estate properties, nor when she died in 2009, nor when the Petitioners filed Succession Cause No. 317 of 2009 and obtained their own grant in 2010, which was confirmed in 2011. The Objectors only came forward years after all these proceedings had been concluded and the properties had been distributed and registered in the names of the Petitioners. This considerable delay in asserting their rights, spanning over

a decade from the death of Vincent Komurgor and several years after the completion of both succession causes, cannot be ignored when fashioning appropriate relief. While the court has found that Grace Chepkosgei Kiprotich and Ben Kimutai Rotich share biological kinship with the deceased Vincent Komurgor, their protracted silence and the manner in which they have advanced their claim, including the disputed identity documents, are factors that must weigh in the court's analysis and view of their claim.

- 71.** When the evidentially rules were developed, and donated to the courts to exercise discretion it is the Court's role to ensure that the decision which is arrived at is one within the jurisdiction as defined in the constitution and the applicable legislation. The tenets of Section 80 of the CPA and Order 45 rule 1 of the Civil Procedure Rules are very clear and do illustrate the general thrust on the case law applicable in such circumstances. The concerns in this matter as argued elsewhere in so far as there are interlocutory issues on Succession between Case No 317 of 2009 and 193 of 2003 they seem to have been litigated as separate jurisdictional case dockets. Needless to say, that the decision on revocation of grant filed by which touched on the objectors based on new discovery of evidence of the DNA failed to disclose that the Estate they were focusing on to inherit had been transmitted, conveyed, titled, and mutated to the holistic standard that no residual estates of the deceased capable of being inherited in Succession Cause No. 193 of 2003. It is important that the court at the time of making the decision should have been entitled to full disclosure so that he would have the opportunity to understand the evidence and considerations on the interlocking issues between case file No. 193 of 2003 and 317 of 2009 that ought to or could have been taken into account during the decision-making process in the broader context of this dispute. Based on the various decisions from the High Court of Kenya the jurisdiction of a probate court is primarily derived from the law of Succession Act particularly Section 47 which empowers the court to determine disputes and distribute a deceased's persons estate. The

following are key decided cases and principles regarding the jurisdiction of the High Court in Probate and Administrative Matters:

- (a) **Limits on Jurisdiction:** Ownership Disputes Vs. Distribution: High Court decisions consistently hold that a probate courts role is to distribute the deceased's "free property." Not to resolve ownership disputes between the estate and third parties. Cases such as in re Henry Albert Moore (Deceased) (2025) KEHC 3946 and in re Estate of Japhet Kimutai Tenai (2024) KEHC 14996 emphasize that the Environment and Land Court (ELC) or other Civil Courts are the proper forums for determining such ownership claims.
- (b) **Inherent Powers and Interim Orders:** The High Court has affirmed its jurisdiction to issue injunctions to protect a deceased's estate, citing its inherent power under Rules 73 of the Probate and Administration Rules. Case in re-Estate of Kingongo Gachagua (2024) KEHC 13035 supports this while in re- Estate of Kimeto Arap Kili Sirtui (2024) KEHC 14383 highlights the courts broad jurisdiction under Section 47 for administration matters.
- (c) **Revocation of Grants:** Recent decisions clarify the procedure for revoking grants. Following the Magistrates' Courts Act 2015, the High Court no longer has original jurisdiction to revoke a grant issued by a Magistrate's Court. Applications for revocation must initially be filed in the Magistrate's Court. *In re Estate of Japhet Kimutai Tenai (2024) KEHC 14996* and *In re Estate of Samwel Muiruri Nganga (2025) KEHC 179* are relevant cases in this area.
- (d) **Jurisdiction Over Muslim Estates:** When the High Court handles the estate of a deceased Muslim, it must apply Islamic law for distribution in accordance with Section 2(3) of the Law of Succession Act, as seen in *JKK v SYW (2025) KEHC 950*.
- (e) **Concurrent Jurisdiction (Succession and Land):** The High Court (in succession matters) and the Environment and Land Court (ELC) can have concurrent jurisdiction in cases involving land, depending on the specifics. The case *Omollo v Ongoro (2023) KEHC 18999* discusses this overlapping jurisdiction.

- (f) **Definition of Property:** The probate court only distributes the "free property" of the deceased.
- (g) **Third-Party Claims:** Creditors or claimants whose claims are not acknowledged by the administrators must establish their claims in separate proceedings, not within the succession cause.
- (h) **Transfer of Matters:** If a matter involves complex questions of title or trust, the High Court (Probate) may direct the parties to file a separate suit in the High Court (Civil/Land).

72. The predominant question is whether by revoking the grant as prayed by the objectors in the applicable case file which formed the basis of the decision there is free estate capable of being inherited without the denovo proceedings in Succession Cause No 317 of 2009 with a legal protocol rider to Cause No. 193 of 2003. In this two probate files the rights of inheritance moved from the father the late Vincent Komurgor and upon his demise the entire estate was transferred to the mother Annah Chepchirchir Kiprotich who again on Succession Proceedings taken out by her children there was total devolution on the intestate estate for their benefit and all rights which accrue transmitted within the spectrum of the law. As a matter of emphasis given the weight

73. For these reasons, I am satisfied that the orders made on 23rd December 2024 cannot stand as issued. They must be reviewed and reformulated in a manner that addresses both Succession Cause No. 193 of 2003 and Succession Cause No. 317 of 2009.

74. Accordingly, the following orders do abound:

- a. *That a declaration be and is hereby made that the review Notice of Motion based on Section 80 of the Civil Procedure Act has construed with Section 1(A) 1(B), 3, 3(A) of the Civil Procedure Act and in furtherance of these provisions Rule 73(1) of the Probate and Administration Rules as read together with Order 45 Rule (1) of the Civil Procedure Rules succeeds on merit to the extent that the orders made in the ruling dated 23.12.2024 are hereby set aside save for the DNA profiling of the objectors.*

- b. That a declaration be and is hereby made that no net free estate survived of the twin estates in case file No. 193 of 2003 and 317 of 2009 capable of being distributed by this court.*
- c. That a declaration be and is hereby made that any cancelation of rights to land which have been registered from one generation to another is a fixated jurisdiction of another constitutional organ within our legal system.*
- d. That the costs of this decision shall be borne by each party.*

**DELIVERED VIA CTS AND EMAIL DATED AND SIGNED AT ELDORET
ON THIS 20TH DAY OF JANUARY 2026**

.....

**R. NYAKUNDI
JUDGE**