

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
PROBATE & ADMINISTRATION CAUSE NO. 140 OF 2000

IN THE MATTER OF THE ESTATE OF TALAI KIMOLING (DECEASED)

KIPKOSGEI KIMONING (*substituted, upon his death,*
by **his** *wife,* **TAPRANDICH**
KIMONING).....**PETITIONER**

AND

WILLIAM KIBIWOTT KIGEN.....**OBJECTOR/APPLICANT**

JUDGMENT

1. The deceased in this matter, **Talai Kimoling**, died intestate 34 years ago on 23/10/1991 at the age of 88 years. By the Petition dated 12/06/2000, one **Kipkosgei Kimoning** (Petitioner), claiming as the only surviving son/child of the deceased, then applied for Grant of Letters of Administration in respect to the estate. He listed only one property, the parcel of land described as **Mosop/Metkei/25** as comprising the estate. The Grant of Letters of Administration was then given to the Petitioner on 5/10/2000 and subsequently confirmed on 7/06/2001 with the Petitioner named as the sole heir of the said parcel of land.
2. However, by the Summons dated 18/05/2017, the subject of this Judgment, the Objector, through **Messrs Ledisha J. Kipseii & Co. Advocates**, claiming as a grandson of the deceased, applied for revocation of the Grant. In his Affidavit filed in support of the Summons, the Objector deponed that the Petitioner took out these proceedings secretly, none of the children of the deceased gave consent thereto, and that the Petitioner misled the Court that he is a son of the deceased when was in fact a step-grandson. He deponed further that the deceased was a co-wife of the Petitioner's biological grandmother, as the two women were wives to the Objector's grandfather, **Kimoning Tuyabei**.
3. The Petitioner unfortunately himself died in 1999, and was substituted by his wife, **Taprandich Kimoning**, who then swore a Replying Affidavit on 17/06/2019 filed through **Messrs D.K. Korir & Co. Advocates**. In the Affidavit, she insisted that the Grant was obtained regularly and denied that there was any misrepresentation. She also insisted that the Petitioner was the only son of the deceased. She denied that the Objector is a son of the deceased, and described him as a son of the Petitioner's sister.
4. The case was then directed to be canvassed by way of a **viva voce** trial. The parties thus filed Witness Statements and List of documents and the case proceeded for trial as from

17/06/2019. The Objectors first three witnesses, **PW1**, **PW2**, and **PW3** testified before **O. Sewe J**, upon whose transfer, the hearing was taken over by **E. Ogola J**, who heard **PW4** and **PW5** and the Objector's case closed. It was upon **E. Ogola J's** transfer that I took over the case and heard the testimony of all the Petitioner's three witnesses, **DW1**, **DW2** and **DW3** before the trial was eventually closed on 22/01/2025, almost 1 ½ years since it commenced. **Ms. Kipseii**, assisted by **Mr. Korir** appeared for the Objector while **Mr. Lagat** appeared for the Petitioner.

5. As some of the Witness Statements were adopted at the trial as evidence-in-chief, I will recount those made by witnesses who actually testified and adopted their Statements.

Objectors' Witness Statement

6. The Objector, **William Kibiwott Kigen**, basically restated his case as already captured above and insisted that the deceased was his grandmother. He reiterated that the deceased had only one child, **Maria Kimoning**, his (Objector's) mother, who died in 1984, and described the Petitioner as a son of a co-wife of the deceased. He stated that since the deceased never bore a son, the Objector's mother, upon request from the deceased, released him (Objector) in the 1950s to go and live with the deceased, and that he therefore grew up in the home of the deceased, and he always referred to the deceased as his mother, and they lived together until the deceased died in 1991. He urged that the deceased obtained registration of the suit land in 1974, they always lived there, and that even after the death of the deceased, he has continued living thereon. He stated that the sureties that the Petitioner presented in his Petition were all his (Petitioner's) own sons, and he also doubted the Chief's letter relied on by the Petitioner since, according to him, the deceased was not a resident of Uasin Gishu within which the Chief who issued the letter had jurisdiction, but of Keiyo South District. He added that throughout the time he lived with the deceased, the deceased was not in good terms with her co-wife, the Petitioner's mother, or her family, including the Petitioner, who was not even welcome at the home of the deceased. According to him, the co-wife's family lived in a different parcel of land in Plateau where the Petitioner's mother was even buried. He further claimed that the deceased, before died, had gone with the Objector to the Land Control Board to transfer the suit land to the Objector but she died before completing the transfer.
7. **Grace Jebii Koskei** stated that she is a neighbour of the family of the deceased at Tambul village where she got married and found the deceased living with the daughter, **Maria**. She stated that the deceased did not have other children so when **Maria** got married, she gave her

first child, the Objector, to the deceased to live with her as “her child”. She stated that it is the deceased who saw the Objector through school and even arranged for his initiation, and was thus the Objector was considered a son to the deceased. She stated further that the deceased personally told her and also other people that she was in the process of transferring the land to the Objector and that her co-wife lived with her children in Kipkabus. She urged that the Petitioner, in 2000, after the deceased died, began claiming the land and the matter proceeded to the Land Tribunal in which she attended as a witness, and testified in favour of the Objector. She urged further that both the deceased and her daughter, **Maria**, the Objector’s mother, were buried in the suit land and the Objector and his family have lived there to date.

8. **Kiptoo Lasoi**, too, stated that she is a neighbour of the family of the deceased at Tambul village where he was born and brought up, and that the deceased used to live in the suit land with her only child, **Maria Kimoning**. He stated further that the husband of the deceased used to live with his other wife, mother to the Petitioner, at Kaptarum in Kipkabus. He, too, urged that the Objector was released by his mother, the only child of the deceased, to go and live with the deceased, and that the Objector’s mother was married. He urged that the deceased lived with the Objector from the time the Objector was about 7 years old and it is therefore at the home of the deceased that the Objector grew up and went to school and even went through initiation, and that the Objector is therefore entitled to inherit the suit land. He stated that it is after the deceased died that the Petitioner began making claims over the suit land despite being told by the community that the deceased had left the land to the Objector, which is what the deceased personally told him before she died.

Petitioners’ Witness Statements

9. **Taprandich Kimoning**, the Petitioner’s wife, who, upon the Petitioner’s death, was substituted on his behalf, insisted that the deceased was the mother of both the Petitioner and **Maria Chepkurgat**. She confirmed that the Objector is **Maria Chepkurgat**’s son and thus a grandson of the deceased, but urged that **Maria** was married off elsewhere. He refuted the claim by the Objector that he is a beneficiary of the estate of the deceased, and urged that if the Petitioner had an interest, he would have filed the Objection much earlier.
10. **William Kipyego Kosgey** stated that he is the Petitioner’s son. He then described the Objector as his aunt’s son, and averred that the aunt was married off elsewhere. He urged that although the filing of this Cause was gazetted, and the Objector knew about it, he never raised a challenge.

11. **Kimwetich Chebabai** stated that he is a resident of Tambul village and a neighbour of the deceased. He stated that the Petitioner is the only son of the deceased since one **Kimoning Tuyoibei Arap Chelai** had 2 wives out of whom he got 2 children, **Maria Chepkurgat** and the Petitioner. He however confirmed that the Objector is a son of **Maria Chepkurgat**, thus a grandson of the deceased. He stated that the suit land belonged to **Kimoning Tuyoibei**, the husband of the deceased, but who died before being registered as owner, and the same was later registered in the name of the deceased, his 2nd wife. He then claimed that in the Keiyo culture, a grandchild is not entitled to inherit from the estate of his grandparents as a matter of right.

Hearing of the Objection

12. As aforesaid, the matter then proceeded for *viva voce* trial.

Objectors' Witness Testimonies

13. **PW1** was the Objector, **William Kibiwot Kigen**. He adopted his Witness Statement and basically reiterated the matters contained therein. He then testified that his mother **Maria**, apart from himself, gave birth to 8 other children. He reiterated his denial that the Petitioner is a son of the deceased and insisted that the Petition herein was filed and Grant obtained without his knowledge. He reiterated that he lived with the deceased since childhood and he is the one who took care of the deceased until her death. He averred that the Petitioner is not entitled to inherit from the estate of the deceased. In cross-examination, he stated that his 8 other siblings have not lodged any claims herein because their father already gave them land. In re-examination, he reiterated that he is a grandson of the deceased and stated any reference in his Affidavits as a son of the deceased was a mere typographical error.

14. **PW2** was the said **Grace Jebii Kosgei**, and **PW3** was the said **Kiptoo Lasoi**. They both adopted their Witness Statements and also basically restated the same matters contained therein.

15. **PW4** was **Susan Kabisa**, a Land Registrar at the Iten Land Office, who came to testify on the strength of Summons issued by the Court. She produced records from the Land Registry in respect to the suit property and gave a chronology of entries thereof. She also produced the Green Card indicating, among others, that the deceased was registered in 1974 as the first owner of the suit land. He also produced a copy of the Application Form dated 25/10/2000 and Supporting documents thereto on the basis of which the Petitioner succeeded the

deceased as the registered owner pursuant to the Certificate of Confirmation issued in this Cause.

16. PW5 was **Victor Kipkurui Murei**, an employee of the Judiciary based at this Eldoret High Court attached to the Archives Section. He, too, came to testify on the strength of Summons issued by the Court. He produced the Court file in **Eldoret High Court Civil Appeal No. 78 of 2004** filed by the Petitioner in which he challenged the decision rendered in **Eldoret CMCC No. 67 of 2004** dismissing his said suit. He also confirmed that the Appeal was dismissed for want of prosecution. In the suit, the Petitioner had applied for eviction of the Objector from the suit land on the basis that the same had devolved to the Petitioner in accordance with the Certificate of Confirmation of Grant issued in this instant Cause. The suit was however dismissed on the basis of a Preliminary Objection raised on the ground of lack jurisdiction, on the basis that the Petitioner had not yet been registered as owner of the suit land.

Petitioners' Witnesses' Testimonies

17. DW1 was the said **Taprandich Kiming**, the Petitioner's wife, an 88 years old lady, who, upon the Petitioner's death, was substituted on his behalf. She adopted her Witness Statement. In cross-examination, she insisted that the Petitioner is a son of the deceased, but upon being pressed further, she conceded that the Petitioner was actually born by **Kobilo Moning**, the co-wife to the deceased. She also agreed that the Objector is the son of **Maria Chepkurgat**, and thus a grandson of the deceased, but contended that **Maria**, the Objector's mother, was married in the **Kamunde** family. She also agreed that she does not live on the suit land but elsewhere with his children. In re-examination, she stated that **Maria**, the Objector's mother, gave birth to other children where she got married. She also claimed that she does not know where the Objector grew up.

18. DW2 was the said **William Kipyego Kosgei**, the Petitioner's son. He adopted his Witness Statement and stated that the deceased was his grandmother and had only one child, **Maria**. He also stated that the deceased had a co-wife, **Kobilo Kimoning**, and the Objector is his uncle, a son of **Maria**. He then contended that **Maria**, the Objector's mother, was married in the **Kapbarngatuny** family where the Objector and 11 siblings were born and where they still live. He stated that the deceased only lived with the Objector as a helper and that the story was that the Objector killed someone then escaped to live at the home of the deceased. He insisted that the Objector should claim his share from his father's home. In cross-examination, he reiterated that the deceased and **Kobilo** were co-wives married to **Kimoning**

Tuiyobei. He then stated that his father was a squatter in Kipkabus when he died and he was buried in Plateau in his son's land. He however conceded that the Chief's letter relied on by the Petitioner was wrong in alleging that the deceased had only one child, the Petitioner, his father, since the correct position is that the deceased only had one child, **Maria**.

19. DW3 was the said **Kimwetich Chebaibai**, who, too, adopted his Witness Statement and reiterated that he is a neighbour of the deceased's family. He stated that he was born in 1933 and confirmed that the deceased had only one child, **Maria Chepkurgat**, the Objector's mother, who was married to one **Kigen Barngetuny**, to whose home **Maria** and her children all relocated. In cross-examination, he reiterated that the deceased and one **Kobilo** were co-wives married to **Tuiyobei Kimoning**, the Petitioner's father. He confirmed that the deceased had only 1 child, **Maria**, the Objector's mother. He claimed that the Objector ran away from their home after he killed a child and that is why he went to live with the deceased. He also confirmed that the Objector all through lived with the deceased until her death but contended that in the Keiyo culture, grandchildren do not inherit their grandparent's land.

Written Submissions

20. Upon close of the trial, the parties filed Written Submissions. The Objector's Submissions is dated 16/09/2025 while the Petitioner's is dated 3/10/2025.

Objector's Submissions

21. Ms. Kipseii, Counsel for the Objector recounted the respective cases presented by the parties, and cited several authorities on the Court's power to revoke a Grant under the provisions of **Section 76** of the **Law Succession Act**. She then reiterated that the Petitioner misrepresented to the Court that he is the only son of the deceased when he is in fact a grandson. She pointed out that although the Petitioner's witnesses claimed that the Petitioner is a sister to **Maria** - the Objector's mother, - the same witnesses at the trial agreed that the deceased had a daughter, **Maria**, but conceded that she had no sons. She also observed that at the hearing, the reason why the Petitioner's witnesses contended that the Objector is not entitled to a share of the estate is because he is a child of a daughter of the deceased. Counsel submitted that we are beyond the era where girls were discriminated against in inheritance, that the witnesses' contention is outright discrimination abhorred by our Constitution, and that in any case, the suit land belonged to a woman and all her children, whether boys or girls, should inherit. She also observed that **DW2**, the Petitioner's son, confirmed that his father, the Petitioner, is a son of **Kobilo Kimoning**, a co-wife to the deceased. She also

pointed out that the Objector has been living on the suit land all through. Counsel then urged that this Court has jurisdiction to cancel the registration of the suit land into the name of the Petitioner as it has powers to do so under the provisions of **Section 47** of the **Law of Succession Act** and **Rule 73** of the **Probate and Administration Rules**. She cited several authorities.

Petitioner's Submissions

22. Counsel for the Petitioner, **Mr. Langat**, after recounting the evidence tendered by the parties, submitted that the Objector has not satisfied the threshold for Revocation of a Grant under **Section 76** of the **Law of Succession Act**, as he has not demonstrated that the Grant was obtained fraudulently or by misrepresentation or by non-disclosure of material facts. He urged that in filing this Cause, the Petitioner complied with all the requirements of **Section 50(2) (g)** and **51(2)** of the **Act**. Counsel submitted that the Objector is a grand-child of the deceased, and the Petitioner is a step-child of the deceased, and that the evidence on record shows that the deceased had taken in the Petitioner as her own son and lived with him in the suit land. In his view therefore, the Petitioner had a superior right over the Objector, to apply for representation. He asserted that a grand-child can only be a beneficiary where his own parent has died, and that no evidence was led by the Objector to show that his parent has died. He insisted that the Chief's letter relied on by the Petitioner recognized the Petitioner as the only son of the deceased and that the Objector did not, on his part, file any alternative list of beneficiaries. He contended further that the Petition was gazetted and notified in accordance with **Section 67(1)** of the **Law of Succession Act**, that the Objector did not raise any Objection and only came to Court after the Petitioner had already died in 2009. Counsel thus asserted that the Objection has been brought after an inordinate delay, 17 years after the Grant was confirmed and a title deed issued to the Petitioner who has since died, and that the Petitioner, upon distributing the estate, now stands discharged from his obligations as an Administrator. He cited several authorities.

Determination

23. The issue arising for determination in this matter can be summarised as follows:

- i) **Who, between the Objector and the late Petitioner, held a higher priority or preference in applying for Grant of Letters of Administration herein.**

ii) Whether therefore, the Grant should be revoked for having been obtained fraudulently, and if so, who should, instead, be appointed the Administrator of the estate.

iii) How should the estate be then distributed?

24. In respect to the 3rd issue above, distribution of the estate, although the parties did not expressly raise it, the nature of the trial and the parties' Submissions persuades me that they would also be contented with the Court determining it as well. The matter is also quite old, the deceased having died in 1992, 33 years ago, and this Cause having itself been commenced in 2001, 24 years ago. There would therefore be no benefit in only partially determining some issues when all material necessary to conclude it once and for all is all on record.

25. Be that as it may, what the Objector prays for in the instant Application is that the Grant issued herein be revoked and/or annulled. The ground he has alleged is that the Grant was obtained by concealment of the material fact that the Objector is the rightful beneficiary, and not the late Petitioner.

26. In respect to revocation of Grants, **Section 76 of the Law of Succession Act** provides that:

“76. Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any Interested Party or of its own motion—

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

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

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

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

27. Clearly, the Objector has approached the Court under sub-sections (b) and/or (c) above.

28. It is also settled that the grounds set out in **Section 76** above need to be proved with sufficient evidence as the mandate to revoke a Grant is a discretionary power that must be exercised judiciously and only on sound grounds, not whimsically or capriciously.

29. Regarding the order of preference or priority in determining the rightful person to Petition for Grant of representation, and/or to be appointed to administer an estate, **Section 66** of the **Law of Succession Act** provides as follows:

“When a deceased has died intestate, the court shall save as otherwise expressly provided, have a final discretion, as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference:

- a) Surviving spouse or spouses with or without association of other beneficiaries.**
- b) Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;**
- c) The public trustee; and**
- d) Creditors;**

30. It is therefore clear that under **Section 66**, the Court has the final discretion as to whom a Grant shall, in the best interests of all concerned, be made. As is also apparent, the order of preference set out above is only a guide and the Court retains a discretion thereon.

31. In this case, the deceased did not leave behind a spouse nor a child. One may therefore argue that **Section 39(1) and (2)** of the **Law of Succession Act**, should apply. The same provides as follows:

“(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority -

(a) father; or if dead

(b) mother; or if dead

(c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none

(d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none

(e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.”

32. In this case, it is not in dispute that the Objector is a grandson of the deceased, her mother, **Maria Kimoning**, being a daughter of the deceased. It is also not in dispute that the Objector, throughout his growing up lived with the deceased at her home (suit land) as her helper. The Petitioner (now also dead), on his part, lied to the Court about his true relationship with the deceased while applying for the Grant. Although he presented himself as the only child of the deceased, this was an outright falsehood. It is clear from the evidence on record, as even confirmed by the Petitioner’s own witnesses, that the Petitioner was a son of the co-wife to the deceased. The correct position is evidently that the deceased, **Talai Kimoning**, and one **Kobilo Kimoning**, were both wives of one **Moning Tuiyobei**, and both wives gave birth to one child each. It is evident that the Petitioner was not at all a son of the deceased, but the only child of the co-wife, **Kobilo Kimoning**. It is the Objector’s mother,

Maria Kimoning or **Maria Chepkurgat**, who was the daughter of the deceased, in fact the only child of the deceased. The Petitioner therefore fraudulently procured a letter from the Chief falsely declaring him the only child of the deceased.

33. The fact that the Petitioner's Counsel, **Mr. Langat** does not seem to have seen anything wrong with this conduct by his client, as he still proceeded to justify the actions in his written Submission, apart from being an unfortunate position taken by an officer of this Court, also leaves me so disappointed with the route that the legal profession seems to be taking nowadays.
34. Regarding priority or preference in applying for Grant for representation, the Objector stated that his mother, **Maria**, died in 1984. Since the deceased died in 2002, it is clear that the Objector's mother did not survive the deceased but predeceased her. The Petitioner also conceded that his mother was married elsewhere where she gave birth to 8 other children who, to date, still live in that other home. Under these circumstances, one may argue that the Objector is not entitled to make any claim over the estate and that he should ask for his share from his mother's marriage home. I do not think that would be a fair way of looking at the matter. It would be a valid argument if the deceased left behind any other children but in this case, the deceased only gave birth to the Objector's mother, no other child. For this reason, I will invoke the provisions of **Section 41** and **38** of the **Law of Succession Act**. **Section 41** provides that:

“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.”

35. On its part, **Section 38** provides as follows:

“38. Where intestate has left a surviving child or children but no spouse

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

36. The Court of Appeal, in the case of **Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others [2014] eKLR**, in dissecting the above provisions, held as follows:

“Although Sections 35 and 38 of the Laws of Succession Act is silent on the fate of surviving grandchildren whose parents’ pre-deceased the deceased, the rate of substitution of a grand child for his/her parent in all cases of intestate known as the principle of representation is applicable. The law on this is section 41. If a child of the intestate has pre-deceased the intestate then that child’s issue alive or *en ventre sa 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 takes between them the share their parents would have taken had the parent been alive at the intestate’s death.”

37. Further, **A. Mrima J**, in the case of **Cleopa Amutala Namayi vs. Judith Were, Succession Cause 457 of 2005 [2015] eKLR**, while following the decision of **W. Musyoka J** in the case of **Re Estate of Wahome Njoki Wakagoto (2013) eKLR**, observed as follows:

“Be that as it may, under Part V of the Act grandchildren have no automatic right to inherit their grandparents (sic)..... The argument behind this position is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents (sic) indirectly through their own parents, the children of their grandparents. The children to the grandparents inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren can inherit directly from their grandparents is when the grandchildren’s own parents are dead. Those grandchildren can now step into the shoes of their parents and take directly the share that ought to have gone to the said parents. Needless to say, such grandchildren must hold appropriate representation on behalf of their parents.” (emphasis mine)

38. Applying the above provisions, my finding is that the Objector has established and demonstrated that the deceased not having given birth to any other child apart from the Objector’s mother, the Objector ranked much higher in priority or preference than the

Petitioner in applying for Letters of Administration over the estate of the deceased. The Petitioner could not therefore justly take out the Letters of Administration over the estate without involving or notifying the Objector, and seeking his consent to do so. Although both the Petitioner and the Objector are not automatic or outright beneficiaries of the estate of the deceased, not being her children, the deceased not having given birth to any other child apart from the Objector's mother, the Objector has also demonstrated that he qualifies "to step into the shoes" of her late mother, **Maria**, the only child of the deceased, and claim her mother's share of the estate. This finding is also emboldened by the evidence that the deceased took in the Objector from when he was only 7 years old and lived with him at her home as his own child throughout his life until her death in 1991. Further justification for this finding is that to date, it is the Objector who still lives in the suit land.

39. The Petitioner, on the other hand, is not a blood relative of the deceased, His only claim to the estate of the deceased is that his mother was a co-wife of the deceased. This is far-fetched in my view. He does not deny that he and his siblings never lived in the suit land and lived in their own different parcel of land separately from the deceased. The fact that the two co-wives lived in separate homes is sufficient proof that neither wife looked at the other's property as communal land. The suit land being at all times registered solely in the name of the deceased, and not the husband of the co-wives, I do not see how or on what justifiable basis the Petitioner can lay claim to the same. The fact that the Petitioner blatantly lied on oath to this Court that he was a son of the deceased also renders him unfit to be looked at by this Court favourably. That fact alone, complete with his procurement of a false letter from the Chief paints him in very bad light. He cannot look at the same law that he so blatantly and knowingly breached to come to his rescue as "***those who come to equity must do so with clean hands***". A person seeking a remedy from a Court of law cannot obtain relief if he has acted unscrupulously, deceitfully, fraudulently, or in any such other unethical manner in respect to the same matter in which he seeks relief.

40. In this case, there being a grand-child, who "steps into her deceased parent's shoes" by taking over her share of the estate, **Section 39** of the **Law of Succession Act** referred to above cannot enable the Petitioner "leap-frog" the Objector in claiming higher priority than the Objector over the estate of the deceased. The correct provisions are clearly **Sections 41** and **38**

41. Had the Petitioner been still alive, I would have, on the strength of his above conduct, swiftly revoked his appointment as Administrator. He is now however deceased and by

reason thereof, the Grant held by him has automatically, under the provisions of **Section 76(e)** of the **Law of Succession Act** “*become useless and inoperative through subsequent circumstances*”.

42. The other issue I need to answer is the fact that the Grant was issued in 2000 and confirmed in 2001 but the instant Summons for Revocation of the Grant was filed in 2017, a whole 16 years after the confirmation. If it is true that the Objector was not aware of the Petitioner’s taking out the Letters of Administration, when was he himself going to apply for the same?

43. The Court of Appeal dealt with a similar issue of delay in the case of **Ali Omar Ali Abdulrahman v Mohamed Ali Abdulrahman [2020] eKLR**, in which the Applicant sought extension of time to file an Appeal to challenge the High Court’s refusal to revoke a Grant. **Murgor JA**, sitting as a single Judge, in declining the Application, held as follows:

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

All factors considered, I am not persuaded to exercise my unfettered discretion to allow the application, which I accordingly dismiss.”.

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

“16. Indeed Section 76 of the Law of Succession Act states that a grant may at any time be revoked, or annulled by the court if it finds that it was obtained fraudulently by making of false statements, or concealing material facts. This may appear to place no time limit within which an application for revocation may be brought. The Probate Court is a court of Equity and has very wide discretion to aid the interest of justice. However, Equity aides the vigilant and not the indolent”

45. As correctly observed above, simply because the **Law of Succession Act** does not fix a time limit for applying for revocation of a Grant, it does not mean that an Applicant who approaches the Court after an inordinate delay has no obligation to explain such delay. As pointed out above by the Judges, revocation of a Grant and/or interference with the mode

distribution decreed a long period of time back has the potential to disrupt lives of those concerned and even third parties such as innocent purchasers where they exist, and severely prejudice the estate as it sends all parties back to square one. Indeed, “*equity aides the vigilant and not the indolent*”. Application for revocation of a Grant and/or interference with the mode of distribution passed earlier, should therefore be only allowed in the clearest of cases, and only where the consequences would not be too disruptive.

46. In this case, the Petitioner, who fraudulently obtained the Grant and confirmation thereof himself died in 2009. As aforesaid, he lied that he was a son of the deceased since as it later transpired, he was only the son a co-wife of the deceased, thus not ranking anywhere in the initial consideration of the persons having priority or preference in inheriting. He has never lived in the suit land just as none of his children or his widow has, as the suit land has at all times, since the death of the deceased, been occupied by the Objector, a grandson of the deceased. The Petitioner, his widow and their children have all along been living in a separate parcel of land where they still live to date. The Petitioner’s widow is herself now approaching 90 years in age, and it is therefore only the Petitioner’s sons, who have no form of blood relationship with the deceased who now stand to take over ownership of the land at the expense of the Objector, a blood grandson of the deceased. There are also no third-party purchasers disclosed to the Court and neither has the existence of any mortgage or charge lodged against the land been alleged. There shall therefore be minimal, if any, disruption with the lives of the concerned parties should this Court interfere with the mode of distribution decreed in the Certificate of Confirmation of Grant issued herein in 2001. On the other hand, upholding the said distribution, which vested the entire suit land into the name of the Petitioner, an undeserving beneficiary in the first place, shall severely disrupt the life of the Objector who ranked higher than the Petitioner in the priority of heirs and has throughout his life lived on the suit land.

Final Orders

47. The upshot of my findings is therefore that the Objector’s Summons for Revocation of Grant, dated 18/05/2017 hereby succeeds, and I rule and order as follows:

- i) The Petitioner-sole Administrator - **Kipkosgei Kimoning** - being now deceased, the Grant of Letters of Administration Intestate issued to him in this Cause, and dated 5/10/2000, is hereby revoked, and a fresh Grant of Letters of Administration Intestate issued to, or in the name of the Objector, **William Kibiwott Kigen**, as the sole Administrator.

- ii) The Objector, **William Kibiwott**, and not the late Petitioner, **Kipkosgei Kimoning**, is hereby declared to be the rightful beneficiary of the estate of the deceased, **Talai Kimoning**, and by extension, the property known as **Mosop/Metkei/25**, the sole asset comprising the estate.

- iii) Consequently, the Certificate of Confirmation of Grant issued herein and dated 7/06/2001 naming the Petitioner, **Kipkosgei Kimoning** – as the sole beneficiary of the property known as **Mosop/Metkei/25**, is hereby also revoked and re-issued with the Objector, **William Kibiwott Kigen**, named as the sole beneficiary of the said property.

- iv) This being a family matter, each party shall bear his/her own costs.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 30TH DAY OF JANUARY 2026

.....
WANANDA JOHN R. ANURO
JUDGE

Delivered in the presence of:

Mr. Kibichi h/b for Ms. Kipseii for the Objector

Lagat for the Petitioner

Court Assistant: Brian Kimathi