



**In re Estate of Sirwanei Chemweno Lekich (Deceased) (Succession Cause 45 of 2013) [2026] KEHC 425 (KLR) (27 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 425 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 45 OF 2013  
RN NYAKUNDI, J  
JANUARY 27, 2026**

**BETWEEN**

**BENJAMIN K. SIRWANEI ..... 1<sup>ST</sup> APPLICANT**

**STANLEY KIPSEREM ..... 2<sup>ND</sup> APPLICANT**

**STEPHEN SIRWANEI ..... 3<sup>RD</sup> APPLICANT**

**AND**

**JENIFA JERUTO SIRWANEI ..... RESPONDENT**

**RULING**

1. What is pending before this Honourable Court is Summons for Revocation or Annulment of Grant dated 21<sup>st</sup> February 2025 in which the Applicants are seeking the following orders: -
  - a. Spent
  - b. That the Grant of representation issued to J J S and confirmed on 28<sup>th</sup> day of August, 2019, be revoked on the grounds of fraud, material non-disclosure and procedural impropriety.
  - c. That pending the hearing and determination of this application, a preservative order be issued restraining the respondent, her agents, servants, assigns or any other person claiming through her from selling, transferring, charging, leasing, subdividing or in any other way dealing with, interfering with or intermeddling with the parcel of land known as Moiben/Kipsiliat Block 3(119).
  - d. That pending the hearing and determination of this application, a temporary injunction be issued prohibiting any dealings with ALL estate properties including Moiben/Kipsiliat Block 3(119).



- e. That upon revocation of the said grant, a fresh grant of letters of administration intestate be issued to the applicants B K. S, R S and S S as joint administrators of the estate of the deceased.
  - f. That costs of this application be in the cause.
2. The Application is supported by the annexed affidavit sworn jointly by B K. S, Stanley Kipserem and S S, the Applicants herein who averred as follows;
- a. That we are the Applicants herein and are duly authorized and competent to make and swear this affidavit in support of the application for revocation and/or annulment of grant.
  - b. That it has come to our knowledge, information and belief that the Respondent herein, being a member of the fourth matrimonial household of the deceased who maintained a polygamous union with four wives pursuant to customary law, has surreptitiously and fraudulently initiated and prosecuted succession proceedings without notice to other rightful beneficiaries.
  - c. That a Grant of Letters of Administration Intestate in respect of the estate of the deceased was issued to J J S on the subsequently confirmed on the 28<sup>th</sup> day of August 2019.
  - d. That the aforementioned Grant was procured through material non-disclosure and/or concealment of certain properties forming part of the deceased's estate, specifically parcels of land registered as Moiben/Chebara/222 and Moiben/Chebara/188, which properties were vested in our deceased progenitor at the time of his demise.
  - e. That furthermore, the Respondent herein has not only omitted the aforementioned properties but has also deliberately and with calculated design excluded the deceased's first, second, and third matrimonial households from participating in the devolution of the estate, notwithstanding their status as legitimate dependants and beneficiaries.
  - f. That even within the ambit of the fourth matrimonial household, the Respondent maliciously and without lawful justification excluded J S, who is the primogeniture female issue of the fourth matrimonial union, from her rightful entitlement in the distribution of the immovable property registered as Moiben/Kipsiliat Block 3(119).
  - g. That we the Applicants, were neither notified of nor afforded an opportunity to participate in the succession proceedings culminating in the confirmation of the impugned Grant, notwithstanding our status as legal beneficiaries of the estate.
  - h. That these material omissions, irregularities and fraudulent machinations only came to our attention when we were in the process of initiating separate succession proceedings, having been unaware of the Respondent's clandestine activities.
    - i. That the Respondent falsely and fraudulently represented to this Honourable Court that the original title deed for the parcel Moiben/Kipsiliat Block 3(119) was lost, misplaced or destroyed, whereas in truth and in fact, we are in lawful possession of the said original title deed.
  - j. That it has come to our knowledge that the Respondent is presently engaged in efforts to subdivide the parcel of land identified as Moiben/Kipsiliat Block 3(119) without requisite authority, consent or involvement of all lawful beneficiaries.
  - k. That the proceedings for the procurement and subsequent confirmation of the Grant of Letters of Administration Intestate were predicated upon deliberate concealment of material



facts, fraudulent misrepresentations, and calculated deception of this Honourable Court, including inter alia, the false assertion that the title deed was lost when in actuality the Applicants have custody of the original instrument of title, all of which cumulatively constitute fraud upon the court rendering the impugned Grant a nullity ab initio.

- l. That the Respondent has already commenced implementation of an unlawful scheme to alienate and/or dissipate estate assets through unauthorized subdivision, which actions would occasion irreparable prejudice to the proprietary interests of legitimate beneficiaries from all four matrimonial households of the deceased, who were either wholly excluded from or inadequately represented in the distribution schedule.
- m. That it is consistent with the principles of equity, justice and fairness that this application be allowed so that the estate may be administered in accordance with the law, with all properties fully disclosed and all beneficiaries from the four matrimonial households accorded their rightful entitlements.
- n. That this application has been instituted timeously within the statutory limitation period and in utmost good faith, supported by cogent and incontrovertible evidence of fraud, concealment, and material non-disclosure which vitiates the impugned Grant ab initio.
- o. That we make this affidavit in support of the application for revocation and/or annulment of Grant herein.

### **Replying Affidavit to the Summons**

3. The Summons is opposed vide a Replying Affidavit dated 4<sup>th</sup> April 2025 sworn by J J S who deponed as follows: -
  - a. That I am a female adult of sound mind, the Respondent herein hence am competent and duly authorized to swear this affidavit on my own behalf and on behalf of my sisters Eunice Jemosop S, Veronica Jemaiyo S and Nancy Jerop S.
  - b. That the contents of the summons for revocation or annulment of grant application dated 21<sup>st</sup> February, 2025, the affidavit in support of the said summons, jointly sworn by B K. S, Stanley Kipserem and S S on the said 21<sup>st</sup> February, 2025, the annexures thereto and even the certificate of urgency by the applicants' advocate have been read and explained to me by my advocate on record in this cause and having understood the same I wish to state as follows.
  - c. That I am advised by my advocate on record in this cause which advise I verily believe to be true that the application now before this Honourable Court is frivolous, vexatious incompetent, not properly before Court, bad in law and amounts to an abuse of court process and that the same ought to be struck out and or dismissed.
  - d. That S Chemweno Lekich, the deceased herein, died on 16/01/2000.
  - e. That the deceased herein was my biological father.
  - f. That the applicants are my step-brothers.
  - g. That my late father had four (4) wives, the fourth one was my mother.
  - h. That long before his demise my late father had settled each of his wives on their respective parcels of land.



- i. That before his demise my father had bequeathed land reference No. Moiben/Chebara/188 to the 1<sup>st</sup> house and her children. My father's first wife lived on the said parcel of land until she passed on and that is where her body was interred. It is on the same parcel of land where her children have been living and benefiting all through. B K. S, the 1<sup>st</sup> applicant herein, belongs to the first house. The 1<sup>st</sup> applicant and Beatrice S are the only surviving members of the said house.
- j. That before his demise my father had bequeathed land reference No. Moiben/Chebara/222 to the 2<sup>nd</sup> and 3<sup>rd</sup> houses and their children. The said houses share equally the said parcel of land and there is a boundary showing their respective shares of the said land. My father's 2<sup>nd</sup> wife and her children have all through continued to live and benefit from their portion of the said parcel of land.
- k. That my father's 3<sup>rd</sup> wife and her children have all through continued to live and benefit from the remaining half portion of land parcel No. Moiben/Chebara/222. The 2<sup>nd</sup> and 3<sup>rd</sup> applicants belong to the 3<sup>rd</sup> house.
- l. That my father's 4<sup>th</sup> wife, that is my mother, was bequeathed land reference No. Moiben/Moiben Block 3 (Kipsiliat)/119. Twelve (12) acres contained in the said parcel of land belong to Chebet Kibowen Yego who passed away on 23/03/1996.
- m. That it is within my knowledge that two months or so before my late father passed on, he had declared in the presence of a number of people for instance; Nicholas Chebet Mutwol; the late Raphael Chebet; Francis Kibos; Andrea Cherop; Charles Cherop; JohnChebii; and Alex Chebii how his assets were to be shared out among the said four houses and it was as indicated herein.
- n. That it is within my knowledge that he made his said oral will in the presence of the said persons under a mugumo tree ("simotwo" tree). That tree (it is still there) marks the boundary between the share of the 2<sup>nd</sup> house and that of the 3<sup>rd</sup> house.
- o. That the said Chebet Kibowen Yego is survived by Patrick Maiyo Bett and Justine Kimutai Bett among others.
- p. That it is within my knowledge that my late father and the said Mr. Yego jointly bought land Reference No. Moiben/Moiben Block 3 (Kipsiliat)/119 hence the share of the said Mr. Yego as indicated in paragraph 12 hereinabove.
- q. That before my late mother (she passed on 20/12/2017, initiated these succession proceedings, in October, 2011 and in December, 2012 (on two occasions that is) she sent me to get the title deed in respect of our said parcel of land from the 1<sup>st</sup> applicant herein but he informed me on those occasions that the title deed for land reference No. Moiben/Moiben Block 3 (Kipsiliat)/119, our land, was lost.
- r. That when he inquired from me as to why my mother wanted the said title deed, I informed him that my mother wanted to file succession proceedings so that we could get title to our portion of land in land reference No. Moiben/Moiben Block 3 (Kipsiliat)/119 and further, so that the family of Chebet Kibowen Yego could also get their share of the said parcel of land.
- s. That I was able to read the 1<sup>st</sup> applicant's mind - he was not happy with my mother, my siblings and I getting our share of the said parcel of land. His conduct and that of the 2<sup>nd</sup> and 3<sup>rd</sup>



applicant confirmed to us that they were out to overreach and disinherit us of our share of the said land.

- t. That it is within my knowledge that after the death of our father, the 1<sup>st</sup> applicant used to say that my siblings and I (all women-we also had a sister by the name Beatrice S who survived the deceased herein, but is now deceased-including our mother we were six in the 4<sup>th</sup> house) are just nothing, but passing clouds and that we were not supposed to inherit the estate of our late father.
- u. That it is further within my knowledge that the applicants even hatched plans towards disinheriting us and this is confirmed by various meetings they held without involving us and other family members.
- v. That I am informed by my brother Jonathan S (he belongs to the 2<sup>nd</sup> house) which information I verily believe to be true, that before my father passed on, he had called him from Nairobi where he used to work and advised him that when he (my father) passes on, he should safeguard the interests of the 4<sup>th</sup> that is, my mother's house. That my late father who was a retired assistant chief knew very well that the applicants herein would want to disinherit us after him passing on.
- w. That as from 1998 my father had instructed me to be cultivating our share of land reference No. Moiben/Moiben Block 3 (Kipsiliat)/119 and he did that because he wanted me to take care of our interests in the said land.
- x. That as responsible as I am, I cultivated our portion of the said land for the benefit of the 4<sup>th</sup> house. I was able to take care of my mother, educate our last born Nancy Jerop S and take care of medical needs of Eunice Jemosop S and generally cater for our needs based on the produce from the portion of our said land. To date, Eunice is still sick and under my care.
- y. That knowing very well that the applicants herein were hell-bent in disinheriting us, our mother with our consent initiated this succession cause.
- z. That while doing that, our mother concentrated on the parcel of land that belongs to us while taking into consideration the interest of the family of the late Chebet Kibowen Yego as evidenced by form P&A. 5 (see the back of the said form).
- aa. That that was done in good faith hence it is totally wrong for the applicants to allege that there was fraud. As regards the 4<sup>th</sup> house, my mother did not leave out any of her children.
- ab. That upon the demise of our said late mother, I stepped into her shoes.
- ac. That were it not that the applicants and other family members were uncooperative and were ill-motivated, succession proceedings would have been done long time ago and jointly.
- ad. That the fact that the applicants are asking that grant of letters administration be issued to them in total disregard of me and other family members go in to show that they are really ill-motivated and that they have made the instant application in bad faith.
- ae. That as stated herein my father passed away way back in 2000 but the applicants have not given any reasons and or explanation as to why they did not initiate succession proceedings within a reasonable time and or as to why they are now waking up from their slumber and wanting the grant of letters administration issued herein to be revoked and or annulled.



- af. That there are no good grounds as to why the grant of letters of administration issued to me should be revoked and or annulled. That I am advised by my advocate on record which advise I verily believe to be true, that the law aids the vigilant and not the indolent.
- ag. That vide this succession cause, we have not robbed any house and or any beneficiary of their lawful share of my father's estate.
- ah. That in the certificate of urgency accompanying the said summons for revocation or annulment of grant, the name J S has been mentioned.
- ai. That I state that that has been made in bad faith. That J (I don't understand why she is being called J S) is not adaughter of the deceased herein. She belongs to the family of kapterer. We were born by the same mother, but different fathers. She is therefore, a stranger to the estate herein. She was not at any given time a dependant of the deceased herein. Her name has been mentioned with ulterior motives.
- aj. That as ill-motivated as they are, I will not be surprised if they were to introduce other strangers to the estate of the deceased.
- ak. That it is within my knowledge that the succession proceedings herein were initiated with the full knowledge of the applicants and other family members from the other houses. That the deceased herein had before his demise declared that each and every house was to deal with their parcels of land separately and I extrapolate that this is also the reason as to why my late mother decided to pursue succession proceedings in respect of our parcel of land.
- al. That parcel of land where Chebara dam is constructed (where ELDOWAS gets its water(s)) used to be owned by my late father. From the proceeds my father got from compensation as regards the said dam, he spent it towards purchasing 23 acres of land for the 1% house at a place called Garage area which is within Moiben Constituency. The applicants have concealed these material facts concerning the said parcel of land. I am yet to know its parcel number. Before his death, my father had bequeathed this parcel of land to the said 1<sup>st</sup> house.
- am. That using part of the profits from the said compensation, he also acquired 20 acres of land situated at Kapkatonon area within Moiben Constituency for the 2<sup>nd</sup> house. The applicants have also deliberately concealed these material facts concerning this parcel of land from this Honourable Court. I am yet to know its parcel number. Similarly, before his death, he had bequeathed this parcel of land to the said 2<sup>nd</sup> house.
- an. That he also used part of the proceeds from the said compensation towards purchasing 20 acres of land at Kapato area within Moiben Constituency for the 3<sup>rd</sup> house. The applicants are therefore guilty of material non-disclosure of these facts. Similarly, before his death, my father bequeathed this parcel of land to the 3<sup>rd</sup> house.
- ao. That besides the foregoing, the 2<sup>nd</sup> and 3<sup>rd</sup> houses each own two and a half (2 ½) acres of land at Kamendi area. Similarly, before his demise our father bequeathed the said parcels of land to the said houses. Again, the applicants have deliberately concealed these material facts from this Honourable Court.
- ap. That my late father had a plot at Chebiemit centre. Before he passed on, he had bequeathed the same to the 1<sup>st</sup> applicant and Jonathan S. The applicants have deliberately concealed these material facts from this Honourable Court.



- aq. That my late father also had a plot at Karandile centre which is within Moiben Constituency. He bequeathed the same to the 3<sup>rd</sup> applicant herein. He also bequeathed to the 2<sup>nd</sup> applicant and Johana Kipkoech S the plot that he had at Koitilial centre which is situated within Elgeyo-Marakwet County. The applicants have again deliberately concealed these material facts from this Honourable Court.
- ar. That if the applicants were candid enough they should have exhibited to this Honourable Court the documents pertaining to land reference Nos. Moiben/Chebara/222, Moiben/Chebara/188 and the other parcels of land and plots I have mentioned herein.
- as. That without prejudice to the foregoing, if at all the applicants are not driven by ulterior 'motive, further, if at all they here after the attainment of justice, then what they ought to have done was to reveal the other many properties to Court, give their particulars and then ask this Honourable to incorporate into this cause and further ask this Honourable Court to distribute the newly introduced assets into the respective houses and or according to the manner the beneficiaries of the said houses would wish to handle their share of the estate instead of focusing on our share of the estate.
- at. That the allegations of material omissions, irregularities, fraudulent machinations, clandestine activities, false and fraudulent representation, misrepresentations, deception, false assertion, concealment and material non-disclosure name it all are baseless and unfounded and ought to be disregarded in their entirety.
- au. That the applicants are male chauvinists, very discriminative towards women, insensitive towards gender equality, people who are still suffering from hangovers of yester years as regards women's rights and therefore we pray that this Honourable Court do protect us from their machinations. We are really vulnerable and in dire need of this Honourable Court's protections.
- av. That the applicants are playing victim and yet that is not the case. We are the ones who are really disadvantaged.
- aw. That it is in the best interest of justice that the application now before this Honourable Court deserves to be dismissed for it lacks merit.

Further Affidavits in opposition of the Summons for Revocation

- 4. The Summons is also opposed vide an affidavit sworn by Jonathan Kiplagat Chepkeitany who averred as follows: -
  - a. I, am now 69 years old and a resident of Tangasir village within Uasin Gishu County, do hereby make oath and state as follows: -
  - b. That I am a male adult of sound mind, the witness of the Respondent herein, conversant with the facts touching on this matter hence am competent and duly authorized to swear this affidavit.
  - c. That the contents of the summons for revocation or annulment of grant application dated 21<sup>st</sup> February, 2025, the affidavit in support of the said summons, jointly sworn by B K. S, Stanley Kipserem and S S on the said 21st February, 2025, the annexures thereto and even the certificate of urgency by the applicants' advocate have been read and explained to me by the Respondent's advocate on record in this cause and having understood the same I wish to state as follows.



- d. That I know Benjamin, Stanley, S and Jenifa. They are all the children of S Chemweno (deceased).
  - e. That before S Chemweno passed on, I had known him for many years.
  - f. That S Chemweno had four (4) wives and a number of children.
  - g. That B belongs to the 1st house, while Stanley and S belong to the 3rd house. Jenifa belongs to the 4<sup>th</sup> house.
  - h. That he settled his 1<sup>st</sup> wife at Cheborowo area within Elgeyo Marakwet County.
  - i. That he settled his 2<sup>nd</sup> and 3<sup>rd</sup> wives in one parcel of land, that is, at Kipshabatai area within Elgeyo Marakwet County. Page 1 of 2
  - j. That he settled his 4<sup>th</sup> wife at Kapsiliot area within Uasin Gishu County.
  - k. That all through, the said houses have been in possession and occupation and use of their respective parcels or portions of land. All and sundry know about this.
  - l. That the 4<sup>th</sup> wife's parcel of land and mine are separated by a single parcel of land. We are neighbours.
  - m. That when S Chemweno passed on at the 4th wife's house, his 4th wife came and informed me about that. I then accompanied her to her house, to confirm what the said wife (Paulina) of the deceased was telling me. I found out that indeed the old man was dead. After that, I called out neighbours and thereafter the report was conveyed to his other family members
  - n. That in as far as I am concerned, S Chemweno and his 4th wife were blessed with five (5) children. One of them is deceased. These were the children that the said 4<sup>th</sup> wife (Paulina Sokomo) used to stay with and take care of.
  - o. That I have been shown a statement of madam chief Salome Chemutai S. She is my niece. She was sired by S Chemweno, but the said S Chemweno did not marry her mother.
  - p. That neither did Salome's mother nor Salome herself nor her (Salome's) siblings live in any of the homesteads of S Chemweno.
  - q. That I wish to confirm that that parcel of land that is at Kapsiliot area belongs to both the 4<sup>th</sup> house and to a person that used to be known as "Mrefu" who is now deceased.
  - r. That it is in the best interest of justice that the application now before this Honourable Court deserves be dismissed for it lacks merit.
5. The Summons is further opposed by an affidavit sworn by Emmanuel Limo Simbolei who averred as follows: -
- a. That I am a male adult of sound mind, now 68 years old, the witness of the Respondent herein, conversant with the facts of this matter hence am competent and duly authorized to swear this affidavit.
  - b. That the contents of the summons for revocation or annulment of grant application dated 21<sup>st</sup> February, 2025, the affidavit in support of the said summons, jointly sworn by B K. S, Stanley Kipserem and S S on the said 21<sup>st</sup> February, 2025, the annexures thereto and even the certificate of urgency by the applicants' advocate have been read and explained to me by the Respondent's advocate on record in this cause and having understood the same I wish to state as follows.



- c. That Benjamin, Stanley, S and Jenifa are persons known to me. Their father is the late S Chemweno.
- d. That S Chemweno (deceased) married four (4) wives.
- e. That the deceased's 1<sup>st</sup> wife was called Tula (she is now deceased), the deceased's 2<sup>nd</sup> wife is called Teriki, the deceased's 3<sup>rd</sup> wife is called Toyoi and the deceased's 4<sup>th</sup> wife was called Sokomo (she is now deceased).
- f. That each house is blessed with a number of children.
- g. That S Chemweno was a very hard working and organized man.
- h. That he settled his 1<sup>st</sup> wife (Tula) on his parcel of land at a place called Cheborowo.
- i. That he settled his 2<sup>nd</sup> wife (Teriki) and 3<sup>rd</sup> wife (Toyoi) on his parcel of land at a place called Kipshabatai area. The said deceased's two (2) wives share equally the said parcel of land. The 2<sup>nd</sup> wife being the senior most wife of the deceased between the said two (2) wives was settled on the right hand side of the said land, that is, on the Eastern side of the said land, while the 3<sup>rd</sup> wife was settled on the left hand side of the said land, that is, on the Western side of the said land, that is, according to Kalenjin customs.
- j. That the deceased settled his last wife, that is, the 4<sup>th</sup> wife, on his parcel of land that is at Kapsiliot area. I know that when the deceased married his 4<sup>th</sup> wife, he brought her from Kerio Valley and settled her on that parcel of land at Kapsiliot area. The 4<sup>th</sup> house shares the said parcel of land with one Mr. Mrefu who is now deceased.
- k. That each house lived and benefitted from their respective parcels of land.
- l. That when the 1<sup>st</sup> wife of the deceased herein passed on, her body was buried in her parcel of land at Cheborowo area.
- m. That similarly, when the deceased's 4<sup>th</sup> wife passed on, her body was buried on her parcel of land at Kapsiliot area.
- n. That I know J S. Her mother is the late Paulina Sokomo. Further, I know her home which is at a place called Kabelio within Elgeyo Marakwet County. J S is not a daughter of S Chemweno.
- o. That my own parcel of land borders that of the said deceased's 4<sup>th</sup> wife. When the 4<sup>th</sup> wife (Paulina Sokomo) and her then five (5) children (one (1) of them passed away while at Kapsiliot area) were brought by mzee S Chemweno from Kerio Valley, they found me already settled on my parcel of land that borders theirs.
- p. That J S was not among the said children of Paulina Sokomo.
- q. That the five (5) children I am talking about are:
  - 1. Jenifa
  - 2. Eunice
  - 3. Beatrice (deceased)
  - 4. Veronica
  - 5. Nancy



- r. That I have been their neighbour since 1988 to date.
  - s. That I also know that S Chemweno acquired other parcels of land at a place called Garage and also at a place called Kamendi. He bequeathed the said properties to his 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> wives.
  - t. That before his death, mzee S Chemwono used to tell me and other people that "kiyatat kaitanyu", meaning, that I have sorted out the needs of my family.
  - u. That it is in the best interest of justice that the application now before this Honourable Court be dismissed for it absolutely lacks merit.
6. The Summons is moreover opposed by an affidavit sworn by Taplilei Teriki Sirwoney who averred as follows: -
- a. That I am a female adult of sound mind, born in 1939, the witness of the Respondent herein, conversant with this matter hence am competent and duly authorized to swear this affidavit.
  - b. That the contents of the summons for revocation or annulment of grant application dated 21<sup>st</sup> February, 2025, the affidavit in support of the said summons, jointly sworn by B K. S, Stanley Kipserem and S S on the said 21<sup>st</sup> February, 2025, the annexures thereto and even the certificate of urgency by the applicants' advocate have been read and explained to me by the Respondent's advocate on record in this cause and having understood the same I wish to state as follows.
  - c. That S Chemweno Lekich, the deceased herein, was my husband. My late husband used also to be known as Lawrence Sirwoney.
  - d. That my late husband had only four (4) wives namely:
    - 1. Tula S (deceased) - 1<sup>st</sup> wife;
    - 2. Taplilei Teriki Sirwoney - 2<sup>nd</sup> wife (that is, myself);
    - 3. Toyoi S - 3<sup>rd</sup> wife; and
    - 4. Paulina Sokomo Sikwanei (deceased) - 4<sup>th</sup> wife.
  - e. That my late husband worked as an Assistant Chief and thereafter he briefly worked for Kerio Valley Development Authority (K.V.D.A.). He was a very industrious man. He was also a very organized and a visionary man.
  - f. That he settled the 1<sup>st</sup> wife (Tula S (deceased)) (my co-wife) together with her children on land reference No. Moiben/Chebara/188 and that has been so to date.
  - g. That he settled me (his 2<sup>nd</sup> wife) and my co-wife (the 3<sup>rd</sup> wife - Toyoi S) together with our respective children on land reference No. Moiben/Chebara/222 where each house is in possession, occupation and use of a share of the said property and that has been so to date. Our share of the said property is in the ratio of 50:50. That parcel of land by measurement is 22 acres.
  - h. That he settled his 4<sup>th</sup> wife (Paulina Sokomo Sikwanei (deceased) (my last co-wife) together with her children on 24 acres of land comprised in land reference No. Moiben Kipsiliat Block 3/119, and that has been so to date. My late husband used to fondly refer to his 4th wife as "my Chemining'wa", meaning my last wife.



- i. That in addition to the foregoing properties, the deceased owned some parcels of land in Milimani Kamendi area in Trans Nzoia County and plots at Chebiemit and Karandile Trading Centres.
- j. That the deceased received a substantial amount of money as compensation from ELDOWAS in respect of his parcel of land where ELDOWAS constructed a dam (this is where Eldoret City and many other areas get their piped water from) and he spent it in acquiring parcels of land for his 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> wives.
- k. That before his demise, my late husband acquired 63 acres of land at Garage area within Uasin Gishu County. He spent the proceeds from ELDOWAS in acquiring the said 63 acres of land.
- l. That within two months or so before my late husband passed on, he convened a meeting under one of the mugumo trees on land reference No. Moiben/Chebara/222 (in Marakwet language, we call that tree 'simotwo'). Those who were in attendance were Nicholas Chebet Mutwol, John Kangogo Chebii, Francis Kibos, Joseph Kibos, Andrea Cherop, Charles Cherop among others. On that day and at the said place my late husband made an Oral Will regarding the distribution of his properties. At the time of making his Last Will, his mental faculties were very much in order. After making the said Will, he insisted and emphasized that his properties should only be divided according to the way he had stipulated in his Oral Will.
- m. That the deceased bequeathed his 1st wife (Tula S (deceased)) together with her children land reference No. Moiben/Chebara/188. The 1<sup>st</sup> wife lived on the said parcel of land until she passed on. That is where her body was buried. It is on the same parcel of land where her children have been living and benefiting therefrom all through (save for Beatrice S who lives elsewhere and does not benefit from the said land, and Elizabeth Jebiwott who pre-deceased the deceased herein).
- n. That in addition to bequeathing the foregoing parcel of land (land reference No. Moiben/Chebara/188) to the 1st house, the deceased acquired 23 acres of land at a place called Garage within Uasin Gishu County and he bequeathed the said 23 acres of land to the 1st house. He also bequeathed the said house a centre plot at Chebiemit Trading Centre. The 1st house shares the said plot equally with the 2<sup>nd</sup> house (my house).
- o. That the deceased bequeathed land reference No. Moiben/Chebara/222 at Kipshabatai village to me (the 2<sup>nd</sup> house) and the 3<sup>rd</sup> house. The said two (2) houses share the said parcel of land equally. There is a boundary which clearly shows the share of each house. Each house has been and continues to be in possession, occupation and use of their respective share as regards the said parcel of land.
- p. That the boundary separating the two (2) portions of the said parcel of land belonging to my house (2<sup>nd</sup> house) and the 3<sup>rd</sup> house runs through two closely standing mugumo trees. The said boundary runs from North to South. The portion on the Eastern side of the said land belongs to me and my children (the 2<sup>nd</sup> house), while the portion on the Western side belongs to the 3<sup>rd</sup> house. This is according to Kalenjin customs.
- q. That besides bequeathing the aforesaid parcel of land to the said two (2) houses, the deceased acquired 20 acres of land at Garage area within Uasin Gishu. He used the proceeds he had gotten from ELDOWAS in acquiring the said 20 acres of land. He bequeathed the said 20 acres of land to me (the 2<sup>nd</sup> house). He also bequeathed to me (the 2<sup>nd</sup> house) a ½ of a plot at Chebiemit Trading Centre. The 1<sup>st</sup> and 2<sup>nd</sup> houses equally share the said centre plot. He also



bequeathed me (the 2<sup>nd</sup> house) 2½ acres of land which land is in that area known as Milimani Kamendi in Trans Nzoia County.

- r. That in addition to bequeathing the 3<sup>rd</sup> house 11 acres of land comprised in land reference No. Moiben/Chebara/222 at Kipshabatai village, the deceased also bequeathed the 3<sup>rd</sup> house 20 acres of land at that place called Garage within Uasin Gishu County. He used the proceeds he had gotten from ELDOWAS in acquiring the said 20 acres of land. He bequeathed the said 20 acres of land to the 3<sup>rd</sup> house. He also bequeathed the 3<sup>rd</sup> house a ½ of a plot at Karandili Trading Centre in Uasin Gishu County. The 3<sup>rd</sup> and 4<sup>th</sup> houses share equally the said centre plot. He also bequeathed the 3<sup>rd</sup> house 2½ acres of land which land is in that area known as Milimani Kamendi in Trans Nzoia County.
- s. That Stanley, S and their mother continue to utilize and benefit from their portions of the deceased's estate to the exclusion of the other beneficiaries.
- t. That the deceased bequeathed the 4<sup>th</sup> house a portion of land reference No. Moiben/Moiben Block 3 (Kipsiliat)/119. The other portion of the said parcel of land belongs to Chebet Kibowen Yego (deceased).
- u. That all members of the deceased's family including the applicants herein knew and know of these arrangements.
- v. That during the lifetime of my late husband, each house and their respective children developed and occupied their respective shares of the deceased's estate and that was according to the arrangements my husband had put in place.
- w. That the arrangements put in place by my husband are very fair and it ought not to be interfered with. Land reference No. Moiben/Moiben Block 3 (Kipsiliat)/119 belongs to Paulina Sokomo Sikwanei (she is since deceased - the deceased herein pre-deceased her), the 4<sup>th</sup> house, and her children, that is, J J S and her three (3) surviving sisters.
- x. That Benjamin, Stanley and S have on several occasions stated that the Respondent and her sisters are passing clouds and they are saying this because Jenifa and her siblings are women. The applicants therefore want to disinherit them.
- y. That the applicants are discriminative towards the 4<sup>th</sup> house and because of that they want to disinherit my step-daughters despite having gotten their own shares of the deceased's estate.
- z. That knowing his children very well, before his passing on, the deceased had given a stern warning to his sons not to interfere with his 4<sup>th</sup> wife and her children since the said house did not have a son and were therefore vulnerable. He sternly warned that no one should pass through Kimarich which is the route to Land Reference No. Moiben/Moiben Block 3 (Kipsiliat)/119, the 4<sup>th</sup> house's inheritance. He asserted that even if he would be dead, he would still protect the 4<sup>th</sup> house's inheritance from anyone who would dare interfere with the same.
- aa. That I pray that while dealing with the matter before Court, this Honourable Court ought to take into account the fact that approximately 24 acres contained in Land Reference No. Moiben/Moiben Block 3 (Kipsiliat)/119 belongs to the 4<sup>th</sup> house.
- ab. That it is in the best interest of justice that the application now before this Honourable Court be dismissed for it completely lacks merit.



7. The Summons is furthermore opposed by an affidavit sworn by Jonathan S Chemweno who averred as follows: -
1. That I am a male adult of sound mind, the witness of the Respondent herein, conversant with this matter hence am competent and duly authorized to swear this affidavit.
  2. That the contents of the summons for revocation or annulment of grant application dated 21<sup>st</sup> February, 2025, the affidavit in support of the said summons, jointly sworn by B K. S, Stanley Kipserem and S S on the said 21<sup>st</sup> February, 2025, the annexures thereto and even the certificate of urgency by the applicants' advocate have been read and explained to me by the Respondent's advocate on record in this cause and having understood the same I wish to state as follows.
  3. That S Chemweno Lekich, the deceased herein, was my biological father. My late father also used to be known as Lawrence Sirwoney.
  4. That my late father had only four (4) wives, namely:
    - a. Tula S (deceased) - 1<sup>st</sup> wife
    - b. Taplilei Teriki Sirwoney - 2<sup>nd</sup> wife
    - c. Toyoi S – 3<sup>rd</sup> wife
    - d. Paulina Sokomo Sikwanei (deceased) - 4<sup>th</sup> wife
  5. That my late father (the deceased herein) and his 1<sup>st</sup> wife (my step-mother) were blessed with three (3) children - a son and two (2) daughters. B (the 1<sup>st</sup> applicant herein) and Beatrice Jepkorir S, belonging to the 1<sup>st</sup> house, are the ones who are alive - Elizabeth Jebiwott S, from the 1<sup>st</sup> house, pre-deceased the deceased herein. She is survived by her children.
  6. That my late father and my mother (the 2<sup>nd</sup> wife to my late father) were blessed with nine (9) children - four (4) sons and five (5) daughters. One of my siblings is deceased.
  7. That my late father and his 3<sup>rd</sup> wife (my step-mother) were blessed with nine (9) children - four (4) sons and five (5) daughters. Only three (3) of them are alive.
  8. That my late father and his 4<sup>th</sup> wife (my step-mother) were blessed with five (5) daughters, one of them is deceased. Before my father married his 4<sup>th</sup> wife, the said 4<sup>th</sup> wife (Paulina Sokomo Sikwanei) had already gotten three (3) children with another man called Luluk and the family name of that man is called Kapterer. J, who calls herself J S, is one of them. She is not the daughter of the deceased herein and neither was she a dependant of the deceased. She is therefore not a beneficiary to the estate of the deceased herein.
  9. That similarly, her other two (2) siblings were not the children of the deceased herein and further, just like J was not a dependant of the deceased herein, they were also not the dependants of the deceased and neither are they beneficiaries to his estate.
  10. That it is very absurd that B S, Stanley Kipserem and S S are trying to introduce a stranger/strangers to the estate of the deceased herein.
  11. That my late father worked as an Assistant Chief and thereafter he briefly worked for Kerio Valley Development Authority (K.V.D.A.). He was a very industrious man. He was also a very organized and a visionary person.



12. That during his life time, my late father acquired a number of properties in different areas and accordingly sorted out the needs of each house by fairly bequeathing them his properties.
13. That the deceased bequeathed his 1st wife (Tula S (deceased)) together with her children land reference No. Moiben/Chebara/188. The same by measurement is ten (10) acres. The 1<sup>st</sup> wife lived on the said parcel of land until she passed on. That is where her body was buried. It is on the same parcel of land where her children have been living and benefiting therefrom all through (save for Beatrice S who lives elsewhere and does not benefit from the said land, and Elizabeth Jebiwott who pre-deceased the deceased herein).
14. That the deceased received a substantial amount of money as compensation from ELDOWAS regarding his land that was taken for the construction of a dam at Chebara area and he spent the same in acquiring properties/parcels of land for his 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> wives.
15. That in addition to bequeathing the foregoing parcel of land (land reference No. Moiben/Chebara/188) to the 1<sup>st</sup> house, the deceased acquired 23 acres of land at a place called Garage within Uasin Gishu County and he bequeathed the said 23 acres of land to the 1<sup>st</sup> house. He also bequeathed the said house a centre plot at Chebiemit Trading Centre. The 1<sup>st</sup> house and the 2<sup>nd</sup> house equally share the said plot.
16. That the 1<sup>st</sup> house therefore owns 10 acres plus 23 acres plus ½ of a centre plot (at Cheblemit Trading Centre) – totaling to 33½ acres plus ½ of a centre plot
17. That the 1<sup>st</sup> house was bequeathed twenty-three (23) acres instead of 20 acres for it did not get land at Milimani Kamendi area in Trans Nzoia County.
18. That the deceased bequeathed land reference No. Moiben/Chebara/222 at Kipshabatai village to the 2<sup>nd</sup> and 3<sup>rd</sup> houses. The said parcel of land by measurement is twenty-two (22) acres. I belong to the 2<sup>nd</sup> house. The said two (2) houses share equally the said parcel of land. There is a boundary which clearly shows the share of each house. Each house has been and continues to be in possession, occupation and use of their respective share as regards the said parcel of land.
19. That the boundary separating the two (2) portions of the said parcel of land belonging to the said 2<sup>nd</sup> and 3<sup>rd</sup> houses runs through two closely standing 'mugumo' trees. The said boundary runs from North to South. The portion on the Eastern side of the said land belongs to the 2<sup>nd</sup> house, while the portion on the Western side belongs to the 3<sup>rd</sup> house. This is according to Kalenjin customs. Each house owns eleven (11) acres of the said land.
20. That besides bequeathing the aforesaid parcel of land to the said two (2) houses, the deceased acquired 20 acres of land at Garage area within Uasin Gishu County. He used the proceeds he had gotten from ELDOWAS in acquiring the said 20 acres of land. He bequeathed the said 20 acres of land to the 2<sup>nd</sup> house. He also bequeathed the 2<sup>nd</sup> house a ½ of a plot at Chebiemit Trading Centre. The 1<sup>st</sup> and 2<sup>nd</sup> houses share equally the said centre plot. He also bequeathed the 2<sup>nd</sup> house 2½ acres of land which land is in that area known as Milimani Kamendi in Trans Nzoia County.
21. That the 2<sup>nd</sup> house therefore owns 11 acres plus 20 acres plus 2½ acres plus a ½ of a centre plot (at Chebiemit Trading Centre) - totaling to 33½ acres of land plus ½ of a centre plot.
22. That in addition to bequeathing the 3<sup>rd</sup> house 11 acres of land comprised in land reference No. Moiben/Chebara/222 at Kipshabatai village, the deceased also bequeathed the 3<sup>rd</sup> house 20 acres of land at that place called Garage within Uasin Gishu County. He used the proceeds he



had gotten from ELDOWAS in acquiring the said 20 acres of land. He bequeathed the said 20 acres of land to the 3<sup>rd</sup> house. He also bequeathed the 3<sup>rd</sup> house a ½ of a plot at Karandili Trading Centre in Uasin Gishu County. The 3<sup>rd</sup> and 4<sup>th</sup> houses share equally the said centre plot. He also bequeathed the 3<sup>rd</sup> house 2½ acres of land which land is in that area known as Milimani Kamendi in Trans Nzoia County.

23. That the 3<sup>rd</sup> house therefore owns 11 acres plus 20 acres plus 2½ acres plus a ½ of a centre plot (at Karandili Trading Centre) - totaling to 33½ acres plus ½ of a centre plot.
24. That Stanley (the 2<sup>nd</sup> applicant) and S (the 3<sup>rd</sup> applicant) belong to the 3<sup>rd</sup> house.
25. That Stanley, S and their mother continue to utilize and benefit from their portions of the deceased's estate to the exclusion of other beneficiaries of the said 3<sup>rd</sup> house. The widows and children of the late brothers of Stanley and S have been deprived of the use and benefit of deceased's estate by the 2<sup>nd</sup> and 3<sup>rd</sup> applicants. In fact, they are before this Court with unclean hands.
26. That the deceased bequeathed the 4<sup>th</sup> house approximately 24 acres comprised in land reference No. Moiben/Moiben Block 3 (Kipsiliat)/119. Twelve (12) acres contained in the said parcel of land belong to the estate of Chebet Kibowen Yego (deceased).
27. That the 4<sup>th</sup> house therefore owns only 24 acres plus ½½ of a centre plot at Karandili Trading Centre.
28. That all members of the deceased's family including the applicants herein knew and know of these arrangements.
29. That within two months or so before my father passed on, he repeated and reiterated the fact that he had bequeathed his properties as mentioned herein to his four (4) wives and their respective children as I have stated in paragraphs 12, 14, 15, 16, 17, 19, 20, 21, 22, 25 and 26 herein. He confirmed that through an Oral Will he made under a mugumo tree (in Kalenjin language that tree is called 'simotwo'). This was witnessed by Nicholas Chebet Mutwol, John Kangogo Chebii, Francis Kibos, Joseph Kibos, Andrea Cherop, Charles Cherop among others.
30. That during the lifetime of my late father, each house and their respective children developed and occupied their respective shares of the deceased's estate and that was according to the arrangements my father had put in place.
31. That before his demise, my late father had insisted that his property should only be divided according to the way he had stipulated in his Oral Will.
32. That the arrangements put in place by my father are very fair and it ought not to be interfered with. Land reference No. Moiben/Moiben Block 3 (Kipsiliat)/119 belongs to Paulina Sokomo Sikwanei (she is since deceased), the 4<sup>th</sup> house, and her children, that is, J J S and her three (3) surviving sisters.
33. That on several occasions Benjamin, Stanley and S, who are male chauvinists, have stated that the Respondent and her sisters are passing clouds: since they are women and that they ought not to inherit anything from the deceased herein.
34. That the applicants are discriminative towards the 4<sup>th</sup> house and because of that they want to disinherit my step sisters despite having gotten their own shares of the deceased's estate.



35. That anticipating trouble from some of his children, specifically the applicants herein, before his passing on, the deceased had given a stern warning to his sons not to interfere with his 4<sup>th</sup> wife and her children since the said house did not have a son and were therefore vulnerable. He sternly warned that no one should pass through Kimarich which is the route to Land Reference No. Moiben/Moiben Block 3 (Kipsiliat)/119, the 4<sup>th</sup> house's inheritance. He asserted that even if he would be dead, he would still protect the 4<sup>th</sup> house's inheritance from anyone who would dare interfere with the same.
  36. That one of the sisters to the Respondent, that is my step-sister, has been sickly for a long time and that she is now disabled and in dire need of constant attention and care and that attention and care has been provided to her by the Respondent. The said Benjamin, Stanley and S want to trample upon the rights of the 4<sup>th</sup> house and unjustly deprive the Respondent and her sisters the benefit of the land our father bequeathed to them before he passed on. Jenifa, the Respondent herein, needs resources and support in order to take care of her sickly sister and also to support her other vulnerable siblings. The parcel of land that was bequeathed to the 4<sup>th</sup> house by the deceased has been a source of livelihoods for the Respondent and her siblings and there is a need for the same to be jealously guarded. They have a legitimate expectation over the said land.
  37. That I pray that while dealing with the matter before Court, this Honourable Court ought to take into account the fact that approximately 24 acres contained in Land Reference No. Moiben/Moiben Block 3 (Kipsiliat)/119 belongs to the 4<sup>th</sup> house. In fact, the 4<sup>th</sup> house's share is less than that of the other three (3) houses.
  38. That it is in the best interest of justice that the application now before this Honourable Court be dismissed for it completely lacks merit.
8. The Summons is additionally opposed by an affidavit sworn by Nicholas Kimutwol Chebt who averred as follows: -
- a. That I am a male adult of sound mind, the Vice Chairman of the larger Kapturgo family, the witness of the Respondent herein, conversant with this matter hence am competent and duly authorized to swear this affidavit.
  - b. That the contents of the summons for revocation or annulment of grant application dated 21<sup>st</sup> February, 2025, the affidavit in support of the said summons, jointly sworn by B K. S, Stanley Kipserem and S S on the said 21<sup>st</sup> February, 2025, the annexures thereto and even the certificate of urgency by the applicants' advocate have been read and explained to me by the Respondent's advocate on record in this cause and having understood the same I wish to state as follows.
  - c. That I knew S Chemweno Lekich (deceased). He was a younger brother to my late father.
  - d. That the deceased herein married only four (4) wives under kalenjini customary law.
  - e. That the said deceased's wives are/were:
    - a. Tula S (deceased) – 1<sup>st</sup> wife
    - b. Taplilei Teriki Sirwoney - 2<sup>nd</sup> wife
    - c. Toyoi S - 3<sup>rd</sup> wife
    - d. Paulina Sokomo Sikwanei (deceased) - 4<sup>th</sup> wife



- f. That my paternal uncle, the deceased herein, was very close to me. We shared a lot of information regarding our larger family. He also used to share a lot of information with me and his other nephews as regards his immediate family members.
- g. That before the deceased herein passed on in the year 2000, he had been sick for a while.
- h. That within two (2) months or so before passing on, the deceased herein called a meeting of representatives of the Kapturgo family. He convened the same at his parcel of land at Kapshabatai village, more specifically at the boundary of the parcel of land which he had settled his 2<sup>nd</sup> and 3<sup>rd</sup> wives and their children. The meeting was held under one of the mugumo trees (there are two mugumo trees close to each other). Some of those who were in attendance were Nicholas Chebet Mutwol (myself), John Kangogo Chebii, Francis Kibos, Joseph Kibos, Andrea Cherop and Charles Cherop.
- i. That at the said meeting, the deceased herein made an Oral Will regarding how he wanted his properties to be shared out amongst his four (4) wives and their respective children. While doing that, he was mentally fit, sober and conscious of what he was doing. Put it in other words, his mental faculties were sharp and undiminished.
- j. That in his said Oral Will, he did the following: -
  - a. He bequeathed his 1<sup>st</sup> wife (Tula S (now deceased)) together with her children land reference No. Moiben/Chebara/188. The same by measurement is ten (10) acres. The 1<sup>st</sup> wife lived on the said parcel of land until she passed on. That is where her body was interred. It is on the same parcel of land where her children have been living on and benefiting therefrom all through (save for Beatrice S who lives elsewhere and does not benefit from the said land, and Elizabeth Jebiwott who predeceased the deceased herein). In addition to bequeathing the foregoing parcel of land (land reference No. Moiben/Chebara/188) to the 1<sup>st</sup> house, the deceased acquired 23 acres of land at a place called Garage within Uasin Gishu County and he bequeathed the said 23 acres of land to the 1<sup>st</sup> house. He also bequeathed the said house a centre plot at Chebiemit Trading Centre. The 1<sup>st</sup> house shares the said plot equally with the 2<sup>nd</sup> house. The 1<sup>st</sup> house was bequeathed 23 acres instead of 20 acres for it did not get land at Milimani Kamendi in Trans Nzoia County.
  - b. He bequeathed land reference No. Moiben/Chebara/222 at Kipshabatai village to the 2<sup>nd</sup> and 3<sup>rd</sup> houses. The said two (2) houses share equally the said parcel of land. There is a boundary which clearly shows the share of each house. Besides bequeathing the aforesaid parcel of land to the said two (2) houses, the deceased acquired 20 acres of land at Garage area within Uasin Gishu County. He bequeathed the said 20 acres of land to the 2<sup>nd</sup> house. He also bequeathed the 2<sup>nd</sup> house a ½ of a plot at Chebiemit trading centre. The 1<sup>st</sup> and 2<sup>nd</sup> houses equally share the said centre plot. He also bequeathed the 2<sup>nd</sup> house 2½ acres of land which land is in that area known as Milimani Kamendi in Trans Nzoia County.
  - c. In addition to bequeathing the 3<sup>rd</sup> house 11 acres of land comprised in land reference No. Moiben/Chebara/222 at Kipshabatai village, the deceased also bequeathed the 3<sup>rd</sup> house 20 acres of land at that place called Garage within Uasin Gishu County. He used the proceeds he had gotten from ELDOWAS in acquiring the said 20 acres of land. He bequeathed the said 20 acres of land to the 3<sup>rd</sup> house. He also bequeathed the 3<sup>rd</sup> house a ½ of a plot at Karandili Trading Centre in Uasin Gishu County. The 3<sup>rd</sup> and



4th houses share equally the said centre plot. He also bequeathed the 3rd house 2½ acres of land which land is in that area known as Milimani Kamendi in Trans Nzoia County.

- d. The deceased bequeathed the 4th house approximately 24 acres comprised in land reference No. Moiben/Moiben Block 3 (Kipsiliat)/119.
- a. That during that time the deceased insisted that his property should be distributed according to his wishes. He also told us (I was present when he was making his said Oral Will) that the interest of the 4<sup>th</sup> house should be jealously protected because the members of the said house are vulnerable.
- b. That the one who calls herself J S is not a daughter of the deceased herein. She was not a dependent of the deceased and neither is she a beneficiary of the deceased estate.
- c. That it is in the best interest of justice that the application now before this Honourable Court be dismissed for it completely lacks merit.

9. Besides that, the Summons is opposed by an affidavit sworn by John Kangogo Chebii who averred as follows: -

1. That I am a male adult of sound mind and a witness of the Respondent herein, conversant with this matter hence am competent and duly authorized to swear this affidavit.
2. That the contents of the summons for revocation or annulment of grant application dated 21<sup>st</sup> February, 2025, the affidavit in support of the said summons, jointly sworn by B K. S, Stanley Kipserem and S S on the said 21<sup>st</sup> February, 2025, the annexures thereto and even the certificate of urgency by the applicants' advocate have been read and explained to me by the Respondent's advocate on record in this cause and having understood the same I wish to state as follows.
3. That I know the parties in this matter. They are my very close relatives.
4. S Chemweno Lekich (deceased) was my paternal uncle "baba mdogo"). He died in the year 2000. He had only four (4) wives, namely: -
  - a. Tula S (deceased) 1<sup>st</sup> wife.
  - b. Teriki Taplilei Sirwaney- 2<sup>nd</sup> wife
  - c. Toyoi S - 3<sup>rd</sup> wife
  - d. Paulina Sokomo S (deceased) - 4<sup>th</sup> wife
5. B belongs to the 1st house, both Stanley and S belong to the 3rd house while J J S belongs to the 4<sup>th</sup> house.
6. The deceased herein is survived by a number of children and two (2) widows.
7. The deceased and his 1<sup>st</sup> wife were blessed with three (3) children one (1) son and two (2) daughters. B and Beatrice Jepkorir S of the 1<sup>st</sup> house are the only ones who are alive. Elizabeth Jebiwott S pre-deceased her father, the deceased herein.
8. The deceased and his 2<sup>nd</sup> wife were blessed with nine (9) children - four (4) sons and five (5) daughters. One of them is deceased.



9. The deceased and his 3<sup>rd</sup> wife were blessed with nine (9) children - four (4) sons and five (5) daughters. Only three (3) of them are alive.
10. The deceased and his 4<sup>th</sup> wife were blessed with five (5) daughters. One of them is deceased. Before the 4<sup>th</sup> wife was married by the deceased, she had already gotten three (3) children (Jane J being one of them - whom the applicants are agitating for) from a previous union. The said three (3) children are not the children of the deceased herein and have never been dependants of the deceased herein. They are (Jane J, who calls herself J S included) are therefore not beneficiaries to the deceased's estate.
11. I am informed by the respondent that Benjamin, Stanley and S are trying to introduce some other people as beneficiaries to the estate of the deceased herein. What I can say is that those persons (Salome Chemutai S and J S) are strangers to the estate of the deceased herein and they are being introduced in bad faith.
12. The deceased served our country as an Assistant Chief and thereafter he worked briefly with Kerio Valley Development Authority (K.V.D.A.). He was a very hardworking man and also an organized and visionary person.
13. Before his death, he had acquired a number of properties. He bequeathed and settled his four (wives and their respective children in their respective parcels of land.
14. He bequeathed and settled the 1<sup>st</sup> wife and her children in 10 acres of land at Cheborowo village within Elgeyo Marakwet County.
15. Besides bequeathing the said 10 acres to the 1<sup>st</sup> house, he also bequeathed the said 1<sup>st</sup> wife 23 acres of land at a place called Garage within Uasin Gishu County. He had also bequeathed them a centre plot at Chebiemit trading centre. The said 1<sup>st</sup> house shares the said plot equally with the 2<sup>nd</sup> house.
16. The deceased received a substantial amount of money as compensation from Eldowas and he spent some of it in acquiring the said 23 acres at Garage for the 1<sup>st</sup> house.
17. When the 1<sup>st</sup> wife passed on, her body was buried on her parcel of land at Cheborowo.
18. B is the only child from the 1<sup>st</sup> house utilizing all the properties bequeathed to the 1<sup>st</sup> house by the deceased. He is doing this to the exclusion of his surviving sister Beatrice Jepkorir S and her children. The other sibling who is deceased and who is survived by three (3) children was called Elizabeth Jebiwott S. Her said children have not gotten any share of their grandfather's estate.
19. Before his death, the deceased had bequeathed ten (10) acres plus 23 acres plus a 1½ of a plot at Chebiemit trading centre to the 1<sup>st</sup> house. In as far as I am concerned, B ought not to be complaining.
20. During his life time, the deceased similarly bequeathed and settled the 2<sup>nd</sup> wife and 3<sup>rd</sup> wife on the same parcel of land at a place called Kipshapatai village. The said parcel of land by measurement is approx. 22 acres. The 2<sup>nd</sup> and 3<sup>rd</sup> houses share the said parcel of land equally.
21. The boundary separating the two (2) portions of the said land at Kipshabatai and belonging to the said 2<sup>nd</sup> and 3<sup>rd</sup> houses runs through two (2) closely standing mugumo trees. The said boundary runs from North to the South direction. The portion on the Eastern side of the said land belongs to the 2<sup>nd</sup> house while the portion to the Western side belongs to the 3<sup>rd</sup> house. Each house owns eleven (11) acres contained in the said parcel of land.



22. The deceased bequeathed the 2<sup>nd</sup> house another portion of land measuring approx. twenty (20) acres at Garage area within Uasin Gishu County. The said parcel was also bought using part of the compensation the deceased had gotten from Eldowas. Besides the said properties, the deceased also bequeathed to the said 2<sup>nd</sup> house a ½ of a plot at Chebiemit trading centre. In fact, that is the plot that the 1<sup>st</sup> and 2<sup>nd</sup> house's share equally. He also bequeathed to the 2<sup>nd</sup> house 2½ acres of land which parcel of land is at that area called Milimani Kamendi in Trans Nzoia County. In total, the 2<sup>nd</sup> house has eleven (11) acres, plus twenty (20) acres, plus a 2/½ acres and a ½ of a plot at Chebiemit trading centre.
23. Similarly, he bequeathed to the 3<sup>rd</sup> house eleven (11) acres of land situated at Kipshabatai village. That is the one bordering that of the 2<sup>nd</sup> house and whose borders runs from North to South between two Mugumo trees.
24. The 3<sup>rd</sup> house was also bequeathed twenty (20) acres of land at Garage area within Uasin Gishu County by the deceased. He also bequeathed the said house 2½ acres at Milimani Kamendi area within Trans Nzoia County. He also bequeathed the 3<sup>rd</sup> house a half (½) of a centre plot at a place called Karandili which is within Uasin Gishu County. The other half (1½) he bequeathed to the 4<sup>th</sup> house. In total, the 3<sup>rd</sup> house owns eleven (11) acres plus twenty (20) acres, plus 2½ acres, plus a half (½) of a centre plot at the said Karandili area. Stanley, S and their mother continue to utilize and benefit from their portions of the deceased's estate and they are doing this to the exclusion of other beneficiaries.
25. The deceased bequeathed the 4<sup>th</sup> house a portion of land measuring approx. twenty-four (24) acres situated at Kapsiliot area within Uasin Gishu County. The entire parcel of land used to be thirty-six (36) acres, however twelve (12) acres belong to one Mr. Arap Murefu (now deceased) leaving the twenty-four (24) acres to the 4<sup>th</sup> house.
26. Some weeks before he passed on, the deceased herein called a meeting of representatives of the Kapturgo family. He convened the same at his parcel of land at Kapshabatai village, more specifically at the boundary of the parcel of land which he had settled his 2<sup>nd</sup> and 3<sup>rd</sup> wives and their children. The meeting was held under one of the mugumo trees (there are two mugumo trees close to each other). Some of those who were in attendance were Nicholas Chebet Mutwol, Francis Kibos, Joseph Kibos, Andrea Cherop, Charles Cherop and myself. On that particular day, he made an Oral Will declaring how he was bequeathing his properties to his four (4) wives and their respective children.
27. In his said Oral Will, he did the following: -
  - a. He bequeathed his 1<sup>st</sup> wife (Tula S (deceased)) together with her children la reference No. Moiben/Chebara/188. The same by measurement is ten (10) acres. The 1<sup>st</sup> wife lived on the said parcel of land until she passed on. That is where her body was interred. It is on the same parcel of land where her children have been living on and benefiting therefrom all through (save for Beatrice S who lives elsewhere and does not benefit from the said land, and Elizabeth Jebiwott who pre-deceased the deceased herein).
  - b. In addition, to bequeathing the foregoing parcel of land (land reference No. Moiben/Chebara/188) to the 1<sup>st</sup> house, the deceased acquired 23 acres of land at a place called Garage within Uasin Gishu County and he bequeathed the said 23 acres of land to the 1<sup>st</sup> house. He also bequeathed the said house a centre plot at Chebiemit Trading Centre. The 1<sup>st</sup> house shares the said plot equally with the 2<sup>nd</sup> house.



- c. The 1<sup>st</sup> house was bequeathed 23 acres instead of 20 acres for it did not get land at Milimani Kamendi in Trans Nzoia County.
  - d. He bequeathed land reference No. Moiben/Chebara/222 at Kipshabatai village to the 2<sup>nd</sup> and 3<sup>rd</sup> houses. I belong to the 2<sup>nd</sup> house. The said two (2) houses share equally the said parcel of land. There is a boundary which clearly shows the share of each house.
  - e. Besides bequeathing the aforesaid parcel of land to the said two (2) houses, the deceased acquired 20 acres of land at Garage area within Uasin Gishu County. He bequeathed the said 20 acres of land to the 2<sup>nd</sup> house. He also bequeathed the 2<sup>nd</sup> house a ½ of a plot at Chebiemit Trading Centre. The 1<sup>st</sup> and 2<sup>nd</sup> houses equally share the said centre plot. He also bequeathed the 2<sup>nd</sup> house 2½ acres of land which land is in that area known as Milimani Kamendi in Trans Nzoia County.
28. The deceased having fairly bequeathed his estate to his four (4) wives and their respective children before his death and further, the respective houses having settled on their respective portions and or having utilized and benefited from the same and further, them having not raised any complaint during the life time of the deceased and or immediately after the demise of the deceased, it is my prayer that the deceased wishes ought to be respected.
29. That Benjamin, Stanley and S have on several occasions stated that the Respondent and her sisters are passing clouds since they are women and that they ought not to inherit anything from their late father. The respondent and her sisters need the intervention and protection of this Honourable Court.
30. I know that one of the sisters to the Respondent has been sickly for a long time and that she is now disabled and in dire need of constant attention and care and that attention and care has been provided by the Respondent. The said Benjamin, Stanley and S want to unjustly deprive the Respondent and her siblings the benefit of the land their father bequeathed to them before he passed on. Needless to say that Jenifa, the Respondent, herein needs resources and support in order to take care of her sickly sister and also support her other vulnerable siblings. The parcel of land that was bequeathed by the deceased to the 4<sup>th</sup> house has been a source of livelihoods for the Respondent and her siblings and there is a need for the same to be jealously safe guarded.
31. I therefore pray that this Honourable Court intervenes on behalf of the Respondent and her siblings for they are vulnerable members of our society needing this Honourable Court's protection.
32. It is in the best interest of justice that the application now before this Honourable Court be dismissed for it lacks merit.
10. The Summons was canvassed by way of written submissions

### **Applicants submissions summary**

11. The Applicants filed their written submissions dated 22<sup>nd</sup> August 2025 in which the Learned Counsel on record Mr. Obinchi submitted on three (3) issues for determination as follows: -
- a. Whether the Applicants have established sufficient grounds for revocation of the Grant based on fraud, material non-disclosure and procedural impropriety?
  - b. Whether the Applicants have demonstrated irreparable harm warranting preservative orders?



- c. Whether the balance of convenience favours granting the relief sought?
12. On revocation of the Grant, counsel submitted that the Court has clear statutory jurisdiction under Section 76 of the [Law of Succession Act](#) to revoke a grant obtained through defective proceedings, fraud, concealment of material facts or untrue allegations. Reliance was placed on Albert Imbuga Kisigwa Vs Recho Kawai Kisigwa (Succession Cause No. 158 of 2000), where the court held that revocation is a discretionary power to be exercised judiciously and on sound grounds and Matheka & Another Vs Matheka [2005] 2 KLR 455, where the Court of Appeal outlined the guiding principles for revocation. Further support was drawn from Jamleck Maina Njoroge Vs Mary Wanjiru Mwangi (2015) eKLR, which reaffirmed that fraud, concealment, or untrue allegations are sufficient grounds for revocation.
  13. Counsel submitted that the Applicants met this threshold by demonstrating that the Respondent deliberately concealed material estate assets, particularly parcels Moiben/Chebara/222 and Moiben/Chebara/188 and falsely represented that the title deed for Moiben/Kipsiliat Block 3 (119) was lost while the Applicants were in possession of the original. Reliance was placed on In re Estate of Moses Wachira Kimotho (Deceased) [2009] eKLR and In re Estate of Julius Ndubi, where courts emphasized the duty of full disclosure in succession matters and condemned non-disclosure as fraudulent. Counsel also cited the definition of fraud from Black's Law Dictionary, arguing that the Respondent's conduct amounted to actionable fraud. It was further submitted that the exclusion of J S, a child of the deceased, was unlawful and contrary to Section 29 of the [Law of Succession Act](#) with guidance from Okello v Onyango [2023] KEHC 22828 (KLR) on the meaning of a dependant.
  14. On irreparable harm and preservative orders, Mr. Obinchi submitted that the Respondent was actively subdividing and attempting to alienate estate property without authority or consent of beneficiaries, exposing the Applicants to imminent and irreparable loss. Reliance was placed on Nguruman Limited Vs Jan Bonde Nielsen & Others [2014] eKLR on the principles of irreparable injury and prima facie rights, Order 40 of the Civil Procedure Rules and Pius Kipchirchir Kogo Vs Frank Kimeli Tenai [2018] KEELC 2424 (KLR). Counsel argued that land is unique and loss through unlawful subdivision cannot be adequately compensated by damages.
  15. On the balance of convenience, counsel relied on American Cyanamid Co. Vs Ethicon Limited (1975) AER 504, submitting that there is a serious issue to be tried, damages are inadequate and the balance tilts in favour of preserving the estate. The Applicants as beneficiaries stand to suffer permanent prejudice, while the Respondent would suffer no legitimate hardship since lawful dealings with estate property require compliance with succession law, including section 45 of the [Law of Succession Act](#).
  16. In conclusion, Mr. Obinchi submitted that the Grant was procured through fraud, concealment, and deliberate deception, rendering it fundamentally tainted. Invoking Section 3A of the [Civil Procedure Act](#), counsel urged the Court to prevent abuse of its process by revoking the impugned Grant and issuing preservative orders to safeguard the estate pending proper administration involving all lawful beneficiaries.

### **Respondent's submissions summary**

17. The Respondent filed her written submissions dated 10<sup>th</sup> September 2025 in which the learned Counsel on record Mr. Wafula submitted on one (1) issue for determination;

#### **a. Whether the Application dated 21<sup>st</sup> February 2025 is merited?**

18. The learned counsel for the Respondent, Mr. Wafula submitted that the dispute arises from a polygamous family setting in which the deceased had four wives and several children. During his



- lifetime, the deceased deliberately and consciously allocated specific properties to each of the four houses. Each house took possession, occupied, and utilized its allocated property and shortly before his death, the deceased reaffirmed these arrangements through a valid Oral Will, witnessed by competent witnesses.
19. Counsel submitted that under the Oral Will, the fourth house (comprising the fourth wife and her daughters) was bequeathed 24 acres of land comprised in Title No. Moiben/Moiben Block 3 (Kipsiliat)/119, together with half ( $\frac{1}{2}$ ) of a centre plot at Karandili Trading Centre. The deceased died on 16<sup>th</sup> January 2000, yet succession proceedings were not initiated until 2013, thirteen years later, due to lack of cooperation from the other houses. As a result, the fourth wife lawfully initiated succession proceedings strictly limited to the property allocated to her house. The grant was duly gazetted vide Kenya Gazette No. 5440 of 6<sup>th</sup> December 2013 and later confirmed on 28 August 2019.
  20. Mr. Wafula submitted that upon the death of the fourth wife on 20<sup>th</sup> December 2017, the Respondent lawfully took over the proceedings and completed the succession process. The land was distributed among the Respondent and her siblings strictly in accordance with the confirmed grant. In doing so, the Respondent took into account the fact that 12 acres within L.R. No. Moiben/Moiben Block 3 (Kipsiliat)/119 belonged to the estate of Chebet Kibowen Yego (Deceased), demonstrating her honesty and transparency. Consequently, allegations of fraud, non-disclosure, or procedural impropriety were unfounded.
  21. Counsel argued that the objectors filed the revocation application over eight years after confirmation of the grant and more than thirteen years after the death of the deceased, without explaining when or how they allegedly discovered the fraud or why they delayed for such an inordinate period. The application was therefore described as an afterthought, ill-motivated and aimed at overreaching the Respondent and her siblings, who are vulnerable members of society. On the law, counsel submitted that Section 76 of the *Law of Succession Act* sets out specific grounds for revocation of a grant and that none of these grounds had been established. The grant was lawfully obtained, transparently processed and its confirmation did not interfere with the shares of the other three houses, whose properties remain intact, occupied, and undistributed. The objectors have suffered no prejudice whatsoever.
  22. Mr. Wafula further submitted that the objectors approached the Court with unclean hands, having failed to disclose that the deceased left behind several assets beyond those cited and having deliberately ignored the existence of the deceased's Oral Will which governed distribution of the estate. Reliance was placed on In the Estate of Joseph Toroitich Cheronu (Deceased) (Succession Cause No. 46 of 2020) [2024] KEHC 10003 (KLR), where the Court held that inheritance should take into account the current establishment, domicile and residence of beneficiaries, emphasizing that succession is not a fresh start but is grounded in the lived realities and arrangements made by the deceased. Counsel reiterated that revocation of a grant is a discretionary power to be exercised judiciously and on sound grounds, and that even if fraud were alleged (which was denied), the Court must consider the consequences of disturbing a distribution that has already been completed without prejudice to the objectors. He added that the objectors are not beneficiaries of Title No. Moiben/Moiben Block 3 (Kipsiliat)/119 and their rights under the deceased's wishes remain fully intact.
  23. On the validity of the Oral Will, counsel submitted that it complied with Sections 8 and 9 of the *Law of Succession Act*, having been made voluntarily, before competent witnesses, when the deceased was of sound mind and within three months of his death. No evidence was tendered to challenge its validity. Mr. Wafula further submitted that the objectors improperly attempted to introduce J S and Salome Chemutai S as beneficiaries or dependants of the deceased, contrary to Section 29 of the *Law of Succession Act*. There was no evidence of dependency, maintenance, or adoption and the deceased never acknowledged them in his Will. They were therefore strangers to the estate, introduced solely to upset



the deceased's wishes and indirectly benefit the objectors. Finally, counsel submitted that the objectors' actions were discriminatory and motivated by gender bias against the fourth house, which consists solely of daughters, in violation of Article 27 of *the Constitution* of Kenya, 2010. The Respondent and her siblings, being vulnerable, were entitled to protection under Article 21(3) of *the Constitution*.

24. In conclusion, Mr. Wafula submitted that the grant was properly obtained and confirmed in respect of property lawfully bequeathed to the fourth house through a valid Oral Will; no fraud or impropriety was committed; the objectors have suffered no prejudice and the application is driven by ill motive and an attempt to disinherit the fourth house. He urged the Court to dismiss the objectors' application with costs and affirm the validity of the Oral Will.

### **Litigation History**

25. Before delving into the substantive merits of this Summons, it is just to give a brief litigation history of this succession cause being the Estate of S Chemweno Lekich (deceased) who passed away in 16<sup>th</sup> January 2000. This Succession Cause commenced way back in 3<sup>rd</sup> April 2013 when Paulina Sokomo Sikwanei (deceased) who was the widow of the deceased petitioned for the Grant of Letters of Administration Intestate. In the Affidavit in support of the Petition for Letters of Administration Intestate, the said Petitioner indicated that the deceased died intestate and left the following surviving him;
- a. Paulina Sokomo Sikwanei Widow (Petitioner)
  - b. J J S Daughter (1975)
  - c. Eunice Jemosop S Daughter (1982)
  - d. Veronica Jemaiyo S Duaghter (1986)
  - e. Nancy Jerop S Daughter (1990)
26. In the said Affidavit and more particularly in the list of inventory of all assets, it was indicated that the deceased left LR. KAPSILIOT PLOT NO. 119 measuring 39 Acres and in the list of liabilities, 12 Acres of land were for Patrick Maiyo Bett and Justine Kimutai Bett. A Grant of Letters of Administration intestate was not granted to the said Paulina Sokome Sikwanei on 16<sup>th</sup> March 2014 due to the disparity in the date when the deceased passed away both in the Kenya Gazette and certificate of death. Consequently, a Grant of Letters of Administration intestate was issued to Paulina Sokome Sikwanei on 9<sup>th</sup> February 2015 after the disparity of the dates of the death of the deceased was rectified.
27. The Respondent herein J J S filed Summons for Rectification of the said Grant dated 3<sup>rd</sup> September 2018 seeking an order that the Grant of Letters of Administration intestate issued on 9<sup>th</sup> February 2016 be rectified and amended by removing the name of Paulina Sokomo Sikwanei a.k.a Paulina Sokomo S (deceased) and replacing it the name of J J S. The Application was premised on the grounds that the said Paulina Sokomo Sikwanei a.k.a Paulina Sokomo S (deceased) died on 20<sup>th</sup> December 2017 and that the Grant of Letters of Administration dated 9<sup>th</sup> February 2015 had been issued to the said deceased person and the same should be rectified and amended to include of the applicant and removing the name of the said deceased person and the said grant had not been confirmed. Consequently, the Grant of Letters of Administration intestate was rectified and issued to the said J J S on 12<sup>th</sup> September 2018. Moreover, a Certificate of Confirmation of Grant was issued on 28<sup>th</sup> August 2019 coached as follows: -
- Rectified Amended Schedule

Name Description Of Property Share Of Heirs



J J S Moiben/Moiben Block 3(Kipsiliat)/119 6 Acres  
Eunice S Moiben/Moiben Block 3(Kipsiliat)/119 6 Acres  
Veronica Jemutai Moiben/Moiben Block 3(Kipsiliat)/119 6 Acres  
Nancy Jerop S Moiben/Moiben Block 3(Kipsiliat)/119 6 Acres  
J J S Moiben/Moiben Block 3(Kipsiliat)/119 12 Acres  
[To hold in Trust for the Estate of Chebet Kibowen Yego (deceased)]

### **Analysis and Determination**

28. I have read and considered the Summons for Revocation, the Replying Affidavits in opposition and the rival submissions. There are three (3) issues for determination by this Honourable Court: -
- a. Whether the Applicants have established sufficient grounds for revocation?
  - b. Whether the Applicants have demonstrated irreparable harm warranting preservative orders?
  - c. Whether the balance of convenience favours granting the relief sought?

### **Whether the Applicants have established sufficient grounds for revocation?**

29. The jurisdiction of this Honourable Court to entertain this application is provided for in section 47 of the [Law of Succession Act](#) as read with Rule 73 of the Probate and Administration Rules. Section 47 of the [Law of Succession Act](#) provides as follows: -

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.

30. The law relating to Revocation or annulment of a Grant is stipulated in section 76 of the [Law of Succession Act](#) which provides as follows: -

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.

31. In the case of *Jamleck Maina Njoroge Vs Mary Wanjiru Mwangi* [2015] eKLR the court set out the circumstances under which a grant may be revoked as follows: -

“The circumstances that can lead to the revocation of grant have been set out in Section 76, law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of a false statement or by or by concealment of something material to the case or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

32. The Applicants contend that the Respondent actively misrepresented facts to the court, particularly in relation to: the status of estate assets, by presenting the estate as comprising essentially Moiben/Kipsiliat Block 3 (119) while omitting other properties allegedly registered in the deceased’s name at the time of death, namely: Moiben/Chebara/188 and Moiben/Chebara/222. The alleged loss of the original title deed for Moiben/Kipsiliat Block 3 (119), which the Applicants assert was false, as they claim to be in lawful possession of the original title. On the other hand, the Respondent denies any misrepresentation and advances a substantive contextual response by stating that the deceased had distributed his estate inter vivos or through an oral will, settling each house on specific parcels of land long before his death and therefore: Moiben/Chebara/188 belonged exclusively to the 1<sup>st</sup> house, Moiben/Chebara/222 belonged jointly to the 2<sup>nd</sup> and 3<sup>rd</sup> houses and Moiben/Kipsiliat Block 3 (119) belonged to the 4<sup>th</sup> house, save for the portion owned jointly with Chebet Kibowen Yego (deceased). Moreover, the Respondent’s counsel submitted that the succession proceedings were initiated only in respect of the parcel allocated to the 4<sup>th</sup> house, in line with the deceased’s express wishes and longstanding family arrangements and that at the time succession was initiated, the Respondent’s late mother genuinely believed the title deed was lost, based on representations allegedly made by the 1<sup>st</sup> Applicant himself.
33. The Applicants also alleged deliberate concealment of several material facts, including existence of other beneficiaries, namely members of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> matrimonial houses, who were neither notified nor involved in the proceedings and J S, whom they claim is a biological daughter of the deceased and a beneficiary unjustly excluded. On the other hand, the Respondent contested the allegation of concealment arguing that no beneficiary was concealed as all houses were already settled on their respective parcels, the Applicants were aware of the proceedings but chose not to participate, J S is not a daughter of the deceased but a child from the Respondent’s mother’s prior relationship and therefore a stranger to the estate. The Respondent also stated that no estate property was concealed, since the omitted properties had already been allocated and possessed by the respective houses and succession was limited to the 4<sup>th</sup> house’s parcel as per the deceased’s oral will and customary arrangements. The Respondent further stated that the Applicants approached the court with unclean hands, asserting that they themselves concealed numerous properties already enjoyed by their houses while seeking to interfere with the only parcel sustaining the 4<sup>th</sup> house.



34. Moreover, the Applicants alleged non-disclosure of material facts and argued that that even assuming the Respondent's narrative of prior distribution is correct, there remained a legal obligation to disclose to the court with regards to the existence of all heirs, whether or not they were to benefit from the particular property and the existence of all assets. On the other hand, the Respondent argued that the court was not misled because the succession cause related only to the parcel relevant to the 4<sup>th</sup> house, disclosure of already distributed assets would have served no practical purpose and would have disrupted settled expectations and that the Applicants' long delay (over 20 years after death) disentitles them to equitable relief.
35. The burden of proof is vested upon the Applicant to satisfy this court that their exist elements under the law which qualify for revocation of letters of grant of representation or that which has been confirmed by the court. This is what the court had in mind in the case of *Home Secretary v Rehman* (2001) UKHL 47 (2003) 1 AC 153 at paragraph 55. "The civil standard of proof always means more likely than not. The only higher degree of probability required by the law is the criminal standard. But ... some things are inherently more likely than others. It would need more cogent evidence to satisfy one that the creature seen walking in Regent's Park was more likely than not to have been a lioness than to be satisfied to the same standard of probability that it was an Alsatian. On this basis, cogent evidence is generally required to satisfy a civil tribunal that a person has been fraudulent or behaved in some other reprehensible manner. But the question is always whether the tribunal thinks it more probable than not."
36. In order to determine the issue at hand, there must be proof that any of the circumstances described under section 76 of the *Law of Succession Act* has occurred. In this case, the applicants have alleged that the grant was obtained fraudulently through concealment of material facts and non-disclosure of material facts to the court. A grant may be revoked upon production of evidence proving the grounds in Section 76 *Law of Succession Act*, whereupon the court will exercise its discretion and revoke the grant. In the case of *Albert Imbuga Kisigwa Vs Recho Kawai Kisigwa* [2016] KEHC 1528 (KLR), Mwita J. made pertinent remarks on principles for the revocation of a grant as follows: -
- “(13) Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”
37. The Respondent knew that the deceased had 4 houses and also had children. Nevertheless, she named the 4<sup>th</sup> House as the survivors of the deceased and one parcel of land being Land Reference No. Moiben/Kipsiliat Block 3 (119) as forming the estate of the deceased. The Respondent did not list the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Houses beneficiaries and did not list other assets left by the deceased among others Land Reference numbers Moiben/Chebara/188 and Moiben/Chebara/222. This amounts to material non-disclosure or concealment of material facts as provided under section 76 of the *Law of Succession Act*. In similar circumstances, the court in *In Re Estate of Moses Wachira Kimotho (Deceased)* [2009] KEHC 3958 (KLR), the court pointed out the importance of disclosing all material facts before a court of Law while seeking letters of administration and confirmation thereof, in the following terms:
- “I am certain that had the applicants been made aware of the application for the confirmation of grant by being served they would have brought to the fore their aforesaid interest in



the estate of the deceased and the resultant grant would have taken care of those interests. Further had the respondent been forthright and candid and included the applicants as beneficiaries of a portion of the estate of the deceased as purchasers for value, the court in confirming the grant would have taken into account their interest in the estate of the deceased. As it is therefore the grant was obtained fraudulently by making of a false statement and or concealment from court of something material to the cause. The respondent knew of the applicants' interest in the estate of the deceased yet she chose to ignore them completely in her petition of letters of administration intestate. She also ignored them completely when she applied for the confirmation of the grant.” (see also *In re Estate of Magangi Obuki (Deceased)* [2020] KEHC 348 (KLR))

38. In the case of *Matheka & Another Vs Matheka* [2005] KLR, the Court of Appeal set out the guiding principles for revocation of a Grant as follows; -

“From the foregoing, it is clear that a grant may be revoked either by application by an interested party or on the Court’s own motion. But even when revocation is by the Court upon its own motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of a false statement or by concealment of something material to the case, or that the grant was obtained by means of untrue allegation of facts essential in point of law or that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate. The grant may also be revoked if it can be shown to the Court that the person to whom the grant has been issued has failed to produce to the Court such inventory or account of administration as may be required.”

39. I am of the view that these representations as already indicated above were not innocent errors but deliberate falsehoods intended to mislead the court, facilitate confirmation of the grant and enable unilateral control and subdivision of estate property to the exclusion of other beneficiaries. These omissions were calculated and strategic, aimed at portraying the Respondent and in general the 4<sup>th</sup> house as the sole legitimate heir and securing confirmation of the grant without scrutiny. The concealment of beneficiaries and estate property strikes at the core duty of disclosure in succession proceedings and is sufficient on its own to warrant revocation. In the case of *Al-amin Abdurahman Hatimy Vs Mohamed Abdulraehman Mohamed & Another* [2013] eKLR the court held that: -

“By virtue of Rule 26, the Law of Succession required that any application for issuance of a Grant must be accompanied by a consent duly signed by all persons entitled to the share in the same estate. The Respondent did not give notice to any of the other beneficiaries of his intention to seek a Grant neither did he present a consent signed by all the beneficiaries. He deliberately sidelined them undoubtedly with the aim of inheriting the entire estate himself. It is clear that the Respondent obtained the Grant by way of concealment of material facts, and as such the proceedings leading to the issuance of said Grant to the Respondent were defective in substance.”

40. In *Re Estate of Ndinguri Karugia (Deceased)* [2017] eKLR Hon. Lady Justice Muigai held as follows; -

“From the detailed chronology of the documents that the Respondent lodged for grant of letters of administration intestate, she did not disclose all the children and family of the Deceased. The non-disclosure of all beneficiaries of the deceased’s estate amounted to concealment of material facts. The Grant and the confirmed Grant were fraudulently



obtained by means of an untrue allegation or fact essential in point of law to justify the Grant.”

41. I also take note that J S, whom the Applicants claim is a biological daughter of the deceased and a beneficiary was unjustly excluded even in the distribution matrix of the impugned Certificate of Confirmation of Grant dated 28<sup>th</sup> August 2019 particularly with regards to Land Reference No. Moiben/Kipsiliat Block 3 (119). With regards to this, the Respondent contested the allegation arguing that J S is not a daughter of the deceased but a child from the Respondent’s mother’s prior relationship and therefore a stranger to the estate. I have carefully perused the summons for confirmation of Grant dated 19<sup>th</sup> October 2018 filed by the Respondent. In that Summons, the Respondent lists only herself and four (4) of the Deceased’s daughter as survivors and beneficiaries. This is despite the Respondent having full knowledge and indeed her acknowledgement that J S is a child from her mother.

42. The question then is why with this knowledge did the Respondent fail to include as beneficiaries all the children of the Deceased. The persons who qualify as dependants of a Deceased person and therefore beneficiaries to the estate are defined by Section 29 of the *Law of Succession Act* as follows; -

29. Meaning of dependant

For the purposes of this Part, "dependant" means-

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.

43. The Respondent who had full knowledge of the identities of all the Deceased’s children and/or dependants deliberately failed to name her as a beneficiary in the distribution matrix of the Certificate of Confirmation of Grant.

#### **Whether the deceased died testate or intestate?**

44. The Analysis of the Evidence in this succession cause is indicative of one predominant factor in making of an oral WILL by the deceased as an instrument of devolving the estate to the beneficiaries. Why is this important? The court had been invited at an opportune time to distribute the assets of the deceased within the spectrum of an intestate estate. It was the Court’s expectation that inheritance justice through this intestate estate distribution justice has been found within their borders of what I can refer as land rights which accrue from the ancestral lineage of the deceased. Unfortunately, from the recent litigation the court presumably was wrong that a final decree in the form of a certificate of confirmation of grant had been issued as a basic legal instrument to deliver the appropriate shares to each of the beneficiaries. This court was confronted with an existence of an oral WILL as compelling new evidence for that grant to be revoked and the proceedings to start denovo under the protocol of an oral WILL

45. The doctrine on the making of a last WILL and testament on the distribution of an estate of a deceased person, is primarily governed by the *Law of Succession Act* which shall be purposively interpreted with the Articles of *the constitution* more specifically the equality clause in Article 27 (4) of the Supreme



Law of the Republic of Kenya. Testamentary Succession is a highly formalistic, personal act allowing a person, commonly known as a testator to control the disposition of his or her estate to take effect after the death subject to the legal limitations of compulsory heirship. A WILL either written or oral is a legal act allowing a person to control the disposition of his or her estate after death subject to legal formalities as provided in the [Law of Succession Act](#). It is strictly a personal act and cannot be delegated. One of the cardinal principle in the making of the WILL is that it is ambulatory and can be changed or revoked by the in testator before his or her death. The right to make a WILL is statutory and must comply with the legal requirements as provided in the Succession Act. One of the key guideline conditions is the Testamentary capacity. What this means that Testator must be 18 years old and above and of sound mind, understanding the nature of his or her estate, heirs, and the act of making a WILL which becomes a legal instrument upon being propounded by the executor for the court to adopt it as a scheme providing the devolution of Land Rights and other movable assets to the beneficiaries as contemplated in Section 29 of the [Law of Succession Act](#).

46. It is now trite in Kenya legal system that the doctrine on the making of a last oral Testamentary of a deceased person regarding the distribution of his or her estate, is primarily governed by Section 9 of the [Law of Succession Act](#). As it would be seen shortly an oral WILL is a valid, legally recognized, yet strictly regrated method of testamentary disposition where a person speaks his or a her final wishes for his or her property usually on his or her death bed in the presence of witnesses.
47. Most importantly, I take note that from the affidavits on record, the Respondent and her witnesses consistently assert that the deceased allegedly made an oral will approximately two months before his death, that the will was allegedly made under a mugumo (“simotwo”) tree, that the will allegedly distributed the estate among the four matrimonial houses and that several witnesses claim to have been present. From my own reading of the averments by the Respondent’s witnesses, the Respondent relies on this alleged oral will to justify the limiting succession proceedings to one parcel of land, excluding other properties and beneficiaries from disclosure and treating the estate as already distributed. Under section 9 of the [Law of Succession Act](#), an oral will is only valid if it is made before two or more competent witnesses; and if the testator dies within a period of three months from the date of making the will: Further, section 10 of the [Law of Succession Act](#) provides that an oral will may be proved by evidence of the independent witnesses who heard it. Basically, the burden of proof lies squarely on the person alleging the will.
48. The rule of evidence is clear that “He who alleges must prove”. The maxim has been grounded in law under Section 107 of the [Evidence Act](#). The same was enunciated by late Justice Majanja in *Evans Otieno Nyakwana Vs Cleophas Bwana Ongaro* [2015] eKLR when he said that: “...As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of section 107 (1) of the [Evidence Act](#) (Chapter 80 of the Law of Kenya) which provides:

“ 107.

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist...”



49. Section 108 of the Evidence Act states that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. For avoidance of doubt, the provision states as follows: -

“The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.”

50. In addition, section 109 of the same Act states: -

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

51. In this instance, the burden of proof lay with the Respondent to prove her case on whether the oral will was propounded by this Honourable Court. I have read and considered the record relating to this succession cause and upon careful examination of the entire record, the following deficiencies emerge that no application was made to this court seeking recognition or proof of an oral will as have alleged by the Respondent and her witnesses, no structured evidence was tendered to demonstrate the exact words used by the deceased, the precise terms of distribution and compliance with section 9 of the Law of Succession Act requirements. Most significantly, the Respondent did not petition for probate and instead, she petitioned for and obtained a Grant of Letters of Administration Intestate which is legally inconsistent with the existence of a will. On the totality of the evidence produced on record, there is no written will, the alleged oral will has neither been propounded nor has it been proved in accordance with sections 9 and 10 of the Law of Succession Act.

52. For an oral WILL to be considered valid and enforceable it must meet the following strict criteria: Witness Requirement: It must be made in the presence of two or more competent witnesses Time Limitation: the testator must die within a period of three months from the date of making the oral WILL Testamentary Capacity: The testator must be of sound mind, 18 years or older and free from coercion, fraud, or undue influence. Free Property: The oral WILL can only dispose of the free property of the deceased (property they have the right to dispose of). Proof and Legal Principles: For court validation (Probate) an oral will needs to be documented in writing, usually by a witness. Conflicting witness accounts may limit the WILL's validity to points confirmed by an independent witness. The testator's intention must be clear.

53. The law has laid down the criteria upon which the WILL can be invalidated. “A will can be invalidated if the WILL is procured through fraud, coercion, undue influence, suspicious circumstances or mistake to take away the free agency of the testator. The court in *Julius Kinyua & Another v Mary Mukwamugo Njagi & 4 Others* (2016) eKLR stated that. To my mind the errors or mistakes pointed out in the will not only point towards a possibility that the deceased was not only confused, but that he was not in a proper frame of mind to identify and will his property. That he was not in a position to know and approve the contents of the will when he executed it. In the view of this court, the will was not only made under suspicious circumstances, but the petitioners sought to effect its alleged intentions in a very suspicious manner” (See also Section 7 )

54. This dispute concerns the validity of the oral WILL which has been introduced by the Applicants to challenge the intestate estate distribution of the shares to beneficiaries. The Court in *Hall vs Hall* (1865-69) LR 1 P&D 481 the court observed that: "To make a good will a man must be a free agent. But all influences are not unlawful. Persuasion, appeals to the affections or ties of kindred, to a sentiment of gratitude for past services, or pity for future destitution, or the like, - these are all legitimate, and may



be fairly pressed on a testator. On the other hand, pressure of whatever character, whether acting on the fears or the hopes, if so exerted as to overpower the volition without convincing the judgment, is a species of restraint under which no valid will can be made. Importunity or threats, such as the testator has not the courage to resist, moral command asserted and yielded to for the sake of peace and quiet, or of escaping from distress of mind or social discomfort, these, if carried to a degree in which the free play of the testator's judgment, discretion or wishes, is overborne, will constitute undue influence, though no force is either used or threatened. In a word, a testator may be led but not driven; and his will must be the offspring of his own volition, and not the record of someone else's."

55. In my Judgement there are factors from the evidence that provide solid, and derived evidence that the purported oral WILL made by the deceased did not reflect his true testamentary intentions and therefore rendering it voidable.
56. Further, had the court found that the deceased left a valid oral will, the law is clear that the proper grant would have been a Grant of Probate not letters of administration intestate as per the provisions of section 53(a) of the *Law of Succession Act*. Failure to obtain a Grant of Probate where a will exists is a fundamental procedural defect going to the jurisdiction and legality of the grant. It is my finding after the clear reading of the record that there is no sufficient evidence on record to prove the existence or validity of the alleged oral will as provided by sections 9 and 10 of the *Law of Succession Act*. The Respondent's reliance on the alleged oral will is unsupported by proper proof and cannot form a lawful basis for succession. Moreover, the record does not clearly establish whether the estate is testate or intestate, rendering the proceedings legally uncertain and that if the estate were testate, the Respondent ought to have petitioned for and secured a Grant of Probate and not a grant of letters of administration intestate. The grant on record was therefore obtained without clarity as to the nature of the estate, contrary to the statutory scheme of the *Law of Succession Act*.
57. A holistic evaluation of the record, weighed against the competing arguments of both parties and the applicable provisions of the *Law of Succession Act*, leads to the inescapable conclusion that the succession proceedings were tainted by non-disclosure of material facts, concealment of relevant information and misrepresentation of material facts. Central to the Respondent's defence is the assertion that the deceased had distributed his estate inter vivos or by way of an oral will, thereby justifying the limitation of disclosure and succession to Moiben/Kipsiliat Block 3 (119). However, a clear examination of the record reveals that no oral will was ever proved, produced or formally established in accordance with sections 9 and 10 of the *Law of Succession Act*. In the absence of a propounded will, the Respondent's presentation of the estate as limited to a single parcel, while omitting other properties registered in the deceased's name and failing to fully disclose the existence of other heirs, amounted to a misrepresentation of the true status of the estate and a concealment of facts that were material to the court's exercise of discretion at both the petition and confirmation stages.
58. In conclusion, the evident deliberate failure by the Respondent to involve the applicants at the time of filing these proceedings, failing to list them among the beneficiaries or seek their consent or renunciation was in my view bad faith and amounted to concealment of material facts. My conclusion is that the proceedings leading to the issuance of the grant are defective in substance and that material information was not disclosed to the court in that had the court been made aware that there were other beneficiaries who were interested in the deceased's estate the court would have hesitated to issue the grant.

#### **Whether the Applicants have demonstrated irreparable harm warranting preservative orders?**

59. Having found that the grant was obtained through non-disclosure, concealment and misrepresentation of material facts, the court must then consider whether the Applicants have



demonstrated a sufficient basis for the issuance of preservative orders pending the final determination of the succession cause.

60. On preservative orders as prayed, the High Court is vested with wide powers under the Law of Succession Act to make such orders as may be necessary to preserve the estate pending distribution to the legitimate heirs and to ensure that the ends of justice are met. Section 47 of the Law of Succession Act, states that the Court has power to preserve the assets of the deceased's estate if it is being wasted. The Section reads as follows: -

“The High Court shall have jurisdiction to entertain any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient, provided that the High Court may for the purpose of this Section be represented by the Resident Magistrate appointed by the Chief Justice.”

61. The test for irreparable harm, as set out in Halsbury's Laws of England, Third Edition, Volume 21, page 352, requires that: -

“Where the court interferes by way of injunction to prevent an injury in respect of which there is a legal remedy, it does so upon two distinct grounds; first that the injury is irreparable and second that it is continuous. By irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages, an injunction may be granted, if the act in respect of which relief is sought is likely to destroy the subject matter.”

62. In *Re Estate of Simon Kimendero (deceased)* [2020] eKLR, the Court noted that of specific significance to preservative order in respect of estate property is that: -

- a. The Applicant has an arguable case;
- b. The property is estate property; and
- c. The property is likely to be dissipated or wasted away.

63. Additionally, In *Re Estate of Jeremiah Ngiri Kibati (Deceased)* [2019] eKLR and *Re Estate of Elijah Ngari (Deceased)* [2019] eKLR, the Court in dealing with the issue of issuance of conservatory orders in succession matters cited with approval the decision of the Court in *Japhet Kaimenyi M'ndatho v M'ndatho M'mbwiria* [2012] eKLR noting that an Applicant in an application for preservative orders has to satisfy the following conditions;

- a. That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the Applicant unless preservative orders of inhibition are issued.
- b. That the refusal to grant orders of inhibition would render the Applicant's suit nugatory.
- c. That the Applicant has arguable case.

64. From the record, it is evident that the Applicants have discharged this burden. The evidence demonstrates that following confirmation of the impugned grant, the Respondent proceeded, or was poised to proceed with acts of subdivision, alienation and exclusive control of Moiben/Kipsiliat Block 3 (119), treating it as the 4<sup>th</sup> House sole property. These actions were undertaken on the strength of



a grant now found to be defective in substance. The risk posed is not speculative; rather, it is real and imminent as continued dealings with the estate property would fundamentally alter its character, potentially introduce third-party interests and place the property beyond the reach of the court. Such acts would occasion irreversible prejudice to the Applicants and other beneficiaries, prejudice that cannot be adequately remedied by damages in the context of succession proceedings.

65. Further, succession matters concern the orderly preservation and distribution of a deceased's estate for the benefit of all lawful beneficiaries. Once estate property is subdivided, transferred, charged or otherwise disposed of on the basis of an invalid grant, restoration becomes legally and practically onerous. The Applicants have demonstrated that absent preservatory orders, the substratum of the dispute would be destroyed, thereby rendering the revocation proceedings nugatory and undermining the authority of the court. In these circumstances, the balance of justice tilts decisively in favour of preservation. The issuance of preservatory orders is therefore not punitive but protective intended to maintain the status quo, safeguard the estate, and ensure that the eventual redistribution following revocation is meaningful, lawful and effective. Accordingly, the Applicants have sufficiently demonstrated irreparable harm warranting the grant of preservatory orders pending the proper administration of the estate in accordance with the law.

#### **Whether the balance of convenience favours granting the relief sought?**

66. The question that follows is whether the Applicants have met the legal threshold for the grant of a temporary injunction restraining any dealings with the estate properties, including Moiben/Kipsiliat Block 3 (119). The legal framework governing the grant of injunctive relief is well established in our jurisprudence. The foundational principles were articulated in *Giella vs Cassman Brown* (1973) EA 358 and have been consistently applied by our appellate court, including in *Nguruman Limited Vs Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR, where the Court of Appeal observed that; -

“In an interlocutory injunction application the applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favor. These are the three pillars on which rests the foundation of any order of injunction interlocutory or permanent. it is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”

67. The Court of Appeal in *Floris Piezzo & Another –vs- Giancarlo Falasconi* (2014) eKLR, while considering whether an injunction can issue in a Succession Cause expressed itself as follows; -

“We have carefully considered the grounds of appeal, rival written and oral submissions, and the law. The application before the high Court was for temporary injunction to restrain the appellants from dealing with the suit premises in a manner inimical to the estate of the deceased. The question which arose and had to be determined first was whether the Court had jurisdiction to grant an injunction in a Succession Cause. The appellants took the position that the Court had no such jurisdiction whereas the Respondent took the contrary position. However, the High Court was persuaded that Rule 73 of the Probate and Administration Rules reserved the Court's inherent jurisdiction to allow for the grant of injunctions in deserving cases. We are in total agreement with this conclusion. We have no doubt at all that the *Law of Succession Act* gives the Court wide jurisdiction in dealing with testamentary and administration issues of an estate. Indeed, Section 47 of the said Act gives the Court jurisdiction to entertain any application and determine any dispute under



the Act and to pronounce such decree and orders as may be expedient. It cannot be said that such decrees and orders would exclude injunction orders. In other words, we are of the same view that Section 47 of the Act gives the Court all-embracing powers to make necessary orders, including injunctions where appropriate to safeguard the deceased's estate. This section must be read together with Rule 73 of the Probate and Administration Rules which further emboldens Court's jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court. We would imagine such orders would also include injunctive orders."

68. On the question of whether the Applicant has established a prima facie case, I am in agreement with the Court of Appeal's definition in *Mrao Ltd Vs First American Bank of Kenya and 2 others* (2003) KLR 125, which was also cited with approval in *Moses C. Muhia Njoroge & 2 others Vs Jane W Lesaloi and 5 others* (2014) eKLR, where a prima facie case was defined as;

"A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later."

69. First, the Applicants have established a prima facie case with a probability of success. The court has already found that the grant was procured through non-disclosure, concealment and misrepresentation of material facts, particularly through reliance on an alleged oral will which finds no evidentiary support on record. The Applicants have further demonstrated that the Respondent has treated Moiben/Kipsiliat Block 3 (119) as the 4<sup>th</sup> House exclusive property, to the exclusion of other beneficiaries and has either undertaken or threatened subdivision, transfer or other dealings. This conduct, when viewed against the finding that the grant is defective, firmly establishes a prima facie case justifying the court's intervention to restrain further dealings pending proper administration of the estate.
70. Secondly, the Applicants have shown that they stand to suffer irreparable harm if the injunction is not granted. The record demonstrates a real risk that, absent restraint, the Respondent may continue to transact with the estate property, thereby introducing third-party interests and permanently altering the character of the estate. Such acts would defeat the very purpose of the revocation proceedings and render any eventual redistribution illusory. The harm apprehended is therefore neither remote nor speculative but imminent and incapable of adequate redress through damages.
71. Finally, the balance of convenience tilts overwhelmingly in favour of preserving the estate. The issuance of a temporary injunction would merely maintain the status quo and ensure that no party gains an unfair advantage through dealings founded on an invalid grant. Conversely, refusal to grant the injunction would expose the estate to dissipation and place the court in the untenable position of attempting to reverse completed transactions arising from a defective process. In succession matters, the court's primary duty is to safeguard the estate for the benefit of all lawful beneficiaries pending lawful distribution.
72. In light of the demonstrated defects in the grant and the real risk of continued interference with estate property, the Applicants have met the legal threshold for injunctive relief. Accordingly, a temporary injunction prohibiting any dealings with all estate properties, including Moiben/Kipsiliat Block 3 (119), is both necessary and just pending the proper administration of the estate in accordance with the law.



73. In view of the foregoing, taking into account the totality of the record, the findings made herein, the applicable provisions of the Law of Succession Act and the overriding duty of the court to ensure the lawful, fair and transparent administration of estates, the following orders are insync:
- a. That the Grant of Letters of Administration Intestate dated 12<sup>th</sup> September 2018 issued to the Respondent herein J J S, together with the Certificate of Confirmation of Grant arising therefrom dated 28<sup>th</sup> August 2019, is hereby revoked in its entirety pursuant to section 76 of the Law of Succession Act having been obtained through non-disclosure, concealment and misrepresentation of material facts and in proceedings that were defective in substance.
  - b. That preservation orders do issue restraining the respondent, her agents, servants, assigns or any other person claiming through her from selling, transferring, charging, leasing, subdividing or in any other way dealing with, interfering with or intermeddling with the parcel of land known as Moiben/Kipsiliat Block 3(119).
  - c. That a temporary injunction do issue prohibiting any dealings with ALL estate properties including Moiben/Kipsiliat Block 3(119).
  - d. That a declaration be and is hereby made that the purported Oral WILL is voidable as an instrument to devolve the inheritance rights to the beneficiaries.
  - e. That a declaration is hereby made that a denovo trial be held in this Succession Cause in the interests of justice
  - f. That a Status Conference be held on 11.2.2026to distill the following:
    - i. The appointment of new administrators under Section 66 of the Law of Succession Act.
    - ii. That a pre-trial conference to lay the framework on case management to expedite the conclusion of this long standing Succession Cause.
  - g) The costs of this application shall abide the outcome of the final decree commonly referred to us certificate of confirmation of grant. Orders accordingly. Each party has leave to apply.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 27<sup>TH</sup> JANUARY 2026**

.....

**R. NYAKUNDI**

**JUDGE**

