

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET

SUCCESSION CAUSE NO. 143 OF 2013

(FORMELY ITEN SPMC NO.17 OF 2010)

**IN THE MATTER OF THE ESTATE OF SAMWEL KIGEN ANWAN
(DECEASED)**

KIPKERING

YATOR

.....PETITIONER/RESPONDENT

VERSUS

STANLEY KIPKOECH KIGEN

CAROLINE JEBET KIGEN

CHRISTINA JEPTUM BOEN

CHRISTOPHER

KOECH

KIMITEI

.....OBJECTORS/APPLICANTS

RULING

1. Before this Court for determination are Summons for Revocation and Annulment of Grant dated 13th December 2024. The Objectors/Applicants seek orders that;

- i. Spent.**
- ii. Spent.**
- iii. The Grant of Letter of Administration Intestate made in favour of the Petitioner/Respondent and other beneficiaries be revoked and/or annulled.**

iv. Costs of this application be in the cause.

2. The Application is filed through **Messrs J. K. Kiplagat & Co. Advocates** and is expressed to be brought under **Section 76, 37 and 47 of the Law of Succession Act** and **Rule 44 and 73 of the Probate and Administration Rules**. It is premised on the grounds set out thereon and the contents of the Supporting Affidavit sworn by the 1st Objector, **Stanley Kipkoech Kigen**.
3. The salient facts of the depositions made by the 1st Objector in the said Affidavit deposed as summarised are as follows. that he is one of the beneficiaries of the estate of their late father **SAMWEL KIGEN ANWAN** which estate is the subject of these proceedings. He annexed a copy of the death Certificate as SK1(a)
4. That it has come to his knowledge as well as that of the other dependants that the Petitioner herein secretly and fraudulently applied for and obtained Grant of letters of Administration intestate of the estate of their late father **SAMWEL KIGEN ANWAN** and had the same confirmed on 11th May 2011 totally excluding him and/or the children of the deceased in the list of distribution. He annexed a copy of the Certificate of Confirmation as SKA2
5. That the Chief's letter dated 21st December 2024 clearly indicates that the deceased left behind the children who are real beneficiaries of the estate. He annexed a copy of the Chief's letter as SK3
6. The 1st Objector deposed that the particulars of fraud and/or malice on the part of the petitioner in the course of his process to obtain the grant are as follows;

- i. failing to disclose to this Honourable court that the deceased died intestate leaving behind the objectors/applicants and other surviving dependants.
 - ii. There was fraud and malice on the part of the petitioner in the course of the process to obtain the grant.
 - iii. Making false statements of facts and concealing from the court or deliberately suppressing some vital facts material to the case.
 - iv. knowingly and deliberately administering the estate of the deceased to himself and locking out other legal dependants
7. He deposed that the entire process of the confirmation of the grant herein was not only fraudulent but also completely defective and improper in that the same was done without his knowledge and the knowledge of the other beneficiaries.
8. the petitioner herein was granted the whole parcel of land known as LR NO. CHERANGANY /CHEBORORWA/117 measuring approximately 14.0 ha. That the same has however not yet been fully distributed.
9. That the petitioner falsely and fraudulently indicated in his petition that he is the only beneficiary of the estate and failed to include him and the rest yet the deceased left behind the following dependants
 - a) Christina Jeptum Bowen – Widow
 - b) Stanley Kigen – Son
 - c) Caroline Jebet Kigen – Daughter
 - d) Joseph Kimitei Kigen – Son of their deceased brother. He annexed as SK1(b) the relevant Death Certificate

10. That in addition to the above averments, the applicants herein fully depended on their deceased father who provided them with farmland which was their family's main source of income. That he also maintained them as a family prior to his death and they therefore qualify as dependants and beneficiaries of his estate. Lastly, the 1st Objector deposed that he has no reason to doubt that the petitioner has not complied with the provisions of **Rule 26 of the Probate and Administration Rules** and the consent which was purportedly executed is null and void on account of the same having been made fraudulently.

The Replying Affidavit

11. The Application was opposed by the Petitioner/Respondent vide his Replying Affidavit filed on dated 17th January 2025. He deposed that the application is fatally defective, raises no triable issues, is vexatious, frivolous, scandalous and an abuse of Court process and thus the same ought to be dismissed *in limine*.

12. The Petitioner further deposed that the Objectors have not proved that they are dependants as provided under **Section 29 of the Law of Succession Act**, and that they have not met the threshold for granting orders for revocation as provided for under **Section 76 of the Law of Succession Act** and that further, that they have not established why it has taken them 13 years to move the Court to have the Grant issued in the year 2011 be revoked in the year 2024. That hat they have also not demonstrated that the Court files were missing as alleged and thus the same is an afterthought.

13. The Petitioner maintained that the instant application has been brought with falsehood, concealment of material facts and misrepresentation since

the Applicants have failed to disclose to the Court that they had filed a similar application dated 16th April 2013 which was dismissed for want of prosecution. The Petitioner contended that the late Samuel Kigen Anwan was never married and had no children as alleged by the Objectors. The Petitioner further contended that the instant application is meant to act as an appeal of **Eldoret CMELC No. 212 of 2018** in which judgment has been entered in his favour.

Submissions

14.The application was canvassed vide written submissions. The Objectors filed submissions dated 25th April 2025 while the Petitioner filed submissions dated 28th April 2025.

The Objectors' Submissions

15.Regarding the revocation of grant, Counsel cited **Section 76 of the Law of Succession Act**. Counsel submitted that the said Section provides that a grant of letters of administration can be revoked if obtained fraudulently, with defective proceedings, or by untrue allegations, or if the administrator fails to proceed diligently with administration.

16.Counsel pointed out that it is clear from the Petition for letters of administration and the affidavit in support thereof, that the Petitioner is the brother to Samwel Kigen Anwan, and that the Objectors are the children, widow and dependant of the estate herein. Counsel submitted that the Objectors have been in use and occupation of the subject land since childhood and for the 3rd Objector since marriage to the deceased.

17.Counsel maintained that it is very unfair for the Petitioner/Respondent to solely inherit the estate when the children and the widow of the deceased

Samwel Anwan herein are still alive, and utilizing the land and they are the true beneficiaries of the estate, and are indeed dependants within the meaning of **Section 29 of the Law of Succession Act**.

18.Counsel urged that grant of letters of administration is therefore defective, having been issued to a person who ranks very low in order of consanguinity. Counsel observed that by concealing the true beneficiaries from the court, the Petitioner hoodwinked the court into confirming the grant in his favour and disinheriting the true beneficiaries.

19.Further, Counsel submitted that the Petitioner did not demonstrate any beneficial interest in the land to warrant him taking out the letters of administration. Counsel urged that the grant was illegally obtained and ought to be revoked. Counsel cited **Section 66 of the Law of Succession Act**, as regards to whom a grant of letters of administration can be made.

20.Counsel further urged that it is trite law that the court cannot sanction an illegality, neither can it shy away from it. Counsel cited the case of **Board of Trustees National Social Security Fund vs Michael Mwaloi [2015] eKLR** where the Court of Appeal cited with approval the decision in the Ugandan Court of Appeal in **Makula International Ltd vs. His Eminence Cardinal Nsubuga Another (1982) H.C.B I** which had held that;

"A court of law cannot sanction what is illegal, and illegality once brought to the attention of court overrides all questions of pleading, including any admission made thereon."

The Petitioner's Submissions

21. With regard to whether the Objectors have proved to be dependants of the deceased, Counsel for the Petitioner cited **Section 29 of the Law of Succession Act** on the definition of a dependant. Counsel submitted that the 1st Objector did not provide any birth Certificate to prove that he was a child of the late Samwel Kigen Anwan together with Caroline Jebet Kigen and Joseph Kimitei Kigen.

22. That he also did not produce any evidence to prove that Christina Boen was a wife of the Deceased. Counsel submitted that the Petitioner in his response to the application dated 9th December 2024 at paragraph 10 of his Replying Affidavit stated that the Deceased Samwel Kigen Anwan was never married and he had no children and therefore it was important for the Applicants to prove that they were children and widow to the Deceased.

23. That the legal burden to so prove rested with them a burden that he submits they have failed to discharge. In this regard, he relied on the case of re estate of **Patrick Mwangi Wahiga [2015] eKLR; re Estate of DMM (Deceased)(2018) eKLR** and the case of **Ann (Suing as the Legal Representative of the Estate of K.G Deceased) UMG(Civil Appeal E036 of 2022((2023) KEHC 1816 (KLR)**

24. He therefore urged that the Objectors application dated 9th December 2024 has failed to meet the required threshold set under **Section 107(1) of the Evidence Act** to the effect that they have failed to discharge the required standard of the burden of proof. Counsel maintained that Stanley Kipkoech Kigen and Caroline Jebet Kigen have failed to prove that they were children of the deceased and there was no material that was placed before the court to confirm that Christina Jeptum Boen was a wife of the Deceased.

25. That there was no marriage certificate that was produced, there was no evidence that there was a traditional marriage and dowry was paid, they have not stated when Christina was married and when the purported children were born and they have also not proved that Christopher Koech Kimitei whom it is alleged to be grandson of the Deceased was being maintained and being taken care of by the Deceased.

26. Additionally, Counsel submitted that the Chief's letter dated 14/09/2010 does not prove marriage and hence the same does not support marriage. Counsel reiterated that there was also no evidence that was laid by the Applicants that they were children of Christina Jeptum Boen and therefore the Applicants have failed to prove that they were dependants of the Deceased.

27. On whether the grant should be revoked, Counsel submitted that revocation of grant is provided for under **Section 76 of the Law of Succession Act**. That the said section provides that revocation can either be set at the instance of an Applicant or can be by the court *suo moto*. However, Counsel added that it is a prerequisite that the conditions for revocation as set out under **Section 76** must be proved. He relied on the case of **Jamleck Maina Njoroge -Vs-Mary Wanjiru Mwangi [2015] eKLR** in this regard.

28. Counsel further submitted that the power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. Counsel added that it is not a discretion to be exercised whimsically or capriciously; there must be evidence of wrong doing for the

Court to invoke **Section 76 of the Law of Succession Act** and order for revocation or annulment of a grant.

29.Counsel submitted that when a court is called upon to exercise this discretion, it must take into account the interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be in the interest of justice.

30.Counsel submitted that the Objectors have invited this Court to revoke the grant of letters of Administration issued to the Petitioner on the grounds that the Petitioner secretly and fraudulently applied and obtained grant of letters of Administration intestate by totally excluding them in the list of distribution of the assets and that the Consent which was purportedly executed is null and void on account of the same having been made fraudulently obtained and he proceeded to outline the particulars of fraud. Counsel urged that there are certain principles or requirements that must be met for the allegation of fraud to be admitted by a Court of Law.

31.Counsel observed that the first principle is that an allegation of fraud be specifically pleaded and proved. In **Vijay Moriaria Nansigh Madhusigh Darbar & Another [2000] eKLR** where **Tanui J (as he then was)** stated as follows: -

"It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts."

32. In regard to the second principle, Counsel submitted that burden of proof of an allegation of fraud is on the person alleging as was held in *Ndolo v Ndolo*[2008] IKLR (G&F)742. Counsel cited **Rule 26 (a) and (2) of the Probate and Administration Rules** and **Section 51(1) of the Law of Succession Act** in this regard.

33. Counsel submitted that the Objectors have not proved concealment due to the following reasons; that in their application they have not annexed P&A form 5, 11, 12, 38, 39 and 80 in order to confirm to this Honourable Court that their names were omitted and they did not participate nor sign on the above stated forms, further they did not annex the purported consent to distribution in which they have stated they did not sign and the same were procured by fraud.

34. In the absence of such evidence, Counsel urged that this Court is not in a position to confirm that the Petitioner concealed relevant material facts involving this Estate and that the Objectors have failed to discharge their burden of proof as far as concealment of material fact is concerned.

35. From the foregoing precedents, Counsel submitted that it is settled law that the allegation of fraud is a serious allegation that must be strictly pleaded and proved and that the burden of proof is on the person alleging and the standard of proof is higher than that which is required in civil cases, which is on a balance of probability and lower than the one in criminal cases which is beyond reasonable doubt.

36. Counsel submitted that the Objectors specifically pleaded fraud but they fall short of proving that the consent to confirmation was forged, that the said consent was not annexed, there was no expert handwriting evidence

nor was there any Government Examiners Reports to confirm that the signatures were forged in the absence of such evidence it cannot be said that the Objectors have proved fraud against the Petitioner.

37.Regarding material non-disclosure by the Objectors, Counsel submitted that the Objectors failed to disclose to the Court that they had filed a similar application dated 16th April 2013, and the same was dismissed for want of prosecution, and that the said application sought similar prayers as the ones being sought in the current application and that same can be seen at annexure KY1 to the Replying Affidavit.

38.Counsel submitted that the extent and consequence of material non-disclosure was discussed in the case of **Bahadurali Ephraim Chmaji Vs Ali Noor Jamal & 2 Others Civil Appeal No. 210 of 1997** and the same was also reiterated in the case of **Signature Tours & Travel Limited-VS-National Bank of Kenya Limited [2017] eKLR.**

39.That the only reason why the Objectors filed the instant application is because the Petitioner became successful in respect to **Eldoret Chief Magistrate E&L Case No. 212 of 2017** and that this can be clearly seen in the Certificate of Urgency 13th December 2024 attached to that application dated 9th December 2024. Counsel maintained that this instant application was filed to act as an appeal to orders given in **Eldoret CM E&L No. 212 of 2017** and so it ought to be dismissed.

Determination

40.Having appreciated parties' pleadings and submissions as herein summarised, it is my considered opinion the only issue for determination is;

- i. **Whether the Objector’s Objection has satisfied the provisions for the revocation of a grant.**
- ii. **Whether the requirement that fraud must be specifically pleaded and that the particulars thereof stated on the face of the pleadings applies in Succession proceedings**

41. The relevant provision of the law that provides for the circumstances under which a grant can be revoked and/or annulled is Section 76 of the Law Succession Act which is to the following effect;

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 has ordered or allowed; 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.”

42. Under the said **Section 76 of the Act** therefore, a Court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party.

43. The Objectors want the Court to revoke the Grant herein on grounds that the said Grant was obtained through fraud and by concealment of material facts important to this case. The Objectors allege that the Petitioner failed to disclose to this Court that they are in fact the legitimate beneficiaries of the estate of the deceased being the wife and children of the deceased.

44. They also aver that the parcel of land known as **LR No. Cherangany/Chebororwa/117** measuring approximately 14.0 ha belongs to the estate of the deceased and that in the Confirmation of the Grant, the Petitioner, without demonstrating the beneficial interest that he had on the parcel of land, awarded the entire parcel to himself to the total exclusion of

the Objectors and without their knowledge and/or consent yet it is upon this parcel of land that the Objectors aver they grew up and were brought up in by the deceased and it is where they still live to date.

45. The Petitioner/Respondent on the other hand has refuted the allegations by the Objectors/Applicants by asserting that the Objectors have not tendered any documentary evidence or proof as per the requirements of **Section 107 of the Evidence Act** to show that they are beneficiaries in the estate, that they are related to the deceased in any way as alleged for reasons that according to the Petitioner, the deceased did not have a spouse or any children surviving him. Counsel in his submissions on behalf of the Petitioner also contended that the Objectors did not avail any relevant proceedings and/or pleadings of the Lower Court to demonstrate the fraud and malice alleged.

46. On the submissions of want of pleadings and/or proceedings of the lower court as submitted by Counsel for the Petition, whereas it is indeed correct that none was availed by the Objector's, the court does point out at this stage that the entire record of the lower court record appertaining to the subject deceased estate, is indeed in the court file as is the norm and so by dint of **Section 47 of the Law of Succession Act** and in the interest of the justice of this case, the court will refer to these proceedings as and when it deems necessary for purposes of ascertaining the truthfulness or otherwise of any matter alleged and also to satisfy itself on what the actual position of what transpired before the lower court is. This is because this provision of the Act gives the Court the power to pronounce itself on any Application before it in a manner that it considers just and expedient. It provides that:

“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...”

47.Further, the court is clothed with the requisite jurisdiction as provided under **Rule 73** of the **Probate and Administration Rules** which provides as hereunder;

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

48.The above said, the court will now deal firstly with the issue for determination on the legal requirements on an allegation of fraud where pleaded. It has been argued by the Petitioner that the allegation that the grant was obtained by way of fraud cannot stand for reasons that as is required by the law, the issue of fraud was not specifically pleaded and the particulars of the alleged fraud laid out. This then raises the issue of whether the requirement to plead and particularise fraud in pleadings applies to Succession proceedings.

49.The requirement to particularize fraud in pleadings is provided for under **Order 2 Rule 4** of the **Civil Procedure Rules** as follows;

Particulars of pleading [Order 2, rule 4]

(1) Subject to sub rule (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing

(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and

(b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

50. Rule 63 of the Probate and Administration Rules lists the provisions of the **Civil Procedure Rules** that apply to Probate and Administration proceedings. It states;

(1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Order 5, rule 2 to 34 and Orders 11, 16, 19, 26, 40, 45 and 50 (Cap. 21, Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.

51. From the above provision of the **Rule 63 of the Probate and Administration Rules**, it is clear that the provisions of Order 2 and the appurtenant Rules are not applicable in proceedings under the Succession Act. For this reason, as in pleadings in other civil cases, it is not

requirement for a party seeking for a revocation of grant on the grounds of fraud to state the particulars of the alleged fraud in its pleadings. This being the case then, the submissions by Counsel that these Objection proceedings are incompetent for reasons that the allegations of fraud made against the Petitioner were not in conformity with the laid down procedure must fail and I now hereby so find.

52. Now moving to the substratum of the Objection itself, the court has considered the pleadings, submissions as well as the lower court record. What is clearly apparent and is not denied by the Petitioner is the averment by the Objectors that he is a brother to the deceased. Indeed, he himself stated as much in Form P&A 80 of his Petition for the Grant of Letter of Administration dated 6th October 2010. Even as the Court notes that the Petitioner is herein challenging the Objector's relationships to the deceased as wife and children as they have stated, it is a very significant observation that the court makes that in the same said Petition as filed by the Petitioner in Form P&A 5, the Petitioner listed the survivors of the deceased as;

- a. Joseph Kimitei Kigen
- b. Stanley K Kigen
- c. Caroline Jebet Kigen

53. All these persons named are the Objectors herein except for the widow. Moreover, to the Petitioner's Petition for the grant of Letter of Administration, he annexed thereto a Letter from the Chief. It is dated 14th September 2010 and was prepared by Chief J.K Rutto of Chebororwa Location, Marakwet West District. The salient particulars of this letter is to

the effect that upon his demise, the deceased left behind a second wife and children *“now residing at the plot.”* The letter further states that the first wife died leaving behind one child named Joseph Kimiti Kigen who the court notes is not a party herein. He gave the name of the second wife as Christina Jeptum Bowen and her children as Stanley K. Kigen indicated to be a son, and Caroline Jebet Kigen indicated to be a daughter. Again, these are the Objectors in these proceedings.

54. Before delving further into this issues, it is important to note that it is a fundamental legal principle that parties are bound by their own pleadings. This is so that in all matters before court, parties then cannot present new cases or arguments outside what they initially filed, ensuring fairness and defining the scope of the dispute for both sides. Also, courts cannot create issues not raised in the initial pleadings. See Independent Electoral and Boundaries Commission & another v Mule & 3 others [2014] KECA 890 (KLR) where the court held that;

Parties were bound by their pleadings which in turn limited the issues upon which a trial court could pronounce. The judge, no matter how well-intentioned, went well beyond the grounds raised by the petitioners and answered by the respondents before her and thereby determined the petition on the basis of matters not properly before the Court. To that extent, the court committed a reversible error.

55. This being the case, the Petitioner herein, having himself stated in his own pleadings that the Objectors herein are in fact dependants of the deceased, and as per the Chief’s letter, children of the deceased, who were in fact residing upon the parcel of land that is the subject matter of these

Succession proceedings at the time of the deceased demise, cannot now turn around and claim otherwise and demand that they avail proof of kinship. In my considered view therefore, the burden of proof as envisaged under **Section 107 of the Evidence Act** that he has cited, given the stated relationship of the Objector's as per his own pleadings and buttressed by their evidence as adduced, now shifts to the petitioner to prove that the Objectors are not the wife and the children of the deceased as they have averred. This burden the Petitioner has not at all discharged.

56. Further to the above, the Petitioner, being the brother of the deceased has also not demonstrated the beneficial interest that he has or may have had to the deceased estate in these proceedings and even at the time of filing the petition for grant to the total exclusion of the Objectors. **Section 29 of the Law of Succession Act** defines who a dependant of a deceased is. The Section also goes ahead to list these dependants in their order of priority to inherit the estate of a deceased 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.

57. From the above provisions, it goes without saying the wife and children of a deceased person rank higher in priority to siblings. It follows therefore that the Objectors should have been the 1st to apply for the grant in the instant case and not the Petitioner.

58. But even assuming the that the Petitioner had any beneficial interest to the estate of the deceased that he needed to actualize, then procedure that he ought to have complied with is provided under the provisions of **Rule 22 of the Probate and Administration Rules**. He was required by law to first taken out citation proceedings and cited the Objectors herein seeking that they obtain the grant failure to which he would then be free to apply. The relevant provision of the Rule provides as hereunder;

22. Citation to accept or refuse or to take a grant

A citation may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

59.In the case of **Josiah Muli Wambua – deceased, Nairobi Succession**

Cause No. 2557 of 2012 [2014] eKLR, Musyoka J explained the rationale behind citations as follows: -

“In intestacy, citation issue only in cases where no petition has been lodged in court. Citations are intended to trigger the process of applying for letters of administration intestate in circumstances where the persons entitled to apply are not willing or are slow in moving the court in that behalf. The citor should not be a person who has himself already applied for the grant, for the citor should only apply for grant after the citee fails to so apply.”

60.This is because the provisions of Rule 26(1) of the Probate and Administration Rules provides the following guidelines on the making of grants. It provides;

26. Grants of letters of administration

(1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.

(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.

61.In light of the above, it is my finding that the Petitioner consciously, knowingly and deliberately petitioned the court for the Grant of Letters of Administration of the deceased estate with the sole and singular intention of disinheriting the Objectors and appropriating to himself the deceased estate comprising of **LR No. Cherangany/Chebororwa/117** measuring approximately 14.0 ha. This is an act that was clearly fraudulent.

62.Further, in taking note of the submission made by Counsel for the Petitioner that a similar application for revocation of the grant was made before the lower court and the same was dismissed for want of prosecution, a perusal of the record of the court shows that indeed upon the grant being confirmed in the lower court on 11th May 2011, an Application for revocation of the same was made. It is dated 16th April 2013. However, the record shows that the Hon Trial Magistrate in her order declining to issue the orders sought stated that the court had no jurisdiction to grant the reliefs sought for reasons that the same could only be granted by the High Court. She therefore directed that the file be placed before the Judge at Eldoret High Court for directions and subsequent orders. It is therefore not correct that the application was dismissed as submitted.

63.Over and above this, the court also notes that the lower court proceedings were before the Magistrate's court at Iten and had to be transferred to Eldoret High Court. In taking cognisance of the back and forth and logistical bottlenecks that ordinarily appertain to the bring up of files during such transfers, even where the courts are in the same court station let alone different court stations and in different counties, I will give the Objectors the benefit of the doubt when they aver that this transfer caused the delay and subsequent late filing of their Objection before this court for the reasons given. I am therefore satisfied that they did raise their

Objection it time but the resolution of the same delayed by dint of the appurtenant legal procedure and the delay occasioned by the transfer.

64.The upshot of my conclusions herein is that I am satisfied that the Objectors have met the conditions set out in **Section 76 of the Succession Act** on the revocation of a grant and more particularly that the grant was obtained fraudulently by the Petitioner whose sole intention was to disinherit the Objectors whom he completely excluded from the succession proceedings before the lower court.

65.Accordingly, therefore, the Letters of Grant of Administration issued to the Petitioner herein on 16th may 2010 and confirmed on 11th May 2011 are now hereby revoked. Further being satisfied that the conduct of the Petitioner in disinheriting the Objectors was conscious intentional and deliberate, the court orders that he pays the costs of these Objection proceedings.

Read dated and Signed at ELDORET on 20th February 2026

E. OMINDE
JUDGE