

deceased's intestate property and/or any of its subdivisions thereof.

2. The application is founded on the grounds on the face of the application and is supported by the affidavit of the applicant, sworn on the same date. Before the application could be heard, however, the respondent raised a preliminary objection dated 17th Day of November 2025 framed as follows-

i. THE Honourable Court lacks the pre-requisite jurisdiction to revoke a Grant issued in a foreign court.

3. The Preliminary Objection was canvassed via written submissions. The respondent's submissions are dated 9th February 2026. He is terse and crisp in his submissions. The Grant was resealed pursuant to the provisions of Section 77 of the Law of Succession Act. Any party wishing to challenge the validity of the will can only do so in the Court that issued the original grant, in this case the Court in the State of California USA, reference is made to the decision in **Re Estate of Anthony Timothy Mariano (Deceased) [2023] eKLR** and the decision in the Supreme Court of India in **Ramesh**

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4. The applicant's submissions are dated 9th February 2026. The issue as framed for determination is-

i. Whether the High Court of Kenya, as a Probate Court, has jurisdiction to revoke a Grant of Probate originally issued by a foreign Court but subsequently resealed in Kenya.

5. The applicant urges that the resealed grant was utilized to administer the intestate estate of the deceased. This is what is challenged. It is submitted that, to this extent, the grant was fraudulently obtained as it did not disclose that it enumerated assets that were not included in the will, and it excluded some beneficiaries.

6. Reference is made to the decision in **Cosimo Policino v Tony Kent [2014] eKLR** for the submission that the Grant ought to be revoked for failing to disclose all the beneficiaries of the deceased. The applicant, therefore, urges that the preliminary objection be dismissed with costs.

ANALYSIS AND DETERMINATION

7. I have reviewed the pleadings herein as against the preliminary objection. The main issue is that the applicant claims the respondent used a resealed will to manage an estate that should have been treated as intestate and failed to list all beneficiaries. I must now decide if the preliminary objection should be upheld based on these facts.

8. The legal threshold of a preliminary objection was well articulated in the *locus classicus* case of **Mukisa Biscuit Manufacturing Ltd v West End Distributors Ltd [1969] EA 696** as follows-

A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which, if argued as a preliminary point, may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.

11. More recently, in the case of **Independent Electoral and Boundaries Commission v Jane Cheperenger and others (2015) eKLR**, the Supreme Court stated;
[21] ...The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of

the objection against the profligate deployment of time and other resources. And secondly, it serves the public cause of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword for winning a case otherwise destined to be resolved judicially and on the merits.

9. As surmised above, the applicant is not challenging the validity of the will, but how the Grant of Probate was utilised to administer the intestate estate and the exclusion of the beneficiaries. The Preliminary objection does not address these ancillary issues, meaning therefore that it does not dispose of the suit.

10. On account of the foregoing, the preliminary objection is dismissed.

11. The Summons for revocation shall proceed to hearing. The respondent will file a response within 21 days. The applicant is granted leave to file a further affidavit if needed within 7 days of service. Mention before the Deputy Registrar on 29th April 2026 to confirm compliance and take further directions.

12. On account of the relationship of the parties, there shall be no order as to costs

13. Parties at Liberty to Appeal. The party exercising their right of appeal to do so within 30 days.

It is so ordered.

**SIGNED, DATED AND DELIVERED IN VIRTUAL COURT
THIS 6th DAY OF MARCH 2026.**

**P. M. NYAUNDI
JUDGE**

In the presence of:

Ng'alamou Court Assistant

Maingi for Administrator

Ms. Mutuko for Applicant/Protestor

ORIGINAL