



**Gichuki & another v Njenga & 3 others (Civil Appeal 413 of 2019)  
[2026] KECA 374 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KECA 374 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL 413 OF 2019  
W KARANJA, K M'INOTI & LA ACHODE, JJA  
FEBRUARY 27, 2026  
IN THE MATTER OF THE ESATE OF NGONDU  
MUGO ALIAS NGONDU MUGO "A" (DECEASED)**

**BETWEEN**

**NAOMI NJERI GICHUKI ..... 1<sup>ST</sup> APPELLANT**

**SALOME NYAMBURA KIMANI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JAMES KIHUMBA NJENGA ..... 1<sup>ST</sup> RESPONDENT**

**WILLIAM P NGUGI MWANGI ..... 2<sup>ND</sup> RESPONDENT**

**JOSEPH KIMWAKI NG'ANG'A ..... 3<sup>RD</sup> RESPONDENT**

**ZEPHANIA NGUGI ..... 4<sup>TH</sup> RESPONDENT**

*(Appeal from the judgment and decree of the High Court of Kenya  
at Nairobi (Ougo, J.) dated 30th May 2019 in HCSC No. 88 of 2009)*

**JUDGMENT**

1. This appeal arises from the judgment of the High Court at Nairobi (Ougo, J.) dated 30<sup>th</sup> May 2019 and relates to the estate of Ngondu Mugo, also known as Ngondu Mugo "A" (the deceased), who died on 19<sup>th</sup> June 2008 domiciled at Gathangari in Kiambu County. By the impugned judgment, the High Court dismissed a summons by the appellants, Naomi Njeri Gichuki (1<sup>st</sup> appellant) and Salome Nyambura Kimani (2<sup>nd</sup> appellant) for annulment and revocation of a grant of probate of the estate of the deceased issued on 16<sup>th</sup> November 2009 jointly to the 1st respondent, James Kihumba Njenga, and the 2<sup>nd</sup> respondent, William P. Ngugi Mwangi.



2. The record before us shows that after the death of the deceased, the 1<sup>st</sup> and 2<sup>nd</sup> respondents petitioned for grant of probate of the will of the deceased dated 28<sup>th</sup> April 2008. The petition indicated that the only asset of the estate was the property known as Githunguri/Gathangari 335 (the suit property) measuring approximately 11.2 acres, and that the deceased was survived by seven beneficiaries who were named and listed in the will and the petition. The beneficiaries were the 1<sup>st</sup> appellant, the widow of the deceased's brother, and six children of three sisters of the deceased.
3. On 23<sup>rd</sup> July 2010, the two administrators applied for confirmation of the grant and a certificate of confirmation of grant was issued on 22<sup>nd</sup> February 2011, with each beneficiary getting 1.6 acres of the suit property. The suit property was subsequently subdivided into seven parcels bearing the numbers Githunguri/Gathangari/3373 to 3379.
4. On 18<sup>th</sup> September 2014, the appellants who are widows of two of the deceased's brother and step-brother, filed a summons to revoke or annul the grant on the grounds that the proceedings leading to the grant were defective in substance; that the grant was obtained fraudulently on the basis of false statements, representations and concealment of material facts; and that the same was obtained by means of untrue allegations of fact to justify the grant. By way of reliefs they prayed for cancellation of the subdivisions of the suit property and reverting of the same to the original parcel, Githunguri/Gathangari 335, and an order for the subdivision of the suit property equally between the appellants alone.
5. The 1<sup>st</sup> appellant contended that the suit property was registered in the name of the deceased during demarcation as trustee; that the deceased died intestate and that his alleged will was a forgery; that the appellants had lived all along on the suit property; that the succession proceedings were conducted secretly without their knowledge and that as a result, the appellants were disinherited.
6. The administrators opposed the summons vide a replying affidavit sworn on 15<sup>th</sup> October 2014 in which they averred that the will was a genuine will of the deceased duly executed and witnessed; that they were appointed executors under the will; that the deceased bequeathed the suit property equally to the beneficiaries; that the deceased had asked the 2<sup>nd</sup> appellant to vacate the suit property and move to their property at Ithanga because she was not a beneficiary; that as soon as the deceased disclosed the contents of his will, the 1<sup>st</sup> appellant placed a caution of the suit property; and that the executors had faithfully executed their mandate and divided the suit property as directed by the deceased.
7. At the hearing, the 1<sup>st</sup> appellant and five witnesses testified in support of the appellants' case while the respondents called four witnesses. After considering the evidence and the parties' submissions, the High Court framed two issues for determination, namely whether the will dated 28<sup>th</sup> April 2008 was valid in law and whether the grant should be revoked.
8. On the first issue the court found that the onus was on the appellants to prove that the will was forged and that they had failed to do so. The court found the evidence of the advocate who drew the will credible and noted that the appellants had not suggested that the deceased did not have capacity to make the will and, in any event, the soundness of mind of a testator is presumed unless it is proved otherwise. The court also found that the appellants had not adduced any evidence of coercion or undue influence in the making of the will by the deceased and that as regards the contention that he was registered as trustee of the suit property, the court noted that he had actually distributed the suit property to the children of his siblings and that none of them was bequeathed such a big portion as to raise suspicion. Accordingly, the court answered the first question in the affirmative, namely that the will was valid.
9. On the second issue, the court found that the appellants had not adduced any evidence of fraud or false statements and that at the confirmation of the grant, all the beneficiaries signed a consent order, save



the 1st appellant. As regards the appellants' contention that they were not aware of the proceedings, the court found that from the dates when the 1st appellant placed cautions on the suit property, she was fully in the picture. Accordingly, the court answered the second issue in the negative, namely that the grant would not be revoked. Being a family dispute, the parties were direct to bear their own costs.

10. The appellants were aggrieved and lodged the current appeal.

There are ten grounds of appeal, some of which are repetitive and overlapping. In all, the appellants fault the trial court for:

1. Failing to evaluate the evidence whether the suit property was trust or free property which the deceased could lawfully dispose through a will;
2. Failing to appreciate the suspicious circumstances surrounding the making of the will, and the proceedings leading to confirmation, and rectification, which should have stirred and disturbed the conscience of the court;
3. Abdicating its duty, to scrutinise the evidence of the propounders, vigilantly and jealously, to satisfy the conscience of the court that the deceased was of sound disposing mind;
4. Ignoring evidence indicating the will was the outcome of others and not the free will of the deceased;
5. Ignoring evidence indicating lack of testamentary capacity, memory and understanding by the deceased;
6. Sanctioning, overlooking, and glossing over relevant evidence of coercion, fraud, forgery and falsehood;
7. Treating the 2<sup>nd</sup> Applicant in a manner that was discriminatory, insensitive, unjust, and in contravention of Article 159 (2)(a) of *the Constitution*;
8. Holding that the deceased was of sound mind and that he knew of and understood the content of the alleged Will;
9. Finding, without evidence, that the 2<sup>nd</sup> Applicant has Land elsewhere to settle, other than the suit property and
10. Holding against evidence that the deceased had capacity to make the will.

11. As appreciated by the appellants in their written submissions, all the above grounds raise three issues, namely, whether the trial court erred by failing to hold:

- i. That the suit property was family property and incapable of disposal by a will as the deceased purported to do;
- ii. That the alleged will of the deceased was not valid because it was made in suspicious circumstances; and
- iii. That the deceased lacked capacity to make the alleged will.

12. Before the hearing of the appeal, the appellant's applied in this Court on 24<sup>th</sup> September 2019 for leave to adduce further evidence. The evidence that they wished to adduce was a medical report of the deceased dated 6<sup>th</sup> July 1992 and a letter dated 27<sup>th</sup> November 2007 from the District Officer Githunguri who had handled disputes between the appellants and the respondents. That application



was dismissed vide a ruling dated 7<sup>th</sup> March 2025 after the Court found that the evidence in question could have been discovered and produced with due diligence. Because of that ruling, we shall ignore submissions by both sides that are based on those documents because they are not validly part of the record.

13. In support of the appeal, the appellant's learned counsel, Mr. Baiya relied on written submissions dated 4<sup>th</sup> August 2020 and submitted that there was evidence that the suit property was registered at demarcation in 1958 in the name of the deceased in trust for his father's family and that the appellants were living on the suit property where they were growing tea and other crops. It was also contended that their late husbands were interred in the suit property. Counsel submitted that by virtue of section 5(1) of the *Law of Succession Act* (the Act), the deceased could only will away his free property, and that the suit property was not free property of the deceased.
14. It was counsel's further submission that the High Court erred by failing to inquire whether the deceased had mental capacity to make the will. It was contended that the onus was on the propounder of the will to satisfy the Court that the testator was of sound mind. In support of the proposition, the appellant's relied on the decisions in *Vijay Chandrakant Shah v. The Public Trustee, CA. No. 63 of 1984* and *In re Estate of G.K.K. (Deceased) [2013] eKLR*.
15. Counsel challenged the manner in which the suit property was distributed. While admitting that the 1<sup>st</sup> respondent was awarded 1.6 acres of the suit property, he submitted that the other beneficiaries were awarded more while the 2<sup>nd</sup> appellant, who had lived on the suit property got nothing. He added that the beneficiaries who were present when the deceased made the will got the lion's share of the suit property.
16. It was the appellants' further submission that the deceased was very ill when he made the will, which created suspicion about the circumstances under which it was made. It was contended that the presence of the Assistant Chief suggested undue influence and that the deceased did not make the will of his own free volition. Counsel further contended that the reference in the will to a property which was not included in the petition suggested lack of testamentary capacity on the party of the deceased.
17. The appellants also took issue with the rectification of the grant, where the 4<sup>th</sup> and 5<sup>th</sup> beneficiaries were removed and each replaced by another beneficiary. It was also submitted that the estimated value of the suit property was false and misleading and that some of the documents were alleged to have been signed by parties who were already dead.
18. For the foregoing reasons, the appellants urged the court to allow the appeal and set aside the judgment of the trial court.
19. The respondents, represented by Mr. Mwangi, learned counsel, opposed the appeal and relied on written submissions dated 1<sup>st</sup> September 2020. It was contended that the deceased's will was valid under section 11 of the Act because the deceased had thumb-printed it and it was witnessed by two witnesses.
20. As regards the capacity of the deceased to make the will, it was submitted that section 5(3) of the Act presumes a testator to be of sound mind and further that section 5(4) casts the burden on a person who alleges that the testator did not have capacity to make the will. Mr. Mwangi contended that the appellants did not discharge their burden merely alleged that because he was ill, he did not have capacity.
21. Counsel also submitted that there was no evidence that the deceased made his will under duress or undue influence. He contended that the mere presence of beneficiaries during the occasion did not constitute coercion or undue influence. He emphasised that the deceased, who did not have a wife or



- children, distributed the suit property to his relatives including the 1<sup>st</sup> appellant. As regards the 2<sup>nd</sup> appellant, counsel submitted that the evidence showed that she was married to one Mwangi Mugo alias Wagithambo, who had his own land at Ithanga.
22. For the above reasons, the respondents urged us to dismiss the appeal with costs.
23. We have carefully considered the record before us, the grounds of appeal, the judgment of the trial court, the submissions by the parties and the authorities that counsel cited. We also bear mind that this is a first appeal where we are obliged to reconsider the evidence, assess it and make appropriate conclusions, but always remembering that we neither saw nor heard the witnesses. We will, therefore, not readily interfere with findings of fact by the trial court unless the findings are based on no evidence or on a misapprehension of the evidence or it is shown demonstrably that the trial court acted on wrong principle in reaching the findings it did. (See *Jaban v. Olenja* [1986] KLR 661).
24. From the evidence on record, the deceased did not have a wife or children. However, he had a brother, Mukonya Mugo, a stepbrother, Mwangi Mugo and three sisters, namely, Gakenia Mugo, Margaret Waithambo, and Eunice Gathoni Mugo. Although he was the registered owner of the suit property, and although the respondents, among them the executors of the Will of the deceased, testified that the deceased bought the suit property and that it belonged to him, from the totality of the evidence on record, there is no serious contest that he held the same in trust for his extended family. There is no evidence on record that the deceased treated the suit property as his personal and exclusive property, to the exclusion of his siblings and his nephews and nieces. The evidence on record shows that quite a number of the children of his siblings still live on the suit property.
25. In *Isack M’Inanga Kiebia v Isaaya Theuri M’lintari & Another* [2018] KESC 22 (KLR), the Supreme Court, recognised African customary trusts as overriding interests rooted in customary law. In determining whether a customary trust exists, the nature of the landholding and intention of the parties is important, and where it is established that the land holding was for the benefit of members of the family, a customary trust will be presumed to have been created in favour of the members of the family whether or not they were in possession or catwalk occupation of the land.
26. The Court further held that whether a customary trust exists is to be determined on a case by case basis depending on the evidence. It identified the following as some of the factors to be taken into account:
- i. The land in question was before registration, family, clan or group land.
  - ii. The claimant belonged to such family, clan, or group.
  - iii. The relationship of the claimant to such family, clan or group was not so remote or tenuous as to make his/her claim idle or adventurous.
  - iv. The claimant could have been entitled to be registered as an owner or other beneficiary of the land but for some intervening circumstances.
  - v. The claim was directed against the registered proprietor who was a member of the family, clan or group.
27. We further note that after the promulgation of *the Constitution* of Kenya, 2010, section 28(b) of the *Land Registration Act*, 2012, recognises trusts, including customary trusts, as overriding interests to which registered land is subject.
28. The view that the deceased held the suit property in trust for his brother and sisters is further borne out by the manner in which he distributed the suit property to their child, in the will. In details he divided the suit property was divided as follow:



- i. Family of Mukonja Mugo (brother)
    - a. Njeri Mukonja (widow)
  - ii. Family of Gakenia Mugo (sister)
    - a. Joseph Kimwaki
  - iii. Family of Margaret Wambui Mugo (sister)
    - a. James Njenga
    - b. Joseph Mwangi
    - c. Hannah Karungari
  - iv. Family of Eunice Gathoni Mugo (sister)
    - a. Zephaniah Ngugi
    - b. William Ngugi
29. This finding effectively disposes of the first issue framed by the appellants. The evidence on record shows that for all intents and purposes, the deceased held the suit property in trust for his brother and sisters and their families. He did not dispose of it as would have been expected of his own private property. Instead, he acted like a trustee and distributed the suit property to the beneficiaries in whose behalf he held the suit property. All he did was to bring to conclusion the African customary trust recognised in *Isack M’Inanga Kiebia v Isaaya Theuri M’Lintari & Another (supra)* and we do not think there was anything illegal in doing so.
30. As regards the appellants’ contention that the suit property was not the deceased’s free property which he could will away under section 5(1) of the Act, we cannot escape noting the patent contradiction and mutually exclusive positions taken by the appellants. In one breath, they assert that the suit property was trust property which the deceased could not dispose of by a will. In another, they contend that the deceased should have bequeathed the suit property by will to the two of them, to the exclusion of the other members of the family. If the deceased had no capacity to bequeath trust property by will, one wonders where the capacity would come from to enable him bequeath it to the appellants.
31. Under section 5 of the Act, there is no doubt that a testator can only bequeath his free property by will. Property held in trust belongs to the trust beneficiaries and does not constitute part of the estate of the deceased trustee, which he or she can will away freely to persons of his choice. Such property is separate and distinct from the testator’s private property and the testator cannot dispose of property that he does not legally own.
32. But there are peculiar circumstances in this case, which must be borne in mind in the interest of justice for all the trust beneficiaries. The Act goes further and defines “free property” to mean property which a person was legally competent to dispose during his lifetime. The deceased could have, during his lifetime and in fulfilment of his duties and obligations as a trustee, lawfully transferred the suit property to the trust beneficiaries. If he could have done so during his lifetime, we are persuaded in the peculiar circumstance of this case where the deceased strictly distributed the suit property by will to the trust beneficiaries only, he would fit within the contemplation of section 5(1) of the Act.
33. In our view, what the law does not allow is a trustee to treat trust property as his personal property and distribute it by will to strangers, so as to defeat the trust and the interests of the trust beneficiaries. In this case, the deceased distributed the suit property strictly to the trust beneficiaries and not to strangers and



further, the suit property has already been subdivided and titles issued to the beneficiaries, including the 1<sup>st</sup> appellant. Effectively, the trust has been determined and wound-up. The peculiar circumstances of this appeal, where the deceased has dutifully honoured his obligations to the trust beneficiaries, demand that this matter be put to rest. It will serve no useful purpose, other than increasing costs and taking more time, to revoke the will and force the parties to commence other process or processes that will well-nigh result in distribution of the suit property to the same trust beneficiaries.

34. The next issue is the circumstances under which the will was made, which the appellants contend were suspicious and invalidated the will. In particular, they contend that some of the beneficiaries and the Assistant Chief were present when the deceased made his will and that those beneficiaries obtained the lion's share of the suit property, which in the appellants' view is evidence of coercion or undue influence.

35. It cannot be gainsaid that for a will to be valid, it must be made freely by the testator, without any coercion or undue influence. A will that is caused by fraud, coercion, importunity or mistake is null and void. Section 7 of the Act provides as follows:

“A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, or has been induced by mistake, is void.”

36. In *Hall v Hall* [1869] LR 1 P&D 481 Lord Penzance held that:

“...pressure of whatever character if so exerted as to overpower the volition without convincing the judgment of the testator will constitute influence though no force is either used or threatened.”

37. In *Wingrove v. Wingrove* [1885] 11 P&D 81, a distinction was made between persuasion and coercion. While the latter invalidates a will, the former does not. The Court reasoned as follows:

“To make a good will a man must be a free agent. But not all influences are 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 fairly be pressed on a testator. On the other hand, pressure of whatever character whether acting on the fears or hopes if so exerted as to overpower the vocation without convincing the judgment is a species of restraint under which no valid will can be made...In a word, a testator may be led but not driven and his will must be the offspring of his own vocation and not the record of someone else.”

38. The authors of the treatise, *Theobald on Wills*, 4<sup>th</sup> Edition at page 39 define “undue influence” in probate causes as follows:

“In a probate court undue influence means coercion, i.e. the testator is coerced into making a will (or part of a will) which he does not want to make. Undue influence takes many forms. At one extreme there may be violence to, or imprisonment of, the testator. At the other the pressure exerted by talking insistently to a weak and feeble testator in the last days of his life may so fatigue his brain that he may be induced for..., to give way to the pressure. Persuasion or advice is legitimate but coercion is not; ‘a testator may be led but not driven’.”

39. While it is true that some of the beneficiaries and the Assistant Chief were present when the deceased made the will, that by and in itself is not evidence of undue influence or coercion. To constitute



undue influence or coercion which would invalidate the will, the appellants were bound to adduce evidence that the respondents exerted on the deceased such pressure that took away his freewill in the distribution of the suit property.

40. The burden was on the appellants to prove that the will of the deceased was vitiated by coercion or undue influence. In *Karanja v. Karanja* [2002] 2 KLR 22, an objection was raised against a will on, among other grounds, that it had been made under undue influence. In dismissing the objection, the High Court held as follows:

“The burden of proof was on the objector. She failed to discharge the burden and the ground of undue influence remains unproven.”

41. In the present case, the mere presence of some of the beneficiaries and the Assistant Chief at the making of the will is not evidence of coercion or undue influence. Depending on how one looks at it, it could actually be evidence of transparency on the part of the deceased. The 2<sup>nd</sup> respondent, who testified as DW1, and whose evidence the trial court accepted, informed the Court as follows under cross-examination:

“Yes, in 2008 I have said we went to Ngongdu Mugo 'A'. He called us me and my brother Zephania Ngugi to go to his place. We went there and found he had called other people (and the) Assistant Chief. Thomas too and Kamau Gachugu. He used to live alone in his house.”

He also informed the court that the 1st appellant was aware of the preparation of the will and was invited into the house, but refused to enter and that the very next day she placed a caution on the suit property.

42. The other evidence of undue influence identified by the appellants is the allegation that some of the beneficiaries who were present got the lion's share of the suit property. In our view, that contention is not borne out by the evidence on record. The suit property was divided into 7 parcels of one and half acres each, which were shared among the beneficiaries identified by the deceased, who included the appellant in her capacity of widow of the brother of the deceased. Her parcel was also one and half acres.

43. The only person who did not get a parcel was the 2<sup>nd</sup> appellant.

We find the case of the 2<sup>nd</sup> appellant rather peculiar because she did not even testify before the trial court. From the record, it appears as though it is the 1st appellant who took it upon herself to agitate the 2<sup>nd</sup> appellant's case, to the extent of claiming that the suit property ought to have been inherited by herself and the 2<sup>nd</sup> appellant only, to the exclusion of all the other trust beneficiaries. There is cogent evidence on record that the deceased did not give the 2<sup>nd</sup> appellant a portion of the suit property because she and her immediate family had another parcel of land at Ithanga and had already been asked to vacate the suit property.

44. All in all, we do not find in this evidence of coercion or under influence or of suspicious circumstances. The kind of suspicious circumstances that would invalidate a will are like those addressed in *Mwathi v. Mwathi & Another* [1995-98] 1 EA 229, where a beneficiary under a will moved the testator to his house, wrote the will himself, witnessed the same and was the sole beneficiary under the will. The present case does not fit in such circumstances.

45. This brings us to the contention that the appellant did not have capacity to make the will because he was too sick. On this aspect of the appeal, beyond bare allegations that the deceased was too sick, there was no evidence led by the appellants to prove that. In a bid to patch up their case on appeal, the appellants applied for leave to adduce further evidence in this appeal regarding the deceased's lack of



capacity, which application, as we have seen, was dismissed. So, before this Court as in the trial court, there is no evidence of lack of capacity on the part of the deceased.

46. Further, we note that Thomas Thuku Ng'ang'a (DW4), the advocate who prepared the will, testified on the circumstances under which the deceased made the will. The deceased had gone to his office earlier to inquire about making a will and eventually invited the advocate to his home where he dictated the will in the presence of about five other people. The witness was firm that he was not related to the family of the deceased; that he spent about three hours with the deceased; and that the deceased was of sound mind. The trial judge, who saw and heard the witness believed him.
47. Under the section 5 of the Act, a testator is deemed to be of sound mind unless an objector proves otherwise, and the burden of proving lack of capacity in this case was on the appellants. The relevant section provides as follows:

- “5(3) Any person making or purporting to make a will shall be deemed to be of sound mind for the purpose of this section unless he is at the time of executing the will, in such a state of mind, whether arising from mental or physical illness, drunkenness, or from any other cause, as not to know what he is doing.
- (4) The burden of proof that a testator was, at the time he made any will, not of sound mind, shall be upon the person who so alleges.” Emphasis added.

The appellants failed absolutely to discharge the burden on them regarding the deceased's alleged lack of capacity to make the will.

48. The appellants have also relied on a number of irregularities, particularly as regards the rectification of grant and the stated estimated value of the suit property. The 1<sup>st</sup> appellant has specifically contended that she was not made aware of the will and the petition for grant of probate. Under section 76 of the Act, a grant may be revoked or annulled on a number of grounds, the most relevant to this appeal being:

- “(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; and
- 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.”

49. The breaches that justify revocation or nullification of a will have to be substantial rather than fleeting or trivial. In *Anil Behari Ghosh v. SMT Latika Bla Dassi & Others* [1955] AIR 566, the Supreme Court of India defined the phrase “defective in substance” the same phrase used in section 76 of the Act, as follows:

“the expression “defective in substance”...means that the defect was of such a character as to substantially affect the regularity and correctness of the previous proceedings.”

50. Where fraud is alleged as the basis for revocation, it has to be proved by cogent evidence to the required standard, which is an intermediate standard above a balance of probabilities but not as high as beyond



reasonable doubt. In *R. G. Patel v. Lalji Makanji* [1957] EA 314, the former Court of Appeal for Eastern Africa expressed the standard as follows:

“Allegations of fraud must be strictly proved; although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required.”

51. Whether or not to revoke a grant is at the discretion of the court. In *John Mundia Njoroge & 9 others v Cecilia Muthoni Njoroge & Another* [2016] KEHC 6254 (KLR), Mativo, J. (as he then was) expressed himself as follows, which we agree with:

Under Section 76, the court has discretionary power when faced with an application for revocation. It can make such orders as it considers fit in the circumstances. The court is not bound to issue revocation even where the case has been set out under Section 76.”

52. As the principle goes, this Court will not normally interfere with exercise of discretion by the trial court except where the judge misdirected himself or herself in law; misapprehended the facts; took into account irrelevant considerations, failed to take into account relevant considerations or that the decision is plainly wrong. (See *United India Insurance Co. Ltd v. East African Underwriters (Kenya) Ltd* [1985] E.A 898). We are not persuaded that we have such a case at hand.
53. For all the foregoing reasons, we find no merit in this appeal and dismiss it in its entirety. Appreciating that the dispute involves close family members, we direct each party to bear their own costs. It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2026.**

**W. KARANJA**

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**JUDGE OF APPEAL**

**K. M'INOTI**

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**JUDGE OF APPEAL**

**K. A. ACHODE**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR.**

