

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
SUCCESSION CAUSE NO E111 OF 2024

**IN THE MATTER OF THE ESTATE OF THE LATE CHELUGET DAVID
KIPTOO**

(DECEASED)

HELLEN CHEPKOECH CHELUGET.....1ST

PETITIONER

GEOFFREY KIPKEMBOI RONO.....2ND

PETITIONER

JOHN KIBIY KOSKEI.....3RD PETITIONER

VERSUS

DRUSILLA JEPKOECH LEL & 14 OTHERS.....

BENEFICIARIES

AND

EVERLYNE CHELUGET.....1ST

DEPENDANT

FAITH CHEBET.....2ND DEFENDANT

EMMANUEL KIRWA CHELUGET.....3RD

DEFENDANT

KIPCHIRCHIR LEL.....4TH

DEFENDANT

Coram: Before Justice R Nyakundi

M/s Kalya & Co Advocates

M/s Triple Ok Law LLP

RULING

1. What is pending before this Honourable Court are two (2) applications. The first application is Summons for Revocation or Annulment of grant dated 7th day of April 2025 premised under Section 76(a)(b)(c) of the Law

of Succession Act, Rule 44, 49 & 73 of the Probate & Administration Rules where the Applicants are seeking the following orders:

- a. *Spent*
 - b. *Spent*
 - c. *A temporary injunction do issue restraining Hellen Chepkoech Cheluget, Geoffrey Kipkemboi Rono, and John Kibiy Koskei, the Executors of the last will and testament of David Kiptoo Cheluget (Deceased) dated 1st July 2022 whether by themselves, their servants, advocates, workers or agents or otherwise from selling, charging, disposing, alienating, transferring interfering, stopping, or in any manner intermeddling with LR NO. UASIN GISHU/KORMAETSHEME/57 measuring 90.24 Ha pending the hearing and determination of this application inter-partes.*
 - d. *The Certificate of Confirmation of Grant issued to the above-named Executors on 7th February 2025 be revoked and/or annulled.*
 - e. *The Honorable Court do issue any further orders it may deem fit and just to grant.*
 - f. *Costs of the Application be provided to be in the cause.*
2. The Summons is based on the following grounds on the face of it among others: -
- a. Hellen Chepkoech Cheluget, Geoffrey Kipkemboi Rono, and John KibiyKoskei, the Executors of the last will and testament of David Kiptoo Cheluget ('the Deceased') dated 1st July 2022 fraudulently extracted the Certificate of Confirmation of Grant on 7th February 2025 through the forgery of the said will.
 - b. The signature allegedly belonging to the Deceased and appearing in the last will and testament of the Deceased is materially different from the signatures the Deceased had previously used.
 - c. The proceedings leading to the issuance of the Certificate of Confirmation of Grant on 7th February 2025 were defective in

- substance on account of the failure of the alleged Executors of the last will and testament of the Deceased to inform the beneficiaries and objectors/applicants herein of the existence of such proceedings.
- d. Failure to notify the objectors herein of the existence of the confirmation proceedings divested from them the opportunity to make representations before the Court.
 - e. Furthermore, the Executors of the impugned last will and testament of the Deceased failed to disclose to the Honourable Court that the bequest under the said last will and testament of the Deceased, specifically, LR NO. UASINGISHU/KORMAET SCHEME/57 measuring 90.24 Ha was incapable of being bequeathed under will as the said property did not wholly form part of the Deceased Estate.
 - f. LR NO. UASIN GISHU/KORMAET SCHEME/57 measuring 90.24 Ha, is co-owned by the Deceased, Anna Cheluget (deceased), Abraham Kirwa Cheluget, John Cheluget, Job Cheluget and Mike Cheluget (the objectors herein), whereas the Deceased claims to be the sole owner of the said property in the last will and testament. The same property is the subject of a suit: **ELC Case No. 115B of 2020-David Kiptoo Cheluget Vs Abraham Kipruto Cheluget & John Kipkemboi Cheluget** which was filed by the Deceased against the Applicants herein. This further inconsistency brings the authenticity and validity of the will into question.
 - g. Consequently, by bequeathing property under will that did not wholly form part of the Deceased estate, the last will and testament of the Deceased is rendered void to the extent of such bequest.
 - h. Therefore, the concealment of this fact lends credence to the assertion that the Executors of the impugned last will and testament of the Deceased relied on untrue allegations of fact, which material fact amounts to an essential point of law justifying the grant or otherwise of the grant in this matter.

- i. The Applicants herein stand to suffer great prejudice and an irreparable loss if the Executors of the last will and testament are allowed to continue administering the estate of the Deceased on account of a fraudulently obtained Grant, to the detriment of their property rights over LR NO. UASINGISHU/KORMAET SCHEME/57 as co-owners with the Deceased.
 - j. The Executors will not suffer any prejudice by the grant of the prayers herein.
 - k. It is in the interest of fairness and justice that the certificate of confirmation of grant issued to the executors of the last will and testament of the deceased be revoked and/or annulled in order that the land property rights of the co-owners and the estate of the deceased be safeguarded.
3. The Summons is supported by an annexed affidavit dated 7th April 2025 sworn by Abraham Kirwa Cheluget who deponed as follows: -
 - a. *I am an Applicant herein and beneficiary of the Estate of David Kiptoo Cheluget (Deceased), being a son of the Deceased. I swear this Affidavit on my own behalf and have authority to swear the same on behalf of DRUSILLA CHEPKOECH LEL, DAMARIS CHEROTICH ROTICH, LYN CHEROP MENGICH, JOHN CHELUGET, MARTHA CHESANG CHELUGET, MIKE KIPKORIR CHELUGET, JOB KIPKEMEI TOO CHELUGET and REBECCA CHELUGET, all Applicants herein and beneficiaries of the Estate of David Kiptoo Cheluget(Deceased) (together referred to as 'the Applicants'), being children of the Deceased (hereinafter 'the Deceased').*
 - b. *Furthermore, I swear this Affidavit as co-owner together with the Deceased, Anna Cheluget (deceased), John Kipkemboi Cheluget, Job Kipkemei Cheluget and Mike Kipkorir Cheluget, over LR NO. UASINGISHU/KORMAET SCHEME/57.*

- c. *Upon the death and burial of the Deceased, the Applicants herein only came to realize the existence of an alleged last will and testament of the Deceased on 12th July, 2024 when the family of the Deceased was summoned by Mr. Kalya of M/S Kalya & Company Advocates for the reading of said last will and testament.*
- d. *That we instructed our lawyers, M/S GlascoteRose Advocates, to write to Kalya & Company advocates informing them that we were still dealing with the loss of our father and requested that the event be postponed. However, we were informed by our advocates that Advocate Chesoo Karen from Kalya & Company advocates responded through an email dated 15th July presence.*
- e. *On 14th August, 2024 our Advocates wrote to Kalya & Company Advocates requesting for a copy of the will, however through an email dated the same the will shall be provided once probate is lodged and the original deposited in court.*
- f. *On 25th October, 2024 our advocates received a copy of a will dated 1st July 2022 via email from Kalya & Company Advocates. A copy of the email correspondence forwarding the will is produced and annexed at pages of the exhibit.*
- g. *Upon receipt and reading of the alleged will and testament of the Deceased, it became immediately clear that the same was a forgery on the following grounds: -*
 - i. *That the late David Cheluget is purported to have stated in the last will and testament that he desires to be buried in his property UASINGISHU/KORMAET SCHEME/57 in accordance to the A.C.K Kormaet Scheme Christian Rites (clause31) and that his executors to pay out of the residuary estate all of expenses of the last illness and other expenses including reasonable funeral expenses (clause32). Yet M/S Kalya & company did not*

deem fit to disclose these facts before his burial. Mr. Kalya and Chesoo Karen visited the family on 17th June 2024 and did not mention any existence of a will nor where and how our father wished to be buried. We believe that the will was signed after our father's death and backdated to 2022.

- ii. Furthermore, it also became apparent that the signature allegedly belonging to the Deceased and appearing in the last will and testament of the Deceased was materially different from the signatures the Deceased had previously used in official documents.
- iii. Therefore, even if this Court were to accept that the Deceased be consistent with the signatures the Deceased applied in other official documents, unless the contrary is proven.
- iv. Curiously, it is evident from the face of the alleged last will and testament of the Deceased that the signatures attributed to the deceased during the execution of the will significantly differ in form in the very will that the deceased is alleged to have executed.
- v. Secondly, I am aware that the Deceased prior to his death and the alleged date of execution of the will had been diagnosed with acute glaucoma which occasioned the progressive loss of his vision. A copy of the doctors' letters confirming the Deceased' condition is produced and annexed at page 18 of the exhibit.
- vi. Consequently, due to the Deceased's acute visual impairment, he was resigned to signing documents by affixing his thumbprint. Infact, as far back as the years 2020-2021, the Deceased signed court documents by affixing his thumbprint. Therefore, it should raise suspicion that while the Deceased was

signing official court documents by affixing his thumbprint as far back as 2020-2021, all of a sudden, he appends a signature in his alleged last will and testament in 2022.

- vii. Furthermore, it is also overly suspicious that coincidentally, the witnesses to the alleged signing of the last will and testament of the Deceased all work at M/S Kalya & Company Advocates, the same advocates firm that prepared the alleged will and testament.*
- h. Therefore, I verily believe that the Certificate of Confirmation of Grant issued by the Honourable Court on 7th February, 2025 was extracted by the Executors of the alleged last will and testament of the Deceased, fraudulently.*
- i. In any case, and even if this Honourable Court were to accept that the alleged will and testament of the Deceased is valid, to the extent that said misleading the Court and obtaining the confirmation of the grant fraudulently.*
- j. Furthermore, I verily believe that the proceedings leading to the confirmation of the grant in this matter were substantively defective in substance on account of the failure by the Executors of the last will and testament of the Deceased to inform the Applicants herein of the existence of such proceedings.*
- k. Despite being the children and beneficiaries of the Estate of the Deceased, the Applicants herein only became aware that the grant over the Estate of the Deceased had been confirmed and issued to HellenChepkoech Cheluget, Geoffrey Kipkemboi Rono and John Kibiy Koskei when the advocate firm of M/S Kalya & Company Advocates made an application to Court to stop the Directorate of Criminal Investigations (DCI) from continuing investigations against the firm over allegations of fraud and forgery with respect to the last will and*

testament of the Deceased in High Court Constitutional & Human Rights Petition No. E006 of 2025.

- l. It is also curious that while the grant of probate with respect to the Estate of the Deceased was issued on 4th November, 2024, the same was confirmed and the Certificate of Confirmation of Grant issued on 7February, 2025, a mere three (3) upon the first issuance of the grant of probate.*
- m. To this extent, I am advised by my advocates on record, which advice I believe to be true, that under Section 71 of the Law of Succession Act, a grant of representation and/or probate can only be confirmed before the expiry of six (6) months upon satisfaction by the Court that the dependents of the Deceased are of full age and have consented to such application, or that it would be expedient in the circumstances of the case to so direct that the grant be confirmed before the expiry of the period provided.*
- n. I verily believe that the Certificate of Confirmation of Grant with respect to the Estate of the Deceased was issued before the expiry of the six (6) months without the consent of the Deceased' dependents, and in any case, the Executors of the alleged last will and testament of the deceased.*

Replying affidavit to the Summons

4. The Summons for Recovation was opposed vide a Replying Affidavit dated 12th May 2025 sworn by Hellen Chepkoech Cheluget who deponed as follows: -
 - a. That I am the 1st petitioner/executors herein issued with grant of Probate of the last will and testament dated the 1st day of July 2022 made to the petitioners in this matter on the 4th day of November, 2024 duly competent to make and swear this affidavit in these proceedings, make representations, and undertake any actions*

necessary on the Co-Executors behalf, and in furtherance to the deceased interest

- b. That I am fully conversant with the late David Kiptoo Cheluget (Deceased) property portfolio, including its location, size, title details and I am further fully conversant with the purchase, transfer, registration, current possession and occupation including the location, size, title details /ownership document such as title deed of the property known as Uasin Gishu / Kormaet Scheme/ 57 measuring 90.24 Ha and all matters relevant to these proceedings. Hence competent to depose to this Relying Affidavit and provide any necessary clarification or additional evidence as may be required.*
- c. That I have read the summons dated 07-04-2025, supporting affidavit by Abraham Kirwa Cheluget sworn on 07-04-2025 and annexures thereto and had the same explained to me by the Petitioners Advocate, on record Messr. W. K. Kalya and having understood the import and tenor thereof now wish to respond thereto as follows:
 - i. From the onset, I wish to state that the said application is fatally and incurably defective, bad in law, an abuse of Court process, misconceived and as such ought to be struck out and/or dismissed with costs to the Estate.*
 - ii. Without prejudice to the foregoing, I aver that the Applicants are not deserving of any of the orders sought in the summons dated 07-04-2025.*
 - iii. Save what is expressly admitted herein I deny all allegations of facts and law contained in the summons dated 07-04-2025 and affidavit in support as if the same were set forth seriatim and traversed verbatim. The Applicants are invited to strict proof of all the allegations contained in the summons.**
- d. The deceased was survived by the following:
 - i. Hellen Chepkoech Cheluget-widow**

- ii. *Drusilla Jepkoech Lel,*
 - iii. *Abraham Kipruto,*
 - iv. *Damaris Jerotich Rotich*
 - v. *John Kipkemboi*
 - vi. *Lynn Mengich*
 - vii. *Dr.Jesang Metto*
 - viii. *Michael Kipkorir*
 - ix. *Job Kipkemei*
 - x. *Rebecca Jepchumba Yato*
 - xi. *Noel Jelagat*
 - xii. *Mehetabel Jepchumba*
 - xiii. *Noble Kirwa*
 - xiv. *Blessings Jemutai (minor)*
 - xv. *Israel Nandy(minor)*
- e. *That the Deceased in his last Will dated 01-07-2022 was survived by dependants under Section 29 of the Law of Succession Act: -*
- i. *Evelyne Cheluget-daughter-in-law (paragraph 18)*
 - ii. *Faith Chebet-granddaughter (paragraph 19)*
 - iii. *Emmanuel Kirwa Cheluget-grandson (paragraph 25)*
 - iv. *Kipchirchir Lel grandson (paragraph 26)*
- f. *That the deceased at the date of his death on 15-06-2024 aged 97 years had survived his deceased 1st wife, Anna Jemaiyo Cheluget (Deceased) died on 10-02-1994*
- g. *That I wish to reiterates the following pertinent facts: -*
- i. *The deceased died on 15-06-2024 leaving a valid written last will and Testament dated 1-07-2022 which was lawfully drawn and attested by three qualified Advocates of the High Court. The Will has since been proved and confirmed vide Eldoret HCP&A No. E111 of 2024.*

- ii. *The deceased and I were lawfully married on 06-04-1996 under Christian Law and blessed with six children. I am the surviving estate widow.*
- iii. *Upon my lawful marriage to the deceased at the age of twenty-two (22) years, I was brought by the deceased to reside on Uasin Gishu / Kormaet Scheme/ 57 measuring 90.24 Ha, which he introduced to me as his sole property, and where we established our matrimonial home.*
- iv. *Upon my relocation to Uasin Gishu/Kormaet Scheme/ 57 measuring 90.24 Ha, I was received warmly and without objection by the Applicants, who accepted and acknowledged my presence and occupation of the home and property, and indeed cohabited with the deceased therein during the lifetime of the deceased.*
- v. *Throughout the substance of our marriage, I was a full-time house-wife and home manager with no independent source of income, and wholly depended on the deceased for all financial and material needs of our household.*
- vi. *At no time did any of the Applicants challenge, resist or question my establishment and continued occupation of the farm known as Uasin Gishu/Kormaet Scheme/57measuring 90.24 Ha, and they are therefore estopped from alleging otherwise, having acquiesced to and endorsed my status and residence therein during the deceased's lifetime.*
- vii. *My establishment in the matrimonial property known as Uasin Gishu/Kormaet Scheme/ 57 measuring 90.24 Ha was done in good faith and on the express assurance and representation of the deceased that the suit property was his exclusive property, and the I continue to reside there as a lawful widow and surviving spouse.*

- viii. *I am informed by Advocate W.K.Kalya, which information I verily believe to be true that prior to his demise, the deceased expressly instructed Advocate W.K.Kalya to ensure his last Will and Testament dated 01-07-2022 would be read to his family and relevant parties immediately after his burial.*
- ix. *In compliance with the deceased's instructions, proper notices dated 3-07-2024 were issued to all the parties herein, the Applicants, acting through their Advocate, declined the invitation to attend reading of the Will and instead wrote a letter dated 12-07-2024 indicating their decision not to participate*
- x. *The deceased's advocate, vide a formal response to the Applicants letter, reiterated in an email dated 15-07-2024, that the reading of the Will would proceed as scheduled, in accordance with the deceased's instructions and applicable legal procedure.*
- xi. *A virtual link for the scheduled reading of the will was duly shared with the Applicants through their Advocate on email, to facilitate their attendance, should they wish to do so give the logistical considerations.*
- xii. *The Applicants Advocate subsequently in a letter dated 14-08-2024 confirmed their non-attendance to the will reading and requested a copy of the will, to which the deceased's advocate responded in an email dated 14-08-2024 and informed the Applicants Advocate that the will would be availed upon the lodging of the Petition for Probate.*
- xiii. *True to that undertaking, the petition for Probate of Written Will was duly lodged before the Honourable Court on 27-09-2024, gazette in accordance with the provisions of the Law of Succession Act on 04-10-2024 vide Gazette Notice No.12910, and thereafter, a copy of the Will was formally shared with the*

Applicants advocate via email on 25-10-2024, upon confirmation that probate had been lodged.

- xiv. The Grant of Probate was issued on 04-11-2024 thirty (30) days thereafter, having satisfied all statutory and procedural requirements.*
- xv. A Judicial Notice was subsequently issued by the Hon. Court on 15-01-2025 and served on our Advocates on 22-01-2025, directing the duly appointed Executors to lodge summons for confirmation of Grant and scheduling the cause for confirmation on 07-02-2025.*
- xvi. The Executors filed summons for confirmation of Grant of Probate pursuant to the Judicial Notice and Section 71 of the Law of Succession Act and a Certificate of Confirmation of Grant of Probate issued on 07-02-2025.*
- xvii. The Applicants as at 07-02-2025 took no steps to file any objection, protest or response to the said petition or summons for confirmation of grant, and cannot feign ignorance of the proceedings in light of the fact that the matter was gazette, listed on the Judiciary Cause List, and the pleadings were accessible through the public Judiciary e-filing system and kiosk.*
- xviii. Indeed, the Applicants openly expressed, both verbally and through correspondence, their decision to first prosecute succession proceedings in respect of their late mother's estate in a letter dated 16-09-2024, and have, by their conduct and inaction, effectively acquiesced to the process concerning the deceased's estate*
- xix. Following the Applicants request, a copy of the deceased's will be duly shared with their advocate via email on 25-10-2024 which confirmed that a Petition for Probate of written will had already been lodged before the Hon. Court*

- xx. *Despite being aware of the filing of Petition as per the Will shared, and granted ample opportunity to participate in the proceedings, the applicants took no steps whatsoever to file an objection, enter appearance, or otherwise demonstrate any interest in the administration and distribution of the estate.*
- xxi. *The Applicants, having been afforded sufficient notice and reasonable time to assert their rights but deliberately choosing not to engage, cannot now claim that their right to be heard was infringed, as one cannot invoke a right they willfully declined to exercise.*
- xxii. *I am informed by my Advocate on Record W.K.Kalya Esq, which information I verily believe to be true that Section 71 (1) empowers to the Court to apply for confirmation of grant to empower the distribution of any capital assets after the expiration of a period of six months, or such shorter period as the Court may direct under subsection(3)*
- xxiii. *I am informed by my Advocate on Record W.K.Kalya Esq, which information I verily believe to be true that Section 71 (3) vide the Judicial Notice dated 15-01-2025 the Court directed confirmation of the Grant herein on a shorter period as permitted in Law.*
- xxiv. *I am informed by my Advocate on Record W.K.Kalya Esq, which information I verily believe to be true that Rule 26 (2) of the Probate and Administration Rules do not apply to a Testate Estate contrary to the averments of the Applicants.*
- xxv. *I am informed by my Advocate on Record W.K.Kalya Esq, which information I verily believe to be true that Rule 40 (8) of the Probate and Administration Rules do not apply to a Testate Estate contrary to the averments of the Applicants.*
- xxvi. *I am informed by my Advocate on Record W.K.Kalya Esq, which information I verily believe to be true that the right to be heard*

under Article 50 of the Constitution presupposes a party's willingness to participate in proceedings, and the applicants, by their own conduct, waived that right by failing to act despite knowledge of the proceedings.

- h. I am informed by my Advocate on Record W.K.Kalya Esq, which information I verily believe to be true that as there has been no change in the Law, pursuant to Article 162 (2) and 165(5) of the Constitution of Kenya, 2010, the ownership status of the disputed registrars, inter-alia Abraham Kipruto and John Kipkemboi over Uasin Gishu/Kormaet Scheme/57 measuring 90.24 Ha and the nature of resultant trust as a remedy rests with Environment and Land Court. It is clear the Applicants misapprehend the Law on resulting trust and I do not hesitate whatsoever to urge the Court to conclude that the High Court has no jurisdiction to adjudicate over the 2nd and 4th Applicants or inquire into the validity of the transfers and their effect thereto. Their claim to the deceased land rests first on the adjudication by the Environment and Land Court.*
- i. That I wish to clarify the following: -*
 - a) I am a farmer by occupation and have been managing agricultural activities on 50 acres forming part of Uasin Gishu / Kormaet Scheme/ 57 measuring 90.24 Ha allocated to me by the deceased to sustain my household and support my children's education and welfare.*
 - b) During the lifetime of the deceased, he had allocated me specific portions of land measuring approximately 50 acre excised out of Uasin Gishu/Kormaet Scheme/57 measuring 90.24 Ha for farming activities. This included:*
 - a. 10 acres which I had planted with Boma Rhodes grass for feeding our dairy cows.*

- b. 40 acres which I cultivated maize to generate income for the family's sustenance.
- c) The deceased and I jointly utilized Tractor KDT 721, Trailer No. ZA/896, harrow, plow, seeders, planters, fertilizer spreaders, combiner, sprayer, mower, and tiller to manage farm activities over Uasin Gishu / Kormaet Scheme/ 57 measuring 90.24Ha effectively.
- d) Immediately following the deceased's death, the 1st Applicant called a meeting at the farm in October 2024 and without any consultation or regard to the practical needs of the 2nd House proceeded to: -
- a. Distributed farm machinery, including tractors and implements previously allocated to, and used by the 2nd House, among themselves exclusively to Abraham Kipruto, John Kipkemboi, Michael Kipkorir and Job Kipkemei.
 - b. The effect of this dispossession has been profoundly destabilizing. The 2nd House is now compelled to hire similar machinery from external providers at a cost of approximately Kshs. 50,000, every planting season. This is a cost that it never incurred during the deceased's lifetime, and which at their current diminished income cannot reasonably sustain.
 - c. In or about October 2024, the applicants, acting unilaterally, proceeded to distribute the dairy cows. Despite the fact that these were cows I had been managing and depending on, they appointed the 1st Applicant as the chairman of the family and informed me that the cows were to be divided equally. Eight cows were taken from me, and distributed to Abraham Kipruto, John Kipkemboi, Michael Kipkorir and Job Kipkemei leaving the 2nd House with only eight cows, yet no alternative source of support was offered to me or my dependent children

- e) *The 1st Applicant jointly with John Kipkemboi, Michael Kipkorir and Job Kipkemei, without consultation or consent, ploughed over my 10 acres of Boma Rhodes grass, depriving the dairy cows of their primary feed source.*
- f) *Subsequently, Abraham Kipruto, John Kipkemboi, Michael Kipkorir and Job Kipkemei jointly in January 2025 reduced the my normal land usage over Uasin Gishu/Kormaet Scheme/57 measuring 90.24 Ha from 50 acres to 23 acres. The 1st Applicants directed me to plough maize on the 23 acres to feed my children and the cows. This was a significant reduction from the 50 acres I had been utilizing before the deceased's death, leaving me unable to sustain the household as before.*
- g) *These actions by Abraham Kipruto, John Kipkemboi, Michael Kipkorir and Job Kipkemei have significantly impeded my ability to generate income and sustain the household consisting of me and the 6 dependant, who include 2 minors.*
- h) *The reduced land use and access from 50 acres to 23 acres has direct financial implications as hereunder: -*
- a. *According to agricultural data the average maize yield per acre in Kenya is approximately 22.8 bags of 90kg each. The average farm gate price for a 90kbag of maize is KShs 4,094.*
 - b. *Therefore, the potential income per acre is: 22.8 bags/acre x KShs 4,094/bag= KShs 93,343.20 per acre.*
 - c. *With a reduction of 27 acres (from 50 to 23 acres), the estimated annual income loss is 27 acres x KShs 93,343.20/acre = KShs 2,520,266.40.*
 - d. *These figures assume optimal conditions with an average yield of 22.8 bags of maize per acre and market price of KShs.4,094 per 90 kg bag.*

- i) *The applicants' but specifically Abraham Kipruto, John Kipkemboi, Michael Kipkorir and Job Kipkemei actions are, with the greatest respect, financially illogical, as they serve only to increase the estate's operational costs unnecessarily. Worse still, their conduct is arbitrary, unjust, and wholly inconsistent with their legal and moral obligations to ensure that the dependants of the deceased from the 2nd House are not rendered destitute or forced into economic hardship*
- j) *The Applicants decision to seize machinery that was previously in use for my benefit of and my children-without a court order, justification, or transparent process-is emblematic of the wider scheme to marginalize and impoverish her and the minors under my care. It is contrary to the principles of equity, justice, and good conscience.*
- k) *On the other hand, the deceased death has occasioned the Applicants a financial boon as demonstrated below: -*
- a. *The Abraham Kipruto, John Kipkemboi, Michael Kipkorir and Job Kipkemei on the other hand have exclusive use of 187 acres forming part of Uasin Gishu /Kormaet Scheme/57 measuring 90.24 Ha for maize production is KShs.17, 455,178.40*
 - b. *Additionally, Abraham Kipruto is generating from exclusive use of his land known as Nandi/ Kipkaren Salient Plot No. 119 measuring 37 acres exclusive use of approximately 30 acres for maize production is KShs.2, 800, 296. This land was a gift from the deceased to his 1st born son as confirmed by the Applicants Annextures.*
 - c. *These figures assume optimal conditions with an average yield of 22.8 bags of maize per acre and market price of Kshs. 4,094 per 90 kg bag.*

- d. *Should Abraham Kipruto, John Kipkemboi, Michael Kipkorir and Job Kipkemei consider silage farming on the 187 acres. Their potential financial profit based on maize silage farming at Kshs.7,000 per tonne and an average yield of 10 tonnes per acre-is approximately KShs.13,090,000 per year.*
- l) *Based on the prevailing agricultural economics, the applicants stand to unjustly profit by approximately KShs. 13,090,000 annually from the 187 acres of land they seized, based on silage production or KShs.17, 455, 178. 40 annually from the 187 acres of land they seized based on maize production alone. These figures underscore the scale of financial loss inflicted upon me and the 6 dependants under my care, and further reveals the inequity of the Applicants conduct in excluding u from land that was vital for our sustenance and dignity.*
- m) *This substantial loss has severely affected my ability to provide for my children as I hereunder demonstrated: -*
- a. *I have two daughters in Canada - the 11th and 12th Beneficiaries herein Mehetabel Jepchumba recently obtained her nurse aide certification and works caring for the elderly, while Noel Jelagat is doing clerical jobs. Both girls are awaiting financial assistance from me to commence undergraduate studies to better their lives, assistance which I am now unable to provide.*
- b. *I also have a Son-Noble Kirwa who, after completing high school, deferred his higher education to assist in taking care of his father due to the latter's deteriorating health. He has since remained at home, unemployed, and unable to pursue tertiary education due to financial constraints. He now does menial jobs in the village.*

- c. *My other daughter, Blessing Jemutai is currently in Form 3 student at Bishop Gatimu Ngandu Girls High School, and her annual school fees and related expenses amount to approximately Kshs, 70,000. Last year, I was able to pay these fees due to the income from maize harvests and livestock. However, with only 23 acres and 8 cows left, I do not know how I will meet next year's obligations.*
- d. *My youngest son, Israel Nandy is in Grade 5 and is a day scholar. He suffers from serious health complications requiring weekly treatment. His medical expenses alone amount to at least Kshs. 10,000 monthly, and combined with his school fees, transport, and other academic needs, his upkeep costs me at least Kshs. 25,000 per annum*
- e. *In addition to the above, the applicants distributed all tractors and farming equipment which I had been using, including those expressly allocated to me by the deceased in his will. I was left with only one motor vehicle registration No.....whose maintenance, fuel, and insurance require approximately Kshs. 200,000 annually-costs that were previously met from proceeds of the farm.*
- f. *I continue to employ workers who assist with farm operations and animal care, with a monthly wage bill of Kshs. 10,000, or Kshs. 120,000 per year, yet my ability to pay them is now in jeopardy due to the applicants' actions.*
- g. *Presently, my household survives on the remaining maize harvest from last year. However, I am acutely aware that this is not sustainable and next year, unless the applicants' actions are reversed, I shall be unable to provide for the household.*
- h. *Since the death of the deceased, I have continued to host members of the church, family, and neighbors for various rites*

and gatherings, which have further strained the household resources.

- i. The eulogy and family records shall demonstrate that all the applicants are degree holders, working in respectable positions, having been educated through the very income generated from this same farm by the deceased, who was a great believer in education. For example Drusilla Lel is the owner and director of Mahakini School, Abraham Kipruto Cheluget is a retired councilor, Damaris Rotich works at Giros Tours, Lyn Megich is the former Chairperson Salaries and Remuneration Commission, John Kipkemboi Too is a retired Former Post Bank employee, Dr. Martha Metto is a senior employee at Moi University, Mike Cheluget is the owner of Nuevo HIR Consultants, Job Kipkemei Too is a director of Kagiptai Developers Ltd and Rebecca Jepchumba Yator is the Human Resource Manager of Ken-Knit Company.*
- j. The Applicants are married to esteemed members of the society for example Damaris Rotich is married to Ambassador Nehemiah Rotich (current board member of Wildlife Justice Committee; WWF Netherlands and Director of Wildlife Justice Inc.), Lyn Mengich is married to Engineer Maxwell Megich, Dr. Martha Metto is married to Joe Metto a renowned business man and farmer and retiree of Kenya Seeds Company, Michael Kipkorir is married to Evelyn Cheluget the current Director-General Immigration and Citizens Services to name but a few.*
- k. It is now ironical and gravely unjust that by depriving me and the minors (11th-15th Beneficiaries herein) of access to the land and movables previously allocated to them, the applicants, led by the 1st Applicant, are denying the younger*

children the very opportunities they themselves were granted by the deceased.

- l. The actions of the 1st Applicants and others, including the arbitrary reduction of my acreage, the distribution of my cows, and dispossession of equipment and vehicles, constitute a violation of my rights as a widow and the constitutional protections accorded to minors under Article 53 of the Constitution of Kenya, and to widows under Article 45.*
- m. The continued mistreatment of me and the minor children by the applicants, despite their own affluence and professional success, is not only unjust but also against the spirit and letter of the Constitution and the principles of equity and justice.*
- j. That I am informed by my Advocate on record W.K.Kalya Esq which information I verily believe to be true that the Applicants obtained interim orders from this Honourable Court in April alleging I have infringed their rights. However, they failed to disclose critical information, including:*
 - i. Firstly, they failed to admit in January 2025 they had unilaterally reduced my land access from 50 to 23 acres knowing very well that this land was essential for household sustenance, education of the minors, and upkeep of the deceased's homestead.*
 - ii. Secondly, they failed to disclose that they had distributed all farm machinery to themselves in October 2024, thereby depriving me of the tools the deceased had made available for my use.*
 - iii. Thirdly, they concealed from the Court that they had also distributed livestock, including dairy cows, in a manner that disadvantaged me. From 16 cows under my care, I was left with only 8, with the rest taken by the applicants without any legal basis or regard to the welfare of the minors and household.*

- iv. *Fourthly, they did not disclose the resultant financial hardships the 2nd house is facing due to their actions*
- v. *Their non-disclosure, coupled with their conduct of deceitfully obtaining favourable orders while suppressing the true facts, amounts to an abuse of the court process. Their hands are not just unclean; they are stained by years of abuse, neglect, and calculated exclusion.*
- vi. *Even during the lifetime of the deceased, these same applicants caused him immense suffering. They mistreated, abandoned, and subjected him to emotional and psychological torture. The deceased confided in me on numerous occasions about his anguish, even expressing despair over how his own children had turned against him.*
- vii. *It is a fundamental principle of equity that one who seeks the Court's assistance must come with clean hands. The applicants' failure to disclose these material facts constitutes an abuse of the Court process.*
- viii. *I am advised by my advocates on record, which advice I verily believe to be true, that any party who approaches a court of equity must do so with clean hands. It is a cardinal principle of law that equity aids the vigilant and not those who act unjustly or conceal material facts.*
- ix. *it is now deeply unjust and unconscionable that these very individuals—who tormented the deceased and undermined his intentions—should now present themselves before this Honourable Court as the rightful and exclusive beneficiaries of his estate, to the detriment of the minors he so dearly cherished.*
- x. *I humbly urge this Honourable Court to take judicial notice of the applicants' pattern of abuse, suppression of the truth, and*

manipulation of court processes, and to treat their claims with the caution and scrutiny they rightfully deserve.

- xi. During the deceased's lifetime, the applicants:*
- a. Mistreated and abandoned him, causing emotional and psychological distress.*
 - b. Opposed his efforts to lease parts of the land to third parties for income generation, often threatening lessees and obstructing such arrangements.*
 - c. The deceased had initiated ELDORET ELC NO. 115B of 2020 DAVID KIPTOO CHELUGET VERSUS ABRAHAM KIPRUTO CHELUGET & JOHN KIPKEMBOI CHELUGET seeking inter alia the eviction of the applicants from the suit land due to their mistreatment and deletion of the co-registrar's from the title No. Uasin Gishu / Kormaet Scheme/ 57 measuring 90.24 Ha.*
 - d. ELDORET ELC NO.115B of 2020 DAVID KIPTOO CHELUGET VERSUS ABRAHAM KIPRUTO CHELUGET & JOHN KIPKEMBOI CHELUGET is pending Ruling on the 1st Petitioner's Application to substitute the deceased Plaintiff and is scheduled for Ruling on 15-05-2025 before the Hon. Justice Charles Yano (ELC Court No.1) sitting at Eldoret.*
 - e. It is unjust that the same individuals who caused the deceased such anguish now positions themselves to benefit exclusively from his estate, to the detriment of the 2nd House.*
- xii. I humbly request this Honourable Court in the interest of justice in the interim period while this matter is pending determination to: -*
- a. Intervene and direct the reinstatement of the status quo ante as it existed at the time of the deceased's death-so as to allow the me and my children the continued use and benefit of the said farm machinery and 50 acres of land forming part of Uasin Gishu / Kormaet Scheme/ 57 measuring 90.24 Ha. Such*

reinstatement is not only in keeping with the deceased's intentions, but is also essential to preserving the welfare and dignity of the 2nd House.

- b. Reinstate my access to the 50 acres of forming part of Uasin Gishu / Kormaet Scheme/ 57 measuring 90.24 Ha, my children and I were utilizing prior to the deceased's death.*
- c. Order the return of all farm machinery and the 8 dairy cows allocated to me by the deceased.*
- d. Restrain the applicants from interfering with the my use, occupation, and possession of the farm house and 50 acres forming part of Uasin Gishu /Kormaet Scheme/ 57 measuring 90.24 Ha and resources pending the final determination of this cause.*
- e. Unless the Court intervenes, the 1st Petitioner shall remain incapacitated in managing the estate's productive land, and the wellbeing of my children, specifically the minor children and household I shall continue to deteriorate-an outcome that is inconsistent with the protective mandates of Articles 45,53, and 57 of the Constitution of Kenya.*
- f. Such orders are necessary to ensure the welfare of the minors and uphold the principles of equity and justice.*
- g. For avoidance of doubt I reiterate the deceased utilized full use and possession of Uasin Gishu/Kormaet Scheme/57 measuring 90.24 Ha until recently when the Applicants wrestled part of it from him.*
- k. That in response to the averments over ownership and registration status of title No. Uasin Gishu/Kormaet Scheme/57 measuring 90.24 Ha I aver as follows: -*
 - i. I reiterate the written declarations made by the deceased in his last will and Testament dated 1-07-2022 in response thereto.*

- ii. *Land parcel number UASIN GISHU / KORMAET SCHEME/57 measuring 90.24 Ha though jointly registered in the names of DAVID KIPTOO CHELUGET, ANNA CHELUGET(DECEASED), ABRAHAM KIRWA CHELUGET and JOHN CHELUGET was solely purchased by David Kiptoo Cheluget (Deceased) using his personal resources.*
- iii. *The registration of parcel number UASIN GISHU / KORMAET SCHEME/ 57measuring 90.24Ha in the names of the deceased wife ANNA-CHELUGET(DECEASED) and his two sons ABRAHAM KIRWA CHELUGET and JOHN CHELUGET on 07-11-1985 at the material time was for purposes of securing the land against political interference during a volatile regime and not intended to convey any beneficial interest to them.*
- iv. *In the circumstances, a resulting trust arose in favour of David Kiptoo Cheluget (Deceased), with his deceased 1st wife Anna Cheluget (Deceased) and his two sons ABRAHAM KIRWA CHELUGET and JOHN CHELUGET holding UASIN GISHU / KORMAET SCHEME/57 measuring 90.24 Ha as mere trustees for his benefit.*
- v. *David Kiptoo Cheluget (Deceased), was at all material times the sole beneficial owner of UASIN GISHU /KORMAET SCHEME/57 measuring 90.24 Ha and that his deceased 1st wife Anna Cheluget(Deceased) and his two sons Abraham Kirwa Cheluget held the legal title in trust, to be extinguished by operation of law upon his death.*
- vi. *David Kiptoo Cheluget (Deceased), made express declarations- both orally and in writing-that he was the sole beneficial owner of UASIN GISHU / KORMAETSCHEME/57 measuring 90.24 Ha including filing a suit vide Eldoret ELC NO.115B of 2020 David Kiptoo Cheluget V Abraham Kipruto Cheluget & Another.*

- vii. *To confirm the sons trustee status over UASIN GISHU / KORMAET SCHEME/57 measuring 90.24 Ha, David Kiptoo Cheluget (Deceased), during his lifetime settled Nandi/Kipkaren Salient Plot No. 119 measuring 37 acres for the benefit of his son Abraham Kirwa Kipruto Cheluget.*
- viii. *The 1st Applicant, who was already gifted Nandi/Kipkaren Salient Plot No. 119 measuring 37 acres by the deceased during his lifetime, now enjoys his own farm but has come back to claim even more from the homestead, further demonstrating the oppressive nature of the Applicants conduct over the suit property.*
- ix. *It is in the interest of justice that the Land Registrar-Uasin Gishu County does rectify the register for land parcel number Uasin Gishu/Kormaet Scheme/57 measuring 90.24 Ha by deleting the names of Anna Cheluget(Deceased), Abraham Kirwa Cheluget and John Cheluget and restoring the land solely in the name of David Kiptoo Cheluget (Deceased) for purpose of vesting in in his estate as per the Certificate of Confirmation of Grant issued herein. Hellen Chepkoech Cheluget, Geoffrey Kipkemboi Rono and John Kibiy Koskei the*
- x. *Court appointed Executors in the estate of David Kiptoo Cheluget, are entitled to administer land parcel number UASIN GISHU / KORMAET SCHEME/ 57 measuring 90.24 Ha in accordance with the deceased express testamentary intentions*
- xi. *Since the death of David Kiptoo Cheluget (Deceased), the Applicants have expressed intentions, including in the summons before the Court to assert full rights of ownership over UASIN GISHU /KORMAET SCHEME/57 measuring 90.24 Ha to the exclusion, disadvantage and prejudice of his estate and*

his duly named beneficiaries in the Last Will and Testament dated the 1st day of July, 2022.

I. That I aver as follows in regards to the deceased written last will and Testament dated 1-07-2022: -

- i. The Will was executed voluntarily, with full testamentary capacity and in full compliance with Section 11 of the Law of Succession Act, as confirmed by the attesting advocates, who have sworn affidavits and filed a constitutional petition Eldoret Petition No. E006 of 2025 challenging the unlawful harassment by investigative authorities.*
- ii. In particular, the Will was signed by the deceased and attested by three competent witnesses present at the same time, thereby meeting all formal requirements of a valid will.*
- iii. The Will on its face is regular, bearing the deceased's signature and an attestation clause signed by the witnesses. In law, a will that is proper on the face of it carries a presumption of due execution (omnia esse rite acta).*
- iv. I aver that there is no credible evidence to rebut the presumption that the Will was properly executed and is valid. The High Court already admitted the Will to probate, implicitly finding it duly executed. The Applicants' insinuations that the Will is invalid are baseless and contrary to the clear evidence of compliance with Section 11.*
- v. Section 5 of the Law of Succession Act presumes the testator's soundness of mind, unless proven otherwise. The Applicants have not provided any evidence that the deceased lacked mental capacity or was under any undue influence when he executed his Will. To the contrary, the circumstances indicate the deceased knew exactly what he was doing -he engaged an advocate to draw the Will, identified his assets and*

beneficiaries, and executed the document willingly. There were no suspicious circumstances surrounding the Will's execution that would cast doubt on the testator's volition or understanding. Accordingly, the burden of proving lack of capacity lies with the Applicants, and they have failed to discharge it. I verily believe the deceased had the requisite testamentary capacity, and the Will represents his true intentions.

- vi. The Applicants have alleged that the deceased's Will is a forgery, an accusation which I categorically deny. The Will in question was drawn by a reputable advocate and executed in the presence of witnesses, leaving very little room for tampering. No prima facie evidence of forgery has been presented – the Applicants' claim rests purely on speculation and suspicion. In law, he who alleges forgery bears the burden of proof, and it is a heavy burden because forgery is a fraudulent act.*
- vii. The Applicants have alleged the will was a forgery. The burden is upon them to establish that fact to the required standard and facts to establish it must make out a case beyond balance of probability. The Applicants have not discharged this burden at all.*
- viii. The Applicants have not produced any forensic document examiner's report or credible witness to impugn the testator's signature. On my part, I am aware the three attesting witnesses (and the advocate who prepared the Will) are available to swear all necessary affidavits and appear in Court to confirm its authenticity. The witnesses affirm that the deceased signed the Will in their presence, and that it was his free act.*

- ix. *Notably, the Applicants themselves did not raise any question about the Will's validity until after the estate had been partially administered, which casts doubt on the bona fides of their forgery claim. We humbly submit that the Will is genuine, and the Applicants' forgery allegation is a red herring with no evidentiary backing it is being used as a stratagem to delay distribution and upset the deceased's wishes.*
- x. *There is no pending caveat, objection, or citation to challenge the said Will before this Honourable Court.*
- xi. *The applicants are improperly using the revocation procedure under Section 76 of the Act to mask their dissatisfaction with the testamentary wishes of the deceased, having failed to file objections or challenge the Will at the appropriate time. They are barred by laches and waiver.*
- xii. *The allegations of forgery and undue influence are not only unsupported by any medical or forensic report but are designed to harass the Executors and cloud the estate distribution.*
- xiii. *The Applicants have also instigated a parallel process by making complaints to the Directorate of Criminal Investigations (DCI) alleging forgery of the Will and other improprieties. They even involve the DCI in purportedly examining the Will. We aver that the Applicants are misusing the criminal justice system to gain an upper hand in this succession dispute, which is an abuse of due process.*
- xiv. *The validity of the Will and any allegations of forgery are squarely within the province of the probate court to determine, on the basis of evidence, in this ongoing case. Invoking police investigations in the midst of these proceedings is oppressive, unnecessary, and meant to intimidate the Executors.*

- xv. *It is telling that despite the DCI's involvement, no prosecution or tangible finding of forgery has been made to date-because, I maintain, the Will is authentic.*
- xvi. *The Applicants' resort to the DCI is therefore a fishing expedition and a form of forum-shopping intended to harass me and the deceased Advocate and derail the due administration of the estate. This Honourable Court has inherent power under section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules to prevent such abuse of its process.*
- xvii. *In light of the aforementioned, I urge the Court to find that the Applicants' conduct in this regard is an attempt to collaterally attack the grant and to litigate through investigation what is before this Court- a tactic that should not be countenanced.*
- xviii. *The proper course for the Applicants was to tender any evidence of forgery within these revocation proceedings (which they have not). The DCI process adds no value and is being misused. In the premises, the Court should safeguard its process and the estate from litigious mischief by dismissing the Applicants' spurious contentions outright. The multi-pronged attack (civil and criminal) on the Executors, absent any proof of wrongdoing, points to a vendetta and abuse of the court process on the part of the Applicants.*
- xix. *While the deceased, occasionally affixed his thumbprint on certain documents, it is neither unusual nor unlawful for an elderly person to alternate between a signature and thumbprint. The deceased's use of his signature in the will is valid and binding in Law, and there exists no legal presumptions that a thumb print invalidates a signature or vice*

versa. The dispositive intention remains paramount, as recognized under Section 11 of the Law of Succession Act, and the Will bears all formal and legal characteristics of due execution.

m. That in response to the order sought for revocation I wish to revert as follows:

- i. There was no fraud, misrepresentation, concealment of material facts, nor any procedural irregularity in obtaining the Grant of Probate. The Applicants allege that the grant was obtained fraudulently, but they have not particularized any specific fraud or hidden material information. The Applicants are invited to strict proof thereof to the allegations thereto.*
- ii. All surviving beneficiaries and dependants were disclosed in the petition for probate, including the Applicants. In fact, the Applicants were listed as such in the Petition and in the schedule of assets and beneficiaries presented to the court.*
- iii. There was no "secret" proceeding - the cause was gazette and the Applicants were aware (or ought to have been aware) of it.*
- iv. The High Court took into account the Applicants' interests during confirmation, as they were allocated shares of the estate per the Will. Thus, the grounds for revocation under Section 76(a), (b) and (c) (defective proceedings, fraud, or concealment) do not arise.*
- v. I am informed by the Advocate on record which information I verily believe to be true that the Courts have emphasized that the power to revoke a grant is discretionary and must be exercised sparingly and on solid grounds, not whimsically. There is absolutely no evidence of wrongdoing by me in obtaining the grant that would justify the drastic order of revocation.*

- vi. *The Applicants were accorded due notice and process at every stage of the succession proceedings. Prior to the grant being issued, a citation and gazettelement were done in accordance with the law. The Applicants did not file any objection within the prescribed period.*
- vii. *If the Applicants felt aggrieved or left out, the law obligated them to file an affidavit of protest before confirmation-which they failed to do. The Applicants cannot now claim lack of service or procedural unfairness, having slept on their rights. Their participation and silence during the confirmation implies acquiescence.*
- viii. *Due process was scrupulously observed by the court and by the Executors; therefore, the Applicants' complaint of not being heard is unfounded.*
- ix. *The grant was lawfully issued and confirmed after a fair process, consistent with the right to administrative action that is expeditious, lawful, and procedurally fair under Article 47 of the Constitution of Kenya, 2010. At all times, the Applicants had the opportunity to be heard in line with Article 50(1) of the Constitution of Kenya, 2010, which they either waived or did not utilize.*
- x. *The Applicants' objections have been raised belatedly, after confirmation of the grant, in circumstances that suggest laches and acquiescence. The Applicants waited until several months after confirmation (and after key steps had been taken in execution of the Will) to file the present Summons for Revocation. No plausible explanation has been given for this inordinate delay.*

- xi. *The estate assets intended distribution would be thrown into disarray. The doctrine of laches applies to prevent such an outcome where the Applicants slept on their rights. I respectfully submit that the Applicants' delay has been tactical and is itself an abuse of the court's process. Their objections, raised as an afterthought, are not bona fide and should be estopped for this reason as well*
- xii. *I am informed by my Advocates on record which information I verily believe to be true that equity aids the vigilant and not the indolent; their silence and inaction for such a long period amount to acquiescence.*
- xiii. *In view of the foregoing points and authorities, I firmly believe the Applicants have failed to establish any valid ground for revocation or annulment of the grant under Section 76 of the Act. They have not demonstrated any fraud, concealment, incapacity, or other vitiating factors - their application is instead driven by dissatisfaction with the Will's outcome, which is not a lawful basis to impeach a grant.*
- xiv. *Where no criteria in Section 76 are satisfied, an application for revocation "must fail". We pray that this Honourable Court, taking into account the interests of all beneficiaries and the justice of the case, do find likewise and dismiss the Summons for Revocation of Grant dated 07-04-2025 in its entirety.*
- xv. *The Grant of Probate as confirmed should be upheld as valid and effective. The estate stands to be administered to completion in accordance with the Will dated 01-07-2022 and the law.*
- n. *That the summons lack merits, is made in bad faith and I urge the Court to dismiss the same with costs.*

- o. *That I swear this Replying Affidavit in the hope that justice may be done, that my children may be protected, and that I may be allowed to live and work on the land my husband entrusted to me, for the welfare and dignity of the 2nd House.*

Notice of Motion Application dated 27th November 2025

5. The Second application is a Notice of Motion Application dated 27th November 2025 expressed to be brought under Section 47 of the Law of Succession Act Cap 160 Laws of Kenya, Rule 49 and 73 of the Probate and Administration Rules, Articles 48, 50, & 159 of the Constitution, Section 1A, 1B & 3A of the Civil Procedure Act Cap 21 Laws of Kenya, Order 51 Rule 1 of the Civil Procedure Rules 2010 where the Applicants are seeking the following orders:

- a. *Spent.*
- b. *The delivery of the ruling scheduled for 16th December 2025 in respect of the summons for revocation of grant dated 7th April 2025 be arrested pending the hearing and determination of this application inter partes.*
- c. *There be a stay of further proceedings in this matter and/or writing of a ruling with regard to the revocation proceedings dated 7th April 2025 and/or further action with regard to the summons for revocation, pending the hearing and determination of this application inter partes.*
- d. *There be an order of stay of all proceedings and/or further proceedings in this succession cause pending the hearing and final determination of **Eldoret ELC case No. 115B of 2020 (Hellen Chepkoech Cheluget (suing as the administrator of the estate of David Kiptoo Cheluget deceased v Abraham Kipruto Cheluget & Another)** filed and still pending at the environment and Land Court at Eldoret.*

- e. *The Honourable Court do give such further orders and directions as it may deem fit to meet the ends of justice.*
 - f. *The costs of this Application be provided for.*
6. The Application is premised on the grounds on the face of it among others that: -
- a. The core proprietary issue concerning the land known as UASIN GISHU/ KORMAET SCHEME/57 measuring 90.24 Ha, which constitutes the majority of the deceased's estate, is the subject of ELC case No. 115 B of 2020.
 - b. The said property forms the central subject matter of both the instant Succession Cause and the parallel proceedings in Eldoret ELC Case No. 115B of 2020, wherein the Applicant aver that the co-registered proprietors hold the Suit Property in trust for the Deceased.
 - c. The Suit Property is registered in the joint names of David Kiptoo Cheluget (the Deceased herein), Jemaiyo Anna Cheluget (Deceased), Abraham Kipruto Cheluget, and John Kipkemboi Cheluget.
 - d. In the said ELC Case No. 115B of 2020, the applicant herein (as Plaintiff therein) expressly avers that the co-registered owners (respondents herein and defendants therein) were registered as such to hold the Suit Property in trust for the Deceased and this issue of trust remains pending determination before the Environment and Land Court.
 - e. In Clause 7 of the Last Will and Testament of the Deceased dated 1st July 2022, the Deceased unequivocally declared sole beneficial ownership of the Suit Property, stating that the co-registered owners made no monetary contribution towards its purchase and held it merely as nominees or trustees.

- f. This Honourable Court has been apprised of the existence or pendency of the Environment and Land Court Case in Paragraph 8 (xi) of the Replying affidavit by Hellen Cheluget sworn on 12th May 2025 hence the necessity of this application, as the Environment and Land Court case directly impinges on the ownership and includability of the Suit Property in the Deceased's Estate, such that proceeding to rule on 16th December 2025 without awaiting its outcome would occasion a miscarriage of justice.
- g. The determination of the summons for revocation of grant touches directly on the validity of the grant, which validity is contingent upon the outcome of the proprietary dispute being heard in the Environment and Land court, a court of competent and concurrent jurisdiction on land matters.
- h. The delivery of the Ruling on the revocation proceedings before the determination of the Environment and Land court case will pre-empt the decision of the Environment and Land Court, leading to the risk of conflicting or inconsistent judicial decisions and rendering the Environment and Land Court proceedings nugatory hence the need for stay of proceedings herein.
- i. Judicial economy and the overriding objective under Section 1A and 1B of the Civil Procedure Act demand that the specialized land dispute in the Environment and Land Court Case be resolved first, as its outcome will conclusively inform whether the Suit Property forms part of the Deceased's Estate for distribution under the Will.
- j. The objectors/ Respondents stand to suffer no prejudice if the orders sought are granted as they are parties in the Environment and Land court case.
- k. The interests of justice demand that the probate court exercises its inherent jurisdiction to preserve the integrity of the judicial process

by staying its proceedings pending the outcome of the Environment and Land court suit.

- I. There is a high risk of irreparable prejudice to the applicants if the ruling on the revocation proceedings is delivered, as it may effectively dispose of the estate to third parties before the question of ownership is finally settled.
7. The Application is supported by the annexed affidavit dated 27th November 2025 sworn by Hellen Chepkoech Cheluget the 1st Petitioner/Applicant who deponed as follows:
- a. I am the 1st Petitioner/Applicant herein, the duly appointed executrix of the Estate of the late DAVID KIPTOO CHELUGET ("the Deceased"), and therefore competent and authorized to swear this Affidavit*
 - b. That I am well versed with the facts of this case as they appear in our records and I am enabled to swear this supporting affidavit out of information within my knowledge as well as information derived from the records within our custody and our advocate's custody.*
 - c. That I am aware that Grant of probate of written will issued to us on 4th November 2024 was confirmed on 7th February 2025 and a certificate of confirmation of grant duly issued on the even dated.*
 - d. That objectors/ Respondents subsequently filed summons for revocation of the grant dated 7th April 2025.*
 - e. That I am aware that on 11th November 2025, the Honourable court directed that parties file written submissions on the summons for revocation of grant and reserved its ruling for 16th December 2025.*
 - f. That I have been informed by my advocates on record which information I verily believe to be true that the delivery of the said ruling is imminent and must be arrested immediately to prevent grave and irreparable prejudice to the estate and the beneficiaries thereof.*

- g. That, the primary asset of the deceased's estate is the parcel of Land Known as Land Reference Number Uasin Gishu/Kormaet Scheme/Block 57 measuring 90.24 Ha which is the principal subject of the dispute herein.*
- h. That I am also aware and did disclose in paragraph 8 (xi)(e) and (d) of my Replying affidavit sworn on 12th May 2025 that the ownership and proprietary rights over the Land Known as Land Reference Number Uasin Gishu/Kormaet Scheme/Block 57 measuring 90.24 Ha are currently the subject of a substantive suit, ELC CASE NO. 115 B OF 2020 filed at the Environment and Land court at Eldoret.*
- i. That I wish to further state that the Suit Property is registered in the joint names of David Kiptoo Cheluget (Deceased) Jemaiyo Anna Cheluget(Deceased), Abraham Kipruto Cheluget, and John Kipkemboi Cheluget*
- j. That prior to his death, the Deceased executed a Last Will and Testament dated 1st July 2022, in which he expressly declared that he was the sole beneficial owner of the Suit Property and that the co-registered proprietors made no financial contribution towards its acquisition and were registered merely as nominees or trustees*
- k. That in Eldoret ELC Case No. 115B of 2020, I am aware that the deceased herein David Kiptoo Cheluget, had sued Abraham Kipruto Cheluget and John Kipkemboi Cheluget (Respondents/Objectors herein), seeking declarations that they were registered as joint proprietors to hold the Suit Property in trust for the Deceased and I have since been substituted as the plaintiff.*
- l. That the issue of whether the Respondents hold the Suit Property in trust for the Deceased is directly pending determination before the Environment and Land Court and I am aware that the matter has a date of 11th December 2025.*

- m. That I am informed by my advocate on record which information I verily believe to be true, having disclosed to this Honourable Court in my Replying affidavit sworn on 12th May 2025 of the existence of the said Environment and Land court proceedings, and the question of ownership and trust raised therein squarely determines whether the Suit Property forms part of the Deceased's Estate capable of distribution under the Law of Succession Act.*
- n. That I am advised by our advocates on record which information I verily believe to be true that the substratum of the summons for revocation, upon which the Honourable court is about to deliver its ruling, rests heavily on the question of the actual ownership and proper listing of the suit property as an asset of the estate, which is the very question the Environment and Land court has jurisdiction to determine.*
- o. That I am further advised by our advocates on record which information I verily believe to be true that if the Ruling on the summons for revocation is delivered before the Environment and Land Court determines the proprietary rights over the property, the same shall pre-empt the decision of the Environment and Land Court, a court of competent jurisdiction on land matters.*
- p. That I am also advised by our advocates on record which information I verily believe to be true that if the ruling proceeds before the Environment and Land court determines the pending question of trust, there is a real risk of conflicting judicial decisions between the two superior courts; one from this court touching on the validity of the grant herein and one from the Environment and Land Court on the legal ownership of the suit property in dispute herein.*
- q. That I am informed by my advocate on record which information I verily believe to be true that the determination by the Environment*

- and Land court on whether the Suit Property is held in trust will conclusively establish:*
- i. Whether the Suit Property belongs in the Estate of the Deceased.*
 - ii. Whether it is available for distribution under the Will.*
- r. That the continuation of proceedings in this succession cause, particularly the delivery of the ruling on the revocation proceedings, would render the ongoing Environment and Land court proceedings nugatory and amount to an abuse of the court process.*
- s. That I am aware that the objectors have lodged succession proceedings for the estate of their mother Annah Jemaiyo Cheluget (Deceased) vide ELDORET HC SUCCESSION CAUSE P&A NO. E083 OF 2025 IN THE ESTATE OF JEMAIYO ANNAH CHELUGET ALIAS ANNA CHELUGET which cause is scheduled for 25th March 2026, in which they have listed therein the property in dispute herein as estate property and were this court to render a ruling on the revocation proceedings herein prior to the Environment and Land court case being determined, there is high likelihood that the subject matter will be distributed in the Objectors' mothers' succession cause rendering the ELC case nugatory and a mere academic exercise which act will gravely prejudice the other beneficiaries of the estate of David Cheluget (Deceased).*
- t. That in the circumstances, in the overriding interest of justice, it is necessary, just, prudent, and consistent with judicial economy that this Honourable Court exercises its inherent jurisdiction and power under Rule 73 of the Probate and Administration Rules to stay all further proceedings hereinto await the outcome of the environment and Land Court matter.*
- u. That I and the estate of the deceased herein, the beneficiaries thereof included, stand to suffer grave prejudice and irreparable*

- injustice if the ruling scheduled for delivery proceeds, as it may be based on an incomplete factual matrix and may pre-empt, undermine, or contradict the environment and Land Court's eventual decision.*
- v. *That no prejudice will be suffered by the Respondents/Objectors if the stay sought is granted as they are parties in the Environment and Land court case; to the contrary, granting the stay will ensure that all questions relating to the Suit Property are resolved by the court vested with the requisite jurisdiction.*
- w. *That this application for stay and arrest of the ruling herein has been brought promptly, in good faith, and in the interest of justice*

Replying Affidavit

8. The Application was opposed vide a Replying Affidavit dated 15th January 2026 sworn by Abraham Kirwa Cheluget who deponed as follows: -
- a. *I am an Objector herein and beneficiary of the Estate of David Kiptoo Cheluget (Deceased), being a son of the Deceased. I am therefore conversant with the matters herein and hence competent to make this affidavit.*
- b. *I have read and understood the Notice of Motion Application dated 27th November, 2025 together with the Affidavit of Hellen Chepkoech Cheluget sworn on the even date in support thereof ('the Application'), the purport and meaning of which I have understood, and where necessary have been explained to me by Triple OK Law LLP Advocates who are on record for the Applicants in this matter.*
- c. *From the onset, I verily believe that the Application as framed by the Applicants is misconceived and ought to be dismissed for reasons set hereunder.*
- d. *I am aware that this Honourable Court directed on 11th November, 2025 that parties canvass the question whether one of the estate properties being LR NO. UASIN GISHU/KORMAET SCHEME/57 ('the*

- Property'), ought to have been included in the impugned will of the Deceased.*
- e. I understand and has been explained to me by my advocates on record, that the Objectors vide their Application, seek to stop the determination of this question and of the Applicants' application for revocation of the Grant issued in this matter, on grounds that the question as to the ownership of the suit property is subject to pending court proceedings in Eldoret ELC Case No. 115B of 2020 - Hellen Chekoech Cheluget (suing as the Administrator of the Estate of David Kiptoo Cheluget-Deceased) Vs Abraham Kipruto Cheluget & Anor.*
 - f. I verily believe that the present Application by the Objectors is misconceived and a misstatement of the directions issued by this Court on 11th November, 2025.*
 - g. I am aware that the Court only directed that the question of the inclusion of the Property in the will of the Deceased, be canvassed, and not the entire application for revocation of the Grant.*
 - h. Secondly, I am advised by my advocates on record, which advice I verily believe to be true, that the question for determination by this Honourable Court is not the ownership of the Property, but whether the same ought to have been included in the Will of the Deceased.*
 - i. Consequently, I am advised by my Advocates on record, which advice I believe to be correct, that there is no contradiction and/or overlap between the present proceedings and the proceedings in Eldoret ELC Case No. 115B of 2020 to warrant stay of these proceedings.*
 - j. Simply put, the issues for determination before this Court and before the Environment & Land Court are different and within the jurisdiction of the respective courts.*

- k. *It is an admitted fact that the title to the Property clearly shows that the property was owned by four (4) proprietors as at the time the Deceased purported to bequeath the same in his will.*
- l. *Consequently, I verily believe that the determination of whether the property ought to have been included in the Deceased' last will and testament would not in any way affect the proceedings on the legal proprietorship of the Property in Eldoret ELC Case No. 115B of 2020.*
- m. *In any case, I verily believe that for proper use of judicial time and in the interests of justice, the present application ought to be heard concurrently with the Objectors' application for removal of the Property from the Deceased will.*
- n. *Additionally, I verily believe that the Objectors' application for revocation ought to be determined first, as it challenges the Grant held by the Applicants, grant on which authority they continue the proceedings in Eldoret ELC Case No. 115B of 2020.*
- o. *It would therefore be greatly unfair and prejudicial to the Objectors if the proceedings are stayed and those in Eldoret ELC Case No. 115B of 2020 continued to their logical end, and later, this Court revokes the Grant issued to the Applicants, as the proceedings before the Land Court would have been continued and sustained on the basis of an illegal and invalid Grant.*
- p. *Consequently, and for good order, these proceedings in fact ought to be expedited as they inadvertently affect Applicants' legal authority to sustain the proceedings in Eldoret ELC Case No. 115B of 2020.*
- q. *I, therefore, believe that it's in the interest of justice and fairness that the present proceedings ought to be expedited instead of stay as prayed by the Applicants.*

Analysis and Determination

9. I have read and considered the pleadings herein by the respective parties. There are two (2) fundamental issues manifest for determination by this Honourable Court: -
- a. Whether LR No. Uasin Gishu/Kormaet Scheme/57 forms part of the estate of the deceased?
 - b. Whether the will dated 1st July 2022 is authentic or a forgery?

Whether LR No. Uasin Gishu/Kormaet Scheme/57 forms part of the estate of the deceased?

10. The jurisdiction of this Court to entertain this Application is provided for in section 47 of the Law of Succession Act. In particular, this section 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.”

11. On the other hand, Rule 73 of the Probate and Administration Rules provides that: -

“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.”

12. Section 47 of the Law of Succession Act thus vests this court with wide discretion in granting protective powers for purposes of safeguarding the estate of a deceased person. The Court of Appeal in **Floris Piezzo & Another Vs Giancarlo Falasconi (2014) eKLR**, expressed itself as follows: -

“...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."

13. From the record, there is an issue with the inclusion and ownership of LR No. Uasin Gishu/Kormaet Scheme/Block 57 (90.24 HA) pending in the Environment and Land Court (ELC). The Objectors contend that the deceased did not have the legal capacity to bequeath the entirety of **LR NO. UASIN GISHU/KORMAET SCHEME/57** because it is co-owned by the deceased, Anna Cheluget (deceased), and several of the Objectors. They argue that this property is currently the subject of **ELC CASE NO. 115B of 2020 HELLEN CHEPKOECH CHELUGET (SUING AS THE ADMINISTRATOR OF THE ESTATE OF DAVID KIPTOO CHELUGET (DECEASED) VS ABRAHAM KIPRUTO CHELUGET & ANOTHER)** where the ownership status remains unresolved. Consequently, they assert that the inclusion of this land in the will as the deceased's sole property is a material non-disclosure that renders the grant defective.
14. Conversely, the 1st Petitioner argues that the deceased was the sole beneficial owner, having purchased the land with his own resources. She deposes that the other parties were registered as co-proprietors merely as nominees or trustees to protect the land from political interference, giving rise to a resulting trust. The Petitioners point out that the deceased himself initiated the ELC suit to rectify the register and delete the co-registrars, a matter that is still pending.

15. The starting point is the constitutional delineation of jurisdiction. Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act unequivocally confer on the Environment and Land Court the power to hear and determine disputes relating title to land.

“13. Jurisdiction of the Court

(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to the environment and land.

(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes -

(a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(b) relating to compulsory acquisition of land;

(c) relating to land administration and management;

(d) relating to public, private, and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(e) any other dispute relating to environment and land.”

16. In parallel, Article 165(5)(b) restricts the jurisdiction of High Court in matters reserved for courts of equal status. This jurisdictional boundary is reinforced by Sections 2 and 101 of the Land Registration Act and Sections 1 and 150 of the Land Act, which collectively vests disputes over proprietary interests within the remit of the Environment and Land Court. In contrast, this Court exercises jurisdiction under the Law of Succession Act. The role of a Probate Court is circumscribed: it identifies the free property of a deceased person, ascertains the beneficiaries and oversees distribution of the estate. Section 3 of the Law of Succession Act defines

“free property” as property of which the deceased was legally entitled at the time of death and which is not subject to any encumbrances that would limit transmission. Therefore, when a party asserts an adverse proprietary claim over a listed asset, the succession court must interrogate whether the property is indeed part of the estate.

17. Where the dispute is centered solely on ownership and requires evidentiary evaluation beyond the scope of a probate court, Rule 41(3) and (4) of the Probate and Administration Rules provides the appropriate mechanism. These provisions empower the court, in cases where ownership is uncertain or contested, to set aside the disputed property pending the outcome of appropriate proceedings, before the relevant forum in this case the Environment and Land Court (ELC).
18. The Probate court, therefore, lacks the mandate to confirm ownership in favour of either party. Jurisdiction is fundamental to the exercise of judicial power. Without jurisdiction, the court cannot act without violating the principles of rule of law and legality. ***See the case of Owners of the Motor Vessel “Lillian S” Vs Caltex Oil (Kenya) Ltd [1989] eKLR.*** A probate court must refrain from making determinations that effectively adjudicate title disputes between the estate and third parties. Issuing a ruling on the ownership of the subject property would exceed the Court’s jurisdiction.
19. Nevertheless, the Court retains power to set aside, review or correct a confirmation of grant where it included property that does not constitute free property. Given the Objectors’ claim predates the confirmation, and in light of the current bona fide dispute over ownership, the appropriate remedy is to allow either the Administrators or the Objectors to seek a substantive determination of ownership before the ELC. Once a determination is made, the Administrators may return to this Court for further directions regarding distribution of the property as per the Certificate of Confirmation of Grant dated 7th February 2025.

20. This court moreover notes that the outcome of **ELC Case No. 115B of 2020** is foundational to this succession cause, as it will determine whether the suit property formed part of the deceased's estate and or free property of the deceased available for distribution.

Whether the Will dated 1st July 2022 is authentic or a forgery?

21. The Objectors challenge the validity of the will which resulted in the Grant of Probate of the last WILL and Testament dated 4th November 2024 and the resultant Certificate of Confirmation of Grant dated 7th February 2025, asserting it is a forgery because the signature therein is materially different from the deceased's known signatures. They highlight that the deceased suffered from acute glaucoma, which led him to sign official court documents via thumbprint as early as 2020-2021, making the appearance of a signature in a 2022 will highly suspicious. They further allege the will was backdated and prepared under suspicious circumstances by the petitioners' advocates.

22. The Petitioners rely on the presumption of due execution (*omnia esse rite acta*), noting the will is regular on its face and was attested by three qualified advocates. They argue that the use of a signature instead of a thumbprint is not unlawful for an elderly person and does not invalidate the document. Citing Section 11 of the Law of Succession Act, they maintain that the formal requirements for a valid written will were met

23. The determination of validity of a will is among the most solemn duties that falls upon a court of probate. When allegations of forgery are raised against a testamentary instrument, the court must approach the matter with heightened scrutiny, as it touches not only on the sanctity of a deceased person's last wishes but also involves accusations of criminal conduct. The present application calls upon this court to examine whether the will dated 1st July 2022 was validly executed in accordance with

Section 11 of the Law of Succession Act and to determine whether the Objectors have discharged the heavy burden of proving allegations of forgery.

24. Section 11 of the Law of Succession Act sets out the formal requirements for valid execution of a Will. It particularly provides as follows: -

“11. No written Will shall be valid unless: -

(a) The testator has signed or affixed his mark to the Will, or it has been signed by some other person in the presence and by the direction of the testator;

(b) The signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a Will;

(c) The Will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the Will, or have seen some other person sign the Will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same

time, and no particular form of attestation shall be necessary.”

25. Section 11 establishes the fundamental requirements for creating a legally valid Will, mandating that the document must be in writing and signed at its conclusion by both the testator and a minimum of two witnesses who must be physically present during the signing ceremony. The Court holds a critical oversight role in this process, being obligated to examine any suspicious circumstances surrounding the Will's execution to ensure it represents the testator's genuine intentions, free from undue influence, coercion, or duress. Following the testator's passing, the executor assumes the responsibility of administering the estate, which

encompasses three key duties: collecting all assets belonging to the deceased, settling any outstanding debts or liabilities, and ultimately distributing the remaining assets to the designated beneficiaries in accordance with the Will's provisions.

26. When forgery is alleged against a will that appears regular on its face with an attestation clause and witnesses' signatures, the courts have consistently held that there exists a rebuttable presumption of due execution under the principle of *omnia esse riteatta*. This principle was articulated in **Karanja and Another Vs Karanja [2002] 2KLR 22**, where the court held that: -

"When the will is regular on the face of it with an attestation clause and signatures of attesting witnesses and the signature of the testator, there is a rebuttable presumption of due execution."

27. The burden of proving forgery lies squarely on the person making the allegation. As this involves an accusation of criminal conduct, the standard of proof required is higher than the ordinary civil standard of balance of probabilities, though not as high as the criminal standard of proof beyond reasonable doubt. This principle was established in **Elizabeth Kamene Ndolo Vs George Matata Ndolo [1996] eKLR**, where the Court of Appeal held: -

"We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases."

28. In examining allegations of forgery in testamentary documents, courts have emphasized that the mere assertion of forgery, without cogent supporting evidence, is insufficient to invalidate a will. In **Fuller Vs**

Strum [2000] ALL ER 2392, the court articulated this principle clearly, stating: -

“While I recognize, that the standard of proof is in the civil standard on a balance of probabilities, it is well recognized that where a serious allegation like forgery is made, the inherent improbability of the event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event has occurred.”

29. The courts have established that evidence of forgery must be approached systematically and with appropriate expertise. Mere visual comparison by laypersons is insufficient. As held in **Asira Vs Republic [1986] KLR 227**,
*“The most an expert on handwriting can properly say is not that somebody definitely wrote a particular thing but that he does not believe a particular writing was by particular person or that the writings are so similar as to be undistinguishable. It is the duty of a court to make an examination and satisfy itself whether the handwriting expert’s opinion can be accepted and the court cannot blindly accept such an opinion...The decision on handwriting, whether it is genuine or not, always rests with the Court...The art of comparing handwriting is no doubt one in which time and thought are given to the formation of letters and words, and therefore expert status may be accorded to a person versed in such comparisons. But as has been accepted in **Wainaina’s Case (Namaina v Republic [1978] KLR 11)** such an expert is not able to say definitely that anybody wrote a particular thing. The reasoning is based upon the knowledge that handwritings can very easily be forged. Moreover, a person may not write in the same style all the time. The expert is therefore faced with trying to analyze forged writing as well as disguised writing. In cases where there is a problem about the writing it is the duty of the court to satisfy itself after examination whether the expert’s opinion can be*

accepted and cannot blindly accept such opinion. In these areas of conflict, it is prudent to look for other evidence so that forgery can be excluded on the one hand, and mistaken identification excluded on the other."

30. Having established these legal principles, this court must now examine whether the evidence presented meets the threshold for ordering forensic examination, while being mindful of its broader duty to ensure succession matters are conclusively determined. In the present case, while the objector has raised questions about the authenticity of the deceased's signature on the will dated 1st July 2022, the court must balance two competing interests: the presumption of due execution and the need for conclusive determination of authenticity when serious allegations are raised. As established in **Re Estate of Samuel Ngugi Mbugua (Deceased) [2017] eKLR**: -

"The allegation that the said signature was not that of the deceased amounts to a claim that the signature was forged or that fraud was exercised in the procurement of the alleged will... The burden of proving forgery lies with the person alleging it."

31. When examining allegations of forgery in the context of wills, the court must be mindful that signatures may naturally vary over time and circumstances. As noted in **Rose Kaiza Vs Angelo Mpanju Kaiza (2009) eKLR**, the acceptance by a witness that there were differences between signatures, along with an explanation for such differences, does not automatically lead to a conclusion that forgery has occurred. The court must look at the totality of evidence, including the circumstances surrounding the execution of the will and the testimony of those present. The Court of Appeal in the said case stated as follows: -

"We think the duty of the court in weighing the opinion evidence of an expert would be more onerous where such opinion is the only material for consideration, than where there is direct evidence on the author of

the handwriting. In this case there was the evidence of the Land Registrar himself who swore that he signed the transfer. The acceptance by the Land Registrar that there were differences between some of his known and specimen signatures and the explanation given by him that he had an injury on his hand when he signed the impugned signature, hence the possible cause of the differences, was not, in our view, a confirmation that the document examiner was right and therefore his evidence ought to be accepted. The credibility of the two witnesses had to be weighed and on that the best judge was the person who heard and watched the demeanour of those witnesses. The Land Registrar was believed by the learned Judge on the basis of his credibility and we have no reason to interfere with that assessment.”

32. However, this Court remains conscious of its wider obligation to ensure that succession disputes are determined with certainty and finality. Although the evidence presented by the objector may not strictly meet the threshold ordinarily required to justify a forensic examination, the Court considers that permitting such an examination at this stage may assist in conclusively resolving any remaining questions regarding the authenticity of the will. This approach is particularly appropriate in light of the considerable value of the estate involved and the need to avert future disputes that could further strain or disrupt family relations.
33. The Kenyan Courts have established that a last testament (last Will) is generally considered final and binding expression of a deceased person's wishes regarding their estate provided it is validly executed, the Testator has capacity and it was not procured by undue influence. The import or primary significance of the last testament lies in its power to revoke all prior Wills and to dictate the distribution of the free estate of the deceased. Once a last Will is proven valid, it governs the distribution of the estate, overriding any prior testamentary documents or intestate laws. The Court's role is to give effect to these final wishes. It is also the

threshold position in law that while the last Will allows a Testator to freely dispose off their property, this freedom is not absolute and is restricted by the inheritance provisions under the Law of Succession Act Section 38 as read with 40 together with Article 27(4) of the Constitution. This allows the Court to intervene if the Will fails to make reasonable provisions to certain dependents.

34. This dispute as framed as of now seems to impeach the last testamentary and the Testator's intention. Some of those issues are being alluded to in the affidavit evidence. It follows therefore, that the issues cannot be wished away on this question and on the other hand, the jurisdiction being exercised by Environment and Land Court. The property rights of a deceased person are as per this dicta from the comparative jurisprudence:

*“When the whole right of property is in a person, as it is in an executor, there is no need to distinguish between the legal and equitable interest in that property, any more than there is for the property of a full beneficial owner. What matters is that the court will control the executor in the use of his rights over assets that come to him in that capacity; but it will do it by the enforcement of remedies which do not involve the admission or recognition of equitable rights of property in those assets. Equity in fact calls into existence and protects equitable rights and interests in property only where their recognition has been found to be required in order to give effect to its doctrines. (See **Commissioner of Stamp Duties (Queensland) v Livingston [1965] AC 694**). Similarly, in **Re Leigh’s Will Trusts [1970] Ch 277, at 281-282**, Buckley J considered Livingston to have established the following propositions:*

“(1) the entire ownership of the property comprised in the estate of a deceased person which remains unadministered is in the

deceased's legal personal representative for the purposes of administration without any differentiation between legal and equitable interests; (2) no residuary legatee or person entitled upon the intestacy of the deceased has any proprietary interest in any particular asset comprised in the unadministered estate of the deceased; (3) each such legatee or person so entitled is entitled to a chose in action, viz. a right to require the deceased's estate to be duly administered, whereby he can protect those rights to which he hopes to become entitled in possession in the due course of the administration of the deceased's estate; (4) each such legatee or person so entitled has a transmissible interest in the estate, notwithstanding that it remains unadministered."

35. In the circumstances specified in this case as pleaded by the parties, there are both contentious and noncontentious issues which needs to be resolved as a whole and substantially so, to individualize title to property and its transmission to the heirs. It seems to me that on the evidence that the pool of assets as disclosed by the Applicants during the distribution to compose the inheritance questions have arisen some which the ELC is being asked to interrogate which will have a correlation with the impugned certificate of confirmation of grant. This is the trajectory in Kenya in so far as inheritance law is concerned. The rights are transferred to the heirs at the time of death (with the opening of the succession, according to the saisine principle). Since then, before the distribution, the heirs are the owners of the assets that make up the estate and, have concurrent standing to issue a claim, on their own behalf, in defence of the common patrimony. After distribution, when the indivisibility in respect of the shared property and rights ends, the standing belongs only to the heir to whom the property or right has been attributed.

36. These principles comprises of the mirror theory to show the shadow or the cracks in the impugned grant of confirmation which is the core of this litigation.
37. From the application before the Court, the central issue for determination is whether, at this stage of the proceedings, the Court is justified in questioning the authenticity of the will relied upon by the Petitioners and consequently directing that it be subjected to forensic examination at the laboratory of the Directorate of Criminal Investigations. The resolution of this question necessarily turns on the legal principles governing the making, validity, and proof of a testamentary instrument such as a will, as provided under Section 11 of the Law of Succession Act. A will is a solemn document that takes effect upon the death of the testator and carries considerable significance for beneficiaries who hold legitimate expectations of inheriting the estate of the deceased. The law further provides that a will, or any part thereof, may be rendered voidable if it is established that its execution was procured through fraud, coercion, undue influence, or any form of pressure that deprived the testator of their free will.
38. In support of their request for forensic examination, the objectors have deponed in their respective affidavits that the circumstances surrounding the preparation and execution of the impugned will are suspicious. In particular, they contend that the signature attributed to the deceased appears irregular, shaky, and doubtful when compared to known signatures of the testator. The objectors have therefore lodged a caveat, alleging that the will may have been executed under undue influence or fraud, or that material facts relevant to its authenticity may have been withheld from the Court.
39. Against this background, the Court is persuaded that no prejudice or injustice would be occasioned to any beneficiary if the original will which had been propounded by the Petitioners is subjected to examination by a

qualified forensic expert. Such an examination would assist the Court in resolving the questions raised regarding the authenticity of the document and would enable the expert to file a report on the contested signatures and related features of the will.

40. In view of the foregoing and exercising the court's inherent powers under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules to ensure the ends of justice, I make the following orders: -

- a.** *That the ruling on the Summons for Revocation of Grant is hereby arrested and stayed until the proprietary rights over LR NO. UASIN GISHU/KORMAET SCHEME/57 are settled by the ELC*
- b.** *That an order be and is hereby issued that there shall be an interim stay of all transmission rights that had crystallized pursuant to the Certificate of Confirmation of Grant dated 7th February 20225 issued in this Succession cause.*
- c.** *That to address the issues of forgery, the Original WILL dated 1st July 2022 which was relied upon in issuing the Grant of Probate and the Certificate of Confirmation of Grant shall be surrendered to the Deputy Registrar of this court within 7 days of this ruling for onward transmission to the Forensic Document Examiner at the Directorate of Criminal Investigations Headquarters along Kiambu road through the County Criminal Investigation Officer, Uasin Gishu within 10 days of this ruling.*
- d.** *That the Petitioners and the Objectors shall, within 7 days of this ruling, avail to the County Criminal Investigation Officer at least three original documents bearing the known signatures of the deceased executed between 2018 and 2022 for forensic analysis.*
- e.** *That the Forensic Document Examiner shall file a comprehensive report with this court within 30 days from the date of receiving both*

the propounded WILL and samples of specimen signatures to be compared with the question of signatures in the impugned WILL.

f. *That the costs of the forensic document examination shall be borne by the estate.*

g. *That a status conference shall be held on 5th May 2026 for further directions based on the examiner's report.*

h. *It is so ordered.*

**DATED, SIGNED AND DELIVERED AT ELDORET VIA CTS THIS 13TH DAY
OF MARCH 2026**

.....
**R. NYAKUNDI
JUDGE**