REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

PROBATE CAUSE NO. E003 OF 2023

IN THE MATTER OF THE ESTATE OF RICHARD OCHIENG OLWENGE (DECEASED)

JEANNET AUMA OCHIENG.....1ST OBJECTOR/APPLICANT

MARGARET ATIENO OCHIENG.....2ND OBJECTOR/APPLICANT

GRACE AKINYI OCHIENG.....3RD OBJECTOR

SHEILA ADHIAMBO OCHIENG.....4TH OBJECTOR

VERSUS

FANUEL ODHIAMBO OCHIENG.....1ST PETITIONER

JORAM OMONDI OCHIENG.....2ND PETITIONER

IAN SEDA OCHIENG.....3RD PETITIONER

ANNE ATIENO ONYANGO.....4TH PETITIONER

RULING

1. The 1st and 2nd Objectors herein have filed an objection to making of a grant dated 23/6/2025 wherein they have averred that their interest in the estate of the deceased is that of being children to the deceased and thus beneficiaries. The reasons for the objection are as follows:

i) That the Objectors have a right to participate in the administration and management of the estate of the deceased hence the need to appoint two (2) of the Objectors to be administrators of the estate of the deceased.

ii) That the Petition as presented and/or filed is incomplete and does not represent the full inventory of the estate of the deceased.

iii) That the 3rd and 4th Petitioners have no capacity and/or legal capacity to administer the estate of Richard Ochieng Olwenge who is their grandfather and without them obtaining capacity by taking out letters of administration in their late father's estate.

iv) That the Petitioners have had selfish engagement in the estate without full disclosure to all beneficiaries of the activities hence the need to have the Objectors in the administration of the estate to oversight the management and/or estate activities. They further accused the Petitioners of the following misdeeds:

a) Opened separate accounts where they divert money from the estate without consulting, obtaining consent and/or authority of all family members.

b) They sold estate properties and pocketed the cash for their private/personal use i.e., scrap metal.

c) Have deliberately left out of the list of assets a lion's portion of the estate so as to disinherit the Objectors.

d) They have used estate property for their own interest, i.e., 10 acres of land in Chemelil.

e) They are running the estate affairs without regard to the Objectors' interest and/or to the exclusion of the Objectors.

2. The 2nd Petitioner filed a replying affidavit dated 12/8/2025 on behalf of the Petitioners wherein he averred inter alia; that the grounds of objection raised herein are the same ones that had been raised in their Notice of Objection to making of grant dated 1/9/2023; that the previous Notice of Objection to making of grant aforesaid was canvassed by way of viva voce evidence leading to this court's ruling dated 9/5/2025 in which it dismissed the notice of objection and directed the Petitioners to proceed to apply for grant of letters of administration; that this court further directed that the Petitioners upon issuance of grant of letters of administration were to file summons for confirmation of grant and also present a statement of accounts over the affairs of the estate of the deceased; that the Objectors herein filed a Notice of Appeal to the Court of Appeal over the said ruling; that the 3rd and 4th Objectors later accepted to let the Petitioners proceed and obtain letters of grant of administration as earlier agreed by the majority of the family members; that the Objectors herein later filed an application for stay of proceedings vide an application dated 15/5/2025 which was dismissed by this court on 4/6/2025; that the 1st and 2nd Objectors later moved to the Court of Appeal

vide an application dated 17/6/2025 seeking for orders of stay of proceedings and an order for injunction pending determination of the intended appeal; that the 1st and Objectors are now abusing the court process by seeking to have another objection hearing yet the same had been heard and still seek to proceed with their appeal at the Court of Appeal; that the Petitioners would wish to adopt their earlier replying affidavit sworn on 17/11/2023 in opposition to the Objectors Notice of Objection; that the 1st and 2nd Objectors do not stand to suffer any prejudice since all administrators are bound by fidelity and to render accounts as directed by the court; that the fact of non-inclusion of certain assets does not defeat the intended grant of letters of administration as the beneficiaries are at liberty to present evidence of those assets and that during confirmation the issue of the assets will be addressed; that it was the Objectors herein who had cited the four Petitioners vide Eldoret High Court Citation Number E015 of 20223; that the four Petitioners were selected through a family voting; that the objection herein is causing delay as the Petitioners cannot file summons for confirmation of grant which delay will affect all the beneficiaries of the estate of the deceased; that the objection is ripe for dismissal.

3. The 1st Objector filed a supplementary affidavit sworn on 29/8/2025 wherein she averred inter alia; that the mere fact that a similar objection had been raised does not deny the Objectors from relying on a legal provision to pursue their

interest in the estate as they are legitimate children of the deceased; that the existence of an appeal in the superior court does not bar the Objectors from contesting proceedings herein as there are no orders of stay of proceedings herein; that they have responded to the move by the Petitioners to obtain grant in line with the legal provisions under the Law of Succession Act; that the persons proposed to take out letters of grant are not best suited as they have wasted the estate and ought to be scrutinized by this court at this stage to avoid wastage of the estate; that the Petitioners agree with the Objectors that the Law of Succession Act places strict requirements on the Petitioners to obtain the consent from the beneficiaries; that the Law of Succession Act (Rule 26(1) and (20 of the Probate and Administration Rules does not contemplate that an election be conducted to select administrators for an estate; that the Objectors filed the citation proceedings at Eldoret High Court to compel the Petitioners to take out letters of grant as there was wastage and mismanagement of the estate; that the Objectors herein had made known to the Petitioners that they wished to be made administrators of the estate; that the Petitioners have left out of the list of assets several properties which comprise of 14 parcels of land, flats, farm house, several plots both in Eldoret and Siaya townships and 32 motor vehicles; that the action of leaving out the said properties by the Petitioners is meant to benefit themselves in total violation of the provisions of section 51 of the Act; that the Petitioners

will run amok if the Objectors are not brought on board to check them for the benefit of all beneficiaries; that the Petitioners are under obligation to list all the assets of the deceased before seeking for the grant; that the Notice of Objection to making of grant should be allowed under section 47 and 66 of the Act as well as Rule 73 of the Probate and Administration Rules and that this court decline to grant letters of grant to the Petitioners but order that the Objectors herein be brought on board as administrators to ensure inclusivity, transparency and accountability at all times; that the succession proceedings should not be made to take an adversarial direction but that the objection herein should be seen in positive light; that this court should note that the Petitioners have taken a position that is not legal and sound and thus should proceed to set the record straight by granting the instant objection.

4. The Notice of Objection to the making of a grant dated 23/6/2025 was canvassed by way of written submissions

5. Vide submissions dated 18/2/2026, learned counsel for the 1st and 2nd Objectors, gave a history of the Objection and submitted that the two objectors are daughters of the deceased, Richard Ochieng Olwenge and who have moved the court vide an Objection to Making of Grant dated 23/6/2025 objecting to making of a grant of representation to the

Petitioners herein on grounds inter alia; that the Objectors have a right to participate in the administration and management of the estate hence the need to appoint them as administrators of the deceased' estate; that the Petition as presented and/or filed is incomplete and does not represent the full inventory of the estate of the deceased; that the 3rd and 4th Petitioners have no capacity to administer the estate of the deceased without taking out letters of administration for their late father's estate; that the Petitioners have had selfish engagements in the estate without full disclosure to all beneficiaries of the activities hence the need to have the Objectors in the administration to oversee the management and/or estate activities.

6. It was submitted that the 1st and 2nd Objectors had earlier filed a Notice of Objection to Making of a Grant dated 1/9/2023 which objection was dismissed vide this court's ruling of 9/5/2023 and that the court then appointed the Petitioners as administrators and directed that the cause be gazetted in the usual manner to pave way for issuance of a grant of letters of administration. That the cause was indeed gazetted vide Gazette Notice No. 6764 dated 19/5/2025 inviting objections to the issuance of a grant to the Petitioners to be entered within 30 days from the date of publication and given that the publication was done on 26/5/2025, the 1st and 2nd Objectors filed their objection on 25/6/2025.

7. Learned counsel submitted that the main issue for determination is whether the Objection raised has any merit.

8. It was submitted that the objection has merit because section 67 and 68 of the Law of Succession Act cap 160, Laws of Kenya empowers a party who objects to the application for grant of letters administration to file an objection which objection shall thereafter be considered by the Court in line with section 69 of the Law of Succession Act, cap 160, Laws of Kenya that empowers the Court to interrogate an application for grant of letters of administration where an objection has been raised by virtue of Section 67, 68 and 69 of the Law of Succession Act, cap 160, Laws of Kenya and which power can be exercised even where no objection is raised by virtue of section 70 of the Law of Succession Act, for instance. section 70 (2) of the Law of Succession Act which empowers the court to " call for further evidence as to the due execution or contents of the will or some other will, the making of an oral will, the rights of dependants and of persons claiming interests on intestacy, or any other matter which appears to require further investigation before a grant is made. The 1 st and 2nd Objectors therefore have raised several grounds why a grant of letters of Administration should not be issued in favour of the Petitioners.

9. The first ground relied upon is that the 1st and 2nd Objectors have a right to participate in the administration of the deceased's estate and to be appointed as administrators. It was submitted that this right stems from the provisions of Section 66 of the Law of Succession Act which is very clear that in exercising its discretion the court should accept as a general guide the following order of preference -

    (a) Surviving spouse or spouses, with or without association of other beneficiaries;

    (b) Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

    (c) The Public Trustee; and

    (d) Creditors

    It was submitted that in the instant case, Part V of the Law of Succession Act places the order of preference on the children of the deceased where the deceased is survived by a child but no spouse (see section 38 of the Law of Succession Act). It thus follows that the 1 st and 2 nd Objectors being children of the deceased, have equal rights with the rest of their siblings to be appointed as administrators of his estate.

11. It was pointed out that the Petitioners have not denied that the 1 st and 2nd Objectors are children of the deceased. They have also not disputed the fact that the 3rd and 4th

Petitioners are not children of the deceased. All they have stated is that it does not matter who among the deceased's beneficiaries is appointed as an administrator and further deponed at paragraph 11 (d) of their replying affidavit that the Law of Succession Act places strict requirements on them as Petitioners to obtain consent of the other beneficiaries having priority to take out letters of administration, such as the 1 st and 2nd Objectors, before any grant of letters of administration is issued. However, despite claiming not to have any issue with the 1 st and 2 nd Objectors being appointed as administrators they opted to rubbish the 1 st and 2nd Objectors' advocates' letter dated 26/7/2023 in which the 1 st and 2nd Objectors made it clear before the Petition for letter of administration was filed that they wanted to be administrators of the estate of the deceased as per annexure marked JAO 1 of the supplementary affidavit.

12. It was contended that the reason for not considering the 1 st and 2nd Objectors request to be appointed as administrators was that there was an alleged election of who was to be appointed as an administrator in which the Petitioners purportedly emerged winners. They also claimed that since the court in Eldoret High Court Citation Case No. E015 of 2023 they had been ordered to take out letters of administration the issue of any other party claiming to be appointed as administrator could not arise. It was further

contended that the Petitioners have further argued that the 1 st and 2nd Objectors had lodged appeals to the Court of Appeal challenging this court's decision on Objection to the Making of a Grant dated 1/9/2023 and therefore it would be an abuse of the court process for the court to entertain the instant objection and further that they have alleged that there are structures put in place to safeguard the 1 st and 2 nd Objectors interest within the Law of Succession Act hence they need not be made administrators. It was submitted that section 66 of the Law of Succession Act gives the 1 st and 2nd Objectors a right to be appointed as administrators and where such right is not exercised there ought to be an express consent executed by them as contemplated under Rule 26 (1) and (2) the Probate and Administration Rules confirming that they do not desire to be appointed as administrators. The said Rule 26 (1) and (2) the Probate and Administration Rules is explicit that:

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

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

applicant and such other evidence as the court may require."

13. It was further contended that the alleged vote, which is alien in the Law of Succession Act, or the citation proceedings taken out by the 1 st and 2nd Objectors could not oust the express provisions of the law in so far as obtaining express consent to making of grant of Letters of administration from all beneficiaries is concerned and ensuring that the persons contemplated under section 66 of the Law of Succession Act are given priority during the appointment of administrators. The 1 st and 2nd Objectors are therefore justified in objecting to a grant of letters of administration being issued in favour of the Petitioners who have bypassed the provisions of the law. Reliance was placed in the case of

Nanzala v Mulunda (Succession Appeal 1 of 2021) 120231 KEHC 2829 (KLR) where the Court held as follows:

"The question that follows, is whether, upon being granted leave by the court to apply, the respondent was obliged to comply with the requirements of the Law of Succession Act and the Probate and Administration Rules, governing applications for representation. The answer to that is in the positive. The grant of leave to apply for representation, upon issuance of a citation, does not override the law on

the process to be followed in applying for representation to an estate. The Citor, upon being granted that leave, has to comply with the requirements of section 51 of the Law of Succession Act and the rules in the Probate and Administration Rules relevant to petitions for representation. One such Rule is7 (7), and the other is Rule 26...

...The deceased had 11 children, being 5 sons and 6 daughters, going by the Chief's letter. All the 11 had a right to administer the estate of their late father. That would mean that if only 1 of them sought representation, he had to comply with Rule 26, by notifying the other 10 of his petition, and providing evidence of the same, by way of renunciation, consent or affidavit. I have very closely scoured and perused through the filed papers from the trial court, and I have not come across any renunciation of right to apply for representation by the other 10 children, nor consents by them, allowing the petitioner to go ahead despite them also being entitled to petition. I have also not seen an affidavit, in compliance with Rule 26(2), explaining the absence of the renunciations or consents under Form 38 or 39, by the other 10 children of the deceased. Rule 26 is in mandatory terms. The failure to comply with it is a defect in the process. "

14. It was also submitted that insofar as there is an appeal before the Court of Appeal over the decision made in the Objection to making of a grant dated 1/9/2023, there is no law which has been cited that bars this court from handling the 1 st and 2nd Objectors. That objection to the making of a grant because there is a Notice of Appeal lodged to the Court of Appeal over a ruling delivered in the matter in respect of the Notice of Objection to the Making of Grant dated 1/9/2023 should not be an issue since section 47 of the Law of Succession Act gives this Court a wide latitude 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. In any event, all what the 1 st and 2nd Objectors have done is to exercise their right as provided under section 67(1) as read together with section 68 of the Law of Succession Act by filing the instant Notice of Objection. That it should be noted that no previous notice had been published in the Kenya Gazette over the estate as contemplated under section 67 of the Law of Succession Act inviting an objection and as such the objection is properly within the law and ought to be considered by this court to ensure that the petition presented represents the entire estate of the deceased and the administrators appointed have the best interest for the deceased's estate. Further, it was pointed out that the first safeguard put in place is

contained under section 66 of the Law of Succession Act so that at that initial stage the court is provided with a golden opportunity to ensure that the best suited party is appointed as an administrator and after the beneficiaries have had their say on whether they indeed consent to the applicants being appointed as administrators because at the end of the day it is the beneficiaries who are the main stakeholders in the probate and administration process and if there is doubt as to whether the applicants petitioning for grant of letters of administration are best suited to take up that role then the court cannot shut its eyes just because along the way the law had provided additional safeguards and thus it must start at the inception because sometimes it may be impossible to undo the damage done if a rogue person ends up mismanaging the estate.

15. It was submitted that the Court has been presented with evidence to show that the Petitioners should not be entrusted with administering the estate and shutting its eyes to this glaring misgivings on the Petitioners' suitability as the Petitioners never wanted to take out letters of administration and the 1 st and 2nd Objectors having moved the court in Eldoret were perceived as the Petitioners' enemies for moving the court and by virtue of being women the Petitioners position was that they have no right over administration of their late father's estate and

therefore cannot be appointed administrators hence the resistance against the 1st and 2nd Objectors request to be administrators

16. It was further submitted that the Petition as presented and/or filed is incomplete and does not represent the full inventory of the estate of the deceased. This court was urged to take note of the fact that it was an admitted fact during the oral testimony given by the 2nd Petitioner, Joram Omondi, that indeed some of the deceased's property had been left out. It was submitted that to date, despite this confession having been made including his admission that he was in possession of motor vehicle registration number KAH 261 T which belongs to the deceased and which he "forgot" to list in the schedule of assets little has been done by the Petitioners to date to review the list of assets they presented to court and include all the properties that the 1 st Objector had highlighted during the objection proceedings and the reason is simple: the Petitioners simply want to keep the properties to themselves without the court putting them to account with the sole selfish intention of disinheriting the Objectors of their rightful inheritance. Hence, with this state of affairs, the 1 st and 2nd Objectors are justified in objecting to the making of the grant in favour of the Petitioners and that they should not keep quiet and wait to file an affidavit of protest at the confirmation stage as proposed by the Petitioners.

Reliance was placed in section 51 (2) (h) of the Law of Succession Act, cap 160, Laws of Kenya which mandates an applicant to make a full inventory of all the assets and liabilities of the deceased and that indeed contemplates that at the time of applying for letters of administration all the known assets of the deceased should be set out in the petition so that the beneficiaries are all kept in the know as well as the court so that at the time of distribution of the estate, the Court is fully equipped to make an informed decision should parties fail to agree and to ensure that the deceased's estate is not hidden and/or kept away from distribution and /or is not wasted by failure to bring all the assets on board. It was submitted that no contrary legal provision has been cited that permits and /or allows a petitioner for grant of letters of administration to deliberately fail to list part of the estate in the list of assets and that in fact, section 52 of the Law of Succession Act criminalizes such acts /omissions.

17. It was submitted that the fact that the Petitioners are hell bent on proceeding with the succession cause despite all the deceased's assets not being brought on board is a clear red flag particularly when one looks at the role of a legal representative which is fiduciary in nature and which requires the person tasked with that role to be transparent and accountable in administering the estate. That it is on account of these actions that the 1 st and 2nd Objectors seek that the court declines to grant the Petitioners the grant of letters

of administration because if at this early stage the Petitioners cannot be entrusted to even give a full inventory of the assets, then what more can they do when the power of being administrators is bestowed unto them?

18. As regards the third ground of objection, it was submitted that the 3rd and 4th Petitioners have no capacity to administer the estate of the deceased without taking out letters of administration for their late father's estate. That by virtue of section 66 of the Law of Succession Act, the 3rd and 4th Petitioners rank lower than the 1 st and 2nd Objectors in so far as who is to be considered for appointment as administrator is concerned. That because the 3rd and 4th Petitioners are grandchildren to the deceased and that they are not legal representatives of the their late father's estate as no letters of administration had been taken out to give them authority to agitate any claim on behalf of the deceased' estate, it follows that they have absolutely no capacity to be appointed as administrators to the estate that is subject of these proceedings.

19. As regards the fourth ground of objection, it was submitted that the Petitioners have had selfish engagements in the estate without full disclosure to all beneficiaries of the activities hence the need to have the Objectors included in the administration to oversee the management and/or estate activities. That it is the 1 st and 2nd Objectors' position that the grant should not be issued to the Petitioners as they have

been dealing adversely with the deceased's property by opening separate accounts where they have diverted funds that form part of the deceased's estate, selling some of the deceased's properties, using the deceased's land in Chemelil and deliberately leaving out a huge chunk of the deceased's properties from the schedule of assets.

20. It was submitted that the 1 st and 2nd Objectors' claims that the Petitioners have deliberately been mismanaging the estate and by extension intermeddled with it have not in any way been denied and/ or controverted and even when the 2nd Petitioner testified he stayed clear of the accusations meaning he had nothing to say because that was and is the truth. That in fact the 1 st and 2 nd Objectors contention that some of the deceased's assets were not listed in the schedule of assets by the Petitioners was confirmed during the hearing when the 2nd Petitioner, Joram Ochieng confirmed that he indeed kept motor vehicle registration number KAH 261 T which was acquired by the deceased for himself and was using it and which was not listed as part of the assets to be administered. That he also confirmed that the deceased owned motor vehicle registration number KAW 342 and many others, which were not included in the schedule of assets in the Petition for grant of letters of administration. He further conceded to the fact that the deceased purchased many motor vehicles and properties which may have not been included in the Petition.

21. It was contended that whereas this was an issue that was pointed out to the Petitioners in the 1 st and 2 nd Objectors' advocates letter dated 26/7/2023 contained at pages 50 of the replying affidavit by the 2 nd Petitioner, the concerns raised by the Objectors were ignored with the Petitioners arguing that the issue of deliberating on the assets owned by the deceased was not important at the stage of applying for a grant of letters of administration but should await confirmation stage. It was submitted that the same is against the law under section 51 of the Act which mandates an applicant to make a full inventory of all the assets and liabilities of the deceased.

22. Further, it was contended that at the confirmation stage the court will only be dealing with the assets listed in the schedule of assets. That it therefore does not make any sense for the Petitioners to argue that the issue of a comprehensive list of assets should be shelved until the confirmation stage because it is expected that by the time the matter reaches confirmation stage all the properties of the deceased ought to have been brought on board That in light of the Petitioners' admission that some of the deceased's assets were left out and in view of their failure to discharge the obligation placed upon them under section 51 (2) (h)of the Law of Succession Act cap 160, Laws of Kenya to give a full inventory of all the deceased's assets, it goes without saying that the Objection is

merited as the Petition cannot be allowed to proceed in the state it is in now which is contrary to the law as stated. Reliance was placed on the case of In **re Estate of Joseph Mapesa Nakuku (Deceased) 120191 eKLR** where the Court held as follows:

"Succession law is about distribution of the property of a dead person. Indeed, the whole process is about the property. A person who does not leave behind any property is said to have no estate, and there would be no basis for conducting succession proceeding's to his estate for there would be nothing to distribute. That being the case, it is critical that the person seeking representation should disclose all the assets that the deceased died possessed of, for that is what constitutes the estate of the deceased. From the material on record, it would appear that the deceased died possessed of several assets, but two are certain, Butsotso/Ingotse/569 and 1110. The administrator disclosed only one in his petition and in his application for confirmation of his grant,

Butsotso/Ingotse/1110. It transpired that that was the only property that he was interested in. He knew that Butsotso/Ingotse/556 was also estate property, going by his witness statement filed herein on 14th November 2016. Yet, he left out this property in his schedule of the assets of the estate, even though

he had petitioned for representation to the estate of the deceased. His approach was selfish and reeked of self-centeredness.

The framework for applications for grants of representation is set out in section 51 of the Law of Succession Act. The most relevant portions are in subsection (2)(g)(h), which state as follows:

"Application for Grant

51. (1) every application for a grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner.

(2) Every application shall include information as to— (a) the full names of the deceased; (b) the date and place of his death;

(c) his last known place of residence;

(d) the relationship (if any) of the applicant to the deceased;

(e) whether or not the deceased left a valid will;

(f) the present addresses of any executors appointed by any such valid will;

(g) in cases of total or partial intestacy, the names and addresses of all surviving

spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;

(h) a full inventory of all the assets and liabilities of the deceased..."

My reading of section 51(2) (g) is that the petitioner is required to disclose all the surviving spouses and children of the deceased. The provision is in mandatory terms. The administrator only disclosed himself, but not his siblings. In his own admission before Waweru J on 18th December 2001, some of the widows of the deceased were still alive as at that date, yet he did not disclose them in his petition, and, therefore, there was no compliance with section 51(2) (g). Section 51(2) (h) requires a full inventory of all the assets of the deceased. The administrator knew the assets of the deceased that were available for distribution, as demonstrated above, but he chose to disclose only that one asset that he was interested in. Again, he did not comply with the mandatory requirements of section 51 of the Law of Succession Act."

23. It was finally submitted that the basis of the processes put in place in obtaining a grant of letters of administration are meant to ensure that the best person is appointed as an

administrator. It therefore behooves the court to evaluate the persons whom it is to entrust with a huge estate such as this one at this initial stage so that the deceased's estate is preserved and protected from wastage. That in the instant case, the persons applying for letters of administration have exhibited from their action, their desire and intention to conceal and keep to themselves part of the deceased's estate to the disadvantage of the 1 st and 2nd Objectors and other beneficiaries therefore making them unsuitable to administer the estate of the deceased and the grant of letters of administration. That the 1 st and 2nd Objectors have adequately demonstrated that the Notice of Objection to making of a Grant is merited and this Court should in exercise of its powers under section 47 of the Law of Succession Act cap 160 and Rule 73 of the Probate and Administration Rules decline to grant any letters of administration to the Petitioners for failure to comply with the procedures set out under the Law of Succession Act and the Probate and Administration Rules and proceed to appoint the 1 st and 2nd Objectors as administrators and to order that the process begins afresh in observance of the law of Succession cap 160 while ensuring inclusivity of all the beneficiaries in the process, transparency and accountability.

24. Vide submissions dated 15/3/2026, learned counsel for the Petitioners submitted that the issue for determination is really only one of whether the instant Objection proceedings

is Res Judicata, and quite unlikely, the issue of merits of the Instant Objection proceedings, because it is based on the same facts as the previous already determined Objection proceedings, which this court has already determined in its Ruling delivered on 9.5.2025, with no new facts which would found any justification for a different determination on merits, without embarrassing the court if it was to reach a different decision on the same facts on merits, when presented with the same facts.

25. As regards the issue of whether the instant Objection Proceedings offend the doctrine of Res Judicata, it was submitted that owing to the nature of the reliefs sought in the instant Notice of Objection to Making of grant dated 23.6.2025 as filed in court on 25th June 2025, as presented by the 1st and 2nd Objectors, it would be important to reproduce the history of this litigation for consideration, for a more appropriate determination of the instant Objection proceedings. That this instant Petition for Grant of Letters of Administration was lodged before this court on 17th August 2023 by the 1st, 2nd, 3rd and 4th Petitioners who had sought in the Petition to be the joint Administrators of the Estate of Richard Ochieng Olwenge [Deceased]. That following the presentation of the said Petition, vide a Notice of Objection to the making of Grant dated 1st September 2023 and filed in court on 5th September 2023, the instant 1st and 2nd Objectors, Jeannete Auma Ochieng and Margaret Atieno

Ochieng along with two other beneficiaries of the same estate of the deceased, namely, Grace Akinyi Ochieng and Sheila Adhiambo Ochieng, then as 3rd and 4th Objectors, respectively, objected to the making of the Grant to the 1st, 2nd, 3rd and 4th Petitioners. That in support of that earlier Notice of Objection to Grant, the Objectors filed four separate Affidavits sworn by each of the Objectors. The lead Affidavit was the one sworn by the 1st Objector, Jeannete Auma Ochieng, on 6th December 2023, which contained the gravamen of the Objection, while the other Affidavits in support by the 2nd, 3rd and 4th Objectors, expressed to have also been sworn on the same date, and simply confirmed agreement with the contents of the 1st Objector's Affidavit. That these same grounds now presented by the instant two Objectors, were the very same or similar grounds of their earlier Notice of Objection to making of grant dated 1st September 2023 which was then presented against the same Petition filed herewith by the same Objectors, amongst two others, namely Grace Akinyi Ochieng and Sheila Adhiambo Ochieng' in which by that time, they presented it as a joint Objection of the Four Objectors. In that earlier Notice of Objection, the grounds on which it was presented were appropriately summarized by the Petitioners in the Replying Affidavit of Joram Omondi Ochieng, sworn on 17.11.2023, at paragraph 3 thereof as follows:

‘’According to the Objectors, this Succession cause ought to have been filed at Eldoret High Court within Uasin Gishu County, and not here in Siaya High Court, because the largest portion of the estate of the deceased is situated in Uasin Gishu County, where the deceased resided and died. [See Grounds (a) and (b) of the Objection to the making of the Grant. According to the Objectors, two of them ought to be included as part of the Petitioners to the instant Petition ‘to strike a balance and to ensure that the Petitioners are kept on check and do not take advantage of the Objectors’ and that they have a right to participate in the administration and management of the estate’, on account of their allegation that the Petitioners had allegedly vowed never to take out Grant of Letters of Administration over the estate of the deceased, and equally avowed not to recognize the Objectors as beneficiaries, threatened to disinherit the Objectors, and allegedly for having sidelined the Objectors from the affairs of the estate, and their alleged apprehension of bias and lack of transparency in the manner in which the Petitioners allegedly have been handling the affairs of the estate of the deceased. In response to the said initial Objection Proceedings, the Petitioners had filed a lead Replying Affidavit by the 2nd Petitioner, Joram Omondi Ochieng’ sworn on 17th November 2023, expressed thereon, at paragraph 1, to have been sworn in consultation with and on behalf of the other Petitioners. In addition, the rest of the Petitioners and the

other beneficiaries of the estate of the deceased, had also filed their separate independent Replying Affidavits in support of the Petition, and relied on the contents of the Replying Affidavit of Joram Omondi Ochieng. The said Replying Affidavits by the beneficiaries in support of the Petition, were those of Nahashon Okoth Ochieng', Stephene Onyango Sedah, Ian Ochieng' Seda, Fanuel Odhiambo Ochieng', and Anne Atieno Onyango. Directions were taken before this Court on 16.10.2023, and again later 31.10.2023 before Honourable Justice Daniel Ogolla, requiring that the Objection proceedings be undertaken by viva voce evidence. This led to the oral testimony of Jeannete Auma Ochieng' on behalf of the Objectors, and closed of their case, and that of Joram Omondi Ochieng' on behalf of the Petitioners, and the rest of the beneficiaries who supported the Petition as presented, and close of their case too. Directions were then given by the court on 13th November 2024, requiring the parties to file and exchange their respective written submissions in support and in opposition to the Objection Proceedings, and ultimately on 9th May 2025, this Court delivered its Ruling in which it rendered itself thus:

i) After considering the entire evidence as presented by both parties, and their written submissions on merit, the court dismissed the above Notice of Objection dated 1st September 2023, on account of not having disclosed any reasonable

justification for declining to issue grant to the Petitioners, as presented in the Petition.

ii) The court issued directions thereon appointing the instant Petitioners to proceed with the Petition for Grant of Letters of Administration over the estate of the deceased Richard Ochieng' Olwenge, in the usual manner of gazzettement of the appropriate Notice of intended Grant. In the same Ruling, this court directed that upon issuance of Grant of Letters of Administration to the Petitioners, they should immediately within Fourteen (14) of the issuance of Grant present before the court, the necessary Summons application for Confirmation of Grant, and within the same time limit of 14 days from the date of issuance of the Grant of Letters of Administration, for the Petitioners to present a Statement of Accounts over the affairs of the estate of the deceased. [See a copy of Exhibit JOO/ 2 being a copy of the Ruling of the Court as delivered on 9th May 2025, produced by the Petitioners in the instant Replying Affidavit of Joram Omondi Ochieng].

26. That following the determination by the court in its Ruling delivered on 9th May 2025, on that earlier Objection proceedings commenced by the Notice of Objection dated 1st September 2023, the 1st and 2nd Objectors, by way of their Notice of Motion application dated 15.5.2025 sought for stay of proceedings before this court to enable them pursue an appeal to the Court of Appeal against the determination by

this Court. That the said application was dismissed by this court in its Ruling delivered on 4.6.2025. That the same Objectors, being aggrieved by that decision, progressed to the Court of Appeal in Kisumu, where they presented an appeal against both the determination of 9.5.2025 and 4.6.2025 on the Objection proceedings, and the application for stay of proceedings to the Court of Appeal vide Kisumu Court of Appeal Civil Application No. E086 of 2025 and E090 of 2025, respectively, which are still pending before that appellate court, this court is now precluded from any further determination of the same dispute at this level. [See the contents of paragraphs 8 – 9 of the Replying Affidavit by Joram Omondi Ochieng, sworn on 12.8.2025 and filed in court on 19.8.2025, where he has produced as JOO/ 6 (a) and (b) respectively, copies of the said Notice of Motion applications filed separately as Kisumu Court of Appeal, Civil Application Nos. E086 of 2025 and E090 of 2025 respectively.]

27. It was submitted that this Instant Joint Notice of Objection to making of grant of Letters of Administration dated 23rd June 2025 and filed in court on 25th June 2025, as now presented by the 1st and 2nd Objectors for determination by the court, again seeking to stop this Honourable Court from issuing Grant of Letters of Administration to the 1st, 2nd, 3rd and 4th Petitioners herein, is now res Judicata, because this court had already granted permission to the Petitioners to take out grant of Letters of Administration vide its Ruling delivered on

9.5.2025, pursuant to which the Petitioners have already published the usual required Gazette Notice in the Kenya Gazette on the same as part of the formal process of issuance of such grant. The notice is in the Court file. [See the contents of paragraph 12 of the Replying Affidavit of Joram Omondi Ochieng, where he has produced as Exhibit JOO/4 (a), and a copy of the Gazette Notice of 26th May 2025]

28. Learned counsel submitted that the doctrine of Res Judicata is novel as its genesis is in Section 7 of the Civil Procedure Act, Cap. 21 of the laws of Kenya, which provides that: -

> "No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court."

29. The counsel further added that the Civil Procedure Act also provides explanations with respect to the application of the res judicata rule. Explanations 1-6 are in the following terms:

> ''Explanation. (1)—The expression "former suit" means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation. (2)—For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

Explanation. (3)—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.''

Explanation (4) — Any matter which might and ought to have been made ground of defense or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation (5) — any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation (6) — Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

30. It was therefore submitted that in essence, the doctrine implies that for a matter to be res judicata, the matters in issue must be similar to those which were previously in dispute between the same parties and the same having been determined on merits by a court of competent jurisdiction. Reliance was placed in the Supreme Court of Kenya decision in the case of **Kenya Commercial Bank Limited v Muiri**

Coffee Estate Limited & Another [Motion No 42 & 43 of 2014 [2016] KESC 6, KLR [19th May 2016] as per Hon. Justices Mutunga, Rawal, Ibrahim, Ojwang, and Ndungu SCJJ. held unanimously as follows regarding the doctrine of res judicata:

> **52. "Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. It would appear that the doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights. …**
> **54. The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.**
> **55. It emerges that, contrary to the respondent's argument that this principle is not to stand as a**

technicality limiting the scope for substantial justice, the relevance of res judicata is not affected by the substantial-justice principle of Article 159 of the Constitution. It is intended to override technicalities of procedure. Res judicata entails more than procedural technicality and lies on the plane of a substantive legal concept.

56. The learned authors of Mulla, Code of Civil Procedure, and 18th Ed. 2012 have observed that the principle of res judicata, as a judicial device on the finality of Court decisions, is subject only to the special scenarios of fraud, mistake or lack of jurisdiction (p.293):

“The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that issues decided may not be reopened and has little to do with the merit of the decision.”

57. The essence of the res judicata doctrine is further explicated by Wigram, V-C in Henderson v Henderson (1843) 67 ER 313, as follows:

"… where a given matter becomes the subject of litigation in, and adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward, as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case.

The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a Judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

58. Hence, whenever the question of res judicata is raised, a court will look at the decision claimed to have settled the issues in question; the entire pleadings and record of that previous case; and the instant case to ascertain the issues determined in the previous case, and whether these are the same in the subsequent case. The court should ascertain whether the parties are the same or are litigating under the

same title; and whether the previous case was determined by a court of competent jurisdiction.

31. It was submitted that this test is summarized in **Bernard Mugo Ndegwa v James Nderitu Githae & 2 others, (2010) eKLR,** under five distinct heads:

i) the matter in issue is identical in both suits;
ii) the parties in the suit are the same;
ii) Sameness of the title/claim;
iv) Concurrence of jurisdiction; and
v) Finality of the previous decision.

32. It was submitted that the instant Objectors have approached the same Court with the same or similar grounds of Objection to the making of a grant by simply putting in a list of new items of alleged assets of the deceased they consider not to have been included in the Petition [See paragraph 14 of their Supplementary Affidavit]. That curiously, none of the alleged assets have been demonstrated to belong to the deceased, whether by any certificate of search or otherwise, attached thereon. There is also no reasonable explanation given by the Objectors why these alleged items of assets of the deceased, cannot await to be included in the application for confirmation of grant by the Administrators, and if the latter decline to do so, similarly no reasonable explanation has been given by the Objectors, why themselves, as legitimate beneficiaries to the estate, should not wait to include the same items of assets in

their own Affidavits of Protest to distribution and confirmation, in response to the application for confirmation of grant, as contemplated under the provisions of sections 71(1), (2), (3), 72 and 73 of the Law of Succession Act, as read with Rules 40 and 41 of Probate and Administration Rules. Noting that such omission to include the same in the Petition as presented, would not, in law, render the Petition invalid in any manner, as contemplated under the provisions of section 51(2)(h) of the Law of Succession Act, as read with Section 51 (4) thereof, and Section 52 thereof, and as per Rule 7 (1) of the Probate and Administration Rules as read with Rule 7 (1)(d) thereof, It was therefore contended that these allegations are simply spurious with no legitimate basis for this instant Objection Proceedings. [See the contents of paragraph 11 (e) of the instant Replying Affidavit by Joram Omondi Ochieng sworn on 12.8.2025]

33. The Supreme Court of Kenya in the above case dealt with the issue as follows:

> **‘59. That Courts have to be vigilant against the drafting of pleadings in such manner as to obviate the res judicata principle was judicially remarked in E.T v. Attorney-General & Another, (2012) eKLR, thus:**
> **“The Courts must always be vigilant to guard litigants evading the doctrine of res judicata by introducing new causes of action so as to**

seek the same remedy before the Court. The test is whether the plaintiff in the second suit is trying to bring before the Court in another way and in a form of a new cause of action which has been resolved by a Court of competent jurisdiction. In the case of Omondi v. National Bank of Kenya Limited and Others, (2001) EA 177 the Court held that,

‘’parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit.’

In that case the Court quoted **Kuloba J., in the case of Njangu v. Wambugu and Another Nairobi HCCC No.2340 of 1991 (unreported) where he stated:**

‘If parties were allowed to go on litigating forever over the same issue with the same opponent before Courts of competent jurisdiction merely because he gives his case some cosmetic face-lift on every occasion he comes to Court, then I do not see the use of the doctrine of res judicata…..”

34. Learned counsel submitted that Res Judicata is one of the factors limiting the jurisdiction of a court. Reliance was placed in the case of **Mumira v Attorney General (Constitutional**

Petition E007 of 2020) [2022] KEHC 271 (KLR) (8 April 2022) (Ruling) opined that;

> **"10. This doctrine requires that there should be an end to litigation or conclusiveness of judgment where a court has decided and issued judgment then parties should not be allowed to litigate over the same issues again. This doctrine requires that one suit one decision is enough, and there should not be many decisions in regard of the same suit. It is based on the need to give finality to judicial decisions.''**

35. It was submitted that this Court, having already given an opportunity to the Objectors on the hearing of their joint Notice of Objection to making of grant dated 1.9.2023 on merit through witnesses of the respective parties who testified and produced their exhibits in support of the same, and having rendered a Ruling on the same as per the Ruling delivered on 9th May 2025, this Honourable Court is now divested of any jurisdiction or authority to hear and determine the instant Notice of Objection to the making of a grant dated 23.6.2025, which raises the same or similar grounds of objection as the one dated 1.9.2023.

36. It was further submitted that any new issue of fact which ought to have been relied upon in support of the earlier Objection, whether as relates to new properties allegedly

identified to have been left out in the list of inventory of assets as presented in the Petition, would not suffice, because parties are supposed to bring out their entire case for determination only once, so that a decision is rendered on all the issues. Any such omission, whether negligent or otherwise, would not grant jurisdiction to the court to rehear the same issue again. In this case, any such new issue of fact is allowed by law to be presented at the stage of confirmation, by way of a Protest Affidavit, not by another application for objection, as demonstrated above.

37. As regards the issue of whether it is an abuse of the court process for this court to hear and determine the instant Objection while the Objectors have presented an appeal pending before the Court of Appeal over the same issue, it was submitted that it is not in dispute that following delivery of this Honourable Court's Ruling on 9th May 2025 the same Objectors, sought and obtained leave of the Court to appeal against the said Ruling, and indeed subsequently thereon filed and served an appropriate Notice of Appeal and letter requesting for typed proceedings from the High Court for purposes of appealing against the said Ruling. Indeed, the instant 1st and 2nd Objectors have also filed, before the Court of Appeal, vide Kisumu Court of Appeal, Civil Application Nos. E086 of 2025 and E090 of 2025 respectively, two separate Notice of Motion applications, both dated 17th June 2025, seeking two principal reliefs, to wit:

i) Stay of further proceedings in the High Court Succession cause or otherwise suspending the implementation of the Ruling and or order of that Court as delivered on 9th May 2025, to wit, the appointment of the Administrators, gazzettement of the estate in the Kenya Gazette and issuance of Grant of Letters of Administration pending the hearing and determination of the Objectors' intended appeal to the Court of Appeal.

ii) Order of Temporary Injunction expressed to be preserving or to prevent the wastage of the estate or intermeddling with the estate of the deceased while pending the hearing and determination of the Objectors' intended appeal.

38. It was submitted that this ground does not require much elaboration. That under section 6 of the Civil Procedure Act, it provides as follows:

> 'No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.'

It was contended that this provision divests the jurisdiction of this court to hear and determine the same issue it had heard and determined, when the same issue is now pending determination on appeal before the Court of Appeal, even if this Court, had not, in the first instance, heard and determined the same.

39. Lastly, it was submitted that in the event the court wishes to consider the merits of the instant Notice of Objection again, the Petitioners rely entirely on the decision of this Court as delivered on 9.5.2025 as amplified by the Petitioners, and the rest of the beneficiaries in their respective Affidavits, as captured in the Replying Affidavit of Joram Omondi Ochieng, along with the written submissions they had filed in opposition to the first Objection Proceedings, which can be summarized as follows:

i) From a reading of the contents of the Objectors' instant Notice of Objection dated 23rd June 2025, the Objectors' alleged grievances which they seek to protect in this instant Objection proceedings, in our humble view do not disclose any plausible explanation of any likely prejudice to the 1st and 2nd Objectors, and any beneficiary of the estate of the deceased, at all, because irrespective of who amongst the undisputed beneficiaries of the estate of the deceased is appointed as Administrators, all beneficiaries including the Objectors, have a lawful opportunity of participating in

the management and administration of the estate of the deceased in the short period of 14 days granted by the court to do so, in the Ruling delivered on 9.5.2025 for the following reasons based on undisputed issues of fact and law.

ii) As to whether the two of the Objectors are included as part of the Four Administrators of the Estate of the deceased or not, allegedly 'to strike a balance and to ensure that the Petitioners are kept on check and do not take advantage of the Objectors' and that they have a right to participate in the administration and management of the estate', is neither here nor there, and would not pose any legitimate prejudice to the Applicants at all, if the order is denied, because of several reasons inter alia; that the Law of Succession Act, Chapter 160, Laws of Kenya, appears to be designed with comprehensive in - built safeguards of protection of the interests of the beneficiaries of any estate of a deceased person from any harm, prejudice, or loss arising from the management and administration of the estate of the deceased by the appointed Administrators of the estate, arising from the express provisions of the sections 83 (e) and (g) thereof, which addresses the duties of the Personal Representatives, under strict supervision of the Court, to include strict requirement for accounts to be

rendered by the Administrators to the court and the beneficiaries over all the assets and liabilities of the estate within 6 months of issuance of the Grant of Letters, before such distribution of the estate to the beneficiaries, and to do the same within 6 months of confirmation of the Grant as proof of conclusion of administration; that it also provides clear opportunity in law, to all beneficiaries, to interrogate such accounts at the point of distribution of the estate during confirmation stage before the court confirms the distribution of the net intestate estate to the beneficiaries with an opportunity to remove such administrators from serving in that capacity if they do not manage to conclude the exercise of proposed distribution and presentation of the confirmation of distribution within six months or such shorter period as the court may direct, or in the event of any proven instance of failure to faithfully undertake the fiduciary duties imposed on them, as contemplated under sections 71 (1), (2), (3), 72, 73 and 76 (d) of the Law of Succession Act; that the law imposes strict requirement for sureties to be availed by the Administrators for approval by the court and the beneficiaries, for such losses if any, and assurance of compensation of any loss to the estate of the deceased on account of fault by the Administrators, and also from the Administrators'

own anticipated share of the estate, the right of the rest of the beneficiaries to move the court at any time to stop the administration by the Administrators in the event of any proof of violation of their responsibilities as set out by law, as contemplated under the provisions of Section 97 of the Law of Succession Act, which provides the statutory anchor for the Probate and Administration Rules as set out at Rule 29 thereof, on demand for proof of solvency of the Petitioners, and provision of sureties as read with the appropriate Forms P&A 5 [Affidavit in support of Petition], P&A 12 [Affidavit of means] P&A 11[Affidavit of Justification of proposed Sureties] and P&A 57 [Guarantee of Personal Sureties], etc.; that the law imposes a strict requirement of an open democratic process of non – secrecy in the process of administration of any estate of the deceased person, by making it mandatory to publicly advertise by gazzettement in the Kenya Gazette of any application for such grant by any Administrator, for a period of not less than 30 days, under strict supervision of the court, which is the only entity which presents the advertisement to the Government Printers, and a strict requirement to seek and obtain consent of any other beneficiary having priority to take out Grant of Letters of Administration under section 66 of thereof, as read with Rules 26 and 27 of the Probate and Administration

Rules, before any Grant of Letters of Administration can issue to any one, to eliminate possibility of any possible beneficiary or creditor missing out on the exercise without having an opportunity to present his/ her interest in the succession cause, as contemplated under sections 67, 68, 69 and 70 thereof, as read with sections 76 thereof, which allows the court to nullify the Grant at any stage, if it turns out that any material aspect of the succession was not undertaken properly or any material information was withheld from the court in the process; that the fact that some unidentified or undisclosed properties of the deceased are not included in the list of inventory of the assets of the deceased in the Petition as presented, does not in any way at all, defeat the intended Grant of Letters of Administration to any Administrator, as alleged by the Objectors, because all the law expects the intended Administrators to do, is list the properties of the deceased which they are aware of, not anything they have no knowledge of, as contemplated under section 51(2)(h) of the Law of Succession Act, as read with Section 51 (4) thereof, and Section 52 thereof, and as per Rule 7 (1) of the Probate and Administration Rules as read with Rule 7 (1)(d) thereof, and should the Objectors or any other beneficiary be aware of any other property of the deceased, they are at liberty to bring it to the attention

of the Administrators, once appointed to be included in the list of properties to be the subject of distribution and confirmation, and should the Administrators for any reason decline to accept the proposed new identified properties of the deceased, any of the beneficiaries is entitled to introduce the same in their Affidavit of protest to the proposed distribution by the Administrators at the point of confirmation as contemplated under the provisions of sections 71(1), (2), (3), 72 and 73 of the Law of Succession Act, as read with Rules 40 and 41 of Probate and Administration Rules on the issue of confirmation of Grant and filing of Protests; that in the face of the foregoing strictures of the law, there would be no occasion, at all, for any prejudice to the Objectors' interests in this succession, even if the instant Objection proceedings is declined, because at every stage of the proceedings they now seek to stop, they have an opportunity to exhaustively interrogate the process, raise any issue and seek the court's protection of their interests without any fear of prejudice. [See the High Court's observation on this issue in concurrence with the Respondents at paragraph 13 of the Ruling delivered on 4th June 2025, declining the application for stay of proceedings.]; that as to whether the Objectors' consent was not obtained before the choice of the two other appointed

Administrators, who they have pointed out to be lacking priority as Administrators, over them as the daughters of the deceased, in accordance with the mandatory provisions of sections 66 of the Law of Succession Act, in an instance where those two other appointed Administrators are grandchildren of the deceased, this is certainly a non – issue at all. By the Objectors' own volition without any allegation of undue influence, opted to file a Citation against the instant 1st, 2nd, 3rd and 4th Petitioners, and all the other identified beneficiaries of the estate of the deceased, vide the Eldoret High Court Citation No. E015 of 2023 in which they expressed themselves, in the usual language of such a Citation Cause, as confirming that despite being aware that they are entitled to also apply for Letters of Administration in priority to all the identified Citees thereon, they voluntarily renounced that right by having given the said Citees, [including the two grandchildren whom they named in that citation], the first priority to apply for grant of the Letters of Administration, failure to which they would be entitled to apply for the same. The Citation court allowed their express request by giving the Citees 30 days within which to apply, failure to which the instant Objectors would be entitled to apply for the same. That in a meeting of all the Ten (10) undisputed beneficiaries held on 5.4.2023, the

beneficiaries unanimously agreed to undertake a popular vote to determine which four of them should be the Administrators of the estate. That having fully participated thereon as possible contenders, with the Objectors themselves voting in the exercise, the four beneficiaries having emerged with the most votes, were agreed to be the Administrators of the estate. That the entire selection process of the Administrators appointed by the court in the Ruling delivered on 9th May 2025, was thus in accordance with the express consent of the Objectors, without any legitimate basis for their instant complaint, as a basis for seeking to be again made part of the Administrators. That they should not be allowed to shift goal posts at their convenience and in the process delay the much-needed succession proceedings to be concluded; that lastly, the period of management and administration of the estate of the deceased granted to the 1st, 2nd, 3rd and 4th Petitioners by the court in its Ruling delivered on 9th May 2025, having been reduced to only 14 days from the date of issuance of Grant of Letters of Administration in their favour, within which to conclude rendering of accounts and distribution, from the usual period of 6 months, as contemplated under section 71 of the Law of Succession Act, in apparent appreciation by the court of the need for urgency in determination of the entire

succession cause, the Objectors' desire to prolong the distribution of the estate of the deceased is not only baffling but is also unreasonable where some of the beneficiaries have expressed a need for immediate distribution of the estate to access their much needed liberty of transactions with their respective shares of the estate for their own welfare.

40. It was therefore the view of the Petitioners that this court should dismiss this instant Notice of Objection to grant as offending the doctrine of Res Judicata and constitutes a gross abuse of the court process. That even on merits, it is grossly unmerited and ought to be dismissed with costs to the Petitioners and all the other beneficiaries of the estate.

41. I have considered the Notice of Objection to making of a grant as well as the submissions tendered, It is not in dispute that the Objectors herein had earlier filed a Notice of Objection to making of a grant dated 1/9/2023 which was heard via viva voce evidence and that a ruling was delivered on 9/5/2025 wherein the said application was dismissed with no order as to costs and that the four Petitioners were allowed to proceed to apply for grant of letters of administration intestate and thereafter file the requisite summons for confirmation of grant. It is also not in dispute that the Objectors herein lodged an appeal to the Court of Appeal at Kisumu vide Application numbers E086 of 2025 and E090 of 2025 which are still

pending determination. It is also not in dispute that the Probate registry herein has since progressed with the issue of gazzettement as the cause has since been gazetted vide the Kenya Gazette Notice of 26/5/2025 and that the issuance of the grant will follow once the Objection herein is determined. It is also not in dispute that the 1st and 2nd Objectors' Notice of Objection to making of a grant dated 23/6/2025 is a replica of the earlier one dated 1/9/2023. I find the issue for determination is whether the present Notice of Objection lodged by the 1st and 2nd Objectors is Res judicata.

42. It is noted that the position of the law under Section 67, 68 and 69 of the Law of Succession Act that objections to making of a Grant are invited once a Succession Cause has been gazetted and that particular Petitioners, have petitioned for Letters of Grant in the Estate of deceased persons. Once the cause is gazetted vide the Kenya Gazzette, any person who has any objection is at liberty to raise the same within thirty (30) days of the gazette notice. It is on the said premise that the 1st and 2nd Objectors have approached this court through their Notice of Objection to making of a Grant dated 23/6/2025. The said objectors contend that by virtue of the provisions of Section 66 of the Law of Succession Act they, being children of the deceased, rank higher in priority to be made administrators instead of the 3rd and 4th Petitioners who are grandchildren of the deceased. As noted above, the said objectors had earlier filed a similar objection dated 1/9/2023 which was heard via

viva voce evidence and determined on 9/5/2025. Upon perusal of the two notice of objection to making of a Grant and find that they are the same and that they raise the same issues. Even though Section 67 – 69 of the Act allows the objectors to raise objections, the fact that they had already filed a similar one and which was fully determined on merit, there is a high possibility that the parties will be forced to start another fresh objection hearing based on the same similar facts and cause of action and which will amount to repetition of evidence which will cause unnecessary delay and inconvenience to the parties. It is my considered view that once an issue has been decided by the court, it is improper for the same court to revisit the same issue. It is on this basis that the objectors' latest objection must be seen and it is for this court to find out whether the same is res judicata.

43. A perusal of the Joint Notice of Objection to making of grant of Letters of Administration dated 23rd June 2025 and filed in court on 25th June 2025, as now presented by the 1st and 2nd Objectors for determination by the court, again seeking to stop this Honourable Court from issuing Grant of Letters of Administration to the 1st, 2nd, 3rd and 4th Petitioners herein shows that the same is res Judicata since this court had already granted permission to the Petitioners to take out grant of Letters of Administration vide its Ruling delivered on 9.5.2025, pursuant to which the Petitioners have already published the

usual required Gazette Notice in the Kenya Gazette on the same as part of the formal process of issuance of such grant. The doctrine of Res Judicata is found in Section 7 of the Civil Procedure Act, which provides that: -

> **"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court**."

44. The above provision also has elaborate explanations with respect to the application of the res judicata rule. Explanations 1-6 are in the following terms:

> **"Explanation. (1)—The expression "former suit" means a suit which has been decided before the suit in question whether or not it was instituted before it.**
>
> **Explanation. (2)—For the purposes of this section, the competence of a court shall be**

determined irrespective of any provision as to right of appeal from the decision of that court.
Explanation. (3)—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.''

Explanation (4) — Any matter which might and ought to have been made ground of defense or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation (5) — any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.
Explanation (6) — Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

45. flowing from the foregoing, the doctrine implies that for a matter to be res judicata, the matters in issue must be similar to those which were previously in dispute between the same parties and the same having been determined on merits by a

court of competent jurisdiction. In the Supreme Court of Kenya decision in the case of **Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & Another [Motion No 42 & 43 of 2014 [2016] KESC 6, KLR [19th May 2016]** presided over by Hon. Justices Mutunga, Rawal, Ibrahim, Ojwang, and Ndungu SCJJ, who held unanimously as follows regarding the doctrine of res judicata:

52. "Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. It would appear that the doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights. …

54. The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates

into fruit for one party, and liability for another party, conclusively.

55. It emerges that, contrary to the respondent's argument that this principle is not to stand as a technicality limiting the scope for substantial justice, the relevance of res judicata is not affected by the substantial-justice principle of Article 159 of the Constitution. It is intended to override technicalities of procedure. Res judicata entails more than procedural technicality and lies on the plane of a substantive legal concept.

56. The learned authors of Mulla, Code of Civil Procedure, and 18th Ed. 2012 have observed that the principle of res judicata, as a judicial device on the finality of Court decisions, is subject only to the special scenarios of fraud, mistake or lack of jurisdiction (p.293):

"The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that issues

decided may not be reopened and has little to do with the merit of the decision."

57. The essence of the res judicata doctrine is further explicated by Wigram, V-C in Henderson v Henderson (1843) 67 ER 313, as follows:

"… where a given matter becomes the subject of litigation in, and adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward, as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case.

The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a Judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

58. Hence, whenever the question of res judicata is raised, a court will look at the decision claimed to have settled the issues in question; the entire pleadings and record of that previous case; and the instant case to ascertain the issues determined in the previous case, and whether these are the same in the subsequent case. The court should ascertain whether the parties are the same or are litigating under the same title; and whether the previous case was determined by a court of competent jurisdiction.

46**.** The doctrine of Res judicata was also summarized in the case of **Bernard Mugo Ndegwa v James Nderitu Githae & 2 others, (2010) eKLR,** where the five distinct heads were listed as follows:

i) the matter in issue is identical in both suits;
ii) the parties in the suit are the same;
ii) Sameness of the title/claim;
iv) Concurrence of jurisdiction; and
v) Finality of the previous decision.

47. The foregoing authorities and the principles enunciated therein as juxtaposed with the instant objection to making of a grant, it is clear that the Objectors have approached the same Court with the same or similar grounds of Objection to the making of a grant. Hence, the objectors herein seek for

another opportunity to have a second bite at the cherry by seeking to take the Court and the parties to the same arena in which this matter had been litigated upon and determined and in which the said objectors have already preferred appeals to the Court of Appeal.

48. The Supreme Court of Kenya in the case of Kenya Commercial Bank Lt Vs Muiri Coffee Estate Ltd (supra)dealt with the issue as follows:

> **'59. That Courts have to be vigilant against the drafting of pleadings in such manner as to obviate the res judicata principle was judicially remarked in E.T v. Attorney-General & Another, (2012) eKLR, thus:**
>
> > **"The Courts must always be vigilant to guard litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the Court. The test is whether the plaintiff in the second suit is trying to bring before the Court in another way and in a form of a new cause of action which has been resolved by a Court of competent jurisdiction. In the case of Omondi v. National Bank of Kenya Limited and Others, (2001) EA 177 the Court held that, "parties cannot evade the doctrine of**

res judicata by merely adding other parties or causes of action in a subsequent suit.'

In that case the Court quoted **Kuloba J., in the case of Njangu v. Wambugu and Another Nairobi HCCC No.2340 of 1991 (unreported) where he stated:**

"If parties were allowed to go on litigating forever over the same issue with the same opponent before Courts of competent jurisdiction merely because he gives his case some cosmetic face-lift on every occasion he comes to Court, then I do not see the use of the doctrine of res judicata….."

49. It is trite that the doctrine of Res Judicata is one of the factors limiting the jurisdiction of a court. In the case of **Mumira v Attorney General (Constitutional Petition E007 of 2020) [2022] KEHC 271 (KLR) (8 April 2022) (Ruling)** the court held that;

"10. This doctrine requires that there should be an end to litigation or conclusiveness of judgment where a court has decided and issued judgment then parties should not be allowed to litigate over the same issues again. This doctrine requires that one suit one decision is enough, and there should not be many decisions in regard

of the same suit. It is based on the need to give finality to judicial decisions.''

Being guided by the foregoing authorities, I am satisfied that the present Notice of Objection to making of a grant by the 1st and 2nd Objectors is meant to rewind the clock in this matter yet the said objectors had been attended to by this court when they lodged a similar objection that was determined on 9/5/2025. It is also instructive that there is need to adhere to the principle of finality in litigation. It is also instructive that the objectors have since lodged appeals to the Court of Appeal Kisumu and therefore it is prudent that they allow the said appellate court to determine their appeals.

50. It is noted that this Court, having already given an opportunity to the Objectors on the hearing of their joint Notice of Objection to making of grant dated 1.9.2023 on merit through witnesses of the respective parties who testified and produced their exhibits in support of the same, and having rendered a Ruling on the same as per the Ruling delivered on 9th May 2025, this Honourable Court is now divested of any jurisdiction or authority to hear and determine the instant Notice of Objection to the making of a grant dated 23.6.2025, which raises the same or similar grounds of objection as the one dated 1.9.2023.

51. It is noted that the Objectors herein have presented some new list of assets allegedly left out by the Petitioners herein in a bid to give the new objection to making of a grant a new face. Even though some assets had been left out as claimed, the Objectors still have the opportunity to raise the issue during the hearing of the summons for confirmation of grant where they will be given an opportunity to present affidavits of protest if need be. Hence, the present notice of objection to making of a grant is still similar to the one dated 1/9/2023.

52. The Objector herein, having presented an appeal pending before the Court of Appeal following delivery of this Honourable Court's Ruling on 9th May 2025 in which they obtained leave of the Court to appeal against the same, ought not to approach this court over the same issue. The said appeals lodged at Kisumu Court of Appeal are Civil Application Nos. E086 of 2025 and E090 of 2025 respectively which seek several reliefs inter alia; stay of further proceedings in the High Court Succession cause or otherwise suspending the implementation of the Ruling and or order of that Court as delivered on 9th May 2025, to wit, the appointment of the Administrators, gazzettement of the estate in the Kenya Gazette and issuance of Grant of Letters of Administration pending the hearing and determination of the Objectors' intended appeal to the Court of Appeal; an order of Temporary Injunction expressed to be preserving or to prevent the wastage of the estate or intermeddling with the estate of the

deceased while pending the hearing and determination of the Objectors' intended appeal. Hence, the Objectors in filing the present Objection to making of a grant and seeking this court to determine goes against the clear provisions section 6 of the Civil Procedure Act which provides thus:

> 'No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.'

The above provision divests the jurisdiction of this court to hear and determine the same issue it had heard and determined, when the same issue is now pending determination on appeal before the Court of Appeal, even if this Court, had not, in the first instance, heard and determined the same. It is clear the Objectors objection herein is Res judicata and ought not to be entertained. It is even worse now that the Objectors have already approached the Court of Appeal for redress and should agitate their appeals there instead of seeking to revive their claims which have been determined. I find that the Objectors should wait to participate in the summons for confirmation of

grant when they can ventilate their issues regarding the aspect of distribution and rendering of accounts by the Petitioners.

53. In view of the foregoing observations, it is my finding that the 1st and 2nd Objectors' Notice of Objection to the making of a grant dated 23/6/2025 lacks merit. As the parties are members of one family, there will be no order as to costs.

Dated and delivered at Siaya this. 9th day of April 2026.

D.KEMEI

JUDGE

In the presence of:

M/s Odwa for Mutiso .....for 1st and 2nd Objectors

N/A..... 3rd Objector

M/s Marisoi for M/s Rotich.....for 4th Objector

Ms Oduor for Ragot.....for Petitioners

M/s Maurine.....Court Assistant