



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of Douglas Kipssrngot Ruto (Deceased) (Succession Cause  
55A of 2022) [2025] KEHC 555 (KLR) (29 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 555 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT BOMET**

**SUCCESSION CAUSE 55A OF 2022**

**RL KORIR, J**

**JANUARY 29, 2025**

**IN THE MATTER OF THE ESTATE OF DOUGLAS KIPSSRNGOT RUTO (DECEASED)**

**BETWEEN**

**JOSEPHINE CHEBET RUTO ..... PETITIONER**

**AND**

**ALICE CHEPNGENO RUTO ..... OBJECTOR**

**RULING**

1. This Succession Cause commenced some 22 years ago and has traversed Nakuru, Kericho and Bomet High Courts. The deceased Douglas Kipsirngot Ruto died intestate on 15th October 2001. His second wife Josephine Chebet Ruto (Petitioner) petitioned for a Grant of Representation on 16th July 2002. The first wife Alice Chepngeno Ruto (Objector) promptly objected and filed a cross-petition. The Objection was concluded with a Consent recorded in court on 25th June, 2003 where Visram J (as he then was and now retired) ordered that letters of administration be issued to the two widows as joint administrators.
2. Subsequently, the Grant was issued on 24th March 2004. The two households could not agree on the distribution. After hearing both widows, Kimaru J (as he then was, and now Judge of Appeal) issued a Judgement dated 19th October, 2009 distributing the deceased's estate. The Certificate of Confirmation of Grant was issued by GBM Kariuki J(as he then was and now retired) on 19th October 2009.
3. Proceedings in the now tattered court file show that successive Judges have since ruled on multiple applications filed by the parties over the years resting with the present Application which is the subject of this Ruling. Proceedings also show that the parties have changed counsel multiple times and each change invariably yielded a new application in court.



4. The present Application dated 30th October 2023 was filed by the Petitioner seeking the following orders:-
  - i. Spent.
  - ii. Spent.
  - iii. Spent.
  - iv. The Grant of Letters of Administration intestate in respect of the estate of Douglas Kipsirngot Ruto who died on 15th October 2001 made to the Petitioner and the Objector herein, confirmed on 19th October 2009 and rectified on 18th May 2018 be and is hereby revoked and/or annulled.
  - v. The County Surveyor Bomet County be directed to visit the land parcel Kericho/Silibwet/663 afresh to establish the actual acreage of the parcel, the acreage covered with tea plantation and the area coverage of the access road.
  - vi. Upon the Grant being revoked/annulled, a fresh Grant be issued to the Petitioner/Applicant and the Objector/Respondent and the same be subsequently confirmed to reflect the orders given by this honourable court upon filing of the surveyor's report in compliance with prayer 5 above.
5. The Application was brought under section 52 and 76 of the *Law of Succession Act*, Rules 44, 49 and 73 of the Probate and Administration Rules. The Application was based on the grounds on the face of the Application and further by the annexed Supporting Affidavit of Josephine Chebet Ruto sworn on 30th October 2023.

**The Applicant's case.**

6. The Applicant stated that she was a co-administrator and a beneficiary to the estate of the deceased. That she changed her advocates as her previous advocates acted without her instructions and championed the Objector's interests. She further stated that the Consent entered in this court on 12th October 2023 was obtained by her previous advocates without her consent. That at the time the Consent was entered, she was bedridden in hospital. She annexed medical documents to that effect.
7. The Applicant stated that as a result of the Consent Order, the Surveyor and the Land Registrar could visit the suit parcel (Kericho/Silibwet/663) at any time for purposes of demarcation and subdivision.
8. It was the Applicant's case that through her Application dated 28th June 2016, the court gave orders revoking the transfer of KTDA shares in the name of the Objector and further ordered that the shares be shared equally between the Petitioner and the Objector. That the Respondent failed to refund her Kshs 28,000/= which she incurred for valuation and for the costs involved in rectifying the Grant. It was her further case that the Objector misled the court when she stated that she had complied with the orders.
9. The Applicant stated that there was a Consent Order recorded on 31st March 2014 which directed the District Surveyor Bomet County to establish the actual acreage, the area covered by tea bushes and to propose a road access in the suit parcel Kericho/Silibwet/663. That the said Surveyor did not visit the parcel and the report filed in court was a forgery. She further stated that she did not participate in the survey process as alluded in the report and that the report was procured fraudulently.



10. It was the Applicant's case that as a result of the above, the rectified Grant was obtained by making false statements and untrue allegations. That the only remedy was to revoke the rectified Grant and issue a fresh one that reflected the correct position of the suit parcel.

### **The Response**

11. Through her Grounds of Opposition dated 20th November 2023, the Objector stated that the Application was misconceived, incompetent, premature and fatally defective. That by dint of section 7 of the Civil Procedure Act, the Application was an abuse of the court process and ought to be dismissed.
12. It was the Objector's/Respondent's case that the Petitioner/Applicant was trying to have a second bite of the cherry. That the Application was meant to delay the conclusion of the matter. It was her further case that the Applicant had failed to produce sufficient evidence to support her prayers in the Application.
13. This Application was canvassed by way of written submissions.

### **Petitioner's/Applicant's written submissions.**

14. The Applicant submitted that the rectified Grant was obtained by means of untrue allegation and misrepresentation of facts. That the Respondent participated in fraud and failed to disclose material facts before the court thereby necessitating revocation of the Grant.
15. It was the Applicant's submission that the court gave orders on 18th March 2018 revoking the transfer of KTDA shares in the Respondent's name and further ordered that such shares were to be divided equally among the Applicant and the Respondent. That the court further ordered the Respondent to refund the Applicant the sum of Kshs 28,000/= which she had incurred in the valuation process. It was her further submission that the Respondent did not comply with the court orders and the resultant rectified Grant did not reflect the court's orders. She relied on section 76 of the Law of Succession Act, re estate of Prisca Ong'ayo Nande (Deceased) (2020) eKLR and re estate of Moses Wachira Kamotho (Deceased) (2009) eKLR.
16. The Applicant submitted that a Consent was recorded on 31st March 2014 which allowed the District Land Surveyor Bomet County to visit the suit parcel, Kericho/Silibwet/633 to establish the actual acreage of the said parcel, area covered by tea bushes and to propose a road access. That the District Land Surveyor never visited the parcel and the purported Report that was presented to court was a forgery and was obtained fraudulently.
17. It was the Applicant's submission that the impugned Consent Order entered into on 12th October 2023 was obtained without her knowledge and instructions. That her advocate acted without her authority. It was her further submission that the mistakes of an advocate should not be visited upon their innocent clients. She relied on *Itute Ingu & another v Isumael Mwakavi Mwenda* (1994) eKLR.

### **The Respondent's submissions**

18. The Respondent submitted that the Applicant failed to show why the impugned Consent should be set aside. That at the time they recorded the Consent, the firm of Enock Miruka & Co. Advocates were properly on record for the Applicant. She further submitted that the referenced law firm had proper instructions to enter the impugned Consent.
19. It was the Respondent's submission that a Consent could only be vacated on the same grounds as a contract i.e. fraud, misrepresentation and mistake. She relied on *Kericho Guest House Enterprises*



Ltd vs Kenya Breweries Limited (2018) eKLR and In re Estate of Reuben Njoroge Njenga (Deceased) [2019] KEHC 1653 (KLR).

20. The Respondent submitted that the grounds set out by the Applicants for revocation of the Grant did not meet the legal threshold as envisioned in section 76 of the *Law of Succession Act*. That as a general rule, fraud ought to be specifically pleaded and specifically proved. It was her further submission that the Applicant did not discharge her burden of proof. She relied on Central Bank of Kenya vs Trust Bank Limited (1996) eKLR.
21. It was the Respondent's submission that the Applicant pleaded fraud but did not prove the same. That fraud and forgery allegations attracted a higher burden of proof than in ordinary civil cases but lower than the standard of reasonable doubt in criminal cases.
22. The Respondent submitted that the prayer for re-survey of the suit parcel was an abuse of the court process. That the court on 31st July 2014 ordered for rectification of the Grant stating the actual acreage of the suit parcel. She further submitted that the court ordered that the suit parcel be distributed in the ratio used in the confirmed Grant. That the Applicant sought a second bite of the cherry. She relied on Sienya Oluoch vs Julius Ochola Ojunga (2012) eKLR.
23. It was the Respondent's submission that the Applicant did not take any issue with the confirmed Grant and the mode of distribution. That the only deviation between the rectified Grant and the confirmed Grant was the exact and accurate acreage of the suit parcel. It was her further submission that the prayer for re-survey of the suit parcel was an afterthought.
24. I have gone through and considered the Application dated 30th October 2023, the Grounds of Opposition dated 20th November 2023, the Applicant's written submissions dated 10th January 2024 and the Respondent's written submission dated 18th March 2024. The two issues that arise for my determination one:-
  - i. Whether there were sufficient grounds to revoke the rectified Grant dated 18th May 2018.
  - ii. Whether the County Surveyor of Bomet County should be directed to re-survey Kericho/Silibwet/663 to establish its actual acreage, the acreage covered by tea plantation and the area covered by the access road.

**i. Whether there were sufficient grounds to revoke the rectified Grant dated 18th May 2018.**

25. The law on revocation of Grants is provided for in Section 76 of the *Law of Succession Act* which states that:-

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-



- (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
- (ii) to proceed diligently with the administration of the estate; or
- (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.

26. In the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* [2015] KEHC 7143 (KLR), Achode J. (as she then was) observed:-

“The circumstances that can lead to the revocation of grant have been set out in Section 76 Law of Succession. For a grant to be revoked either on the Application of an interested party or on the court’s own motion there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of false statement, or by concealment of something material to the case, or that the grant was obtained by means of untrue allegations of facts essential in point of law.”

27. The Applicant stated that the rectified Grant dated 18th May 2018 was obtained by misrepresentation of facts and untrue allegations. That Mumbi J. issued orders on 18th May 2018 where she revoked the transfer of the deceased’s KTDA shares and ordered that the said shares be divided equally between the Petitioner/Applicant and Objector/Respondent. The Applicant further stated that the court ordered the Respondent to refund the Applicant Kshs 28,000/= she incurred during valuation. It was the Applicant’s case that the orders were not captured in the rectified Grant.

28. It was the Applicant’s case that the County Surveyor of Bomet County did not visit the suit parcel as directed by the court on 31st July 2014 and the report that was presented in court was fraudulently procured. That the contents contained in the rectified Grant in terms of acreage and access road of the suit parcel were false.

29. The Respondent on the other hand submitted that the Applicant had not met the threshold for the revocation of the rectified Grant as envisioned in section 76 of the *Law of Succession Act*. She further submitted that the Applicant had not proved the allegation of fraud.

30. I have keenly perused the court record and as already stated in the introductory paragraphs the Petition for Letters of Administration Intestate for the estate of Douglas Kipsirngot Ruto were lodged by the Petitioner/Applicant on 16th July 2002. A Grant was issued in the joint names of the Applicant and Respondent on 24th March 2004 and a Certificate of Confirmation of Grant was issued on 19th October 2009 following the Judgement of Kimaru J. (as he then was). The Certificate contained the schedule of the properties that were to be distributed between the Applicant and the Respondent. It is noteworthy that before issuing judgement, the learned judge ordered the valuation of the properties and a report was filed by the appointed valuers.

31. For the purpose of this Application, this court shall focus on the suit parcel i.e. Kericho/Silibwet/663 as it emerged from the pleadings to be the property that was under dispute. In the Certificate of Grant dated 19th October 2009, 17 acres with 4 acres of mature tea plantation was issued to the Respondent/Objector and 6.2 acres was issued to the Applicant/Petitioner.



32. The Objector filed an Application dated 30th November 2010 seeking to have the Deputy Registrar of the High Court execute the necessary transfer documents. The Application was allowed by the Ruling of G.B.M Kariuki J. (as he then was) on 23rd March 2011.
33. Through a Consent Order dated 30th January 2012, it was ordered that in relation to the suit parcel, 17 acres with 4 acres of mature tea plantation be issued to the Respondent/Objector and 6.2 acres with 2 acres of mature tea bushes be issued to the Applicant/Petitioner.
34. The Applicant filed a Notice of Motion Application seeking an injunction restraining the Respondent from trespassing or carrying out any survey on the subject land. On 26th October 2012, the court (Mutende J.) ordered that in line with a Consent by the parties in open court on 12th October 2012 that the District Surveyor of Bomet County to give a Report on the intended subdivision of the subject land (Kericho/Silibwet/663).
35. The report dated 30th November 2012 was filed in court (Kericho High Court) on 3rd December 2012. The report stated that the subdivision of the subject land failed to take off as the Petitioner/Applicant (Josephine Chebet Ruto) wanted a new access road that would pass through the side occupied by the Objector (Alice Chepngeno Ruto). The Objector on the other hand stated that the Applicant did not need a new access road as she was well served by an existing road. The report recommended that the court resolve the issue of the road access and the mode of subdivision of the tea to enable subdivision of the subject land.
36. The Petitioner/Applicant filed another Application dated 29th August 2013 seeking among others stay of the implementation of the District Surveyor's Report. When the Application came up for hearing on 31st March 2014, the parties through a Consent Order agreed to have the District Surveyor visit the suit parcel and file his Report in court. Upon reading the Report, the court (Sergon J.) on 31st July 2014 ordered that:-
  - i. There be created a road access of 0.40 acres
  - ii. The actual acreage of the suit parcel was 22.75 acres
  - iii. The actual acreage covered by tea was 4.5 acres.
  - iv. Parties meet their own costs.
37. The Petitioner/Applicant filed Summons dated 8th December 2015 where she asked the court to order the District Surveyor, Bomet County to create the road access in the suit parcel as ordered by the court on 31st July 2014. The Applicant also sought the Officer Commanding Police Station Bomet to provide security. The prayers were granted by Ong'udi J. on 24th April 2016.
38. The Petitioner/Applicant filed Amended Summons dated 28th June 2016 where she sought among others the rectification of the Grant to reflect the court order of 31st July 2014, that the actual acreage of the suit parcel be determined, that the court revoke the certificate which transferred the deceased's shares in KTDA to the Respondent and that she be refunded Kshs 28,000/= she incurred during valuation. The Applicant also wanted the Respondent to account for the rent proceeds from the rental premises on L.R No. 631/61/V (IR No. 30648).
39. In a Ruling dated 6th September 2018, Ngugi J. (as she then was and now Judge of Appeal) held:-
  - i. That the transfer of the deceased's shares in KTDA be and is hereby revoked and the said shares be shared equally between the Applicant and the Respondent.



- ii. That the Respondent do refund to the Applicant her share of the fee amounting to Kshs 28,820/= incurred for valuation.
  - iii. That the Grant in this matter confirmed on 19th October 2009 shall be rectified as directed in the Ruling of 31st July 2014 and a certificate duly issued.
40. A rectified Certificate of Confirmation of Grant was issued on 18th May 2018 and it is this Grant that the Applicant/Petitioner wants revoked.
  41. On the issue of the transfer of the KTDA shares, I have looked at the schedule of the properties to be shared in the first Certificate of Confirmation of Grant dated 19th October 2009. The shares that were listed as property of the deceased were shares in Kericho Rural Multipurpose Co-operatives Society and shares in National Bank of Kenya. I have also looked at the rectified Certificate of Confirmation of Grant dated 18th May 2018 and similarly, the listed shares were shares in Kericho Rural Multipurpose Co-operatives Society and shares in National Bank of Kenya.
  42. Having considered the above, it is my finding that the referenced KTDA shares were not listed as part of the deceased's property for distribution then. The resultant dealings of the deceased's KTDA shares could not be used as a ground to revoke the Grant. However as shown above there was an Order by the court (Mumbi J.) revoking the transfer of the KTDA shares to the Objector and ordering that the same be shared equally between the Objector and the Petitioner. The said Order has neither been reviewed nor appealed. That being the case however the same cannot be a ground for revocation but rectification.
  43. On the issue of the Applicant/Petitioner being refunded Kshs 28,000/= by the Respondent/Objector, it is my view that the issue was not part of the deceased's estate and could not equally be used as a ground to revoke the Grant. It is my further view that the Applicant's relief on this matter lay with execution and not seeking to have the Grant revoked.
  44. In any event, the orders of Ngugi J. of 6th December 2018 were explicit that the Grant confirmed on 19th October 2009 was to be rectified as directed in the Ruling of 31st July 2014 (creating of a road access and determining the acreage of the suit parcel). A rectified Certificate of Confirmation of Grant was issued on 18th May 2018.
  45. In issuing the Certificate of the Rectified Grant, Ongeri J. stated on the Certificate as follows:-
 

“..... has been rectified as per the ruling of 31<sup>st</sup> July 2014 under Rule 43 (I) Cap 160 *Law of Succession Act*, Adopting the Bomet District Surveyor's Report filed in court on 27<sup>th</sup> June 2014 giving effect to the creation of the road of access as per the map.”
  46. The Schedule of distribution however mirrored the earlier schedule in the Grant.
  47. In the mind of this court, a reading of the entire Rectified Grant showed that it had taken into account the earlier orders of the court and had been rectified. All that the parties should have done was to have the matter mentioned and to seek clarity. They did not have to wait for years only to seek revocation.
  48. I however observe that the orders of Mumbi J, issued on 6th September 2018 in respect to the deceased's shares at the KTDA was not included in the Rectified Grant. Nonetheless the omission does not warrant revocation of the rectified Grant but rather a further rectification.
  49. The Applicant averred in her Supporting Affidavit that her advocate entered into a consent on 12th October 2023 without her consent or instructions. She has strongly urged the same position in her submissions.



50. I have perused the proceedings of 12th October 2023. On that date Mr. Mugumya appeared for the Objector/Applicant while Mr. Miruka appeared for the Petitioner/Respondent in the Application dated 2nd September 2022. Mr Mugumya submitted that the Application was meant to enforce the Grant.
51. In a rejoinder Mr Miruka told the court that the Application being made was heard and orders issued on 29th February 2016. He submitted that there was no need for fresh orders. Mr. Mugumya explained that he was seeking fresh orders because the Grant was rectified. Mr. Miruka further stated that his client the Petitioner was not present in court but that members of her family were present in court. He told the court that they had no objection to the surveyor going on the ground and that the Application could be allowed.
52. The court recorded the Consent allowing the Application dated 2nd November, 2022.
53. From the proceedings above, it was clear that the consent was entered in open court in the presence of Counsel on record and beneficiaries. The import of the Consent was to grant an order similar to orders granted earlier by the court (Ongudi J.) as correctly submitted by Mr Miruka, the Petitioner's/ Respondent's counsel. The Orders granted by Ongudi J. were made following the Application dated 8th December 2015 made by Josephine Chebet Ruto who is the Petitioner and Applicant in the present Application. Ongudi J. granted Orders for the District Surveyor to implement the Ruling of 31st July 2014.
54. I have gone through the pleadings in the present Application and I have not seen any evidence of fraud presented by the Applicant/Petitioner.
55. Flowing from the above, it is my finding that the Applicant/Petitioner did not prove the grounds for revocation of Grant as provided for under section 76 of the [Law of Succession Act](#). Therefore, the prayer for the revocation of Grant is rejected.

**ii. Whether the County Surveyor of Bomet County should be directed to re-survey Kericho/Silibwet/663 to establish its actual acreage, the acreage covered by tea plantation and the area covered by the access road.**

56. With respect to Prayer V seeking re-survey of Kericho/Silibwet/663, the Petitioner/Applicant while admitting existence of an order directed to the District Surveyor to survey the land, faulted the surveyor's report filed in court as a forgery. She stated that the Report on the suit parcel that was presented to court (Sergon J.) that formed the basis of the Ruling dated 31st July 2014 was a forgery and was obtained fraudulently. That the Surveyor did not visit the parcel land and that she did not participate in the process.
57. It is trite that fraud must be pleaded and most importantly be proved. In *Kinyanjui Kamau vs George Kamau* (2015) eKLR, the Court of Appeal held:-

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo vs Ndolo* (2008) 1 KLR (G & F) 742 wherein the Court stated that:-

“...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; In cases where fraud is alleged, it is not enough to simply infer fraud from the facts." (Emphasis mine)

58. Similarly in Christopher Ndaru Kagina vs Esther Mbandi Kagina & Another (2016) eKLR, the court held:-

“It is trite law that he who alleges fraud must prove fraud. Allegations of fraud must strictly be proved. Great care must be taken in pleading allegations of fraud or dishonesty. In particular, the pleader needs to be sure that there is sufficient evidence to justify the allegations. In the Case Central Bank of Kenya LTD -V- Trust Bank Ltd & 4 Others [26] the Court of Appeal in considering standard of proof required where fraud is alleged state that fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof is much heavier on the person alleging than in an ordinary Civil Case. The burden of proof lies on the applicant in establishing the fraud that he alleges.” (emphasis mine)

59. I have painstakingly combed through the proceedings before Serгон J. in 2014. The Order granted by the court was a Consent Order meaning that both the Objector and the Petitioner were desirous of establishing the actual acreage on the ground.

60. In the summary of the Technical Report dated 26<sup>th</sup> June, 2014 the surveyor recorded views of the parties. He stated that the Petitioner, Josephine Chebet Ruto wanted the mature tea comprising 3.64 acres shared equally and not as per the Grant. She also wanted 0.86 Acres of tea excluded from the distribution claiming it was hers. That she also wanted the access road measuring 0.4acres and stated that it had existed before. The Report also contained the views of one Shadrack Langat representing the Objector.

61. It was not true therefore that the Petitioner/Applicant was side-lined in the survey. Furthermore, the Report was filed in court in the year 2014 and impugning its veracity ten years later was an afterthought in my view. It is therefore my finding that the Applicant did not prove her allegation that the Surveyor's Report was fraudulently obtained. The court record and surveyor's report has shown otherwise.

62. As earlier stated in this Ruling, this matter was dealt with by Serгон J. where in a Ruling dated 31st July 2014, the court acknowledged receipt of the District Surveyor's Report filed on 27th June 2014 and made the following orders in relation to the suit parcel (Kericho/Silibwet/663) :-

- i. There be created a road access of 0.40 acres
- ii. The actual acreage of the suit parcel was 22.75 acres
- iii. The actual acreage covered by tea was 4.5 acres.
- iv. Parties meet their own costs.

63. It is my finding therefore that the prayer for resurvey had already been determined and it was res judicata. Section 7 of the *Civil Procedure Act* 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.



64. The Court of Appeal in *The Independent Electoral And Boundaries Commission vs Maina Kiai & 5 Others* (2017) eKLR held that:-

“The rule or doctrine of *res judicata* serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common sensical (sic!) protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute or calumny. The foundations of *res judicata* thus rest in the public interest for swift, sure and certain justice.”

65. Flowing from the above, it is my finding that this prayer cannot be granted as it offended the doctrine of *res judicata*. Consequently, the prayer for re-survey of the subject parcel, Kericho/Silibwet/633 is rejected.

66. Having gone through the court record in its entirety, it is my view that the present Application was meant to frustrate the completion of the present succession proceedings. The Orders being sought had been granted multiple times by the court though differently constituted.

67. In the final analysis, it is my finding that the Applicant/Petitioner failed to prove the requisite grounds for revocation of the Grant as envisioned in section 76 of the *Law of Succession Act* and further failed to demonstrate that she was meritorious of the prayer for re-survey of the subject parcel. It was apparent to this court that with every change of legal representation, there were fresh instructions for a new Application which basically stagnated the succession cause instead of moving it towards conclusion.

68. In the end, the Application dated 30th October 2023 seeking revocation of grant is dismissed with costs to the Respondent/Objector.

### **Further Orders**

69. From my perusal of the entire file and proceedings, and to bring clarity to the various Orders of the court, I make the following Orders:-

- i. With respect to sub-division of LR Kericho/Silibwet/663, the Surveyor’s Report adopted by the court (Sergon J) on 31/7/2014 found the total acreage to be 22.75 acres as opposed to 23.23 acres thereby affecting the initial distribution.
- ii. An Order for an access road measuring 0.40 acres was granted further affecting distribution.
- iii. Total tea coverage was found to be 4.5 acres and not 6 acres further affecting distribution.
- iv. As per the Rectified Grant the redistribution was to be prorated to the earlier distribution ratio.
- v. For clarity therefore the Grant shall be and is hereby further rectified to reflect:-
  - a. Access road of 0.40 acres which leaves 22.35 acres for distribution.
  - b. Alice Chepngeno Ruto (Objector) shall have 17 acres inclusive of 4 acres of mature tea less the reduced acreage on prorated basis.
  - c. Josephine Ruto (Petitioner/Applicant) shall have 6.2 acres inclusive of 2 acres of mature tea less the reduced acreage on prorated basis.



- d. The deceased's shares in KTDA shall be shared equally between the Petitioner and Objector.
  - vi. An order is hereby issued for the County Surveyor to proceed to implement the Further rectified Grant.
  - vii. An order shall issue for security to be provided by the local OCS as prayed for in the Application dated 2nd November 2022 and the consent recorded on 12th October 2023.
  - viii. Should either Administrator decline to sign or execute the necessary documents, an Order does issue for the Deputy Registrar of the court to execute the same.
  - ix. The deceased's shares in KTDA shall be shared equally between the Applicant and the Respondent.
70. Any party not satisfied with this Ruling is at liberty to appeal to the Court of Appeal within 28 days.  
Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED THIS 29<sup>TH</sup> DAY OF JANUARY 2025.**

.....

**R. LAGAT-KORIR**

**JUDGE**

**Ruling delivered in the presence of Mr. Kirui for the Petitioner/Applicant and Mr. Mugumya for the Objector/Respondent Siele (Court Assistant).**

