



**In re Estate of Monica Achieng Obura (Deceased) (Succession Cause
8 of 2021) [2025] KEHC 2453 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2453 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 8 OF 2021
MS SHARIFF, J
FEBRUARY 27, 2025**

BETWEEN

GEORGE ERICK OBURA 1ST OBJECTOR

VICTOR OCHIENG OBURA 2ND OBJECTOR

AND

GRACE AOKO OBURA 1ST PETITIONER

FLORENCE AWOUR OBURA 2ND PETITIONER

CHARLES ODIDA 3RD PETITIONER

RULING

1. Before me is the Summons for Revocation or Annulment of Grant dated 2nd June 2022 and filed on 3rd June 2022, and expressed to be brought under Section 76 of the *Law of Succession Act* and Rule 44 of the Probate and Administration Rules.
2. The application is based on the grounds that the grant was obtained fraudulently and by means of untrue allegations of facts material to the case and is further supported by the affidavit of George Erick Obura, the 1st Objector herein. He deposed that as beneficiaries to the estate herein, they were not aware of the filing of this cause nor were they invited to sign any documents. He purported that the will presented this Court was not signed by the deceased herein and/or her signature is a forgery. He deposed that the deceased was unable to write well as she was extremely unwell and under the constant care of the 2nd Objector herein and the 1st Petitioner. He alluded that the deceased could not on her volition directed how her properties were to be distributed as she lacked the mental capacity. He averred that the said will purported to deal and direct how the 2nd Objector's interest in parcel number Kisumu/Manyatta 'A'/14 is dealt with and how parcel number Kisumu/Manyatta 'A'/15 is also distributed yet the deceased did not own parcel number Kisumu/Manyatta 'A'/15 and only owned half the share in



parcel number Kisumu/Manyatta 'A'/14 as per his annexed copy of the certificate of search marked G00-1(a) and (b).

3. Finally, he avers that the will purports to direct how the 2nd Objector will collect his rent and use parcel number Kisumu/Manyatta 'A'/14 yet the deceased did not own the said ½ share of the 2nd Objector and/or any share in parcel number Kisumu/Manyatta 'A'/15.
4. Opposing the Objector's application, the Petitioners swore a Replying Affidavit dated 26th May 2023 and filed on the 5th June 2023 in which they deposed that the Objectors application terming the same as misconceived, unmeritorious, mischievous and that it ought to be dismissed with costs. According to them, the Grant of Probate was duly filed in cognizance of all the family members, including the Objectors herein. They averred that the deceased died testate and on commencing the petitioning process, the Objectors never registered their objections to the process and/or move this Court with a view of ceasing any further proceedings with regards to the estate of the deceased herein.
5. They averred that the deceased herein was lucid until her time of demise and at no point did she lose her bearings and the Objectors allegations are unfounded. Further, they averred that the in-Succession Cause No. 475 of 2002, the deceased herein got parcel number Kisumu/Manyatta 'A'/14 whole share and the Objectors herein never registered their objections before the Court.
6. They averred that the deceased will is properly drawn and executed pursuant to Section 11 of the [Law of Succession Act](#) Cap 160, Laws of Kenya. Also, the signature of the deceased tally with that on her ID and previous executed documents annexed and marked as GFD 004. They insisted that the Objectors were aware of the will as she participated in the reading process and appended their signature confirming attendance at the advocate's office.
7. Vide Court directions issued on 8th May 2023, the Objectors Summons for Revocation of Grant was canvassed by way of viva voce evidence.

Objectors case

8. OB-PW1 was George Erick Obura, the 1st Objector herein. He relied on his witness statement recorded on 5th July 2023, and his list of documents annexed and marked as OB-Exhibits 1-8 which he relied on. At his request this Court adopted the same as his evidence in chief. According to him, as per exhibit 1 & 2, copies of certificate of search, land parcel number Kisumu/Manyatta 'A'/15 is registered under George Erick Obura and Edward Omondi Obura. He told the Court that the title is with Barclays Bank as there is a charge of Kshs. 196,000/= . With regards to exhibits 3 & 4 parcel number Kisumu/Manyatta 'A'/14 is registered under Arthur Ojung'a Obura and Victor Ochieng Ojung'a. He told the Court that Arthur Ojung'a is his late father and victor, the 2nd Objector herein, is his younger brother. He referred this Court to exhibit 5 which is a title for Kisumu/Songhor/416 registered under the deceased herein. He told the Court that his prayer is that the deceased be declared to be have died intestate and that her will be disregarded as the same has various gaps which were brought up by two of his sisters.
9. He told the Court that the Petitioners, after the opening of the will, refused to discuss the issues of signature of the deceased as contained in the document. He asserted that the said signature seemed to have been forged and that having done various transactions and another succession process with the deceased, he knew her signature.
10. He testified that the will distributes land parcel number Kisumu/Manyatta 'A'/15 which is not registered under the deceased's name and that the rent collection from the properties on land parcel number Kisumu/Manyatta 'A'/14 & 15 is forceful as the same does not belong to the deceased. He notes that the will seeks to disinherit the 2nd Objector of land parcel number Kisumu/Manyatta 'A'/15.



- He testified that the will appoints the 1st Petitioner as one of the administrators and that she has been collecting the rent from properties on parcel Daraja Mbili/22 to their exclusion and that the 2nd Petitioner has allocated herself acres of land.
11. He told the Court that the 2nd Petitioner is in possession of the motor vehicles belonging to the estate of the deceased and that the same cannot be traced. Also, that she allocated herself acres of land and that she is even planting cane on land parcel Kisumu/ Songhor//416
 12. On cross-examination, he told the Court that the deceased herein was an administrator of the estate of his late father's estate and that he lacked receipts to prove collection of the rent. He confirmed that he reported the issue of the motor vehicles to the police and can produce the OB. He insisted that he wishes to invalidate the will of the deceased, but he does not have a handwriting report on his mother's signature.
 13. He confirmed that the will was read in his presence in November 2021 and that he raised an objection at the opening and was advised by his counsel to await negotiations. He insisted that his mother was very sick and lacked the mental capacity to author and execute the will. He did not have the psychiatric report but has documents showing that she was undergoing neurological treatment.
 14. On re-examination, he told the Court that there have been changes on the properties belonging to the estate of his late father. Land parcel number Kisumu/Manyatta 'A'/14 was transferred to the deceased herein at the exemption of the co-owner as his late father owned half and Joseph and Victor owned the other half.
 15. OB-PW2 was Victor Ochieng Obura, the 2nd Objector herein. He relied on his witness statement recorded on 5th July 2023. At his request this Court adopted the same as his evidence in chief. According to him, the deceased herein is his mother and that the will does not demonstrate her wishes of the deceased. He testified that based on the availed official certificates of search it is clear there was a change of the title deed and the same was done without his knowledge.
 16. On cross-examination, he told the Court that the deceased instructed him and the 2nd Petitioner to collect rent and to have the same deposited in a family account.
 17. On cross-examination by the Court, he testified that he is not benefitting from land parcel number Kisumu/Manyatta 'A'/14 as he is not in agreement with the tenants.

Petitioner's case

18. PET-PW1 was Grace Aoko Obura, the 2nd Petitioner herein. She relied on her Replying Affidavit filed on 5th June 2023 and list of documents annexed thereto produces as PET-PW1 Exhibits 1-6. At her request this Court adopted the same as her evidence in chief. According to her, the deceased was lucid until her time of demise and at no point had she ever lost her bearings as to what was happening around her. She told the Court that the allegations of the Objectors are unfounded and unproven. She told the Court that at the conclusion of the petitioning process in succession cause No. 475 of 2002, the estate of late Arthur Ojung'a Obura, the deceased herein got land parcel number Kisumu/Manyatta 'A'/14 in whole and the Objectors herein never filed an objection on the same. She insisted that the will of the deceased confirmed to the dints of Section 11 of the [Law of Succession Act](#) and that the signature of the deceased is the correct one as demonstrated by her ID and previously executed documents as per annexure marked GFD 004. She testified that the Objectors were aware of the will and were present at the reading and their signatures ascertain the same.
19. On cross-examination, she told the Court that the deceased was the proprietor of land parcel number Kisumu/Manyatta 'A'/14 &15 where she owed 0.5 acres in share. Land parcel number Kisumu/



- Manyatta 'A'/14 official certificate of search shows Victor Ojung'a Obura and Monica Achieng Obura as the registered proprietors and that it was previously registered under the names of Victor Ojung'a Obura and Arthur Ojung'a Obura. She told the Court that she did not have the title deed. With regards to land parcel number Kisumu/Manyatta 'A'/15 official certificate of search shows Philip Omondi Obura and George Erick Obura as the registered proprietors, but she did not agree. On land parcel Daraja Mbili/22, she told the Court that the same is registered in the name of his late father Arthur Ojung'a Obura and the deceased herein with the lease in respect to it being under the name of her late father, Arthur Ojung'a Obura. On plot Kisumu/Songhor/416 could be in the name of the deceased herein. She testified that no transmission was conducted on their late father's estate.
20. She told the Court that she has been handling the collection of rent from the properties on land parcel Daraja Mbili/22 and she has an updated account book on the same but has not given an account on how the proceeds have been utilized. She told the Court that she has been collecting the rent from the month of August 2021.
 21. On re-examination, she told the Court that her statements as per her sworn Replying Affidavits are true and that the will does provide for Daisy and that the Grant and will also gave her authority to collect the rent.
 22. PET-PW2 was Florence Awuor Obura, 3rd Petitioner herein. She relied on her Replying Affidavit filed on 5th June 2023 and list of documents annexed thereto produces as PET-PW1 Exhibits 1-6. At her request this Court adopted the same as her evidence in chief. According to her, she is the beneficiary to the estate of the deceased herein and that she has no objection to the will. She insisted that her mother wrote the will when she was of sound mind and that land parcel Kisumu/Manyatta/ 'A'/15 is the bone of contention. She insisted that half of the share on the same was to be given to George and Philip equally as the same should be done according to the will.
 23. On cross-examination, she testified that at no time was her deceased mother bedridden and that she lacked the requisite documents to show her mother was medically fit. She told the Court that Kisumu/Manyatta/ 'A'/15 is registered under the names of George Erixck Obura and Edward Omondi Obura and that she agreed that her late mother could not have included that parcel in her will.
 24. According to the Certificate of Grant of the estate of the late Arthur Ojung'a Obura, the properties are indicated as: Kisumu /Kona/2295, Kisumu/Manyatta/ 'A'/14 & Kisumu/Daraja Mbili/22. She told the Court that she is not aware who distributed parcel no. Kisumu /Konya/2295 to George Erick Obura and Victor Daniel Ochieng Obura. Also, she was not aware of the transmissions on parcel no. Kisumu/Manyatta/ 'A'/14 and Kisumu/Daraja Mbili/22.
 25. She told the Court that Daisy Monique Obura is the daughter of her brother Philip Edward Obura (deceased) and that the same includes her and that her name appears twice which is a typing error. She insisted that Daisy is entitled to inherit from the estate of the deceased and that her brothers are simply busy bodies. Futher, she told the Court that the statement of accounts with regards to the estate of the deceased are available and that the same can be availed upon request.
 26. On re-examination, she reiterated that the deceased was of sound mind when she made her will and that her signature is valid.
 27. PET-PW3 was Charles Odido Owuor, who relied on his recorded witness statement filed on 5th June 2023 and a Replying Affidavit sworn on 26th February 2023. At his request this Court adopted the same as his evidence in chief. According to him, the deceased was lucid until her time of demise and at no point did she ever loose her bearings as to what was happening around her. He told the Court that the allegations of the Objectors are unfounded and unproven, and that at the conclusion of the petitioning



process in succession cause No. 475 of 2002, the estate of the late Arthur Ojung'a Obura, the deceased herein got land parcel number Kisumu/Manyatta 'A'/14 in whole and the Objectors herein never filed an objection on the same. He insisted that the will of the deceased confirmed to the dints of Section 11 of the *Law of Succession Act* and that the signature of the deceased is the correct one as demonstrated by her ID and previously executed documents. He testified that the Objectors were aware of the will and were present at the reading and their signatures ascertain the same.

28. On cross-examination, he told the Court that he was appointed as the executor of the will of the deceased herein and that Daisy Monique Obura being that child of the deceased son of the deceased herein, she is entitled to inherit her late father's share in the estate of the deceased herein. He confirmed that one of the children of the deceased was present when the will was been drafted by the counsels.
29. He told the Court that he commenced the succession proceedings with regards to the estate of the deceased and listed her assets as follows: Kisumu/Manyatta/ 'A'/14 (0.5 acres share), Kisumu/Manyatta/ 'A'/15 (0.5 acres share). Kisumu/Daraja Mbili/22 Kopere and Kisumu/Songhor/416. He confirmed that the estate had no liabilities. He told the Court that all the beneficiaries consented to the process and signed the requisite documents. He told the Court that Kisumu/Daraja Mbili/22 belonged to the late Arthur Obura and that the deceased herein held it in trust. On Kisumu/Manyatta/ 'A'/14 he expressed uncertainty on whether the deceased was ever registered as the proprietor. He confirmed that the beneficiaries to the estate of the deceased are doing things without his knowledge and he was clueless of the actions that arose after signing of the will. He told the Court that he was not sure if the properties were available for distribution, to be precise the Kisumu/Songhor/416 and motor vehicle registration number KYP 534. He told the Court that he does not know who collects the rent and that there is intensive sibling rivalry within the family. He confirmed that the deceased was lucid at the time she wrote and executed her will. He insisted that there existed issues that prompted the Objectors to come to Court.
30. On re-examination, he told the Court that the deceased was sane when she authored and executed her will and that Daisy Monique Obura been the grandchild of the deceased ought to inherit her late father's share in the estate of the deceased.

Beneficiary's case

31. B-PW1 was Jane Ouko, the beneficiary herein. She relied on her recorded witness statement dated 5th July 2023. At her request this Court adopted the same as her evidence in chief. According to her, she is the eldest daughter of the deceased herein. She told the Court that between 1970 and 1971 her parents purchased land parcel no. Kisumu/Manyatta/ 'A'/14 measuring 0.15 HA and the title was under the names of her late father Arthur Ochieng Obura and her brother Victor Ochieng Obura. In the year 2018, the deceased fell sick and her condition continued to deteriorate. She played the role of a care giver and assisted her to collect rent from some of her properties until the point she passed on in October 16th 2020.
32. She told the Court that when the deceased died, she received communication from the 2nd Petitioner's counsel instructing her to cease collecting rent from the properties. The 2nd Petitioner took over the rent collection from August 2021 to date and that at the time she handled the collection, the total amount was Kshs. 70,000/=.
33. She told the Court that Kisumu/Manyatta/ 'A'/15 is in the names of George Erick Obura and Philip Edward Omondi; Kisumu/Konya/2095 was transmitted from the name of the late Arthur Ochieng Obura to George Erick Obura and that it was the deceased who conducted the transmission process; Kisumu/Manyatta/ 'A'/14 is to her knowledge still registered in her late father's name and that the



title deed is in the possession of the 2nd Objector; Kisumu/Songhor/416 is registered in the name of the deceased herein and the same has not been transferred to anyone; Kisumu/Daraja Mbili/22 has residential houses and the 2nd Petitioner is doing the collection of rent.

34. She told the Court that her niece, Daisy Monique Obura, is over 18 years but she is not aware of her current location.
35. On cross-examination, she told the Court that she has not availed any document to prove that the 2nd Petitioner has been collecting rent from the residential houses located on Kisumu/Daraja Mbili/22 property. She told the Court that she wishes to withdraw from the administration of the estate of the deceased and that it was the deceased who gave her permission to collect rent.
36. At the close of the beneficiary's case, the parties were directed to file and exchange their respective submissions. The Court proceedings dated 4th December 2024, indicate that the Objectors filed their respective written submissions but the Court record shows that none of the parties complied with the Court directions as issued on 7th October 2024.

Analysis & Determination

37. I have considered the summons herein and the response thereof. Issues that emerge for determination are:
 - a. Whether the alleged will dated 11th November 2017 is valid.
 - b. Whether the Grant issued on 16th August 2021 should be revoked.
38. On whether the purported will dated 11th November 2017, is valid, the Objectors were duty bound to prove that the document was not compliant with the conditions set out under Section 5 of the [Law of Succession Act](#) which provides that:
 - “ 1. Subject to the provisions of this Part and Part III, every person who is of sound mind and not a minor may dispose of all or any of his free property by will and may thereby make any dispositions by reference to any secular or religious law he chooses.
 2. ...
 3. Any person making or purporting to make a will shall be deemed to be of sound mind for the purpose of this section unless he is at the time of executing the will, in such a state of mind, whether arising from mental or physical illness, drunkenness or from any other cause, as not to know what he is doing.
 4. The burden of proof that a testator was, at the time he made any Will, not of sound mind, shall be upon the person who so alleges.”
39. The onus lay with the Objectors to satisfy the Court that the deceased at the time of making the will was too ill or affected by medication to know what she was doing. No report by a medical officer or other professional witness on the score was proffered, save for the bare assertions by the Objectors. Beneficiary PW1 who was a caretaker to the deceased herein disputed the assertions by the Petitioner and reiterated that the deceased did author and execute the will that was before the Court.



39. The Court of Appeal had this to say in *Ngengi Muigai & Another v Peter Nyoike Muigai & 4 Others* In the matter of James Ngengi Muigai (Deceased) [2018] e KLR:-

“In the recent case of *Rosemary B. Koinange* (suing as legal representative of the late Dr. Wilfred Koinange and also in her own personal capacity) & 5 Others v *Isabella Wanjiku Karanja & 2 Others* [2017] e KLR this court examined the issue of mental capacity (to make a will) and stated as follows:

“The essentials of testamentary capacity were laid out in the case of *Banks v Goodfellow* [1870] LR5QB 549 as cited with approval in the Tanzanian Court of Appeal case of *Vaghella v Vaghella* [1999] EA 351 thus:

“A testator shall understand the nature of the act and its effects, shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing property and bring about a disposal of it which if the mind had been sound, would not have been made.”

39. The Court of Appeal further stated:

“Construing the issue of capacity, *Githinji J.* in the case of *In Re Estate of Gatuthu Njuguna* (Deceased) [1998] e KLR stated:

“As regards the testator’s mental and physical capacity to make the will, the law presumes that the testator was of sound mind and the burden of proof that the testator was not of sound mind is upon the person alleging lack of sound mind, in this case the applicant However paras 903 and 904 of Volume 17 of *Halsbury’s Laws of England* show that, where any dispute or doubt of sanity exists, the person propounding a will must establish and prove affirmatively the testator’s capacity, and that where the objector has proved incapacity before the date of the will, the burden is shifted to the person propounding the will to show that it was made after recovery or during a lucid interval. The same treatise further shows that the issue of testator’s capacity is one of fact which can be proved by medical evidence, oral evidence of the witnesses who knew the testator well or by circumstantial evidence and that the question of capacity is one of degree, the testator’s mind does not have to be perfectly balanced and the question of capacity does not solely depend on scientific or legal definition. It seems that, if the objector produces evidence which raises suspicion of the testator’s capacity at the time of execution of the will which generally disturbs the conscience of the court as to whether or not the testator had necessary capacity, he had discharged his burden of proof and the burden then shifts to the person settling up the will to satisfy the court that the testator had the necessary capacity.”

39. In this case, as per the certificate of death issued on 27th November 2020, it is not disputed that the deceased was aged 82 years at the time of death. The cause of death is stated in the copy of death certificate to be cardio respiratory due to upper gastrointestinal bleeding due to liver cirrhosis.
39. PET-PW3 and beneficiary PW1, who was her caretaker testified that she was lucid all through till the day of her death. PET-PW3 who was a witness in the will of the deceased noted that the same was authored at the office of the advocates of the deceased and that he also witnessed the document.



39. Equally, it is not correct that the deceased did not will away her entire estate as the will indicates instructions concerning her residential house in Migosi. From the evidence of beneficiary PW1 it is clear that the 2nd Petitioner adhered to the instructions of the deceased as she changed the locks to the deceased residential house that the beneficiary PW1 could not access the same. Clearly, therefore the Objectors have failed to discharge their burden of proof in relation to the challenge to the testamentary capacity of the deceased. I find their claims unsupported by evidence and dismiss them. Based on the Petitioners and Beneficiary's evidence, it is evident that though ailing during the material period the deceased remained lucid. The detailed contents of the will document leave no doubt concerning the acuity of her mind at the time.

39. The Objectors further argued that the signature on the will was not that of their mother and that the same was forged. The Court in the case of *In Re Estate Of Samuel Ngugi Mbugua (deceased)* [2017] eKLR had this to say;

“The allegation that the said signature was not that of the deceased amounts to a claim that the signature was forged or that fraud was exercised in the procurement of the alleged will. That is to say that someone other than the deceased had affixed that mark on the will with the intent of passing the same as the signature of the deceased. Forgery is a criminal offence. The applicant is in fact imputing criminal conduct on either the person propounding the will or those who were involved in the operation that is purported to have been its execution. The burden of proving forgery lies with the person alleging it. In *Elizabeth Kamene Ndolo vs George Matata Ndolo* Nairobi Court of Appeal civil appeal number 128 of 1995 it was stated that the charge of forgery or fraud is a serious one, and the standard of proof required of the alleger is higher than that required in ordinary civil cases.

The allegation of forgery placed a heavy burden upon the applicant to prove beyond reasonable doubt, or at least beyond balance of probability, that indeed the signatures were forged. He led no evidence on the alleged forgery. It is clear, therefore, that he failed to discharge the burden of proof and thus his allegation of forgery cannot succeed. It was said in *Karanja and another vs. Karanja (supra)* that where a will is regular on its face with an attesting clause and the signature of the testator, a rebuttable presumption of due execution or *omnia esse riteatta* arises. In the context of the instant case, I am satisfied that the will before me was regular on the face of it and the presumption applied to it, but the applicant did not rebut the presumption through concrete evidence.”

39. In this case the burden of proof lay with the Objectors who alleged forgery on the signature of the deceased in the will. The Objectors did not call/produce any report by a document examiner or produce any concrete evidence to prove his allegation of forgery and therefore that allegation fails.

39. Having found that the will does meet the requirements of Section 11 of the *law of succession act*, it's my finding that the deceased did leave any valid will that would warrant revocation of the grant made herein.

39. On revocation of the grant, the Objectors have argued that the same should be revoked on the ground that; it was obtained fraudulently by making of false statements or concealment of material facts to the Court; the will dated 11th November 2017 was fraudulently obtained and is not signed by the deceased.

39. For avoidance of doubt, Section 76 of the *Law of Succession Act* provides as follows:

“



“76. Revocation or annulment of grant

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.”

39. The above Section 76 was interpreted In re Estate of Prisca Ong’ayo Nande (Deceased) [2020] eKLR where it was stated that:

“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

39. The Objectors invited the trial Court to revoke the Grant of Probate issued to administrators of the estate of the deceased for the reasons that the Will that the Petition for Probate was based on was not



signed by the deceased and that if at all it was signed then the signature was a forgery. Further to this, the Objectors stated that the grant was made without his knowledge.

39. In essence, the Objectors were asserting that the Grant issued to the 1st, 2nd and 4th Petitioner was obtained by fraud and concealment of material facts.

39. There are certain principles or requirements that must be met for the allegation of fraud to be admitted by a court of law.

39. The first principle is that an allegation of fraud must be specifically pleaded and proved. In *Vijay Morjaria v Nansingh Madhusingh Darbar & Another* [2000] eKLR, where Tunoi, JA (as he then was) stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently.

It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from facts.”

39. In *R.G Patel v Lalji Makanji* [1957] EA 314 the former Court of Appeal for Eastern Africa stated as follows:

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

39. The second principle is that the burden of proof of an allegation of fraud is on the person alleging. In *Ndolo v Ndolo* [2008] 1KLR (G &F) 742 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....In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

39. In *Christopher Ndaru Kagina v Esther Mbandi Kagina & Another* [2016] eKLR the court pronounced itself as follows:

“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.....”

39. In *Moses Parantai & Peris Wanjiku Mukuru suing as the legal representatives of the estate of Sospeter Mukuru Mbeere (deceased) v Stephen Njoroge Macharia* [2020] eKLR, the Court of Appeal observed as follows:

“In the instant case, the appellants needed to not only plead and particularize the fraud, but also lay a basis by way of credible evidence upon which the Court would make a finding that indeed there was fraud in the transaction leading to the transfer and registration of the suit land in the name of Janet all the way to the respondent...”



39. The third principle is that the burden of proof of allegation of fraud is higher than that required in civil cases that of proof on a balance of probabilities; and lower than that required in criminal cases, that is beyond reasonable doubt. In *Ndolo v Ndolo* [2008] 1KLR (G &F) 742 the Court stated that:

“...Since the Respondent was making serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases....”

39. In *Central Bank of Kenya Limited v Trust bank Limited & 4 Others* [1996] eKLR, the court rendered itself as follows:

“The Appellant has made vague and very general allegations of fraud against the Respondent. Fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof was much heavier on the Appellant in this case than in an ordinary civil case.”

39. In *Moses Parantai & Peris Wanjiku Mukuru* (supra) the Court of Appeal observed as follows:

“... Fraud is a quasi-criminal charge which must, as already stated, not only be specifically pleaded but also proved on a standard though below beyond reasonable double doubt, but above balance of probabilities.....”

39. From the forgoing precedents, it is settled law that the allegation of fraud is a serious allegation that must be strictly pleaded and proved. The burden of proof is on the person alleging and the standard of proof is higher than that which is required in civil cases, which is on a balance of probability, and lower than the one in criminal cases, which is beyond reasonable doubt.

39. The Objectors have specifically pleaded fraud, their only shortcoming being on proving that allegation. The Objectors invited the Court to consider the deceased’s signature in the impugned Will as the deceased was unable to write well as she had become frail and was constantly bedridden thus could not have of her own volition directed how her will was to be done nor could she sign the same given her frail nature. This Court is not a handwriting expert and as such, it cannot decipher how to ascertain the aforementioned signatures. If the Objectors strongly suspected that there was forgery or fraud, the best agency to deal with such claims involving property of the deceased person is the police investigators first to unravel the truth.

39. Accordingly, the allegation of fraud fails as the Objectors has not sufficiently and specifically proved it.

39. The other ground for revocation of the Grant was that all the beneficiaries’ consent was not availed prior to the institution of the succession proceedings.

39. When dealing with Grant of Probate for a Will in Kenya, this process is for a deceased case of a person who died testate. This means that the deceased had in place a will before he died. The person administering the Will is known as an Executor and the persons benefitting from the Will are called Beneficiaries. To apply for a grant of Probate for a Will in Kenya, you must file a Petition with the High Court of Kenya. The Petition should include:

- i. Deceased’s Details
- ii. Full name, date, and place of death.
- iii. Last known residence.



- iv. Relationship of the Applicant to the Deceased.
 - v. Estate Inventory
 - vi. A list of all assets and liabilities of the Deceased.
 - vii. Executor and Applicant Information
 - viii. Names and addresses of the Executor(s) and Applicant.
 - ix. Supporting Documents
39. The applicant has to ensure that their Petition is accompanied by:
- i. The original Will.
 - ii. Original Death Certificate.
 - iii. Proof of property ownership (search documents for immovable property).
 - iv. Identification documents for Executors and Beneficiaries.
 - v. Letter from the Area Chief confirming the Beneficiaries entitled to the estate.
39. The matter will be gazette in the Kenya Gazette Notice and Objections will be invited by the Court. Anyone contesting the Will has 30 days to file an objection. If no objections are raised, the Grant of Probate is issued.
39. Unlike the intestacy procedure, form 38 is not required under testate. I am satisfied that, there is no ample evidence for this Court to revoke the grant probate issued on 16th August 2021, within the purview of Section 76 of the Law of Succession Act that the Grant was obtained by concealment of material facts and misrepresentation.
39. Having held as above, it is my finding that the summons for revocation or annulment of grant filed on 3rd June 2022 lacks merit and is consequently dismissed with no order as to costs. It is so ordered.

DATED AND DELIVERED AT BUNGOMA THIS 27TH DAY OF FEBRUARY 2025.

SHARIFF MWANAISHA SAIDA

JUDGE

In the presence of :

..... for Petitioners

..... for Objectors

.....Court Assistant

