



**In re Estate of Benjamin Ikaari Mehtu (Deceased) (Succession Cause  
6 of 1981) [2025] KEHC 5235 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 5235 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 6 OF 1981  
SM MOHOCHI, J  
MARCH 28, 2025**

**IN THE MATTER OF THE ESTATE OF BENJAMIN IKAARI METHU (DECEASED)**

**BETWEEN**

**WASHINGTON WARUNGE METHU ..... BENEFICIARY**

**AND**

**JAMES MWANGI METHU ..... 1<sup>ST</sup> RESPONDENT**

**JENNIFER WANGECHI KAREITHI AKA JENNIFER WANGECHI**

**GITHAIGA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Application before me is a summons for revocation of grant dated 17<sup>th</sup> January 2024 filed pursuant to Sections 44 and 76 of the *Law of Succession Act*, Cap 160 Laws of Kenya, Rule 44(1), 49, and Rule 73 of the Probate and Administration Rules, 1980 and Order 45 of the Civil Procedure Rules (2010) where the Applicant seeks;
  - i. Spent
  - ii. Spent
  - iii. That, the Honorable Court be pleased to set-aside, vacate and or review the consent dated 29<sup>th</sup> March, 2023 and the subsequent consent order adopted thereon.
  - iv. That, upon granting prayer iii above the grant of letters of administration issued to the 1<sup>st</sup> Respondent herein on 25<sup>th</sup> April, 2023 be revoked and or annulled
  - v. That, the costs of this application be in the cause.
2. The Summons was Supported by the Applicants Sworn affidavit and was anchored upon the following grounds;



- a. That, the Respondents entered into a consent on 29<sup>th</sup> March 2023 culminating into a certificate of confirmation of grant issued on 25<sup>th</sup> April, 2023,
  - b. That, the terms of the consent were such that the entire succession affected and in essence consent of all the beneficiaries of the deceased estate was necessary before the adoption of the same.
  - c. That, the consent equally involved only two parties in the estate whereas the deceased had more beneficiaries and further to the foregoing the consent only considered the distribution of only one property known as L.R No. 4730/55 Lanet despite the fact that the estate comprised of more other properties to wit L.R 451/13 LXVIII Nakuru Municipality, L.R No. 9349 Bahati, L.R No. 451/32 LXVIII Nakuru Municipality, Nakuru Municipality Block 7/5, L.R No. 13542/39, Nakuru Municipality Block 5/455 Dawsonville among other properties.
  - d. That, the Applicant never consented to having the 1<sup>st</sup> Respondent appointed as an administrator of the deceased estate,
  - e. That, the Respondents included property No. LR No. 4730/55 without disclosing to the Court that the property no longer forms part of the deceased estate hence not available for distribution.
  - f. That, the alleged distribution never took into account the fact that some of the beneficiaries have already benefited from other properties hence they are not eligible for equal distribution.
  - g. That, it will cause great prejudice to the applicant if the matter is concluded before all the parties are heard.
  - h. That, it is therefore apparent that there is an apparent error on the face of record to warrant granting of the prayers sought
  - i. That, there is new and important information/evidence to allow the Court to entertain the instant application.
  - j. That, in the interests of justice this application should be allowed as the respondents will suffer no prejudice.
3. The Application was further supported by the Sworn Affidavit of the Applicant evenly dated whereby he depones that;
- a. That the property known as L.R. No. 4730/55 does not form part of the deceased estate the alleged distribution never took into account the fact that some of the beneficiaries have already benefited from other properties hence they are not eligible for equal distribution.
  - b. That the Respondents have now called a surveyor to subdivide the land a fact that will greatly prejudice the Applicant's interests since he has never been consulted in any matter forming part of the deceased estate.
  - c. That it will cause great prejudice to Applicant if the matter is concluded before all the parties are heard.
  - d. That there is an apparent error on the face of record to warrant granting of the prayers sought.
  - e. That there is new and important information/evidence to allow the Court to entertain the instant application.



- f. That in the interests of justice this application should be allowed as the respondents will suffer no prejudice.
- g. That it is only fair and just that this application be allowed for the cause of justice to be met.
- h. That no prejudice will be occasioned to the Respondents should this application be allowed.

### **Applicants Case**

4. The Applicant has put up a spirited fight in its written submissions dated 24<sup>th</sup> January 2025 contending that;
  - a. The law on setting aside consent was well illustrated and this case satisfy the following cases;
    - i. Flora Wasike Destimo Wamboko [1988/1 eKLR
    - ii. JM Mwakio vs Kenya Commercial Bank Ltd Civil Appeals 28 of 1982
    - iii. Purcell us FC Trigell Ltd (1970) 2 All ER 671;
    - iv. Kenya Commercial Bank Ltd vs Specialised Engineering Co. Ltd [1982] KLR 485,
    - v. Board of Trustees National Social Security Fund v Michael Mwalo [2015] eKLR,
    - vi. The estate of the late Simon Ndungu Njoroge Nakuru Succ No 539 of 2001
  - b. To argue that the Application satisfies the conditions for setting aside or impeach a consent order or a consent judgment, that it must be shown that it was obtained by fraud, or collusion or by an agreement contrary to the policy of Court.
  - c. And that by dint of not having been involved in entering the consent the same should be set-aside.
  - d. The Applicant contends that, consensus is that Courts would rarely interfere with consent entered by parties unless there is a demonstration of very clear and precise reasons. to do so.
  - e. The Applicant submits that, a general look at the consent, other than the parties to the said consent, the same referred to the other beneficiaries of the estate herein including the Applicant herein. That there is no evidence before the Court to show that the Applicant was involved in the same and or agreed to the mode of distribution that resulted in the consent before the Court.
  - f. That, at the time of preparing the submissions, the Respondents had not filed any response to the application and or provided the Applicant with any documentary evidence that a meeting was held, he attended, and thereafter it was agreed that the Respondents herein would enter into a consent that was entered on 29<sup>th</sup> March 2023.
  - g. That, there being no evidence by the Respondents to the effect that the Applicant and the other beneficiaries gave the Respondents authority to enter into the consent, the Applicant submit that, the consent dated 29<sup>th</sup> March 2023 is null and void and the same ought to be set-aside.
  - h. That, not all the properties belonging to the estate were included in the consent which appears to have settled all the issues. A look at the schedule and the list of assets identified in the affidavit for assessment of the estate duty filed together with the petition, it is clear that the deceased herein had several shares in various companies and also another property other than LR 455/5 (Nakuru Municipality Block 5/455).



- i. The pleadings before the Court also show that there are other properties belonging to the deceased that have not been taken into consideration. There is no evidence that the Petitioner herein fully administered the estate in any way and or rendered accounts to the Court as required under Section 83 of the *Law of Succession Act*.
  - j. The Applicant contended that the property subject of the consent does not form part of the estate of the deceased and that a copy of the lease, and entry No. 35 clearly shows that the property herein is registered in the name of Margaret Muthoni Methu and as such not subject to distribution by the Court.
  - k. That, from the title before the Court, it is clear the ownership of the subject parcel of land is in contention. There is no evidence contradicting that the title to the said parcel of land is in the name of Margaret and the entries thereafter show that the said property has been used as security. The parties to the consent failed to disclose important facts to this Court.
  - l. That, the said property does not form part of the properties belonging to the deceased and the same is not available for distribution.
  - m. That, the role of the Family Court is to deal with property already ascertained as belonging to the deceased.
  - n. The Applicant thus submitted that the Application dated 17<sup>th</sup> January 2024 be allowed as prayed for.
5. The Application was opposed by both the 1<sup>st</sup> Respondent who swore a replying Affidavit dated 6<sup>th</sup> September 2024 and the 2<sup>nd</sup> Respondent who swore a replying affidavit dated 12<sup>th</sup> August 2024.
6. The 1<sup>st</sup> Respondent depones that;
- a. The instant application for the revocation of grant is devoid of merit and ought to be dismissed with costs to the Respondents. It is a scheme by the applicant herein to further delay the due process of the law in succession which has been stalling in Court for over 44 years.
  - b. It is not true that the parcel of Land Reference Number 4730/55 Lanet does not form part of the estate of the deceased. The petitioner Margaret Muthoni Methu as well as myself listed the said the said property as property of the deceased and the same has already been distributed to all, the beneficiaries as per the certificate of confirmation of grant on record and such distribution does not prejudice the applicant herein in any way.
  - c. He is not opposed to including all properties of the deceased to this cause. The Applicant, however, should endeavor to avail all the ownership documents of the said properties as proof so as to have the grant rectified and not revoke a grant that has taken over 43 years to have it issued.
  - d. LR Number 455/5 Dawsonville Nakuru Municipality which is now Nakuru Municipality Block 7/634 is currently registered in his name with the Certificate of Lease having been transferred to me by Margaret Muthoni Methu. This property LR Number 455/5 Dawsonville Nakuru Municipality does not form part of the Estate of Benjamin Ikaari Mwangi Methu. (Attached herein and marked "IMM ILa and b" are copies of the Certificate of Lease for Nakuru Municipality Block 7/634 registered in the name of Margaret Muthoni Methu and later to James Mwangi Methu respectively)



- e. The grant that the Applicant is seeking to have revoked crystalized from a consent of parties which was signed by all the parties and adopted as an order of the Court. The contents of the said consent distributed the estate equally for the first time since the cause was filed in the year 1981. The Applicant herein has not demonstrated to this honorable Court the prejudice he has suffered as a result of the said equal distribution of the estate and to that extent he does not deserve the orders sought in the instant application,
  - f. The Applicant herein has never at any single moment for the past over 43 years, raised any objection on the mode of distribution of the estate of the deceased. This clearly proves that the instant application is an afterthought aimed at further delaying the ends of justice, the said application does not raise any triable issues and/or a reasonable cause of action to invite the intervention of this honorable Court.
  - g. In furtherance to the consent of the parties having been obtained and the certificate of confirmation of grant dated 25<sup>th</sup> April, 2023 having been issued, he personally undertook the responsibility of distributing the estate, an exercise that has been pending for over 43 years.
  - h. Upon being appointed the administrator and upon obtaining consent from all the other beneficiaries, the surveyor sub-divided Land Reference Number 4730/55 Lanet, placed beacons and all the beneficiaries picked their preferable portions as per the attached sketch plan. The Applicant herein actively participated during the process and selected his portions as he wished.
  - i. In absolute disregard of the milestone this cause has taken to this point, the Applicant who has actively participated in this succession cause over the years, has now moved the Court seeking to revoke a grant which he has immensely benefited from with the sole objective of delaying this succession cause which has been pending in Court for over 43 years.
  - j. The beneficiaries herein will be highly prejudiced if the orders sought are granted as they have all taken possession of their respective portions of land for the first time in over 43 years and have already began significant economic developments thereon.
  - k. The 1<sup>st</sup> Respondent urges this Court in the Interest of Justice and fairness to dismiss the Applicants Summons dated 17<sup>th</sup> January, 2024 with costs being awarded to the Respondents.
7. The 1<sup>st</sup> Respondent further in its written submissions dated 13<sup>th</sup> December 2024 contend that;
- a. The first distribution of the estate was realized through the consent the applicant seeks to set-aside. It is also worth noting that the applicant herein has not explained to Court how the property LR No.4730/55 switched from being the property of the deceased to the alleged Margaret Muthoni Methu. The alleged registered owner Margaret Muthoni Methu has previously made an application seeking to distribute the said property. It's therefore our submission that LR No.4730/55 has been at all material times available for distribution.
  - b. The fact that the applicant pleaded that the distribution of the property LR No.4730/55 is unfair, it a clear admission that the said property is available for distribution, the only issue the Court should proceed to address, is whether the distribution is fair and equitable. Despite the applicant complaining that the distribution was unfair, he didn't suggest a fair mode of distribution for this Court to consider.
  - c. As towwhether the consent dated 29<sup>th</sup> March 2023 should be set-aside the 1<sup>st</sup> Respondent submits that, there are no material facts which has been presented by the applicant herein to



inform this Court in making a decision to set-aside the consent that before the evaluation of the motion on merit of the consent sought to be set-aside, it is important to consider genesis of the said consent. The succession herein was commenced in 1981, by one Margaret Muthoni Methu being the wife of the deceased. Despite passage of time the said administrator failed to take any reasonable steps towards distribution of the estate as required by law.

- d. The said Margaret Muthoni Methu filed summons dated 28<sup>th</sup> July 2022, seeking to distribute the estate. All the beneficiaries were agreeable to the mode of distribution adopted in the said summons, except the 2<sup>nd</sup> Respondent herein who opposed the said summons through an affidavit of protest dated 1<sup>st</sup> September 2022. The said summons was immediately withdrawn upon filing of the said affidavit of protest.
- e. The 2<sup>nd</sup> Respondent was dissatisfied by the conduct of the administrator, and moved the Court through summons for revocation of grant dated 8<sup>th</sup> December 2022. Her Major ground was that the administrator has failed to distribute the estate, which largely affected beneficiaries specifically the estate she represents. The petitioner responded to the summons for revocation of grant vide an affidavit filed in Court on 13<sup>th</sup> February 2023 where she formally agreed to distribute the estate. It's the said revocation which culminated into the consent dated 29<sup>th</sup> March 2023. It's worth noting that during these proceedings the applicant herein never raised any issue.
- f. The advocates for the parties further entered into a consent dated 1<sup>st</sup> December 2023 and filed in Court on the same date. In the said consent, parties authorized the surveyor to proceed and subdivide LR No.4730/55, agreed on cost and supervision during the survey. The subdivision took place as demonstrated by surveyor's sketch annexed to the 2<sup>nd</sup> Respondent's affidavit and parties picked portions of their choice. The applicant herein picked portions number 4 and 10 in the said sketch. It's ridiculous that the applicant is seeking to set aside a consent and certificate of confirmed grant despite enjoying benefits arising from the said documents.
- g. The 1<sup>st</sup> Respondent submit that the application dated 17<sup>th</sup> February 2024 is an afterthought and a scheme by the applicant to delay distribution of this estate.
- h. Reliance is placed on the following authorities;The Court of Appeal in Isaac Kinyanjul Njoroge vs National Industrial Credit Bank Limited [2018] eKLR, Flora N Wasike vs Destimo Wamboko [1982-88] 1 KAR 625 and Hirani vs Kassam (1952) 19 EACA 131 that prima facie, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them..... and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the Court..... or if the consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable the Court to set aside an agreement.
- i. The applicant herein has not proved any of the above principles. It's worth noting that, when the petition was instituted, the property herein was listed as property of the deceased. The alleged registered owner Margaret Muthoni Methu has previously made application seeking to distribute the said property. She has never claimed the property is her personal property and to that extent it cannot be contended that the consent was entered in ignorance of material facts in relation to ownership.
- j. The applicant further contents that, the consent didn't take care of other properties of the deceased. He has specifically listed LR.451/13 LXVII Nakuru Municipality, LR No. 9349



Bahati, LR No.451/32 LXVII Nakuru Municipality, Nakuru Municipality block 7/5.LR No 13542/39 Nakuru Municipality Block 5/455 Dawsonville, company shares among other Surprisingly the applicant has failed to attach any documentary evidence to demonstrate the above properties are registered in the name of the deceased. This significant omission on the part of the applicant clearly shows how the application before Court is frivolous and abuse of Court process.

- k. That it is within the knowledge of the 2<sup>nd</sup> Respondent herein that property LR Number 455/5 Dawson Ville Nakuru Municipality which is now Nakuru Municipality block 7/634 is currently registered in the name James Mwangi Methu the 1st Respondent. The said property is subject to an active Court case being Nakuru ELC. O.S Number E04 of 2023 Jennifer Wangechi Kareithi Versus James Mwangi Methu and Margaret Muthoni Methu. which is scheduled for hearing on 25th March 2025. It's worth noting that the applicant herein is an interested party in the said suit.
  - l. The 1st Respondent submits that the Applicant has not demonstrated how he has been prejudiced by the consent and subsequent certificate of confirmed grant issued herein. The consent distributed the state equally to all beneficiaries and they have taken possession of their respective portions of land for the first time since 1981.
  - m. The application herein is a scheme by the applicant to continue delaying distribution of the estate which has been pending for the last 40 years. Some of the beneficiaries have passed on before any benefit of the estate accruing to them. It will be unfair and against the interests of justice to revert the beneficiaries back to the long wait they have been enduring since 1981.
8. In the upshot, the 1<sup>st</sup> Respondent urges this Court to dismiss the current application with cost.
9. The 2<sup>nd</sup> Respondent depones that;
- a. The instant summons for revocation of grant is devoid of merit and the same ought to be dismissed with cost. It's just a wide scheme by the applicant to further delay the due process law in a succession that has been stalling in Court for the last 44 years.
  - b. It's not true that parcel of land Reference Number 4730/55 Lanet is no longer property of the deceased, the petitioner Margaret Muthoni Methu as well as the current administrator have listed the said property as property of the deceased and have already distributed to all beneficiaries of the estate equally as per the certificate of confirmed grant on record and such distribution doesn't prejudice the applicant herein in anyway.
  - c. She is not opposed to including more properties to the estate as suggested by the Applicant in paragraph 4 of the supporting affidavit. The Applicant should avail ownership documents of the said properties and the grant be rectified accordingly to include them and NOT to revoke the certificate of confirmed grant on record.
  - d. It is within the 2<sup>nd</sup> Respondent's knowledge that property LR Number 455/5 Dawson Ville Nakuru Municipality which is now Nakuru Municipality block 7/634 is currently registered in the name James Mwangi Methu the 1<sup>st</sup> Respondent. The said property was listed as property of the deceased at the time of petitioning the Court in this matter.
  - e. She has filed in originating summons before the Environment and land Court Nakuru being Nakuru ELC.O.S Number E04 OF 2023 Jennnifer Wangechi Kareithi Versus James Mwangi Methu and Margaret Muthoni Methu, seeking a declaration that two Respondents are holding



parcel of land Title number Nakuru Municipality Block 7/634 in trust for themselves and on behalf of the Estate of David Githaiga Methu (deceased).

- f. The Applicant herein, should seek to be made a party to the Nakuru EL.C. OS Number E04 of 2023 Jennnifer Wangechi Kareithi Versus James Mwangi Methu and Margaret Muthoni Methu to claim his share in the said land instead of seeking to revoke the current grant.
  - g. The grant sought to be revoked crystalized from a consent of parties which was signed by parties and adopted as an order of the Court. The contents of the said consent distributed the estate equally for the first time since 1988.
  - h. The applicant has not demonstrated to Court the prejudice he has suffered as result of the said equal distribution of the estate and to that extent he doesn't deserve the orders sought in the application.
  - i. It is worth noting that, the summons for rectification of grant dated 28<sup>th</sup> July 2022 which sought do distribute the estate, was not opposed by the applicant herein. The 2<sup>nd</sup> Respondent was the only beneficiary who opposed the said application, which culminated in a consent settling the matter.
  - j. The 2<sup>nd</sup> Respondent submit that the application is an afterthought and doesn't raise any reasonable cause of action to invite the intervention of this Court.
  - k. The 2<sup>nd</sup> Respondent wish to confirm that, furtherance to the consent of parties and certificate of confirmation grant dated 25<sup>th</sup> April 2023, the 1<sup>st</sup> Respondent herein took the responsibility of distributing the estate, which exercise has been pending for more than 40 years.
  - l. Indeed, under the instruction of the Administrator and consent of all beneficiaries. the surveyor subdivided the land Reference Number 4730/55 Lanet, placed beacons and all beneficiaries picked their preferable portions from the sketch plan provided. It worth noting that the Applicant herein passionately participated during the process and selected portions number 4 and 10 in the sketch plan with intention of drilling a borehole.
  - m. In a bizarre turn of events, the Applicant has moved the Court seeking to revoke a grant which he has immeasurably benefited from with sole objective of delaying this succession cause which has been pending in Court for more than 40 years.
  - n. The beneficiaries will be highly prejudiced if the orders sought are granted. since they have taken possession of their respective portions of land for the first time in 40 years and began significant economic activities therein.
  - o. The 2nd Respondent prays that summons for revocation of grant filed herein be dismissed with cost.
10. On the 9<sup>th</sup> July 2024 the Court had directed that the Summons for revocation of grant dated 17<sup>th</sup> February 2024 would be heard and determined by way of filed written submissions with timelines being set by the Court.
  11. On the 29<sup>th</sup> October 2024, the Applicant was absent, the 1<sup>st</sup> Respondent was yet to comply and file their written submissions as well as the 2<sup>nd</sup> Respondent and the Court allowed the Respondent more time to the 28<sup>th</sup> November 2024.
  12. On the 6<sup>th</sup> December 2024 the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were yet to comply while the Applicant had complied on the 14<sup>th</sup> August 2024 by filing his written submissions. The Court allowed further time



to comply while fixing the matter for ruling on the 18<sup>th</sup> March 2025 which delivery was slightly delayed to today.

### **Analysis and Determination**

13. After considering the application, supporting affidavit and replying affidavit, the only issue for determination is whether the Applicant has met the requirements for setting aside a consent order.

14. The Court in the case of Brooke Bond Liebig vs Mallya (1975) EA 266 set out the principles of setting aside consent orders as follows:

“The compromise agreement was made an order of the Court and was thus a consent judgment. It is well settled that a consent judgment can be set aside only in certain circumstances, e.g on grounds of fraud or collusion, that there was no consensus between the parties, public policy or for such reasons as would enable a Court to set aside or rescind a contract. In this case the parties and their advocates consented to the compromise in very clear terms; they were certainly aware of all the material facts and there could not have been any mistake or misunderstanding. None of the factors which could give rise to the setting aside of a consent agreement existed.”

15. This was reiterated in the case of Flora N. Wasike vs Destimo Wamboko [1988] eKLR where the Court quoted Setton on Judgments and orders (7th edition) vol 1 page 124 as follows:

“Any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and those claiming under them...and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the Court...; or if the consent was given without sufficient material facts, or in general for a reason which would enable a Court set aside an agreement.”

16. From the above authorities, a consent order can only be set-aside on narrow parameters where it is demonstrated that the consent procured through fraud, non-disclosure of material facts or mistake or any reason that would enable the Court to set-it aside. The Applicant has to therefore demonstrate whether there was fraud, misrepresentation or mistake that would lead to the setting-aside of the consent order.

17. On 29<sup>th</sup> March, 2023, a consent order was entered by Advocates for the then Objector Jenniffer Wangeci Kareithi A.K.A Jenniffer Wangechi Githaiga and the then Administrators Margret Muthoni Mwangi Methu.

18. The Import of the Consent was to replace the Administrator with James Mwangi Methu and a mode of distribution as follows;

A. That the property of assets of the deceased particularly described as LR. NO. 4730/55 Lanet be distributed equally among all the beneficiaries as follows: -

- i. Margaret Muthoni Mwangi Methu.....4 Acres
- ii. James Mwangi Methu.....4 Acres
- iii. Leonard Waithaka Methu.....4 Acres
- iv. Jennifer Wangechi Kareithi (To hold trust for her children) .....4 Acres



- a) Benson Karithi Githaiga
- b) Benjamin Ikaari Mwangi
- c) James Methu Githaiga
- d) Sabra Wendo Muthoni

v. Washington Warunge Methu.....4 acres

B. That survey, subdivision and allocation of the property LR. No. 4730/55 Lanet be conducted in the presence of all beneficiaries in following terms:

- a. That each beneficiary to own ½ (half an acre) touching the tarmac.
- b. That each beneficiary to own 3½ (Three and half acres) from the remainder of the property after subdivision and allocation referred in (a) above.
- C. The costs of the survey and outstanding rates in respect to the asset of the deceased Benjamin Ikaari Mwangi Methu (LR. No. 4730/55 Lanet) will be borne by all beneficiaries equally

19. From the Court record, counsel for all the parties in the present matter were present in Court as the consent was recorded and adopted.
20. This Court further notes the Applicants email dated 2<sup>nd</sup> August 2022 addressed to the Deputy registrar consenting to the distribution as per the Petitioners (then) proposal which is indicative of his involvement negating his position of not having ever been involved in these proceedings.
21. This Probate has been alive for over forty-four (44) years and the fact that the Applicant appears not in any hurry to wind-up the estate is confounding to say the least.
22. The fact that it almost took forty (40) years to achieve a confirmation of grant upon consent is equally not perturbing to the Applicant.
23. In my exercise of my discretion I find no basis has been laid to warrant disturbing the consent giving rise to the confirmation of grant.
24. The Counsel for the Administrator is in law representing the estate and all beneficiaries and the Applicant was thus represented and cannot argue that he ought to have personally executed the consent.
25. The Applicant has participated in the Survey of L.R No. 4730/55 Lanet including identifying two parcels he is to receive therefrom
26. The arguments around inclusion of properties forming part of the estate or exclusion of such properties does not necessarily lead to revocation of grant in fact the Administrator is more than willing to include any assets of the deceased that can be demonstrated to have been registered in his name at the time of his demise.
27. While the Applicant has clearly been unable to showcase in proof the alleged fraud, he has equally failed to show what prejudice the Applicant suffered from the consent entered into on the 29<sup>th</sup> March 2023.
28. This Court is unable to find favor or merit in the Summons for revocation of grant dated 17<sup>th</sup> January 2024 and accordingly dismiss the same.



29. It is the duty of the Administrator to conclude the distribution within six (6) months of today and to file an account indicating settlement of the estate leading to the closure of the probate file. In this case administrator/1<sup>st</sup> Respondent is ordered to file a detailed report on the distribution of properties forming part of the estate within the next Forty-Five (45) days
30. Parties shall bear their respective costs.
31. Any Party Aggrieved with this Ruling has 45 days leave to Appeal and the Leave so granted shall act as stay of execution.
32. The directions on hearing and disposal of the Pending Application dated 10<sup>th</sup> January 2025 shall be during the next scheduled mention.
33. Mention for compliance and further directions shall be on the 5<sup>th</sup> June 2025

It is so Ordered

**DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 28<sup>TH</sup> DAY OF MARCH, 2025**

**MOHOCHI S.M**

**JUDGE**

