In re Estate of the Late Kireger Kuto (Deceased) (Succession Cause 74 of 2015) [2025] KEHC 4034 (KLR) (28 March 2025) (Ruling)

Neutral citation: [2025] KEHC 4034 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE 74 OF 2015

RN NYAKUNDI, J

MARCH 28, 2025

IN THE MATTER OF THE ESTATE OF THE LATE KIREGER KUTO (DECEASED)

BETWEEN

JONAH KIBET RUTTO ..... 1ST OBJECTOR

ANNA CHEPKORIR KURO ..... 2ND OBJECTOR

AND

PHILIP RUTTO ..... 1ST PETITIONER

DANIEL KIPLAGAT ..... 2ND PETITIONER

RULING

1. This court issued a Certificate of confirmation of Grant on 10th June, 2024 effectively bringing this matter to a conclusion. Two applications have since emerged. The petitioners brought in an application dated 15th January, 2025 seeking reliefs as follows:
    a. Spent
    b. That the Grant of letters of administration intestate made to the applicants herein and confirmed on the 19th November, 2021 be rectified/amended in terms of the annexed mode of distribution and an amended certificate of confirmation of Grants be issued.
    c. That such further orders be issued as the court may deem just and expedient.
    d. That costs of this application be in the cause.
2. The application by the petitioners is based on grounds that:

a. That there is an error on the acreages of the Land parcel Number Kaptuktuk Farm LR/ Tembelio/Elgeyo Border/Block 10(Kaptuktuk)/422 was wrongly indicated to be measuring 47 acres instead of 42.5 Acres.

b. That the rectification is to ensure that the correct acreage is captured as per the ground measurements to enable a just and true reflection of the sizes each beneficiaries is to receive.

c. That the grant as was confirmed did not specify who was to get with parcel of land as regards the Bayete Farm LR/Tulwet/Kesses/Block 6(Bayete) Plot Nos. 30, 68 and 69 which are three parcels in number.

d. That the applicants are administering the estate according to the law.

3. The Objectors equally lodged an application of even date seeking orders as follows:

a. Spent

b. That this Honourable court recuses itself from further handling this cause as the objectors/ applicants have lost confidence and have lost confidence and have no faith in the court.

c. That the Honourable court be pleased to issue an order of temporary stay of execution of the ruling dated 11th October, 2024 be set aside in its entirety.

d. That there be issued an order for preservation of the estate by stopping any sale and/or transfer of any portion or part of the estate comprised of 47 acres in L.R No. Tembelio/Elgeyo Boarder Block 10 (Kaptuktuk 'B')/422 registered in the name of Kireger Arap Kuto, deceased, and 33 acres in Tulwet/Kesses Block 6 (Bayete) Plot Nos. 30, 68, 69 also in the name of Kireger Arap Kuto pending hearing and determination of this application.

e. That Jonah Kibet Rutto be appointed an Administrator to represent the 2nd house of the deceased.

4. The application is premised on the grounds therein and it is further supported by the Affidavit sworn by Jonah Kibet Rutto on 15/01/2024.

5. The petitioners in response to the application filed a replying affidavit in which Daniel Kiplagat deposed that that to his own knowledge, the application was premised on falsehood, generally tainted with dishonesty and misrepresentation of facts, which he characterized as a deliberate move by the Objectors/Applicants to obstruct the course of justice and delay the cause further. He described the Objectors as litigious busy bodies who were only out to frustrate the estate, and prayed that the court should issue a stern warning to them.

6. He further deposed that the issues being raised by the Objectors/Applicants were already raised by themselves in their own application dated 19th December, 2023, and these issues were heard before the same court, which delivered its ruling on 11th October, 2014. As such, Kiplagat stated that the Objectors' instant application was res judicata and against the provisions of Section 7 of the *Civil Procedure Act*, and should therefore be dismissed with costs.

7. The 2nd petitioner noted that during the said hearing until the final verdict was rendered, the Objectors were at all times represented by the firm of C.D Nyamweya & Co. Advocates. He stated that since judgment in this matter was already delivered, no firm of advocates would purport to have come on record for the Objectors in place of C.D Nyamweya & Co. Advocates without following the due procedure as laid down in Order 9 Rule 9 of the Civil Procedure Rules, 2010. Therefore, the firm

of Miyenda & Company, having not complied with the said provision, had no right of audience and should be denied such.

8. He contended that the Objectors' application did not raise any substantiated grounds that would warrant the recusal of the judge handling the matter. He emphasized that a party cannot choose which court should hear their case or want another court to recuse itself merely because they obtained an order against themselves from that court.

9. He deposed that the estate had already been distributed to the rightful beneficiaries as per the chief's letter filed with the court, and all the houses received their share of the estate and were contented with the same. Kiplagat claimed that the allegations raised by Jonah Kibet Rutto in his supporting affidavit were unfounded and unjustified, and only meant to misguide the court.

10. He deposed that the Objectors were strangers to the estate with no locus standi, and as such, Jonah Kibet Rutto could not purport to demand appointment as an administrator to represent the 2nd house of the deceased. In response to the Supporting Affidavit, Kiplagat asserted that the Applicants were not entitled to any portion of the deceased's estate as they were neither children, beneficiaries, nor dependents of the deceased, thus having no color of right to lay claim over the estate.

11. He further deposed that the Applicants had not presented evidence of either an oral or written will to prove their allegations, and that the deceased's property was rightfully divided based on intestacy laws under the Succession Act. Mr. Kiplagat stated that to his knowledge, the deceased died intestate without leaving any will, and the allegations raised by the Objectors were mere speculations meant to justify their greed.

12. Regarding paragraph 27 of the Supporting Affidavit, Kiplagat stated that no application for review had ever been filed in respect to the court's ruling of 11th October, 2024, and the court could not be called upon to sit as an appellate court over its own decision.

13. He refuted allegations by the 1st Objector/Applicant that the 2nd house was excluded and their existence concealed from the court, calling it a misleading allegation made under oath despite knowing it was untrue. Kiplagat asserted that all houses were catered for, as confirmed by the chief's letter and the distribution, and that the grant was obtained with all material facts presented to the court.

Determination

14. First and foremost, I wish to deal with the application dated 15th January, 2025 seeking rectification of Grant.

The Law

15. Rectification of Grants is provided for in Section 74 of the *Law of Succession Act*, CAP 160 Laws of Kenya and Rule 43(1) of the Probate and Administration Rules. As for Section 74, it provides as follows:

> " Errors may be rectified by court:
>
> Errors in names and descriptions, or in setting forth the time and place if the deceased's death or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly."

Rule 43(1) provides as follows:

> " where the holder of a Grant seeks pursuant to the provisions of section 74 of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time or place of death of the deceased or; in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the Grant was made."

16. In the application for rectification of Grant, the court in the matter of the estate of Hasalon Mwangi Kahero (2013) eKLR construed the law as follows:

> " when dealing with an application for rectification of grant to add a full name of person who was omitted."
>
> An error is essentially a mistake. For the purposes of section 74 and Rule 43, it must relate to a name or description or time and place of the deceased death, or the purpose of a limited grant. Is an omission of a name or in the description of a thing an error" it would be an error if say a word in the full name of a person is omitted or a word or number or figure in a description is omitted. But where the full name of a person or a full description of a thing or property is omitted, it would be stretching the meaning of the word "error" too far to say that would amount to the error or mistake envisaged in Section 74 and Rule 43."

17. In this case, the applicant seeks to have the Grant rectified as there is an error on the acreages of the Land parcel Number Kaptuktuk Farm LR/Tembelio/Elgeyo Border/Block 10(Kaptuktuk)/422 was wrongly indicated to be measuring 47 acres instead of 42.5 Acres and further that the grant as was confirmed did not specify who was to get the parcel of land as regards Bayete Farm LR/Tulwet/Kesses/Block 6(Bayete) Plot Nos. 30, 68 and 69 which are three parcels in number.

18. In examining the amendments sought herein, I find that they are manifestly within the ambit of Section 74 of the *Law of Succession Act*. The rectification pertaining to the acreage discrepancy from 47 to 42.5 acres constitutes a clear correction of description rather than a substantive alteration of the Grant's character. Similarly, the clarification regarding specific allocation of the three distinct parcels in BAYETE FARM represents a necessary precision to an otherwise ambiguous distribution. These amendments are quintessentially administrative in nature, designed to reflect factual accuracy and facilitate proper implementation of the Court's intentions. They neither introduce new beneficiaries nor fundamentally alter the proportionate entitlements already established. The law's purpose in permitting rectification is precisely to address such technical inaccuracies that, if left uncorrected, would frustrate rather than fulfil the judicial mandate to ensure orderly succession. Consequently, the Court is not only empowered but obligated to grant the rectification sought to prevent future disputes arising from these correctable discrepancies.

19. Notwithstanding the fact that learned counsel Mr. Miyienda has not regularized his appearance to come on record as required under Order 9 Rule 9 of the Civil Procedure Rules, 2010, this Court deems it necessary to address the substance of the objectors' application in its entirety. The objectors seek numerous substantive reliefs including: recusal of this Court; temporary stay of execution of the ruling dated 11th October, 2024; setting aside of the said ruling in its entirety; preservation orders stopping any sale or transfer of the estate properties; appointment of Jonah Kibet Rutto as an administrator representing the alleged 2nd house; and the nullification and/or revocation of the certificate of confirmation of grant dated 10th June, 2024. These are not mere ancillary reliefs but constitute a comprehensive challenge on the finality of this Court's previous determinations. The

application is fundamentally premised on allegations of bias and loss of confidence in the Court's impartiality, accusations which strike at the heart of judicial integrity.

20. It is a long-established principle that judicial recusal cannot be invoked merely because a party is dissatisfied with previous rulings or anticipates an unfavorable outcome. The threshold for recusal requires clear demonstration of actual bias or reasonable apprehension of bias by an objective observer. Similarly, the setting aside of a previous ruling and nullification of a confirmed grant require exceptional circumstances demonstrating grave injustice or fundamental procedural irregularity, none of which have been established here.

The law on recusal

21. It is universally recognized that when appointed to the office of judge of the superior courts, the first covenant before commencement of any duties, a binder oath of office must be administered with the following words insitu:

> "I, ..., (The Chief Justice /President of the Supreme Court, a judge of the Supreme Court, a judge of the Court of Appeal, a judge of the High Court) do (swear in the name of the Almighty God)/(solemnly affirm) to diligently serve the people and the Republic of Kenya and to impartially do Justice in accordance with this Constitution as by law established, and the laws and customs of the Republic, without any fear, favour, bias, affection, ill-will, prejudice or any political, religious or other influence. In the exercise of the judicial functions entrusted to me, I will at all times, and to the best of my knowledge and ability, protect, administer and defend this Constitution with a view to upholding the dignity and the respect for the judiciary and the judicial system of Kenya and promoting fairness, independence, competence and integrity within it. (So help me God.)

22. In the discharge of their adjudicative function, Judges are bound by cardinal principles of judicial conduct, many of which have been crystallized and enshrined in the Judicial Service (Code of Conduct and Ethics) Regulations, 2020, promulgated pursuant to the *Judicial Service Act* (No. 1 of 2011). These principles constitute the bedrock upon which public confidence in the administration of justice is maintained and against which judicial conduct must be measured.

23. For example, Rule 36 requires that every judicial officer carry out the duties of the office with impartiality and objectivity in line with Articles 10, 27, 73(2) (b) and 232 of *the Constitution*. The Judge is required to avoid favouritism, nepotism, tribalism, cronyism, religious bias, or engaging in corrupt or unethical practices. Additionally, in the discharge of their duties, Judges are expected to:

    a. uphold and apply the law;

    b. observe fairness and impartiality; and

    c. perform the duties of judicial office, including administrative duties impartially, competently, and diligently, without bias.

24. Where impartiality cannot be assured, a Judge ought to recuse himself. Rule 47 provides:

> "1. A judicial officer may recuse himself or herself in any proceedings in which his or her impartiality might reasonably be questioned where the judicial officer—
>
> a. is a party to the proceedings;
>
> b. was, or is a material witness in the matter in controversy;

c. has personal knowledge of disputed evidentiary facts concerning the proceedings;

d. has actual bias or prejudice concerning a party;

e. has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;

f. had previously acted as a counsel for a party in the same matter;

g. is precluded from hearing the matter on account of any other sufficient reason; or

h. a member of the judicial officer's family has economic or other interest in the outcome of the matter in question.

2. Recusal by a judicial officer shall be based on specific grounds to be recorded in writing as part of the proceedings.

3. A judicial officer may not recuse himself or herself if—

a. No other judicial officer can deal with the case; or

b. because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

25. This subject on recusal has been an adjudicatory issue for centuries and Kenya is no exception as it is exemplified from the various decisions resolved by the various superior courts. It is worthy to sample but afew for purposes of the instant application.

4. The Supreme Court in Jasbir Rai and 3 Others v Tarlochan Singh Rai and 4 Others SCK Petition No. 4 of 2012 (2013) eKLR gave the following guidelines to apply in determining recusal applications:

> "(6) Recusal, as a general principle, has been much practised in the history of the East African judiciaries, even though its ethical dimensions have not always been taken into account. The term is thus defined in Black's Law Dictionary, 8th ed. (2004) [p.1303]:
>
> > "Removal of oneself as judge or policy maker in a particular matter, [especially] because of a conflict of interest."
>
> (7) From this definition, it is evident that the circumstances calling for recusal, for a Judge, are by no means cast in stone. Perception of fairness, of conviction, of moral authority to hear the matter, is the proper test of whether or not the non-participation of the judicial officer is called for. The object in view, in the recusal of a judicial officer, is that justice as between the parties be uncompromised; that the due process of law be realized, and be seen to have had its role; that the profile of the rule of law in the matter in question, be seen to have remained uncompromised."

26. The Court of Appeal in Kaplana H. Rawal vs Judicial Service Commission & 2 others (2016) eKLR remarked:

> "... An application for recusal of a judge is a necessary evil. On the one hand it calls into question the fairness of a judge who has sworn to do justice impartially, in accordance with *the Constitution* without any fear, favour, bias, affection, ill-will, prejudice, political, religious, or other influence. In such applications, the impartiality of the judge is called into question and his independence is impugned. On the other hand, the oath of office notwithstanding, the judge is all too human and above all *the Constitution* does guarantee all litigants the right to a fair hearing by an independent and impartial judge...
>
> 25. The Supreme Court of Canada expounded the test in the following terms in R. v. S. (R.D.) [1977] 3 SCR 484:
>
> > "The apprehension of bias must be a reasonable one held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. The test is what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. This test contains a two-fold objective element: the person considering the alleged bias must be reasonable and the apprehension of bias itself must also be reasonable in the circumstances of the case. Further the reasonable person must be an informed person, with knowledge of all the relevant circumstances, including the traditions of integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties the judges swear to uphold..."

27. It is imperative that the perception of the judiciary being unbiased is maintained in order to preserve the rule of law. That is why public confidence in the judicial hierarchy is based on the pillars of objectivity, impartiality and fairness. Essentially, the judiciary remains the last bastion in protecting and guaranteeing the fundamental rights and freedoms of our citizenry. Despite the incessant delays and huge expenditure associated with litigation in our legal system, disputants still approach the court because there is still a semblance of justice in every step. Although there is cry out there on delay and timeline of concluding cases within a reasonable time, the people of Kenya still have faith in the judicial process for it is the only arm of government which helps in preserving the social fabric of the nation as people are always willing to approach the courts to pursue judgment in their favour which they use to vindicate or enforce their rights. The tenets of the administration of justice requires not only a fair adjudication of the dispute itself but also impartial adjudicators. That is why it is presupposed that the appointment of judges must be carried out with due diligence to only those who are unbiased and will fairly evaluate the dispute and exercise discretion in the decision making process without fear favour or ill-will. In any constitutional democracy, it is expected for judges to have certain indispensable characteristics such as independence, competence, fairness, objectivity, impartiality which render them to efficiently discharge the duties of the office of a judge as a neutral umpire. In the instant case, it is this veil which the applicant seeks to pierce conceptualized as recusal of this court from further adjudication of the disputes as it deals with intestate administration. The power of recusal is individualized to the specific judge in question hence *the Constitution* has placed a very high threshold on challenging a judge's impartiality. This insulation is to avoid disgruntled petitioners or litigants to a suit to weaponize the administration of justice through avalanche of petitions. The standards applied or used to gauge

bias, impropriety or reasonable suspicion model are extremely high and in the facts of this case, the applicant has not discharged that burden of proof set by the law. Moreover in this case, a detailed analysis is provided with reference to the record itself in which a trial on the merits was presided over by this court and a final determination on the controversy of identification of the beneficiaries and the free properties to be shared out to the beneficiaries. Additionally, it must not be lost of this court that every process must be criticized to not only secure justice but a whimsical grievance appearance of impropriety or bias must be castigated.

28. In order to understand the problem in the litigation history of this estate, it is imperative that such developments up to this application of recusal be put to perspective. On 16th February, 2015 Philip K. Ruto and Daniel Kiplagat petitioned for grant of letters of administration to administer the estate of Kireger Kuto apparently survived of the following:

    Sarah Bot Chepngok Kuto – widow (deceased)

    Christina Bot Tipteymet Kuto – (widow)

    Mary Bot Agui Kuto – (widow)

    Esther Bot Kiplelei Kuto – (widow)

    Philip K. Ruto (son)

    Chepngok Kuto (daughter)

    David Kiprono (son)

    Samuel Kuto – (son)

    Christopher Morogo – (son)

    Grace Cheptarus – (daughter)

    Chebo Nandi (daughter)

    Eunice Kipsitini (daughter)

    Sarah Jemeli (daughter)

    Jane Kapitok (daughter)

    Hellen Kuto (daughter)

    Esther Kuto (daughter)

    Salina Kapchenge (daughter)

    Everline Kapkemei (daughter)

    Sally Kuto (daughter)

    Isaac Kuto (son) (deceased)

    Susan Kuto (daughter).

29. During the trial within a trial, the objectors' case involving Jonah Rutto was heard and determined on the merits. For instance, the objector Jonah Rutto without hesitation is a biological son to the administrator Philip Rutto. The property in contention is that of his late grandfather. Keeping in mind the importance of the structural integrity of the court, wit is highly crucial to make reference to the certificate of confirmation of grant issues on 10th June, 2024. As a governing rule of law that put to rest as the time of the decision, finality of the issues on the cause of action with regards to the estate

of Kireger. The recent recusal order by the objectors offers great insights into the much needed legal information on aggrieved parties who find themselves not successful in the first round of litigation who in their quest for justice held the view that the case will go in their favour. With the extreme importance provided for in our constitution and statute law to the appearance of justice, due process fair process, it is required of any applicant to place critical evidence on the possibility of bias, impropriety, conflict and impartiality of a session judge and not a mere probability or suspicion.

30. From the above analysis it can be concluded it is tragedy that the test of recusal has not been met from the various parameters and dimensions of each test. It follows therefore that the motion is lost.

31. The other limb of the objector's application is on stay of execution of the ruling dated 11th October, 2024 together with the prayer for preservation of the estate by stopping any sale and transfer of the portions in question. Based on my understanding of Order 40 Rules 1 and 2 of the Civil Procedure Rules, these provisions empower an aggrieved party to seek the court's intervention through a preservation order. Such orders aim to prevent the opposing party from tampering with, interfering with, or depleting the property in dispute while the substantive claim proceeds to determination.

32. The courts have developed several guiding principles when applying these rules. In the landmark case of American Cyanamid v Ethicon (1975) AC396, the court established three essential criteria for granting equitable injunctive relief:

    a. The applicant must demonstrate that there exists a serious question to be tried on the merits;

    b. The balance of convenience must favor the granting of the injunction; and

    c. The applicant would suffer irreparable harm—damage that cannot be adequately remedied through monetary compensation—if the injunction were not granted.

33. In line with the test outlined in the American Cyanamid Case,

> " Lord Diplock in the Siskina Case (ICYG) AC 210 held that the general proposition that an injunction cannot exist in isolation and must be linked to an underlying cause of action. That subsection speaking as it does of interlocutory orders presupposes the existence of an action, actual or potential, claiming substantive relief which the High Court has jurisdiction to grant and to which the interlocutory orders referred to are but ancillary. This factor has been present in the previous cases in which Mareva injunctions have been granted, A right to obtain an interlocutory injunction is not a cause of action, it cannot stand on its own, it is dependent upon there being a pre-existing cause of action against the dependant arising out of an invasion actual or threatened by him, over legal or equitable right of the Plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing course of action. It is granted to preserve the status quo pending the ascertainment by the court of the rights of the parties and the grant to the Plaintiff of the Relief to which his cause of action entitles him, hence may or may not include a final injunction".

34. I take note that the basic principles in the American Cyanamid and Siskina Cases have been adopted by our courts in Giella V Cassman Brown Company Ltd (1973) EA, Central Bank of Kenya V Giro Commercial Bank Ltd (2007) 2EA 93. MRAO LTD v First American Bank of Kenya Ltd (2003)

EKLR. Thus in the case of Pius Kipchirchir Kogo versus Frank Kimeli Teani (2018) Eklr in which the court stated:

> " irreparable injury means the injury must be the one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not in itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of apprehended injury. The meaning of balance of convenience ill favor of the plaintiff is that if an injunction is not granted and the Suit is ultimately decided in favour of the plaintiffs, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiff's to show that the inconvenience caused to them be greater than that which may be caused to the defendant's inconvenience be equal, it is the plaintiff who suffer. In other words, the plaintiff has to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater which is likely to arise from granting". Further, in Kenleb Cons Ltd vs New Gatitu Service Station Ltd another, (1990) eKLR where the court stated that "to succeed in an application of injunction an applicant must not only make a full and frank disclosure of all relevant facts to the just determination of the application but mist also show he has a right legal or equitable, which requires protection by injunction"

35. In examining the prayers for stay of execution and preservation of the estate property, I find that the objectors have not met the threshold required for grant of such orders. The applicants have failed to demonstrate a prima facie case with a probability of success. The ruling of 11th October, 2024 was made after full consideration of the merits, with both parties having had adequate opportunity to present their respective cases. Furthermore, the objectors have not shown what irreparable harm they would suffer if the stay is not granted, especially considering that the Certificate of Confirmation of Grant was issued on 10th June, 2024, effectively concluding this matter. The balance of convenience tilts heavily against granting the orders sought, as doing so would only serve to prolong litigation in a matter that has been conclusively determined, thereby preventing the rightful beneficiaries from enjoying their inheritance. The objectors appear to be seeking a second bite at the cherry through this application, after having failed in their earlier attempt to challenge the distribution of the estate.

36. With regard to the prayer for preservation of the estate by stopping any sale or transfer of the estate properties, I find this to be unwarranted. The petitioners, as duly appointed administrators, have the legal mandate to administer the estate in accordance with the confirmed grant. The objectors have not produced any credible evidence to suggest that the administrators are mismanaging the estate or are about to dissipate the assets in a manner prejudicial to the legitimate beneficiaries. Moreover, the objectors have not established their locus standi to the intestate estate save that they are Grandchildren to the deceased. In terms of section 29 of the *Law of Succession Act*, it was the finding of this court then that their inheritance rights is a moot question given the dimension and characteristics of a biological child of the deceased or what is commonly referred to as a dependant capable of inheritance.

37. It is clear from the principles set out in the authorities above that the purpose underlying the grant of an injunction is to prevent a defendant or respondent from putting assets subject matter of the suit beyond the reach of judgment creditors herein the beneficiaries. The assets may be put beyond the reach of judgment creditors or beneficiaries for that matter by hiding them, by transferring them to third parties without a consent of other beneficiaries or by dissipating them in the doctrine of the Succession Act, it is intermeddling with the estate. The scope of an injunction is normally restricted to

assets which would be amenable to execution in aid of a final judgment of the court. In my considered view, at this stage of the proceedings, I can see no justification for grant of an injunction. In the order of the assets, in which a decision has been made by this court unless and until the Certificate of confirmation of grant has been revoked.

38. Re-thinking the scope of the prayer for revocation, there are well established principles that a party is not allowed to re-open his case over and over again where there is often a mismatch for the actual reasons for making that application. From the perspective of the objector, the legal foundations in respect of this application, demonstrate the degree of the doctrine of estoppel flowing from the provisions of section 7 of the *Civil Procedure Act* on Res judicata.

39. The doctrine of res judicata operates as a shield against repeated litigation, invoked as a defense where legal rights and obligations have already been determined by a previous judgment. For this principle to effectively bar subsequent proceedings, three essential prerequisites must be satisfied: first, the parties in the current action must be identical to or in privity with those in the former proceeding; second, the subject matter presently contested must have been directly or substantially at issue in the earlier litigation; and third, these matters must have been conclusively adjudicated by a court of competent jurisdiction. When these elements converge, the law prevents parties from relitigating settled disputes, thereby preserving judicial economy, preventing inconsistent judgments, and providing finality to the parties involved.

40. In that respect, the Court of Appeal held in The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others, [2017] eKLR), that:

> " For the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;
>
> a) The suit or issue was directly and substantially in issue in the former suit.
>
> b) That former suit was between the same parties or parties under whom they or any of them claim.
>
> c) Those parties were litigating under the same title.
>
> d) The issue was heard and finally determined in the former suit.
>
> e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised."

41. The Court went on to state on the role of the doctrine:

> " 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 commonsensical 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."

42. In addition, in Halsbury's Laws of England 4th edition, Vol. 16, paragraph 1528, this doctrine has been addressed as follows:

> " In order for the defence of res judicata to succeed it is necessary to show not only that the cause of action was the same but also that the plaintiff has had an opportunity of recovery and but for his own fault might have recovered in the first action that which he seeks to recover in the second action ..... it is not enough that the matter alleged to be concluded might have been put in issue, or that the relief sought might have been claimed. It is necessary to show that it was actually put in issue or claimed."

43. Applying these principles to the present application, I find that the objectors' petition is manifestly barred by the doctrine of res judicata. The objectors, Jonah Kibet Rutto and Anna Chepkorir Kuro, are pursuing substantially identical claims to those already adjudicated in the proceedings that culminated in the ruling of 11th October, 2024. The parties remain the same, litigating under identical titles with respect to the same subject matter namely, the administration and distribution of the estate of Kireger Kuto. The issues of the objectors' standing, the proper identification of beneficiaries, and the distribution of the estate properties were all fully ventilated, heard, and conclusively determined by this Court, which possessed requisite jurisdiction. The Certificate of Confirmation of Grant issued on 10th June, 2024 represents the final determination on these matters. The objectors' attempt to repackage their grievances through allegations of bias and requests for preservation orders cannot circumvent the finality principle that res judicata embodies. To entertain such applications would be to countenance an abuse of process, permitting dissatisfied litigants to endlessly re-agitate settled matters until they secure a favorable outcome. This Court is duty-bound to prevent such forum-shopping and to protect the integrity of its own judgments. The law demands finality in litigation; it neither contemplates nor permits a perpetual cycle of identical disputes being brought before the courts.

44. Having considered the applications before me, I find that the petitioners' application for rectification of the grant is merited. The correction of the acreage from 47 acres to 42.5 acres for Land parcel Number Kaptuktuk Farm LR/Tembelio/Elgeyo Border/Block 10(Kaptuktuk)/422 is necessary to reflect the accurate measurements on the ground. I also find merit in the petitioners' concern that the confirmed grant did not specifically allocate the three distinct parcels of Bayete Farm LR/Tulwet/Kesses/Block 6(Bayete) Plot Nos. 30, 68 and 69. This omission requires rectification, and I therefore allow these parcels to be distributed according to the annexed mode of distribution to ensure proper administration of the estate and to prevent future disputes among the beneficiaries. As for the objectors' application, I find no substantial grounds warranting my recusal from this matter. The objectors have failed to demonstrate any bias or prejudice that would impair my ability to adjudicate this cause fairly. Moreover, I note that the firm of Miyenda & Company Advocates has not properly come on record as required under Order 9 Rule 9 of the Civil Procedure Rules, 2010. In any event, the issues raised by the objectors have already been determined in the ruling delivered on 11th October, 2024, and this court cannot sit as an appellate court over its own decision. Accordingly, the objectors' application is dismissed for lack of merit.

45. Consequently, the following orders do abide:

    a. The petitioners' application dated January 15, 2025 is allowed.

    b. An amended certificate of confirmation of Grant do issue.

    c. The objectors' application dated January 15, 2025 is dismissed in its entirety.

    d. Costs of both applications shall be borne by the objectors

DATED, SIGNED AND DELIVERED AT ELDORET THIS 28TH DAY OF MARCH, 2025

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R. NYAKUNDI

JUDGE