In re Estate of Daniel Muntet Naimodu (Deceased) (Succession Cause 256 of 1990) [2025] KEHC 6005 (KLR) (28 April 2025) (Ruling)

Neutral citation: [2025] KEHC 6005 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

SUCCESSION CAUSE 256 OF 1990

SM MOHOCHI, J

APRIL 28, 2025

IN THE MATTER OF THE ESTATE OF DANIEL MUNTET NAIMODU (DECEASED)

BETWEEN

ALFRED KOILEKEN SIMEL ..... APPLICANT

AND

MONICAH WANJIKU ..... 1ST RESPONDENT

PAUL MUIGAI MUHIA ..... 2ND RESPONDENT

RULING

1. Before me is an Amended Summons for Revocation of Grant dated 15th June, 2021 orders that:

   i. That this Application be certified as urgent and heard ex-parte in the first instance.

   ii. That this Honourable Court be pleased to issue orders to arrest and/or stay the delivery of its Ruling in the current suit scheduled for the 5th of May 2021, regarding the Respondent's Summons dated 13th March 2019, pending the hearing and determination of the Summons for Revocation or Annulment of Grant herein.

   iii. That pending the inter partes hearing and final determination of these Summons for Revocation, this Honourable Court be pleased to issue an order injunction restraining the Respondent by herself, her agents, employees, nominees, assigns, and/or any other persons or authority howsoever claiming through the Respondent whatsoever from disposing off, leasing out, cultivating, pledging, sub-diving, offering for sale, selling, transferring and/or howsoever dealing with the properties forming part of the Estate of the Late Daniel Muntet Naimodu which include, but is not limited to: Olmekenyu Title No:

      Narok/CIS-Mara/Olulunga/ 108,

Olulunga Township Title No 70,

Narok/CIS-Mara/Olulunga/18236,

Narok/CIS-Mara/Olulunga/18245,

Enooretet Title No

Narok/CIS- Mara/Olulunga/210,

Narok/CIS-Mara/Olulunga/151,

Narok/CIS-Mara/Olulunga/209,

Narok/CIS-Mara/Olulunga/18437

Narok/CIS-Mara/Olulunga/18438.

and

Narok/CIS-Mara/Olulunga/18237,

Narok/CIS-Mara/Olulunga/18238,

Narok/CIS-Mara/Olulunga/18239,

Narok/CIS-Mara/Olulunga/18240,

Narok/CIS-Mara/Olulunga/18241,

Narok/CIS-Mara/Olulunga/16042,

Narok/CIS-Mara/Olulunga/18242,

Narok/CIS-Mara/Olulunga/18243,

Narok/CIS-Mara/Olulunga/18244.

iv. That pending the inter partes hearing and final determination of these Summons for Revocation, this Honourable Court be pleased to issue orders of inhibition forbidding any dealings in all the properties forming part of the Estate of the Late Daniel Muntet Naimodu which include, but is not limited to: Olmekenyu Title No

Narok/CIS-Mara/Olulunga/ 108,

Olulunga Township Title No 70,

Narok/CIS-Mara/Olulunga/18236,

Narok/CIS-Mara/Olulunga/18245,

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Narok/CIS- Mara/Olulunga/210,

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Narok/CIS-Mara/Olulunga/18242,

Narok/CIS-Mara/Olulunga/18243,

Narok/CIS-Mara/Olulunga/18244.

v. That this Honourable Court be pleased to issue temporary and prohibitory orders prohibiting the Respondent by herself, her agents, employees, nominees, assigns, and/or any other persons or authority howsoever claiming through the Respondent's Grant of Letters of Administration from intermeddling with the Estate of the Late Daniel Muntet Naimodu pending the hearing and determination of these Summons for Revocation.

vi. That pending the inter partes hearing and final determination of these Summons for Revocation, this Honourable Court be pleased to issue an order compelling the Director National Registration Bureau to provide the Applicant with certified registration details of Monicah Wanjiku Kimani Id Number 334xxxx, Paul Muigai Id Number 520xxxx And Joseph Muhia 5205xxx.

vii. That pending the inter partes hearing and final determination of these Summons for Revocation, this Honourable Court be pleased to issue temporary and prohibitory orders prohibiting any further investigation, intimidation, harassment and/or prosecution of the beneficiaries of the Estate of the Late Daniel Muntet Naimodu in relation to any properties owned jointly or in common with the Deceased herein.

viii. That the Grant of Letters of Administration Intestate in relation to the Estate of the Late Daniel Muntet Naimodu issued to Isabela Nyokabi Muntet on the 5th of March 1990 and confirmed on the 9th of October 1992 and subsequently amended to include Monica Wanjiku Kimani as the Administrator, on the 22nd of July 2015 and further amended to include Monica Wanjiku Kimani and Paul Muigai Muhia as the current Administrators, on the 30th of September, 2020 and/or issued on any other date whatsoever, be and is hereby revoked and/or annulled.

ix. That all the steps taken pursuant to the aforementioned Grant of Letters of Administration and the Certificate of Confirmation of Grant and Amended Grant which may have changed the ownership status to any properties that are/ were part of the Deceased's Estate herein be declared nullity and void in law.

x. That this Honourable court be pleased to issue an Order to reverse all dispositions, registrations and dealings made pursuant to the aforementioned Grant of Letters of Administration in all properties forming part of the Estate of the Late Daniel Muntet Naimodu which include, but is not limited to: Olmekenyu Title No

Narok/CIS-Mara/Olulunga/ 108,

Olulunga Township Title No 70,

Narok/CIS-Mara/Olulunga/18236,

Narok/CIS-Mara/Olulunga/18245,

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Narok/CIS-Mara/Olulunga/18243,

Narok/CIS-Mara/Olulunga/18244.

xi. That this Honourable Court be pleased to order the alleged Administrator Monica Wanjiku to produce to the court a proper, full and accurate account of the Deceased's Assets and their dealings to the date of the account.

xii. That the Orders issued herein be served upon the Land Registrar, Narok for compliance.

xiii. That this Honourable Court be pleased to order that a proper procedure be followed in appointing new Administrators to the Estate of the Deceased herein.

xiv. That this Honourable Court be pleased to make any other and further orders that it deems just.

xv. That the costs of and occasioned by this application be borne by the Respondent.

2. The matter came severally for directions among others the 22nd of June, 2021 when the 1st Respondent's Advocates on record indicated that he had filed Grounds of Opposition and would not be filing any other documents. The matter was therefore scheduled for hearing by way of viva voce evidence.

3. The Applicant called several witnesses who gave evidence to the effect that:

a. the Applicant/Objector/ Protestor, is a son and administrator of the Estate of the Late Hosea Simel Ole Naimodu Muntet who died on the 22nd of January 2016 who was a son of the late Daniel Muntet Naimodu (the Deceased herein) .

b. the Deceased herein died on the 23rd of May 1984.

c. the Deceased was survived by several family members: two wives namely Priscilla Wambui Muntet Lepaingoni and Isabella Nyokabi; the marriage between Priscilla Muntet and the Deceased was blessed with three children: Hoseah Simel Naimadu (my Deceased father), Silas Geoffrey Kishoyian (Deceased), Mike Parmaleu Paing'oni.

d. the Deceased's wife Priscilla Wambui Muntet Lepaingoni who is the Applicant's grandmother died on or about the 5th of October 2007 and was buried next to her husband the late Daniel Muntet Naimodu (the Deceased herein) on the property known as Olulunga Township Title No 70.

e. Isabella Nyokabi did not however have children of her own and thus died childless.

f. After the death of the Deceased in 1984, the family came together and held several meetings that culminated to the meeting held on the 8th of June 1993 presided over by chiefs of Kimiti Ole Shunkur to deliberate on the matter of sharing the land parcels belonging to the deceased according to the accepted customs with mutual consensus in mind.

g. the aforementioned meeting was well attended and an agreement with regards to the distribution of agricultural lands entered into in good faith and manners that would foster peaceful coexistence of all the children and wives of the deceased in accordance with the necessary customs and traditions.

h. the abovementioned Agreement was on the premised of Section 32 of the *Law of Succession Act* which excludes the distribution of parcels of land in certain areas including Narok which ought to be governed by the Maasai Customary Law.

i. it however emerged that unknown to other family members vide Petition dated 14th day of March 1990, Isabela Nyokabi Mundet moved to this Honourable Court and fraudulently obtained Letters of Administration to the Estate of the Late Daniel Muntet Naimodu which were issued on the 5th of March 1992 and confirmed on the 9th day of October 1992.

j. From the said Petition it is quite clear that neither the Applicant's father, his mother nor brothers were consulted and/or involved in the said process.

k. it is also clear that neither the Applicant's father, his mother nor brothers were included in the list of surviving beneficiaries as is mandatorily required by law for a person applying for letters of administration.

l. of note is also that the said Isabela Nyokabi was childless but however deliberately misrepresented that the Deceased was survived by Joseph Muhia, Paul Muigai and Monica Wanjiku who were not the Deceased's biological children, a fact which she did not reveal to the court.

m. the grant (or intended) was therefore obtained by means of untrue allegation of fact essential in point of law and/or concealment of material facts which warrants annulment under Section 76 of the *Law of Succession Act*.

n. the process of obtaining the Amended Grant in 2015 and subsequently therein were also attended by glaring difficulties and as such the same is defective because the persons who obtained representation are not qualified to be appointed as the personal representative of the Estate.

o. the procedure adopted in obtaining the Grant of Letters of Administration and subsequent amendment and confirmation was flouted.

p. it is therefore best interest of justice that the grant be revoked so that all the parties participate and benefit fully.

q. the current Administrators have moved to various land registries as well as various court cases, inter alia Summons dated 13th March 2019 and Narok Miscellaneous Application No 39 of 2019, to advance said fraud with the view to wrongfully and unlawfully defraud, dispose of and/or disinherit the lawful owners and beneficiaries of their properties.

r. of serious note is that the said Administrators have wrongfully and/or fraudulently procured registration and sub-divisions over some of the Deceased's properties with the intention to dispose them of, these include but is not limited to: Olmekenyu Title No

Narok/CIS-Mara/Olulunga/ 108,

Olulunga Township Title No 70,

Narok/CIS-Mara/Olulunga/18236,

Narok/CIS-Mara/Olulunga/18245,

Enooretet Title No

Narok/CIS- Mara/Olulunga/210,

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Narok/CIS-Mara/Olulunga/16042,

Narok/CIS-Mara/Olulunga/18242,

Narok/CIS-Mara/Olulunga/18243,

Narok/CIS-Mara/Olulunga/18244.

s. the Respondents have also destroyed some of the structures on the Deceased's properties and sold others to third parties in an effort to defeat the claims by the rightful beneficiaries.

t. the Administrator's Summons dated 13th March 2019 and filed in this suit is sub-judice Narok Miscellaneous Application No 39 of 2019 is similarly scheduled for Ruling on the 5th of May 2021.

u. unless this Honourable Court urgently intervenes by granting the orders sought herein, there is real and present danger that the Administrator herein may unduly and adversely continue to deal with the abovementioned properties and thus prejudice or occasion irreparable loss and damage to the detriment of the Estate of the Deceased herein as well as the beneficiaries.

4. It is notable that the 1st Administrator sought to file responses and bring additional witnesses and evidence after all the other parties had testified, heard and cross-examined. All the same the Respondents gave evidence that:

a. The first and second administrators were not the biological children of Isabela Nyokabi, neither were they the biological children of Daniel Muntet Naimodu who is the deceased herein.

b. Isabela Nyokabi was barren and/or died without bearing any Children of her own.

c. It was alleged that the 1st and 2nd Administrators are in fact daughter and grandson respectively of Isabela Nyokabi's sister.

d. It was also alleged that the 1st Administrator (Monica Wanjiku), Paul Muigai and the 2nd Administrator's Father (Joseph Muhia) were siblings.

e. Whereas no proof was provided is support for the foregoing and especially Isabela Nyokabi's sisterhood, there was no proof that the said siblings were adopted by Isabela Nyokabi and/or the Deceased herein for that matter.

f. The 1st and 2nd Administrators do not also have any authority to act on behalf of the estate of the late Isabela Nyokabi.

g. The 2nd Administrators purports to be acting on representative capacity yet he does not have legal authority to act on behalf of the estate of his father.

h. The 1st Administrator brought a witness whose identity and origin is unknown. Whereas his statement alleged that his name was James Supeyo Ole Muntet, he denounced the same during cross-examination.

i. It is notable that the 2nd Administrator had also sought the revocation of grant on account of mal-administration on the part of the 1st Administrator.

Applicants Submissions

5. The Applicants rely,upon the grounds set out in the face of the Amended Summons for Revocation of Grant dated 15th of June, 2021 and Supporting Affidavits of Alfred Koileken Simel and Jackson Moshonkoi dated 15th June, 2021, together with that of Kantau Ole Nkurunna and Anna Naramat Enole Sina dated 3rd June, 2021 as well as the Further Affidavits of Alfred Koileken Simel dated 22nd October, 2021 and 7th June, 2024 and the authorities filed together with these submissions to canvass their case.

6. The Applicant have refined eight issues for the consideration of this court as follows;

a. Who are the rightful beneficiaries of the Estate herein?

b. Whether the Estate had been exempted from certain estates by virtue of Section 32, and customary law has been applied?

c. Whether the Grant of Letters of Administration Intestate in relation to the Estate of the Late Daniel Muntet Naimodu issued to Isabela Nyokabi Muntet on the 5th of March 1990 and confirmed on the 9th of October 1992 and subsequently amended to include Monica Wanjiku Kimani as the Administrator, on the 22nd of July 2015 and further amended to include Monica Wanjiku Kimani and Paul Muigai Muhia as the current Administrators, on the 30th of September, 2020 and/or issued on any other date whatsoever, be revoked and/or annulled on account of the fact that obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case and/or 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. Whether the Grant of Letters of Administration Intestate in relation to the Estate of the Late Daniel Muntet Naimodu issued to Isabela Nyokabi Muntet on the 5th of March 1990 and confirmed on the 9th of October 1992 and subsequently amended to include Monica Wanjiku Kimani as the Administrator, on the 22nd of July 2015 and further amended to include Monica Wanjiku Kimani and Paul Muigai Muhia as the current Administrators, on the 30th of September, 2020 and/or issued on any other date whatsoever, be revoked and/or annulled on account of the fact the Administrators herein failed to proceed diligently with the administration of the estate as well as to produce to the court, within the time prescribed, any such inventory or account of administration despite clear court order?

e. Whether this Honorable Court can reverse all dispositions, registrations and dealings made pursuant to the aforementioned Grant of Letters of Administration in all properties forming part of the Estate of the Late Daniel Muntet Naimodu which include, but is not limited to: Olmekenyu Title No

Narok/CIS-Mara/Olulunga/ 108,

Olulunga Township Title No 70,

Narok/CIS-Mara/Olulunga/18236,

Narok/CIS-Mara/Olulunga/18245,

Enooretet Title No Narok/ CIS- Mara / Olulunga/ 151,

Narok/CIS-Mara/Olulunga/209,

Narok/CIS-Mara/Olulunga/210,

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Narok/CIS-Mara/Olulunga/18240,

Narok/CIS-Mara/Olulunga/18241,

Narok/CIS-Mara/Olulunga/16042,

Narok/CIS-Mara/Olulunga/18242,

Narok/CIS-Mara/Olulunga/18243,

Narok/CIS-Mara/Olulunga/18244?

f. Whether the Amended Summons for Revocation herein 15th June, 2021 is *res judicata*?

g. Whether the Application dated 19th March. 2024 is merited?

h. Who should bear the costs?

7. On the first issue the Applicant contends that,it is trite law that the primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries.

8. That, it is without a doubt that the deceased herein died intestate. Consequently, Part V of the Act should apply to the estate.

9. That, Section 29 of the *Law of Succession Act* which defines a dependent as follows:

29

(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;

(b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death."

10. That, Section 40. of the *Law of Succession Act*, provides for where intestate was polygamous:

1. Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

2. The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

11. That, it is trite law that he who alleges must prove in line with Section 107 (1) of the *Evidence Act*, Cap 80 Laws of Kenya, provides that: -

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."

12. Reliance is placed upon the case of *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & another* [2005] 1 EA 334, where the Court of Appeal held that: -

As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party

the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.

13. The Applicants submit that it is not in doubt that, the Applicant's father (Hosea Simel) is the son of the Deceased herein. The Applicant produced a birth certificate in this connection. This explains why he was jointly registered as co-owners with him in property known as Olmekenyu Title No Narok/ Cismara/Olulunga/ 108.

14. That the father-son relationship is also revealed by the various written correspondence between the Deceased and the Applicant's father, as well as other government authorities concerning the administration of the Applicant's father's estate. A position well buttressed by the witnesses who testified in court together with the various pieces of evidence adduced.

15. That the Respondents on the other hand are not the biological children of the Deceased. Neither is the 2nd Administrator's father, for that matter. That, the said administrators and/or their parents were not adopted by the Deceased and/or maintained by him prior to his death.

16. That in the premises they can by no means rank higher in priority over the Deceased immediate family.

17. That, the Applicant's father and thus his estate remains the true and Bonafide beneficiaries of the Deceased herein Estate.

18. As to Whether the Estate had been exempted from certain estates by virtue of Section 32, and customary law has been applied? It is submitted that Part V of the Act exempts the provisions of the act from certain estates by virtue of Section 32, and customary law has been applied to such estates, by dint of Section 33.

19. That, Sections 32 and 33 provide as follows.

> " 32 The provisions of this Part shall not apply to—(a)agricultural land and crops thereon; or(b)livestock, in various Districts set out in the Schedule: West Pokot, Wajir, Samburu, Lamu, Turkana, Garissa, Isiolo, Kajiado, Marsabit, Tana River, Mandera and Narok"
>
> "33 Law applicable to excluded property law applicable to the distribution on intestacy of the categories of property specified in section 32 shall be the law or custom applicable to the deceased's community or tribe, as the case may be."

20. That, the properties of the Deceased herein are located in what was known as the former Narok District (now Narok County) and thus exempted from the provisions of the Act. Going by the foregoing statutory provisions the applicable law would be the Maasai Customary Law which provides that it is only the male children of the deceased that inherit land. That, this was well captured in the testimony of the witness known as Anna Naramat Enole Sina.

21. That, the deceased's estate was and remains the preserve of his male children, among whom the Applicant's father is one, and it will be in violation of the said statutory provisions for the estate to be otherwise distributed.

22. As to whether the Grant of Letters of Administration Intestate in relation to the Estate of the Late Daniel Muntet Naimodu issued to Isabela Nyokabi Muntet on the 5th of March 1990 and confirmed on the 9th of October 1992 and subsequently amended to include Monica Wanjiku Kimani as the Administrator, on the 22nd of July 2015 and further amended to include Monica Wanjiku Kimani and Paul Muigai Muhia as the current Administrators, on the 30th of September, 2020 and/or issued on any

other date whatsoever, be revoked and/or annulled on account of the fact that obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case and/or 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?

23. The Applicant submits that; the *Law of Succession Act* provides for Revocation or annulment of grant under Section 76 as follows;

> 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,
>
> ii. or such longer period as the court order or allow; or
>
> iii. to proceed diligently with the administration of the estate; or 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."

24. Reliance is placed in the case of *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 nothe 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."

25. That, Section 52 makes it an offence for any willful and reckless statements in application for grant. It provides as follows: Any person who, in an application for representation, willfully or recklessly makes a statement which is false in any material particular shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment. 31. Your Lordship, the foregoing statutory provisions lend credence to the general rule of law which emphasizes utmost good faith (uberimae fidei) from parties who take out or are subject of the court proceedings.

26. That, the said responsibility is part of justice itself and non-disclosure of material facts undermines justice and introduces festering waters into the pure steams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law.

27. In this case, the deceased having died intestate, it therefore means that his estate and distribution thereof is subject to the rules of intestacy.

28. That, Section 29 for instance defines a dependent as follows:

29 (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;

(b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death."

29. That, Section 40 on the other hand, provides for where intestate was polygamous as follows:

(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

30. That Rule 26(a) and (2) of the *Probate and Administration Rules* provides as follows: -

" 26.

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

3. An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in

default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require."

31. That, from the reading of the above rule, it is mandatory for every applicant who wishes to be an administrator to an estate to give notice to every person entitled in the same degree as or in priority to the applicant. Further that, such person of equal or lower priority must give consent or renunciation during filing of succession cause.

32. Reliance is placed on *re Estate of Magangi Obuki (Deceased)* [2020] eKLR the court quoted the case of *Re Estate of Moses Wachira Kimotho (Deceased)* Succession Cause 122 of 2002 [2009] eKLR, the court pronounced itself on the importance of disclosing all material facts before a court of Law while seeking letters of administration and confirmation thereof. It observed as follows:

> " I am certain that had the applicants been made aware of the application for the confirmation of grant by being served they would have brought to the fore their aforesaid interest in the estate of the deceased and the resultant grant would have taken care of those interests. Further had the respondent been forthright and candid and included the applicants as beneficiaries of a portion of the estate of the deceased as purchasers for value, the court in confirming the grant would have taken into account their interest in the estate of the deceased. As it is therefore the grant was obtained fraudulently by making of a false statement and or concealment from courtof something material to the cause. The respondent knew of the applicants' interest in the estate of the deceased yet she chose to ignore them completely in her petition of letters of administration intestate. She also ignored them completely when she applied for the confirmation of the grant."

33. The Applicant further echoes Justice Gikonyo in *Re Estate of Julius Ndubi Javan* [2018] eKLR (Deceased) when he stated that:

> " ...in any judicial proceedings, parties must make full disclosures to the court of all material facts to the case including succession cases....non-disclosure of material facts undermines justices and introduces festering waters into pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law."

34. That, where the Deceased was polygamous as in this case, it behooves whoever desires of the distribution of the same to provide full and accurate information concerning the deceased's beneficiaries and/or dependents.

35. That, the 1st Petitioner took out letters of administration vide petition dated 14th March, 1990 wherein she purportedly indicated that the only beneficiaries of the deceased were Joseph Muhia, Paul Muigai and Monica Wanjiku. She cunningly concealed the relationship of these people to the Deceased because she knew fully well that they were strangers.

36. That this is so because she was not a stranger to the knowledge that the same were not the biological children of the Deceased, neither were they adopted and/or being maintained by the deceased prior to his death. They were all independent grown up adults, married and with families.

37. That this was despite the said Petitioner's knowledge of the Deceased second family and children born of Priscilla Wambui whom she had frequently met and even had meals with, at least according to the testimony of the Deceased's only surviving son Mike Parmaleu.

38. That the true and Bonafide beneficiaries of the aforementioned Estate were left out.

39. That the amendments to the aforementioned grant were also premised on these false allegations of facts which were material to the proceedings herein.

40. That, it can be summed, that 1st Petitioner and Subsequent administrators therein chose to conceal their true relationship to the Deceased for fear of being in want of the proof of the same.

41. That the 1st Respondent deliberately mislead the court into issuing rectified grant of letters of administration in her favor by alleging that she was the daughter to Isabela Nyokabi, a fact she knew fully well that the same was not true. This is quite evident from her Affidavit in support of the summons for rectification of grant dated 23rd April, 2015 but received in court on the 27th of April, 2017 on pages numbered 35 and 36 of the Applicants documents.

42. That, the Applicant knew fully well that if she were to disclose her true identity, the same would not have been granted in her favor but dismissed.

43. That the Respondents and their predecessors should not be allowed to reap gain from their otherwise criminal conduct.

44. That, by virtue of Section 76 of the Act, this Court is bestowed with the powers to revoke the said letters of administration, irrespective of how much time the Respondents have cunningly concealed the truth from the Honorable Court.

45. The Applicants humbly submit that, the grant of letters of administration issued herein together with the subsequent derivatives therein are ripe for dismissal for the reasons that the same were obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case.

46. As to whether the Grant of Letters of Administration Intestate in relation to the Estate of the Late Daniel Muntet Naimodu issued to Isabela Nyokabi Muntet on the 5th of March 1990 and confirmed on the 9th of October 1992 and subsequently amended to include Monica Wanjiku Kimani as the Administrator, on the 22nd of July 2015 and further amended to include Monica Wanjiku Kimani and Paul Muigai Muhia as the current Administrators, on the 30th of September, 2020 and/or issued on any other date whatsoever, be revoked and/or annulled on account of the fact the Administrators herein failed to proceed diligently with the administration of the estate as well as to produce to the court, within the time prescribed, any such inventory or account of administration despite clear court order?

47. The Applicant contends and submits that, on or about the 29th of November, 2021 this court allowed prayer 4A of the Amended Summons for revocation herein in the presence the Respondents advocates.

48. In pure contempt, opposition and disobedience to the dignity and authority of this honorable court however, the Administrators have to date failed neglected and/or refused to comply with the said orders of the court. This is despite subsequent service of the said orders, thereby warranting revocation in line with Section 76 (d) (iii) of the *Law of Succession Act*.

49. That the 1st Administrator is notorious and guilty of maladministration wherein she has purported to suo motu sell off portions of the estate herein to her sole benefit but the detriment of the Estate

and that this what prompted the Summons for Revocation of Grant dated 3rd August, 2018 by the 2nd Respondent's mother Nancy Wangari Muhia as well as informed the Amended summons herein.

50. That, in the premises, the 1st Respondent is unfit to hold the said position and/or take part in the proceedings subsequent herein.

51. That, the Grant of Letters of Administration should thus be revoked.

52. As to Whether this Court can reverse all dispositions, registrations and dealings made pursuant to the aforementioned Grant of Letters of Administration in all properties forming part of the Estate of the Late Daniel Muntet Naimodu which include, but is not limited to: Olmekenyu Title No Narok/CIS-Mara/Olulunga/ 108, Olulunga Township Title No 70, Narok/CIS-Mara/Olulunga/18236, Narok/CIS-Mara/Olulunga/18245, Enooretet Title No Narok/CIS Mara/Olulunga/151, Narok/CIS-Mara/Olulunga/209, Narok/CIS Mara/Olulunga/210, Narok/CIS-Mara/Olulunga/18437 and Narok/CIS-Mara/Olulunga/18438. Narok/CIS-Mara/Olulunga/18237, Narok/CIS-Mara/Olulunga/18238, Narok/CIS-Mara/Olulunga/18239, Narok/CIS-Mara/Olulunga/18240, Narok/CIS-Mara/Olulunga/18241, Narok/CIS-Mara/Olulunga/16042, Narok/CIS-Mara/Olulunga/18242, Narok/CIS-Mara/Olulunga/18243, Narok/CIS Mara/Olulunga/18244

53. The Applicant Submits that, the power to reverse all the fraudulent transactions was discussed in the case of *Santuzza Bilioti alias Mei Santuzza (Deceased) v Giancarlo Falasconi* (2014) eKLR where the court held that:-

> "...the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancellation of the title deed. Further, a succession court can order a cancellation of a title deed if a deceased's property is being fraudulently taken away by non-beneficiaries such as where the property is being sold before a grant is confirmed."

54. Further reference is made to the case of *PLR v JNR & another* [2013] eKLR it was aptly stated as follows: -

> "Section 2 (1) of the *Law of Succession Act* provides that the provisions therein applied to all cases of intestate or testamentary succession to the estates of deceased persons and to the administration of estates of those persons. An estate means the free property of a deceased person that is the property of which that person was legally competent free to dispose during his lifetime, and in respect of which his interest has not been terminated by his death. It is clear that at the time of his death the deceased was free to deal with the suit property as he wished, the same not having been legally transferred to a third party including the 1st Defendant.In addition, in order to determine the suit, this court would be required to determine questions of validity of the wills and whether the Plaintiff is a beneficiary of the deceased's estate and therefore entitled to his estate. The property and the issues to be determined in the suit fall under the realm of the *Law of Succession Act*. The Environment and Land Court is a special court established under Article 162 (2) (b) and Section 4 (1) of the *Environment and Land Court Act* No 9 of 2011 and it is meant to deal with matters concerning the environment and the use and occupation of and title to land. However, matters of ownership and entitlement to a deceased person's property, including land are governed by the *Law of Succession Act* and are to be determined by the Family Court. Thus by virtue of Section 2 (1) of the said Act, this court lacks jurisdiction to determine the same."

55. That Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules grants a succession court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process. Such powers include cancellation of title deeds obtained through fraud or where there has been an abuse of the process of the court. Rule 73 of the *P&A* also provides

> " Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice to prevent abuse of the process of the court."

56. That, In *Santuzzabiloti alias Mei Santuza (deceased) v Giancarlo Felasconi* (2014) eKLR the court said as follows regarding the jurisdiction of the court in succession matters

> " This cannot be the case as the succession court has powers to order a title deed to revert to the names of deceased person. This in effect amounts to cancelation of the title deed. Further a succession court can order a cancellation of title deed if a deceased property is being fraudulently taken away by non-beneficiaries such as where the property is being sold before a grant is confirmed"

57. That, the case at hand is one that calls for the exercise of aforementioned discretion. This is a typical case where the true beneficiaries of the Estate are being denied their proprietary rights and rightful inheritance whereas strangers to the estate are wrongfully and unlawfully appropriating the same.

58. The Applicant submit that, the court should allow the aforementioned prayer as prayed so as to avert untold injustice that will continue visiting the true beneficiaries of the Estate in the absence of the court's intervention.

59. As to Whether the Amended Summons for Revocation herein 15th June, 2021 is *res judicata*? The Applicant Submits that Section 7 of the *Civil Procedure Act* Cap 21 Laws of Kenya defines the doctrine of *res judicata* in the following terms: -

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

60. That the *Civil Procedure Act* also provides explanations with respect to the application of the *res judicata* rule. In the dicta in *re Estate of Riungu Nkuuri (Deceased)* [2021] eKLR the court stated as follows:

> " The test for determining the Application of the doctrine of *res judicata* in any given case is spelt out under Section 7 of the *Civil Procedure Act*. In *Independent Electoral & Boundaries Commission v Maina Kiai & 5 others* [2017] eKLR, the Supreme Court while considering the said provision held that all the elements outlined thereunder must be satisfied conjunctively for the doctrine to be invoked. That is:
>
> 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."

61. The Applicants humbly submit that the argument that the summons herein are *res judicata* is ill conceived and unmerited, which should be dismissed, as wishful and are not *res judicata* as claimed or at all for the reasons that:

a. the Applicant's Father's Estate was never party to the Application by Mike Parmaleu, as claimed or at all.

b. The Application dated 5th July, 2016v and/or otherwise by Mike Parmaleu Paingoni was never filed in a representative capacity.

c. That the Estate of the late Hosea Simel was never consulted and/or did not give any consent to be represented as claimed and/or at all.

d. In any case Mike Parmaleu does/did not have the legal capacity to represent the estate of the late Hosea Simel (the Applicant's father herein).

e. Despite being brothers, the said Mike Parmaleu and the Applicant's father have completely separate and distinct portions of inheritance if any.

f. A cursory perusal of the Application and/or Ruling with respect to Application by Mike Parmaleu, the same is focused on the Grant of Letters of Administration that were issued to Monica Wanjiku whereas the Amended Summons herein seeks to revoke the Grant of Letters of Administration issued ab initio.

62. As to Whether the Application dated 19th March. 2024 is merited? That, on record there is an Application by one Esther Seenoi seeking to remove property known as CIS Mara Olulung'a 210 from the succession proceedings and the same misconceived, incurably defective, scandalous, incompetent, bad in law, frivolous and an abuse of the Court process, which ought to be dismissed.

63. That it is undeniable the property known as CIS-Mara/Olulung'a/ 210 was hived off and/or is a sub-division of the Deceased's herein's property known as CIS-Mara/Olulung'a 151.

64. That, it is also without a doubt that the transactions leading to the subdivision and alleged transfer were done by unknown means, in the absence and the exclusion of the Deceased and/or his Estate. The alleged vendor in the transaction (Moses Nkaru) is a stranger and has never been the legal representative of the Deceased herein so as to validly represent and/or transact of behalf of the Deceased herein, as claimed or at all.

65. In the premises the Applicant Esther Seenoi has no good title as claimed or at all, for the reason that the same was fraudulently obtained and is therefore illegal, null and void therefore humbly submit that the said application is unmerited and thus should be dismissed with costs.

66. With regards to who should bear the costs? The Applicant submits that, it is ordinarily true in law that costs follow the event unless for some good reason the court orders otherwise. Further, the effect of Section 27 of the *Civil Procedure Act* is that the Judge or court dealing with the issue of costs in any suit, action, cause or matter has absolute discretion to determine by whom and to what extent such costs are to be paid.

67. That the Applicants would not be here were it not for the various material nondisclosures and connivance by the Respondents and their alleged predecessor and that costs follow the event and for the inconvenience caused, they pray that the costs of this application be borne by the Respondents.

Respondents Case

68. The 2nd Administrator/Respondent in its written submissions in Opposition to the Objector/ Applicant's Application dated the 15th day of June, 2021 vide the 2nd Respondent's Replying Affidavit dated the 16th day of August, 2021.

69. The 2nd Administrator/Respondent contends the following to be the issues for consideration before this Honorable Court.

    i. Whether this Honorable Court is divested of the requisite jurisdiction to ventilate over the dispute on account of the application of the doctrine of *res judicata*.

    ii. Whether the Objector/Applicant's Application is merited.

    iii. Whether or not, all that parcel of land known as CISMara/Olulunga/210 forms part of the deceased's estate.

    iv. Who shall bear the costs of the Application?

70. On the first issue the 2nd Administrator/Respondent submits that, this Honorable Court is divested of the requisite jurisdiction to ventilate over the issues raised in the instant dispute on account of application of the doctrine of re-judicata.

71. That it is a trite principle of law that decisions of the court must be respected as fundamental to any civilized and just judicial system. Judicial determinations must be final, binding and conclusive. Indeed, there is injustice if a party is required to litigate afresh matters which have already been determined by the court. Further, a decision arrived at by a court of law of competent jurisdiction, unless set aside or quashed in a manner provided for by the law, must be accepted as incontrovertibly correct. The principles of law that ensconce finality with respect to the determination of disputes before courts of law in the land would be substantially undermined if the Court were to revisit them every time a party is dissatisfied with a judicial officer's decision.

72. That the principle of re-judicata finds statutory expression in the edicts of Section 7 of the *Civil Procedure Act*, 2010 that provides as hereunder.

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

73. It is now an accepted edict of law and judicial practice that the application of the *res judicata* principle holds sway both in suits and applications. This was held by theCourt in *Abok Jantes Odera v john Patrick Mashira* Civil Application No Nai, 49 of 2001 where the former also asserted that in order for a litigant to rely on the defence of *res judicata* there must in essence b;

> " (i) a previous suit in which the matter was in issue;
>
> (ii) the parties were the same or litigating under the same title

(iii), a competent court heard the matter in issue

(iv), the issue had been raised once again in a fresh suit" (Emphasis Ours).

74. Reference is made to the case of *Independent Electoral & Boundaries Commission v Maina Kiai & 5 others* (2017) eKLR, the Court of Appeal laid out the rationale for application of the doctrine of *res judicata* as follows

> " The rule or doctrine of *res judicata* serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court, It is designed as a pragmatic and common-sensical 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 and calunny. The foundations of *res judicata* thus is in the public interest for swift, sure and certain justice." (Emphasis Ours).

75. That, in the *Maina Kia* (*supra*) decision, the Court of Appeal proceeded to quote with approval the decision of the Indian Supreme Court in the case of *Lal Chand v Radha Kishan*, AIR 1977 SC 789 where it was stated;

> " The principle of *res judicata* is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded in equity, justice and good conscience which require that a party twhich has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue. The practical effect of the *res judicata* doctrine is that it is a complete estoppel against any suit that runs afoul of it, and there is no way of going around it-not even by consent of the parties-because it is the court itself that is debarred by a jurisdictional injunct, from entertaining such suit." (Emphasis Ours).

76. Further reference is made to the case of *Gurbachan Singh Kalsi v Yowani Ekori* Civil Appeal No 62 of 1958 the former East African Court of Appeal stated as follows:

> " Where a given matter becomes the subject of litigation in and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not except under special circumstances, permit the same parties to open the some subject of litigation in respect of a matter which might have been brought."

77. The interested party submitted that as per Order 45 of the *Civil Procedure Rules* the only grounds upon which an application for review, such as the one that is now before this Court, can be founded are:- "discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him/her at the time when the decree was passed or the order made or; on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason.

78. That a mere perusal of the application that is now before court clearly manifests that there is sufficient reason warranting the court to issue the review orders sought. Reference is made to the case of *National Bank of Kenya v Ndungu Njau* Civil Appeal No 211 of 1996 [1995-98] 2 EA 249; it was held that:-

> "a review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court and the error or omission must be self-evident and should not require an elaborate argument to be established. It will not be sufficient ground of review that another Judge could have taken a different view of the matter. Nor can it be a ground of review that the court proceeded on an incorrect exposition of the law and reached erroneous conclusion of the law... Misconstruing a statute or other provision of the law is not a ground for review."

79. Further reliance is placed on the case of *Nasibwa Wakenya Moses v University of Nairobi & another* [2019] eKLR the Court held:

> "An application for review may be allowed on any other "sufficient reason." The phrase 'sufficient reason' within the meaning of the above rule means analogous or ejusdem generis to the other reasons stipulated in Order 45 Rule 1. This position was illuminated in *Sadar Mohamed v Charan Signh and another* where the Court held that: - "Any other sufficient reason for the purposes of review refers to grounds analogous to the other two (for example error on the face of the record and discovery of new matter)."

80. The interested party thus submits that it is necessary for review orders to issue so as to correct the apparent error of listing the interested parties' property as falling within part of the estate, while the Interested Party already has title deed in her name.

81. That the error is self-evident and does not require an elaborate argument to be established.

82. The Interested Party poses the question as to how can this Honorable Court be asked by the Respondents to Distribute the Interested Party's land in this Succession matter when the Interested Party is alive and the property is registered In her name? Why did the Interested Party file her Claim before this Court and not the Environment and Land Court? the jurisdiction of the Environment and Land Court to hear and determine disputes relating to the environment and the use and occupation of and title to land is provided for under Article 162(2) (b) of the *Constitution* of Kenya, 2010 and at Section 13 of the *Environment and Land Court Act*, 2011. The said Section 13 provides as follows:

> "13. Jurisdiction of the Court (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the *Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land. (2) In exercise of its jurisdiction under Article 162(2) (b) of the *Constitution*, the Court shall have power to hear and determine disputes— (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; (b) relating to compulsory acquisition of land; (c) relating to land administration and management; (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and (e) any other dispute relating to

environment and land. In this matter, the respondent do not dispute that the Interested Party is the one that is duly registered owner of the property."

83. That the Respondents contention is that the Interested party allegedly obtained the said registration by way of fraud. Whether the Interested party holds good title or not can only be litigated upon at the Environment and Land Court and not this forum. All particulars of alleged fraud can be listed in a suit before the ELC, since this honorable court does not have the jurisdiction to make determinations relating to Title to land, use and occupation.

84. That for now, a Title deed in the name of the interested party has been produced before this court. The same is prima facie evidence of ownership and we urge the court to treat it as such and order that the property thus cannot form part of the estate that is up for distribution. That it is for this reason that the interested party insist again that the interested party is not even a creditor to the estate. she has her own title deed in her name.

85. That Section 24 (a) of the *Land Registration Act* provides that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto Section 26 (1) of the *Land Registration Act* provides that the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except— (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

86. That if at all the Respondents wish to challenge the interested party's title, they can do so at the ELC. It is trite law that a review of court orders should normally be done by the Court that issued the said orders. It was in this court that the orders of 17th June, 2021 were issued, prohibiting dealings on in among others the Interested Party's land parcel CISMara/Ololulunga/210. It is for this sole reason that the interested party has approached this honorable court, seeking that it reviews its orders.

87. Based on the foregoing evidence and arguments advanced hereinabove, she humbly prays that this honourable court be pleased to grant the Interested party the orders as sought in her Application.

88. The Honorable Court issued directions for disposal of the subject Applications vide written submissions.

Analysis and Determination

89. The 1st issue for consideration is if this summons for revocation of grant offends the *res judicata* rule as argued by the Respondent and interested party.

90. This Court opines that for the doctrine of *res judicata* to apply, in this instance, there should be demonstration that the same issues have been heard and determined by a court of competent jurisdiction, same parties litigated under the same title and issues have been raised once more in this application.

91. In case of *Independent Electoral and Boundaries Commission v Maina Kiai & 5 others*, [2017] eKLR, it was held 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."

92. The *Civil Procedure Act* provides explanations with respect to the Application of the *res judicata* rule. Explanations 1-6 states thus:

> " Explanation. —(1) The expression "former suit" means a suit which has been decided before the suit in question whether or not it was instituted before it.
>
> Explanation. —(2) For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.
>
> Explanation. —(3) The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.
>
> Explanation. —(4) Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.
>
> Explanation. —(5) Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.
>
> Explanation. —(6) Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating."

93. I am of the view that the application dated 5th July, 2016 was a summons for revocation of grant grounded on identical grounds with the summons dated 15th June, 2021.

94. Joseph Ndungu in dealing with the summons for revocation of grant dated 5th July, 2016 did agonize as to the whereabouts of the Applicant for 30 years before seeking for a revocation of grant.

95. In this instance I pose a similar question as to where this Applicant has been since 38 years ago when the succession was instituted.

96. The Applicant is a sibling of the Applicant in the summons dated 5th July, 2016. I find the summons to be *res judicata*.

97. With regards to the interested party issue, she claims to have a title issued in 2011 for an acquisition before the demise of the deceased.

98. With regards to the Application for review dated 19th day of March, 2024 I find the same to be of no merit as the said property was transferred prior to the demise of the deceased and there is no discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the Applicant or could not be produced by him/her at the time when the decree was passed or the order made or; on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason.

99. The Applicant has anchored the Application on "other sufficient reasons" for the review which the court finds to be baseless.

100. The validity of the interested party title is unimpeached which means this property is unavailable for distribution.

101. This Court shall allow parties to ventilate the ownership details before the appropriate forum.

102. I accordingly find the application dated 15th June, 2021 to be without merit the same is dismissed with costs to the administrators.

103. The Court shall afford the administrator an opportunity to file a detailed return on distribution of assets of the deceased.

104. The applicant has leave to appeal this ruling before the Court of Appeal within 45 days.

105. The period of leave shall act as stay period.

106. Mention after 60 days.

It is So Ordered.

SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM

ON THIS 28TH APRIL 2025

_____

MOHOCHI S.M

JUDGE