



**Abdulla t/a Gulshan Hotel v Karimjee & another (Succession Cause  
380 of 2010) [2024] KEHC 8554 (KLR) (18 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 8554 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 380 OF 2010  
G MUTAI, J  
MARCH 18, 2024**

**BETWEEN**

**IBRAHIM SHEIKH ABDULLA T/A GULSHAN HOTEL ..... OBJECTOR**

**AND**

**ZAFFER EBRAHIM TAYABALI KARIMJEE ..... 1<sup>ST</sup> RESPONDENT**

**MUSTAFA EBRAHIM TAYABBHOY KARIMJEE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. The Objector/Applicant is a tenant in the premises owned by the deceased. On 26<sup>th</sup> September 2016, he filed Summons for Revocation or Annulment of Grant dated 22<sup>nd</sup> September 2016, vide which he sought the following orders: -
  1. Spent;
  2. That this Honourable Court be pleased to have revoked and annulled: -
    - a. The Grant of Letter of Administration Intestate issued on 17<sup>th</sup> May 2011;
    - b. The Certificate of Confirmation of Grant issued in this matter on 14<sup>th</sup> March 2013.
  3. That the Honourable Court do proceed to determine the rightful administrators and heirs to the estate of Rukiyabhai Lukmanji (if at all she is deceased) and their respective shares;
  4. That the legal representatives of the estate of Rukiyabhai Lukmanji, as purported, proceed to produce to the Court proof of the death of Ms Rukiyabhai Lukmanji as well as proof of their relationship to her;



5. That the grant was issued through mischief as the said purported heirs did not avail themselves before the Court, and it is unclear how the affidavits and consents were executed in order to nominate the administrators of the deceased's estate;
6. That the letter of the Chief used to identify the heirs to the estate of the deceased have been found to be fraudulent, thereby making the entire process a sham and outright perjury by both counsel for the purported administrators and themselves;
7. That this Honourable Court be pleased to grant an order preserving, prohibiting, restricting and barring/cancelling any registration, transfer, transmission, advertisement for sale, sale execution and or dealing in whatsoever manner and or act of dealing in respect to all immovable properties and assets of the estate of Rukiyabhai Lukmanji including but not limited to land parcels known as Mombasa/Block XVI/137 together with the building and improvement erected thereon and vested in the deceased pending the hearing and determination of this applications;
8. That the costs of the application be provided for.

### **The Objector/Applicants Summons\***

2. The application was supported by the affidavit of Ibrahim Sheikh Abdulla, the Objector/Applicant herein, sworn on 22<sup>nd</sup> September 2016. He stated that the grant was obtained by means of fraud and deception as the Respondents/Administrators failed to provide all the material facts and used fraudulent documents purportedly prepared by government officials. He averred that he knew the alleged deceased person and that she never introduced him to the Respondents/Applicants as being her children or relatives or otherwise at all. He claimed that neither the Respondents/Administrators nor their co-beneficiaries have been to Kenya.
3. The Objector/Applicant referred to the inconsistencies in the Power of Attorney donating authority to Mustafa Fazalabbass Mohamedali, executed in his favour by Zaffer Ebrahim Tayabali, the 1<sup>st</sup> Petitioner/Respondent, stating that the date of execution varied from that of notarization, had handwritings that were different and also that the Notary Public who witnessed the execution in Karachi, Sindh Province, Pakistan wasn't licensed. He referred to the conduct of Mr Mustafa Fazalabbass Mohamedali, in particular to the claim he made that the alleged deceased person died on 18<sup>th</sup> March 1987. Reference was made to the proceedings before the Business Premises Rent Tribunal wherein Mr Mustafa Fazalabbass Mohamedali produced an affidavit supposedly executed by the deceased at the time when going by the present proceedings, she must have been dead. It was, therefore, urged that the grant be revoked.

### **The Response of the Petitioners/Respondents**

4. The Petitioners/Respondents opposed the application. A Replying Affidavit was sworn on 26<sup>th</sup> March 2018 by Zaffer Ebrahim Tayabali (hereafter "Zaffer") in which he deposed that his co-administrator, Mustafa Ebrahim Tayabbhoy Karimjee, was deceased, having died on 22<sup>nd</sup> April 2012. He stated that the Objector/Applicant was a tenant in a properly erected on Title No Msa/block XVI/137, which land is owned by 4 people, of which the deceased had ¼ share. He denied that the grant in respect of the deceased estate was obtained fraudulently. He also denied that Mustafa Fazalabbass Mohamedali was involved in obtaining the grant. The deponent accused the Objector/Applicant of having filed several cases against him, some of which were still pending when he swore the affidavit.



5. The 1<sup>st</sup> Petitioner/Respondent denied that an affidavit supposedly sworn by the deceased was produced in RRA No 31 of 2006 before the Business Premises Rent Tribunal. He averred that it was possible for a person to be a landlord without being a registered owner of a property and gave as an example the Objector/Applicant, who he alleged, leased out part of the premises and was collecting Kshs 60,000/- per month as rent, which he converted for his own use, contrary to the court order.
6. The Petitioners/Respondent prayed that the Summons for Revocation of Grant be dismissed with costs.
7. The Objector/Applicant filed a Further Affidavit on 8<sup>th</sup> November 2018 in response to the Replying Affidavit of the 1<sup>st</sup> Administrator/Respondent. He denied that the 2<sup>nd</sup> Petitioner/Respondent was dead and sought strict proof. He cast doubt on the veracity of the claims of the 1<sup>st</sup> Petitioners/Respondent, arguing that it was not clear at all whether they were sons of Rukiyabhai Lukmanji as they had both denied and affirmed that they were in different proceedings. The Objector/Applicant impugned how the title was obtained because it had not been shown that Rukiyabhai Lukmanji was deceased.
8. The Objector/Applicant deposed that the letter purported to have been issued by the Chief of Tononoka Location was fraudulent and had been denied by the current holder of the said office. He averred that he was not a frivolous litigator and that all suits he filed were intended to secure his rights as well as those of the absentee owner of the property and to prevent fraudsters from taking it over. He averred that he has locus standi to file these objection proceedings.

#### **The Evidence of the Objector/Applicant**

9. The Summons for Revocation of Grant was canvassed by way of viva voce evidence. The Objector/Applicant, through his son Abdula Sheikh Ibrahim Abdul, testified on 16<sup>th</sup> May 2022 before Mr Justice John Onyiego. He averred that the grant was obtained fraudulently. He referred to the affidavit produced in the Business Premises Rent Tribunal on 8th June 2007 and contrasted it with the averment in the petition that the alleged deceased person died on 18th March 1987 and averred that the deceased could not have made a deposition in 2007 while dead. He stated that the latter, purportedly from the chief of Tononoka, was fraudulent and had been denied. He averred that the deceased never left lawful beneficiaries.
10. When cross-examined, he stated that his father was the tenant of Rukiyabhai Lukmanji. He stated that Amina Yusuf, the Area Chief, Tononoka, who purportedly issued the impugned letter, was a suspect in the commission of fraud and that she had since passed on. He admitted that there had been several cases between the parties, some of whose judgments were adverse to them. He also admitted that his father had no direct claim to the estate of the deceased.
11. During reexamination, the witness stated that they are seeking the revocation of the grant so that the property can revert to the deceased. Afterwards, other matters can be decided, such as Mombasa ELC Cause No 6 of 2017, between the parties hereto. He stated that the deceased was a Kenyan and that she never left any relatives.
12. The second witness for the Objector/Applicant was Wanamwinyi Abdulazil. At the time he testified he was the Area Chief of Tononoka. He testified that he was employed on 11<sup>th</sup> January 2011. When shown the letter dated 13th September 2020, he averred that it was said to have been issued by his office and allegedly signed by Madam Amina Yusuf, his predecessor in the office. He testified that he went through the Succession Register and the Service Register but could not find such a record. It was his evidence that on the date Madam Amina Yusuf purportedly signed the letter, she served two people,



none of whom related to this succession cause. He thus averred that the letter was not issued by his office.

13. During cross-examination he averred that Amina Yusuf was deceased. He stated that he was not the chief on 17<sup>th</sup> September 2010. He stated that he didn't have a service register in Court. He averred that he didn't have copies of documents issued to the people who saw the chief on 17<sup>th</sup> September 2010. He was unaware if the document analyst had examined Chief Amina Yusuf's signature.

### **The Evidence of the 1st Petitioner/Respondent**

14. The evidence of the 1<sup>st</sup> Petitioner/Respondent was taken on 10<sup>th</sup> May 2023. Zaffer Ebrahim Tayabali Karimjee testified that he is a resident of Dubai. He stated that he and his deceased brother applied for a grant of the estate of Rukiyabhai Lukmanji, who he stated was his mother. He averred that his mother died on 18<sup>th</sup> March 1987. He told the Court that the Objector/Applicant was a tenant in the premises. It was his evidence that their deceased mother owned  $\frac{1}{4}$  of the suit property while 3 of his late brothers owned the rest. He stated that before the grant was issued, due process was followed. He accused the Objector/Applicant of being motivated by economic reasons to obtain a property that wasn't his and which he had no reason to claim.
15. When cross-examined, Zaffer stated that he was a British citizen born in Zanzibar and presently a resident of Dubai. He averred that his mother died on 18<sup>th</sup> March 1987. It was his evidence that he filed the Petition on 10<sup>th</sup> November 2010. The petition was supported by a certified entry in the Register of Death. It was his evidence that his mother was buried in Zanzibar, having been a resident of the said Island. He, however, stated that she would go to Mombasa from time to time.
16. When shown the letter from the Chief Tononoka Location, supposedly signed by Madam Amina Yusuf, the then Area Chief, and the second one issued in 2015, Zaffer testified that the first letter was obtained by his late brother Mustafa. Mustafa, according to him, resided in Pakistan but would come to Kenya from time to time. Zaffer stated that their late mother had 8 children, only 3 of whom were alive. When shown the affidavit sworn and signed by Rukiyabhai Lukmanji on 8th March 2007, he admitted that it was supposedly sworn by his deceased mother. He stated that their mother died in 1987. He explained that his brother must have produced the letter in good faith and that it was an error on his part to have done so.
17. He also admitted that there were pending criminal investigations relating to the matter. When shown a power of attorney, he executed in favour of Mr Mustafa Fazalabbass Mohamedali, he conceded that although he signed it in Dubai, it was witnessed by Clyde & Co Advocates in Mombasa and was not notarized, as is the practice with documents under oath executed outside the Republic of Kenya. Regarding the power of Attorney notarized in Pakistan, Mr. Zaffer conceded that the advocate who purportedly notarized it wasn't listed in the list of advocates admitted to practice law in Sindh Province, Pakistan.
18. Zaffer conceded that there he hadn't produced a certificate of death and that what was provided to the court was an entry in the death records kept by the Zanzibari authorities. He, however, insisted that Rukiyabhai was his mother.
19. When reexamined by Mr Omwenga, Zaffer insisted that the deceased died in 1987 and that as she was his mother, he was in a good position to know the said fact better than the Objector. He insisted that the letter of the chief he had produced was genuine. He denied that the Objector/Applicant had any interest in the estate and averred that he had no right to bring the objection proceedings. He denied that he, Zaffer, was an impostor and averred that Rukiyabhai was his mother and that he visits her grave every time he goes to Zanzibar.



## The Objector/Applicant's Submissions

20. The Objector/Applicant counsels filed submissions dated 3<sup>rd</sup> August 2023. In which they urged that the proceedings to obtain the grant were defective in substance and fraudulent and that the grant was obtained by means of untrue allegations of fact.
21. Counsel submitted that according to the Petition for Letters of Administration Intestate, the deceased died on 18<sup>th</sup> March 1987 at Kilimani, Zanzibar, while her last known place of residence was Tononoka, Mombasa and that she died domiciled in Kenya. The attention of the Court was drawn to the fact that the Petitioners/Respondents produced a Register of Deaths which showed that the death was registered on 12<sup>th</sup> November 2009, a year before the filing of the Petition, and 22 years after the alleged death. The Court was invited to find that the entry of death was made in contemplation of filing the instant petition and was, hence, most likely fraudulent.
22. The Objector/Applicant submitted that the letter of the chief used to obtain the grant was said to have been issued by Ms Amina Yusuf, the then Chief of the Tononoka Location. The office of the Chief at Tononoka had since renounced the letter, and the current Chief denied there was a record of such a letter in their possession.
23. It was submitted that on 8<sup>th</sup> March 2007, the Petitioner/Respondent presented before the Business Premises Rent Tribunal an affidavit allegedly sworn by the deceased. Counsel submitted that having died in 1987, Rukiyabhai Lukmanji couldn't have sworn an affidavit in 2007, 20 years later. All these matters, the counsel urged, raised doubt as to the veracity of the Petitioners/Respondents' accounts
24. It was urged that there is no proof that the Petitioners/Respondents are the children of the deceased as no certificate of birth was produced.
25. Counsel submitted that the proceedings herein were defective as having died in Zanzibar as alleged the succession proceedings ought to have been commenced there as provided for by Rule 28(a) and (b) of the *Probate & Administration Rules* and that under Rule 41(1) or the said Rules the protestors or any interested person ought to have been heard before the grant was issued or confirmed.
26. I was referred to the case *Jane Njeri Nderi v Rachel Wangari Nderi* [202]eKLR.
27. The Objector/Applicant filed further Written Submissions dated 4<sup>th</sup> October 2023. In the said submissions, he averred that section 76 of the *Law of Succession Act* provides that "any interested party" may apply for revocation of grant "at any time", whether or not the subject grant had been confirmed. His counsel submitted that it wasn't a requirement at law that an applicant in an application brought under section 76 of the *Law of Succession Act* must be a dependent; that any interested party could do so.
28. It was argued that as a tenant the Objector/Applicant was an interested party as he has a legal duty to pay rent to the bona fide proprietor of the estate and "not to imposters or fraudsters". He further argued that the Objector/Applicant's interest went further as he was claiming an interest in the suit property way of adverse possession under the *Limitation of Actions Act* and that the grant he was impugning puts his claim into jeopardy "yet the grantees are not bona fide dependents of the estate".
29. It was submitted that since the deceased died a long time ago and had not left heirs, the Objector/Applicant had acquired the said property by way of adverse possession. Counsel urged that he wasn't seeking to have this Court make determinations on matters pending before other adjudicative bodies but was only bringing the Court up to speed with issues being dealt with by other Courts.
30. Counsel submitted that the grant should be revoked because the Petitioner had not brought evidence to prove a relationship with the deceased, used a forged letter to obtain the grant, did not follow the



correct procedure, and what he stated to be multiple evidence of fraud committed by the Petitioners/ Respondents.

31. Counsel, therefore, prayed that the grant be revoked and or annulled.

### **The Written Submissions of the Petitioners/Respondents**

32. The Petitioners/Respondents submitted that the letters of administration were issued in this cause on 5<sup>th</sup> May 2011 and were confirmed on 28<sup>th</sup> February 2012, with the Certificate of Confirmation of Grant being issued on 14<sup>th</sup> March 2012.

33. Counsels for the Petitioners/Respondents urged that Petition for Grant was gazetted on 23<sup>rd</sup> March 2011 vide Gazette Notice No 3016. The objection was filed on 26<sup>th</sup> September 2016 over 5 years after the Grant was issued.

34. The Petitioners/Respondents identified four issues for determination, to wit:-

1. Whether the Objector /Applicant has the locus standi to challenge the grant;
2. Whether the Family Court can deal with matters pending before other Courts;
3. Whether the Objector/Applicant had met the threshold for grant of the orders sought; and
4. What orders should be issued?

35. Regarding the first issue, it was denied that the Objector/Applicant had locus standi as he was a tenant. Relying on the decision of Mr Justice PJ Otieno in HCA No 82 of 2016, involving the parties hereto, it was urged that he could not challenge the title of his landlord. Counsels referred this Court to the decisions *In re Estate of Alfred Mutune Munyao (deceased)* [2019] eKLR, *In re Estate of Stephen Kimotho Karanja (deceased)* [2022] eKLR and *Joseph Muriuki Kitbinji* [2021] eKLR for the proposition that proceedings filed by a party without standing were null and void.

36. On the second issue, counsels for the Petitioners/Respondents submitted that various matters were pending before other Courts. It was urged that the duty of the Probate & Administration Court was “to make a determination as to the extent of a deceased’s estate, its administrators/executors, heirs/beneficiaries and distribution of the estate”. It was submitted that “this Honourable Court should confine itself to its jurisdiction and not delve into matters that are the subject of other forums and thus bring about a judicial absurdity.” In support of this, counsels referred this Court to the case of *In re Estate of GKK (deceased)* [2017] eKLR where it was held that “the primary function of a Probate Court is the distribution of the estate of the deceased.” It was urged that I leave criminal disputes, Civil disputes, land ownership claims, tenancy disputes etc” to the appropriate forums.

37. On whether the Objector/Applicant met the threshold for revocation or annulment of the grant, counsel for the Petitioners/Respondents submitted that he hadn’t. They argued that the Petitioners/ Respondents were the children of the deceased with six other siblings, some of whom were dead. The position of the Petitioners/Respondents was contrasted with that of the Objector/Applicant, who made no claim of being related to the deceased save for being a tenant. It was urged that the Objector/Applicant had no standing to bring these proceedings. In support of the said submissions, reference was made to the decisions of the Court in *In re Estate of Kirae Muyaweru alias Kirai Muyaweru (deceased)* [2020] eKLR, *Eunice Nyambura Muthusi v Kenneth Kinyua Wabeta* [2016] eKLR and *In re Estate of Susan Solomon Macharia (deceased)* [2018] eKLR.

38. It was submitted that the issues raised by Objector/Applicant regarding notarization were misguided. Counsel submitted that the search in respect of the Karachi Bar was in regard to law firms and not



individual advocates. Regarding the chief's letter, it was submitted that the evidence of the current Chief of Tononoka did not show that the letter relied on when filing the grant was not authored by the said office nor that the signature on the said document did not belong to Amin Yusuf. It was thus urged that there was no evidence to show that Amina Yusuf did not author the impugned letter. It was urged that I should not exercise my discretion by revoking or annulling the grant.

39. Counsels thus prayed that I should dismiss the Objector/Applicant's summons dated 22<sup>nd</sup> September 2016. The Court was urged to award the costs to the Petitioners/Respondents.

### **Issues for Determination**

40. To enable me to determine this matter, I must first distil what the issues are. I have carefully considered the pleadings, the testimony of the parties and the submissions filed by the counsels for the Objector/Applicant and the Petitioners/Respondents. Having done so, it is my view that the issues for determination in this matter are:

1. Who may file a Summons for Revocation or annulment of the Grant?
2. Whether based on evidence adduced herein, there are grounds to revoke the grant; and
3. Whether or not costs are payable, and if so, by whom?

### **Analysis and Determination**

41. From the evidence adduced, it is clear that the Objector/Applicant is not related to the deceased. The parties agree that he is a tenant in the premises, partly or wholly owned by the deceased.

42. I will look at each of the issues in turns

### **Who may file Summons for Revocation of Grant?**

43. Section 76 of the [Law of Succession Act](#) provides that: -

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

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either
  - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
  - (ii) to proceed diligently with the administration of the estate; or
  - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced



any such inventory or account which is false in any material particular; or

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

(emphasis added).

44. The Petitioners/Respondents counsel avers that the Objector/Applicant has no locus standi and therefore that the instant objection has no legs on which it can stand on and must fall therefore. This is based on their reading of sections 29, 38, 39 and 66 of the Law of Succession Act. They aver that the Objector/Applicant is neither a family member, a relative, a beneficiary or a dependent of the deceased.
45. With respect to sections 29, 38, 39 and 66 of the Law of Succession Act may not have much relevance in this matter. The relevant section is section 76 as this is the provision that deals with revocation of grants. In the said section it stated that “any interested party” may apply for revocation or annulment of grant.
46. Who then is an interested party? Black’s Law Dictionary, 11<sup>th</sup> Edition, defines an “interested party” as being  
“a party who has a recognizable stake (and therefore standing) in a matter.”
47. My understanding of the above definition is that an interested party is anyone whose legal interests may be affected by a decision that the Court makes. In the context of a matter before the Probate and Administration Court, this will undoubtedly be a party whose claims may be prejudiced by the decision to issue or confirm a grant.
48. Is a tenant an interested party? In my view, he is. He most certainly needs to know the identity of his landlord so that he can be sure that he is paying rent to the rightful beneficiary. In addition, he has lodged a claim against the owner before the Environment and Land Court, which is pending a determination.
49. As an interested party within the meaning of section 76 of the Law of Succession Act, he cannot be said to be without locus standi. He has a standing identified by statute. In the circumstances, I am unable to agree with counsel for the Petitioners/Respondent that he doesn’t.
50. The meaning of “interested party” has been discussed in many decisions of the High Court. In the case of AMM v JMN [2019] eKLR the Court stated that: -  
“An interested party is one who has a stake in proceedings, though he was not a party to the cause ab initio. He is one who will be affected by the decision of the Court when it is made, either way. The Court should not act in vain by enjoining a party that clearly would have no interest in the subsequent proceedings”
51. In the circumstances, I find and hold that the Objector/Applicant has the standing to bring the Summons that are the subject of this judgment.

### **Is there a basis to revoke the grant?**

52. I have already adverted to section 76 of the Law of Succession Act and what it provides.



53. In *In re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR W Musyoka, J stated as follows:-

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

54. In this matter, I note that the Petitioners/Respondents relied on a letter from the chief of the Tononoka Location. The Objector/Applicant's second witness testified that the letter was not from their office and did not emanate from them. The witness for the Petitioners/Respondents could not explain how the said letter was procured, nor was it clear as to the place of death of the deceased.
55. Things get even murkier when the affidavit presented before the Business Premises Rent Tribunal is considered. The affidavit in question was sworn in March 2007 by Rukiyabhai Lukmanji, who had died 20 years before. When questioned about it, Mr. Zaffer blamed his deceased brother. The said affidavit creates real doubt about the veracity of the claim of the Petitioners/Respondents. Having previously engaged in a fraudulent act how would the Court be sure of the truthfulness of their account now?
56. No clear nexus was demonstrated between the deceased and the Petitioners/Respondents; for example, no birth certificate or any other evidence of kinship ties was produced. It wasn't clear from Mr Zaffer's account whether he knew where his alleged mother lived at Tononoka. There was a disconnect between the fraudulent letter of the chief and the death entry produced as to where the deceased lived and died.
57. Lastly, it was evident that at least one of the powers of attorney produced in Court was fraudulent, having been purportedly signed in Kenya by a person then in Dubai.
58. In my view, the Petitioners/Respondents engaged in an elaborate fraud that tainted the entire process of obtaining the grant.
59. I also find and hold that the Petition was defective in substance. No proof of death was produced. The letter of the chief produced was a forgery. The deponents made untrue allegations of fact.
60. Circumstances this Court must exercise its discretion judiciously and not whimsically. Given that the previous proceedings are defective, the best option for the Court is to revoke the grant so that the dependants of the deceased, once identified, can start the succession proceedings.



**Who should bear the costs of these proceedings?**

61. As this is a succession cause, an award of costs is not an appropriate remedy.

**Disposition**

62. The upshot of the foregoing is that the grant issued to the Petitioners/Respondents on 17<sup>th</sup> May 2011 and confirmed on 14<sup>th</sup> March 2012 is hereby revoked. The heirs of the deceased are at liberty to take out a fresh petition for letters of administration intestate.

63. Each party shall bear own costs.

64. It is so ordered.

**DATED AND SIGNED THIS 18<sup>TH</sup> DAY OF MARCH 2024 AT MOMBASA. RULING DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Mr Aboubakar, for the Objector/Applicant;

Mr. Mogaka, for the Petitioner/Respondent; and

Arthur – Court Assistant.

