



**In re Estate of Njenga Gituru (Deceased) (Succession Cause
21 of 2018) [2024] KEHC 5429 (KLR) (23 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 5429 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
SUCCESSION CAUSE 21 OF 2018
SN MUTUKU, J
APRIL 23, 2024**

BETWEEN

**ALICE WANJIKU NGUGI 1ST APPLICANT
KEZIAH WANJIRU KIMANI 2ND APPLICANT
LUCY NJERI KIMANI 3RD APPLICANT
GRACE NJOKI NJENGA 4TH APPLICANT
ROSE MUTHONI NJENGA 5TH APPLICANT
ESTHER NJAMBI NJENGA 6TH APPLICANT
MARY WAMBUI NJENGA 7TH APPLICANT
HANNAH NDUTA NJENGA 8TH APPLICANT
JOSEPH KIARIE NJENGA 9TH APPLICANT**

AND

**PHILIP NJUGUNA 1ST RESPONDENT
JOSEPH KAHIHIA KAMUNGE 2ND RESPONDENT
MARGARET KANGETHE 3RD RESPONDENT**

JUDGMENT

1. A Grant of Probate with Written Will was made in this matter to Philip Njuguna, Joseph Kahihia Kamunge and Margaret Kangethe, the executors named in the Will of the Deceased, on 2nd July 2019. That Grant was issued pursuant to a Petition for Probate with Written Will filed by the executors on 27th March 2018. The three executors are named in the Will of the deceased dated 24th May 2012.



2. The deceased died on 3rd August 2017 aged 90 years leaving behind two families. The first family is comprised of nine children of the deceased and first wife Josphine Waceke (deceased), namely:
 - i. Alice Wanjiku Ngugi (daughter)
 - ii. Keziah Wanjiru Kimani (daughter)
 - iii. Lucy Njeri Kimani (daughter)
 - iv. Grace Njoki Njenga (daughter)
 - v. Rose Muthoni Njenga (daughter)
 - vi. Esther Njambi Njenga (daughter)
 - vii. Mary Wambui Njenga (daughter)
 - viii. Hannah Nduta Njenga (daughter)
 - ix. Joseph Kiarie Njenga (son)
3. The second family comprises of the following survivors:
 - i. Keziah Wahu Njenga (widow),
 - ii. Esther Waruguru Njenga (Daughter)
 - iii. John Njuguna Njenga (son)
 - iv. Samuel Karinge Njenga (son)
4. The Will of the Deceased is contested by all the nine children of the deceased from the first family. The executors filed Summons for Confirmation of the Grant dated 27th February 2020. The children of the first house filed Summons for Revocation of Grant dated 12th March 2020. The court (Mwita, J) directed that both applications be heard together through viva voce evidence. This Judgment relates to the two applications.

Summons for Confirmation of Grant

5. This is dated 26th February, 2020. It was filed by the executors and seeks the following orders:
 - a. That the Grant of Probate made to Philip Njuguna, Joseph Kahihia Kamunge and Margaret Kangethe in this matter on 2nd July, 2019 be confirmed.
 - b. That the costs of this application be in the cause.
6. In the grounds supporting that application, the executors have stated in their affidavit dated 26th February, 2020, that the grant of probate of the last will of the deceased dated 24th May, 2012 was made to them on 2nd July, 2019. They listed the survivors of the deceased as comprising of the two families as shown on 2 and 3 of this judgment above and stated that there is no pending application for the provision for dependants or estate duty is payable.

Application for Revocation of Grant

7. This application, filed by all the children of the first family as applicants, is brought pursuant to section 7, 47, 76 of the of *Law of Succession Act* and Rule 44(1) and 73 of the Probate and Administration Rules and all other enabling provisions, seeking the following orders:



- a. That the Chief Executive, PCEA Kikuyu Hospital, provides a comprehensive medical report of Njenga Gituru (deceased) since the first visit to the hospital until his death on the 3rd of August, 2017.
 - b. That the purported Will of the late Njenga Gituru be declared invalid, null and void.
 - c. That the Grant of Probate issued in this matter be annulled on the ground that the Will is invalid.
 - d. That cost of the application be in the cause.
8. The Application was supported by an affidavit sworn by the 5th and 6th Applicants with authority of the other applicants. They claim that they had no knowledge of a written Will left behind by the deceased; that the deceased had no mental capacity to make a written Will because he was suffering from old age, senility and dementia and as a result, he could not communicate and make rational decisions; that the Will must have been obtained under duress and/or undue influence from his caretakers which renders it illegal and non-binding.
 9. They further stated that the Grant was made fraudulently by making false statements and by concealment of material facts from the court; that the petition and making of grant was done without their knowledge and only got to know about this when they went to protest at the chief's office; that Keziah Wahu (the second wife) had already transferred many of the prime properties of the deceased to herself; that the Will was written by the 2nd Wife and her advocate with the intention of depriving them of their inheritance and taking the larger share of the estate and further that the deceased was made to execute the Will without approving the contents of the said document.
 10. They also claim that the Will is discriminatory against the daughters of the deceased on the basis of gender and marriage which is unconstitutional; that they are challenging the validity of the Will and are applying for reasonable and equitable distribution of the deceased estate; that all properties were acquired by the deceased and the 1st wife and it would be unfair for the same to end up with the 2nd wife and that all properties of the deceased have not been included in the Will as the deceased had more properties.
 11. They accused their stepmother of collusion with the executors with the aim of defrauding them of their inheritance and therefore it is necessary for the Grant to be revoked and the Will to be declared null and void to enable equitable distribution of the deceased estate.

Replying Affidavit

12. The application was opposed by the executors vide a Replying Affidavit dated 23rd September, 2020. The executors have stated that at all times the Applicants were aware of the written Will left behind by the deceased as the same was read out to them at the chief's office on 15th August, 2017 and that the deceased had invited them to accompany him to his lawyer's office for purposes of making the Will.
13. They stated that they have followed the applicable law in filing and obtaining the Grant of Probate and therefore the same was not obtained fraudulently as alleged. They denied making any false statements and or concealing material information from this honorable court. They stated that at the time the deceased was making the Will he was in good health, was aware of the contents of the Will and that the said Will was executed and witnessed by two persons and that the contents of the Will were explained to the deceased in Kikuyu language after which he executed the same.



14. They denied the allegations of collusion with the 2nd wife to defraud and/or disinherit the beneficiaries. They stated that allegations of collusion were malicious and there is no evidence adduced to prove the same. It is their case that application to revoke the Grant lacks merit, is baseless and is an abuse of the court process and should be dismissed with costs.
15. The Applicants filed a supplementary affidavit dated 18th June, 2021 in which they stated that they would like an equal share of what was acquired when their mother was alive and that all the properties listed in the Will were acquired during their mother's lifetime. They reiterated that the deceased had no mental capacity to make the Will as he was diagnosed with severe dementia and severe confusion as per the medical reports dated 23rd December, 2020 and 19th April, 2021.
16. They further stated that the properties which were left out of the Will include a property Plot No. C126 located in Rongai Town, Ngong/Ngong/18630, Kajiado/Olchoronyore/374; that the same belonged to their deceased father and that these properties were transferred to the 2nd wife, which should be taken into consideration when the estate is being shared among the beneficiaries.

Evidence of the Applicants

17. The matter proceeded for hearing on 2nd February, 2021. The case for the Applicants is supported by the evidence of three witnesses. Esther Njambi Njenga testified as the first witness. Her case is that her father the deceased could not have signed the Will as he was sickly and that 5 years before his death he could not identify any of his children.
18. On cross examination she stated that the deceased must have been forced to sign the Will. She did not have any evidence that the thumb print was not that of the deceased. She stated that they have attached medical records from PCEA Kikuyu hospital showing the deceased was in hospital from 1st July 2017 to 3rd August, 2017 when he died and that the deceased had been attending hospital prior to these dates. I noted that no records were produced to show this.
19. The second witness was Rose Muthoni Njenga who testified on 1st November, 2021. She reiterated that the deceased was sickly and forgetful. That the deceased used to tell them that he had left a Will with an advocate though he did not tell them which advocate. That at the Chief's office they were given a piece of document purporting to be the Will. It is her case that the Will was not written by the deceased. That the properties included in the purported Will were fewer than what the deceased owned, and that the deceased was sick at the time he is alleged to have written the Will and could not remember anything.
20. On cross examination, she stated that she was not present at the time of writing the Will. That she did not see Keziah writing the Will nor did she witness any fraud. She also stated that she did not have any evidence to show that Keziah transferred the properties to herself. She also stated that she did not have any documents to show that the deceased was sick in 2012 or any evidence to show that the deceased was not able to write the Will. She stated that they did not report to the police on any fraudulent activity with regards to the Will of the deceased and that she did not know the title numbers of the properties she claims were not included in the Will.
21. Phillip Kimani Maina was the third witness. He testified that he was a licensed clinical officer, license number R01902120; that the deceased was admitted at PCEA Kikuyu Hospital on 1st July 2017 where he was diagnosed with hyperglycemia, hypertension and severe dementia. He produced a report dated 23rd December 2022 on behalf of Dr. Tindi, the Medical Doctor, who had attended and managed the deceased. His evidence was that the deceased was seen first on 1st July 2017 and that dementia can develop 5 years earlier.



22. On cross examination he stated that he is a clinical officer and not a Medical Doctor. He stated that he was not a specialist in psychiatry and that he was not aware whether Dr. Tindi was a specialist in psychiatry. According to him, the hospital did not have other records of the deceased before 2017 and he could not testify about the deceased's mental health in 2012 as he does not have such records.

Evidence of the Respondent

23. Patrick Simon Kuria testified on 22nd September, 2022. He told the court that he is an advocate by profession and that he has been practicing for 50 years in the firm of P.S.K Kimiti. He confirmed that he is the one who drew the deceased's Will and witnessed the deceased executing it.
24. He testified that the Will is dated 24th May, 2012 and was drawn at the request of the deceased. That though the Will was in English he took the instructions in Kikuyu language which the deceased understood. That the deceased knew the contents of the Will as he explained the same to him in Kikuyu language.
25. On cross examination he stated that he knew the deceased. He stated that he was not the one who printed the Will and could therefore not explain as to why some names were capitalized and underlined. He also stated that he could not tell whether the deceased remembered his children's names and that he did not know whether deceased had left out of the will any properties.
26. He further stated that Keziah or any other family members of the deceased were not present during the writing of the will.
27. Margaret Wambui was the second witness for the executors. He told the court that she was the deceased's neighbor and friend and was present at the advocate's office at the time when the deceased was making the Will. She stated that the deceased gave instructions to the advocate in Kikuyu and the Will was written in Kikuyu and the same was read to the deceased. That it was translated in English.
28. She denied the alleged fraud, concealment of any information or false statement. She stated that Keziah was not present at the time of making the Will. She further stated that there was no beneficiary present at the time of making the Will. On cross examination she stated that she did not know that the deceased had mental infirmity.
29. Parties filed submissions after the conclusion of evidence of the witnesses.

Applicants' Submissions

30. The Applicants' submissions are dated 3rd October 2023. They identified the following as issues for determination:
- a. Whether the deceased had capacity to write the Will dated 24th May, 2012?
 - b. Whether the deceased understood the contents of the Will?
31. On the first issue they submitted that the deceased had been ailing, suffering from diabetes and dementia since 2011 until his death on 3rd August, 2017 and therefore he lacked mental capacity to make the Will. They relied on section 5 (1) and (3) of the [Law of Succession Act](#) and the case of re Estate of Margaret Njambi Thuo (Deceased) [2019] eKLR on the requirements for formation of a valid Will where the court stated that:
- (i) The Will must have been executed with testamentary intent;
 - (ii) The testator must have had testamentary capacity;



- (iii) The Will Must have been executed free of fraud, duress, undue influence or mistake;
- (iv) The Will must be duly executed.

32. They submitted that the deceased's free will was unduly influenced by the 2nd wife for her to get a bigger share of the estate and relied on James Maina Anyanga -vs- Lorna Yimbiha Ottaro & 4 others [2014] eKLR cited in the case of Re Estate of Gatuthu Njuguna (deceased)[1998] eKLR where the court stated that:

“Where any dispute or doubt or sanity exists, the person propounding a will must establish and prove affirmatively the testator's capacity and that where the objector has proved incapacity before the date of the will, the burden is shifted to the person propounding the will to show that it was made after recovery or during a lucid interval. The same treatise further shows that the issue of a testator's capacity is one of fact to be proved by medical evidence, oral evidence of the witnesses who knew the testator well or by circumstantial evidence and that the question of capacity of is one of degree, the testator's mind does not have to be perfectly balanced and the question of capacity does not solely depend on scientific or legal definition. It seems that if the objector produces evidence which raises suspicion of the testator's capacity at the time of the execution of the will which generally disturbs the conscience of the court as to whether or not the testator had necessary capacity, he had discharged his burden of proof, and the burden shifts to the person setting up the will to satisfy the court that the testator had necessary capacity.”

33. On the second issue they submitted that the deceased was elderly and was around 85 years old at the time of making the Will. That the advocate who drafted the Will stated that the contents of the Will were explained to the deceased in Kikuyu. It is their case that the advocate did not draft a certificate of translation as the Will was drafted in English. On this they relied on Rule 54 (3) of the Probate and Administration Rules which states that:

Before admitting to proof a written will which appears to have been signed by a blind or illiterate testator or by another person by direction of such a testator, or which appears to be written in a language with which the testator was not wholly familiar, or which for any other reason gives rise to doubt as to such testator having had knowledge of the contents of the will at the time of its execution, the court shall satisfy itself that the testator had such knowledge by requiring an affidavit stating that the contents of the will had been read over to, and explained to, and appeared to be understood by, the testator immediately before the execution of the will.

34. It is their case that there is no affidavit produced to this effect and as such there is no proof that the deceased understood the contents of the Will dated 24th May, 2012. They urged that the Will should be declared null and void.

35. They also relied on the case in Re Estate of Salome Wangari Ngungi(deceased) [2017]eKLR where the court held that:

“.....it would have been diligent on the part of the advocate drawing the said Will to also draw up a certificate of translation to indicate that the contents of the said Will had been read out to the deceased in a language she understands and she had attested to the same. This was not done.”



Respondent's Submissions

36. The Respondents filed their submissions dated 15th January, 2024. They stated that contrary to what was alleged by the Applicants the deceased Will was valid. It was their submissions that the Applicants' case on revocation of grant is primarily on the issue of equal and equitable distribution of the estate. They argue that the deceased had the freedom of testation as provided for under section 5 of the [Law of Succession Act](#). They submitted that it has been held in various cases that inadequate provision and/or provision at all to a beneficiary is not ground to invalidate a Will. They relied on In Re estate of Julius Mimano (2019) eKLR where it was held that:

“The applicant pointed at the fact that the Will did not provide for the children of the deceased, and especially himself, being the only son of the deceased. According to him that was unusual and raised suspicion. Section 5 of the [Law of Succession Act](#) gave the deceased freedom of testation, to dispose of his property as he pleased to whomsoever he pleased. It was within his freedom or discretion to determine who was to benefit from his bounty. The mere fact that a will leaves out children from benefit and benefits the spouse substantially should not be ground for invalidation of a will. A party aggrieved by such provision has a remedy in section 26 of the [Law of Succession Act](#), but not in the nullification of the will.”

37. On the issue of validity of the Will they stated that the same was made by an advocate who came to testify in Court. That the two persons witnessed the Will and hence was made in total compliance with the Law. That no evidence on forgery of the Will was tendered. They relied on the case of In Re estate of Julius Mimano(supra) where it was held that:

“It is the applicant's contention that the signatures on the will were forged and did not belong to the deceased. He did not call a document examiner to give expert opinion on the said signatures. The applicant did not express himself to be a qualified document examiner, or handwriting expert, whose word on the matter could be given some weight. Section 109 of the [Evidence Act](#), Chapter 80 of the Laws of Kenya placed the burden of proof on him.”

38. On the issue of mental capacity of the deceased to make the Will, they submitted that no iota of evidence was produced to show that at the time of making the Will the deceased suffered from dementia. That according to the law the Applicants bore a burden to show that the deceased person did not have capacity to write a will in the year 2012 a task they have failed to discharge. They relied on Re estate of Julius Mimano (supra) where it was held that:

“In the instant case, the applicant did not adduce any evidence as to the condition of the deceased as at the time of the execution of the will. The testimonies of the applicant's witnesses only talked of the deceased's illness in the period just before his death. None referred to the condition he might have been in 1998. Indeed, it would appear that in 1998, the deceased was in no weakened or feeble physical or mental condition on account of either old age or disease or intoxication arising from consumption of either alcohol or drugs. It would appear that he was in full control of his faculties at the time, and therefore not disposed to manipulation or undue influence or undue pressure from any quarter, of such nature that he could not resist. Indeed, nothing on record suggests that he was in such a condition in 1998 as to be overly dependent on others for decision-making, and general mobility and locomotion.”



39. They further submitted that the evidence of the Clinical Officer did not assist the court. He was not the maker of the medical report and had no authority to produce the same. Further that the medical reports produced speak of the deceased's health as at 2017 and not in 2012 at the time of making the Will. That the Applicants confirmed during the hearing that they had no evidence on their allegations of fraud and forgery. It is their case therefore that the Applicants application is frivolous and vexatious and an abuse of court process.

Analysis and Determination

40. I have considered both applications, the affidavits, the oral evidence, the submissions, and the authorities relied on. To my mind the main issue arising in this matter is the capacity of the deceased to make the Will or put differently, the validity of the Will. The Summons for revocation revolve around that one issue. The Applicants want the Grant revoked because they claim that the Will is invalid, null and void for lack of capacity of the deceased to make it.

41. Revocation of a grant is governed by section 76 of the *Law of Succession Act* which provides as follows:

76. Revocation or annulment of grant

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

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



43. Although the Applicants have made allegations in this matter, the evidence shows that they were aware of the Will. Rose Muthoni testified that their late father had informed them of the existence of the Will being held by an advocate although they did not know which advocate. The Applicants have not demonstrated there was fraud in making of the will or in obtaining the Grant. They have failed to demonstrate that there was concealment of any material from the court.
44. The Applicants appear to anchor their case on the issue that the Will was not valid, on account of several factors, which include the mental capacity of the deceased at the time of making the Will, whether the deceased understood the contents of the Will, duress and fraud. According to the Applicants the 2nd wife of the deceased influenced him to make the Will and transfer prime properties to her.
45. I have read all the evidence adduced by the Applicants. I find that there is no evidence that the Will was obtained through duress or undue influence. Mr. Kimiti who drafted the Will testified in court and confirmed that the deceased did instruct him to write the Will; that he was instructed in Kikuyu language which he and the deceased understood and that he recorded in English; that he explained the contents of the Will to the deceased and the deceased confirmed the contents before executing the Will. He testified that none of the deceased's family members were present during the making of the Will.
46. Margaret Wambui, one of the three executors, also testified that Keziah, the second wife of the deceased and the step-mother to the Applicants was not present during the making of the Will.
47. Section 5 of the *Law of Succession Act* provides that:
5. Persons capable of making wills and freedom of testation
 - (1) Subject to the provisions of this Part and Part III, every person who is of sound mind and not a minor may dispose of all or any of his free property by will, and may thereby make any disposition by reference to any secular or religious law that he chooses.
 - (2) A female person, whether married or unmarried, has the same capacity to make a will as does a male person.
 - (3) Any person making or purporting to make a will shall be deemed to be of sound mind for the purpose of this section unless he is, at the time of executing the will, in such a state of mind, whether arising from mental or physical illness, drunkenness, or from any other cause, as not to know what he is doing.
 - (4) The burden of proof that a testator was, at the time he made any will, not of sound mind, shall be upon the person who so alleges.
48. Further, section 11 of the *Law of Succession Act*, provides as follows:
- “Written wills
- No written will shall be valid unless—
- (a) the testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;
 - (b) the signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;
 - (c) the will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other



person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

49. The evidentiary burden was on the Applicants to prove that the Will was not valid. They claimed that the deceased was suffering from dementia and therefore he did not have the mental capacity to make the Will. From the evidence adduced in court there is nothing to demonstrate that the deceased suffered from mental illness in the year 2012 when he was making the Will. The evidence by the medical officer and the medical reports produced are dated 2017 and not 2012. There is evidence that the hospital did not have any records prior to 2017 showing that the deceased was admitted or was attended to in the said hospital.
50. The doctor who attended to the deceased did not attend court to testify. The clinical officer who produced the medical report was not the one who attended to the deceased and was not specialized in psychiatry and therefore could not offer expertise on the subject. It is also clear that the report relates to deceased's condition in 2017 before he died not 2012 when the Will was written.
51. The Applicants raised an issue with the thumbprint affixed by the deceased in the Will. They however did not give any evidence to show that the thumbprint did not belong to the deceased. The advocate who drafted the Will stated that he witnessed the deceased signing the Will. Margaret Kangethe testified that she was present when the deceased signed the Will and witnessed the same and that the deceased understood the contents of the Will as he was dictating in Kikuyu and the advocate recorded in English.
52. The Applicants have claimed that the deceased did not include all his properties in the Will. They singled out Plot No. C126 in Rongai, Ngong/Ngong/18630 and Kajiado/Olchore Onyore/37 as having been left out in the Will. They also claimed that Keziah transferred these properties to herself. They did not have evidence to prove these allegations.
53. The Applicants also alleged fraud and forgery. The Law is very clear that he who alleges must prove. The applicants had the obligation to prove the alleged forgery, they failed to do so. There is no iota of evidence on the alleged forgeries or fraud. The standard of proof for forgery and fraud, being criminal in nature, is, according to Elizabeth Kamene Ndolo v George Matata Ndolo [1996] eKLR (Gicheru, Omolo and Tunoi JJA), higher than what is expected in ordinary civil cases.
54. The Applicants did not adduce evidence to show that Keziah had any influence in the writing of the Will and the provisions made in it. They have failed to prove that there was fraud or that the Grant was obtained fraudulently or through concealment of material facts or any other requirements for the revocation of the Grant.
55. The Applicants have failed to prove that the deceased left out of the Will certain properties. They were not able to point to the court those properties and in whose names are the said properties registered in or that Keziah transferred any of those properties to herself during the lifetime of the deceased or at any other time. They failed to prove that Keziah transferred properties to herself with the intention of depriving them of their share of the property.
56. From the foregoing the Applicants failed to proof their case and demonstrate the requirements for revocation of grant. They have failed to demonstrate that the deceased lacked mental or any other capacity to make the will. I have no material before me, as required by the law, to prove that the will is invalid for reason of lack of capacity of the testator.



57. Consequently, the Summons for Revocation fails. The Summons for Confirmation of the Grant of Probate is allowed. The Grant of Probate with Written Will made to the three executors on 2nd July 2019 is hereby confirmed. The distribution of the estate shall be done in accordance with the Will of the deceased dated 24th May 2017.

58. Due to the nature of the dispute, I direct that costs shall be borne by the estate of the deceased. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 23RD DAY OF APRIL 2024

In the presence of

.....**for the Applicants**

.....**for the Respondents.**

S. N. MUTUKU

JUDGE

