



REPUBLIC OF KENYA



**In re Estate of Maruta Wanga Wamamu (Deceased) (Succession Cause 447 of 2005) [2022] KEHC 13514 (KLR) (23 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13514 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 447 OF 2005  
WM MUSYOKA, J  
SEPTEMBER 23, 2022**

**IN THE MATTER OF THE ESTATE OF MARUTA WANGA WAMAMU (DECEASED)**

**JUDGMENT**

1. The cause relates to the estate of Maruta Wanga Wamamu, who died on June 22, 1990. Two succession causes were initiated. The first in time was Kakamega HCSC No 155 of 1995, and the latest was Kakamega HCSC No 477 of 2005.
2. In Kakamega HCSC No 155 of 1995 there is a letter from the Chief of West Wanga Location, dated March 6, 1995, indicating that the deceased had been survived by a widow and 6 sons, being Arnota Ayieko Maruta, Alfred Ouma Maruta, Martin Joseph Maruta Wamamu, Joseph Bulialia Maruta, Denis Wetta Maruta, Harrison Wanga Maruta and Moses Juma Maruta. He was expressed to had died possessed of a property described as North Wanga/Koyonzo/920. Representation was sought in the cause by Martin Joseph Wamamu, in his capacity as son, in a petition lodged on March 20, 1995. The deceased was said to have been survived by the 7 individuals listed in the Chief's letter of March 6, 1995, and he was said to have died possessed of Kakamega HCSC No 155 of 1995. Letters of administration intestate were made to Martin Joseph Wamamu on December 6, 1995, and a grant was duly issued, dated December 19, 1995. That grant was never confirmed.
3. In Kakamega HCSC No 477 of 2005 there is a letter from the Chief of Koyonzo Location, dated August 22, 2005. It identifies 9 individuals as survivors of the deceased, being 1 widow, 5 sons and 3 nephews. The widow is Arinota Ayieko Maruta. The sons are Dennice Wetta Maruta, Alfred Ouma Maruta, Harrison Maruta Wanga, Martin Joseph Maruta and Joseph Bulialia Maruta. The nephews are said to be Raphael Arusi Opatia, Pariato Ngonzo Opatia and Arinoli Wesonga Opatia. He is said to have died possessed of North Wanga/Koyonzo/920; South Wanga/Lureko/42, 58 and 64; and South Wanga/Lureko/Buhuyi/15. Representation was sought in that cause by Dennis Wetta Maruta, in his capacity as son of the deceased, through a petition that he filed in court on August 24, 2005. He listed the survivors of the deceased as the 9 individuals named in the Chief's letter of August 22, 2005, and to have died possessed of North Wanga/Koyonzo/920; and South Wanga/Lureko/42, 58 and 64. Letters of administration intestate were made to Dennis Wetta Maruta on January 25, 2006, and a grant was



- duly issued, dated March 20, 2006. The said grant was not confirmed, although a summons in that behalf, dated August 13, 2010, was lodged in the cause on October 6, 2010.
4. After the filing of the summons dated August 13, 2010, a summons for revocation of the grant made in Kakamega HCSC No 477 of 2005 was lodged in that cause on October 21, 2010, by Martin Joseph Maruta Wamamu. His case was that there was another pending succession cause pending in the same estate, being Kakamega HCSC No 155 of 1995. He averred that the deceased died a polygamist, and the administrator in Kakamega HCSC No 477 of 2005 had not disclosed some of the survivors of the deceased namely the survivors of Stephen Wanga Maruta and Moses Juma Maruta.
  5. The court files in respect of the 2 causes, that is to say Kakamega HCSC No 155 of 1995 and Kakamega HCSC No 477 of 2005, were placed before Lenaola J, on December 8, 2010, who, upon perusing them, ordered their consolidation, with the lead file being Kakamega HCSC No 477 of 2005. The grants made in both causes were revoked, and the court, by consent of the parties, appointed fresh administrators, being Raphael Wamukoya Obadiah, Dennis Weta Maruta and Martin Joseph Wamamu. It was directed that the fresh grant be confirmed on the basis of the application for confirmation on record, dated August 13, 2010, with Raphael Wamukoya Obadiah and Martin Joseph Wamamu being directed to file affidavits of protest to that application. A fresh grant of letters of administration intestate was duly issued, dated December 23, 2010, based on the orders of December 8, 2010.
  6. In the summons dated August 13, 2010, by Dennis Wetta Maruta, the deceased was said to have been survived by the 9 individuals listed in the petition in Kakamega HCSC No 477 of 2005. It was proposed that North Wanga/Koyonzo/920 be shared out unevenly between Dennice Wetta Maruta, Harrison Ouma Maruta, Alfred Ouma Maruta, Martin J Wamamu, Joseph B Maruta and Consolata A Juma; South Wanga/Lureko/42 unevenly between Dennice W Maruta, Raphael A Opatia, Paristo N Opatia and Arinoli W Opatia; South Wanga/Lureko/55 unevenly between Dennice W Maruta and Martin J Wamamu; and South Wanga/64 evenly between Alfred Ouma Maruta and Harrison Wanga. Dennis Wetta Maruta swore another affidavit on February 11, 2011, revising the proposals of August 13, 2010. North Wanga/Koyonzo/920 disappears, and its place is taken by North Wanga/Koyonzo/290, which he proposes to devolve unevenly between Dennis Wetta Maruta, Harrison Wanga Maruta, Alfred Ouma Maruta, Martin J Wamamu, Joseph B Maruta and Consolata A Juma. He proposes devolution of South Wanga/Lureko/42 unevenly upon Dennis W Maruta, Raphael A Opatia, Raphael A Opatia, Paristo N Opatia, Arinoli W Opatia and Harrison M Wanga. He proposes that South Wanga/Lureko/55 should go to Dennis W Maruta and Martin J Wamamu unevenly; and South Wanga/64 unevenly to Alfred Ouma Maruta and Consolata A Juma.
  7. Martin Joseph Wamamu filed a schedule of distribution, March 2, 2011, of even date. He identifies the survivors of the deceased as 10 individuals, named as the late Stephen Wanga Maruta, Alfred Ouma Wamamu, Martin Joseph Wamamu, Harrison Maruta Wanga, Denis Weta Maruta, the late Moses Juma Maruta, Joseph Bulialia Maruta, Raphael Arusi Opatia, Paristo Ng'ono Opatia and Arinoli Wesonga Opatia. He says that North Wanga/Koyonzo/920 had been shared out by the deceased between the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> houses, so that those who got and should get shares are Stephen Wanga Maruta from the 1<sup>st</sup> house; Alfred Ouma Maruta, Consolata A Juma and Joseph Bulialia Maruta of the 3<sup>rd</sup> house; Martin Joseph Wamamu of the 4<sup>th</sup> house; and Harrison Maruta Wamamu and Denis Wetta Maruta from the 5<sup>th</sup> house. He proposes that South Wanga/Lureko/42 be shared out amongst members of the 1<sup>st</sup> house, being the families of the late Stephen Wanga Maruta and the late Opatia (Raphael A Opatia, Paristo N Opatia and Arinoli W Opatia). He proposes that South Wanga/Lureko/55 should go to Martin Joseph Wamamu of the 4<sup>th</sup> house and Denis Wetta Maruta of the 5<sup>th</sup> house, equally. He proposes that South Wanga/Lureko/64 should devolve upon Alfred Ouma Maruta



of the 3<sup>rd</sup> house and Harrison Maruta Wanga of the 4<sup>th</sup> house., he proposes that the shop on Plot No 15 Buhuyi Market be shared out between Joseph Saka Wanga of the 1<sup>st</sup> house, Alfred Ouma Maruta of the 3<sup>rd</sup> house, Martin Joseph Wamamu of the 4<sup>th</sup> house and Harrison Maruta Wanga.

8. Dennis Wetta Maruta swore a further affidavit on April 2, 2011. He avers that the estate was shared out on December 30, 1980, based on a handwritten document attached to his affidavit, which, unfortunately, is in the Luhya language, without an English translation. He avers that Stephen Wanga Maruta had been given his share of the land in 1967. The language of the affidavit is not very clear, but he appears to say that Stephen Wanga Maruta was given North/Wanga/Koyonzo/1199 (12.5 acres), Lureko/218 (1.3 hectares) and Plot No 5 Buhuyi, and that he sold some of them to the Elphas Nganyi Abulialia. He accuses the late Stephen Maruta and Martin Wamamu of grabbing Lureko/42 (13 acres), Lureko/55 (6.3 acres) and  $\frac{1}{4}$  of Koyonzo/920. He states that Buhuyi Plot No 15 was allocated to the younger sons: Dennis Wetta Maruta, Harrison Maruta Wanga, Alfred Ouma Maruta and Martin Wamamu.
9. There is a joint affidavit by Raphael Wamukoya Obadiah, Dennis Wetta Maruta and Martin Joseph Wamamu, sworn on an undisclosed date in November 2012, but filed herein on November 2, 2012. The number of the survivors and “dependants” of the deceased keeps expanding. The 3 list 13 individuals as children of the deceased, namely Dennis Wetta Maruta, Alfred Ouma Maruta, Harrison Maruta Wanga, Martin Joseph Wamamu, Joseph Bulialia Maruta, Mary Wanga, Igneta Makokha, Florence Oketch, Beritah Okumbo, Hendrich Chengwe, Fuleria Oduor, Beatrice Shikuku and Hellen Atemba. Raphael Wamukoya Opatia, Paristo Ngono Opatia, Arinoli Wesonga Opatia, Abwao Opati and Consolata A. Juma are listed as “dependants.” However, despite the number of survivors going up the distribution of the assets remain the same.
10. There are also reports by surveyors. One is dated November 25, 2016, and it confirms how the South Wanga/Lureko/55 and North Wanga/Koyonzo/920 is occupied on the ground. South Wanga/Lureko/55 is said to be occupied by Martin Joseph Wamamu 1.275 hectares and Dennis Wetta Maruta 1.275 hectares. North Wanga/Koyonzo/920 is occupied by Martin Joseph Wamamu 2.20 hectares, Alfred Ouma Maruta 1.40 hectares, Joseph Bulialia Maruta 0.76 hectare, Consolata Awuor Juma 1.37 hectares, Dennis Wetta Maruta 1.94 hectare and Harrison Maruta Wanga 1.84 hectares. That report was made on the basis of an order made on October 31, 2016 by Mwita J. Another order was made by Mwita J on December 1, 2016 on a survey to be done on South Wanga/Lubao/42 and 64, which I suppose should be Lureko and not Lubao, to confirm its occupancy. A report was subsequently filed, dated March 20, 2017, which is limited to South Wanga/Lureko/42. It shows how the same is occupied on the ground. Raphael Amukoya Opatia 3 acres, Faristo Ngono Opatia 3.25 acres, Arnold Kabaka Obatia 3 acres, the late Stephen W. Omaruta 5.25 acres and Alfred Ouma Maruta 3 acres.
11. Denis Weta Maruta swore another affidavit on November 19, 2018. He avers that at the time of his death, the deceased had a draft will in Luhya language, dated December 30, 1980, in which he divided his assets amongst members of his family. He has attached a copy of the English translation of the said draft will.
12. Directions on the application were made by Lenaola J on April 12, 2011, and by Kimaru J on July 26, 2011, for disposal of the summons for confirmation of grant by oral evidence.
13. The oral hearings commenced on March 15, 2012, before Jaden J. Martin Joseph Maruta, the protestor, was the first to take the witness stand. He informed the court that the deceased had 5 wives, who he named as Teresa, Agnes, Veronica, Arinoda and Kelesethia. The late Teresa had 1 child, Stephen, who passed on, leaving behind wives and children. The late Agnes had 1 child, Cyrila Wanga, who got married, and passed on. The late Veronica had 7 children, 3 sons and 4 daughters. 1 of the sons



died, and was survived by a family. 1 daughter died, and was survived by a daughter. The late Arinoda had 1 son and 3 daughters. The late Kelesethia had 2 sons and 2 daughters. He said that the deceased died possessed of 4 parcels of land, North Wanga/Koyonzo/920 measuring 23.5 acres, South Wanga/Lureko/42 measuring 13 acres, South Wanga/Lureko/55 measuring 6.3 acres and South Wanga/Lureko/64 measuring 3 acres. He stated that up to the date of his death the deceased was living in North Wanga/Koyonzo/920 with his 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> wives, with each wife and her children living in a separate homestead demarcated by boundaries. He stated that the 1<sup>st</sup> wife had been settled on North Wanga/Lureko/42 with her son. He stated that North Wanga/Lureko/64 was not settled on, but was used by the deceased for sugarcane farming. After he died, 2 sons moved into North Wanga/Lureko/64, that is to say Alfred Ouma from the 3<sup>rd</sup> house and Harrison Wanga from the 5<sup>th</sup> house. He stated that the wish of the deceased was that Harrison Wanga and Alfred Ouma would share South Wanga/Lureko/64. He stated further that South Wanga/Lureko/55 was unoccupied, but said that the wish by the deceased was that the same be shared out between Martin Joseph Wanga from the 4<sup>th</sup> house and Dennis Wetta from the 5<sup>th</sup> house. He described South Wanga/Lureko/42 as the ancestral land, which had belonged to the father of the deceased. He said that the deceased had a stepbrother called, called Opayia Wangwe, who died in 1962, and whose 3 sons still occupied a portion of South Wanga/Lureko/42. The other portion of South Wanga/Lureko/42 was occupied by the 1<sup>st</sup> house of the deceased. He said that the share of the deceased in South Wanga/Lureko/42 was about 4 acres. He stated that the deceased had a commercial plot at Butayi Market, No 5, which the family, after he died, agreed to share out between the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> houses. He explained that the 2<sup>nd</sup> house was left out because the 2<sup>nd</sup> wife of the deceased had died, and her only child had also died, although she had been survived by children. The share of the 1<sup>st</sup> house in Butayi Plot No5 was given to Joseph Saka, that of the 3<sup>rd</sup> house was given to Alfred Ouma, that for the 4<sup>th</sup> house went to Martin Joseph and that for the 5<sup>th</sup> house was given to Harrison Maruta. He stated that the estate of the deceased was shared out on 2<sup>nd</sup> March 2011, in accordance with the wishes of the deceased. He said that Dennis Wetta Maruta had transferred all the lands of the deceased to his name, and said that he no longer had faith in him.

14. During cross-examination, he stated that the late Stephen and the late Moses had initially been left out of the petition, despite having wives and children. He stated that North Wanga/Koyonzo/920 had already been given to the late Stephen, and, therefore, the same did not form part of the estate of the deceased, and the late Stephen was not disclosed in the petition because he had already benefitted inter vivos. He stated that South Wanga/Lureko/218 did not form part of the estate, as it belonged to the late Stephen, although he could not tell whether he had bought it or inherited it. He further said that North Wanga/Koyonzo/1199 had already been given to the late Stephen. He stated that the late Moses was given a share in North Wanga/Koyonzo/920, and he settled his family there, with his wife Consolata Juma being in occupation. He said that the deceased had intended that he, Martin Joseph, be given South Wanga/Lureko/55. He stated that the deceased was buried on North Wanga/Koyonzo/920. He stated that Bukuyi Plot No 15 was intended for the younger children.
15. At the oral hearing on October 3, 2012, the record reflects that Hellen Ayemba addressed the court, at the end of the proceedings that day, and informed it that she was a daughter of the deceased, and lived on the land belonging to the deceased, and that she had 2 children. She said she had 8 sisters, some married and some unmarried. It was directed that supplementary papers be filed to reflect all the survivors of the deceased.
16. The witness was reexamined on October 23, 2018 before Njagi J., and he was also cross-examined on the contents of the surveyors' reports, dated March 20, 2017 and November 25, 2016. He stated that it was his wish that the court distributes the estate as per the contents of the surveyors' reports. He also stated that the late Stephen had not been given any land by the deceased. He went on to say that he had



previously sworn an affidavit saying that the deceased had given land to the late Stephen inter vivos, referring to South Wanga/Lureko/42, which he said the deceased had given to the late Stephen. He said that North Wanga/Koyonzo/1199 belonged to the late Stephen. He said that the property reflected in the 2 survey reports were the only assets in the name of the deceased.

17. The applicant testified before Njagi J on October 23, 2018. He averred that the late Stephen was given his share of the land by the deceased during land demarcation in 1967, and the share given to him was North Wanga/Koyonzo/1199 measuring 12.5 acres, South Wanga/Lureko/218 measuring 1.3 hectares and Buhuyu Plot No 5. He stated that the assets registered in the name of the deceased were North Wanga/Koyonzo/920 measuring 23.5 acres, South Wanga/Lureko/55 measuring 6.3 acres, South Wanga/Lureko/64 measuring 3 acres, South Wanga/Lureko/42 measuring 11 acres and North Wanga/ Indangalasia/15. He averred that after the deceased died, the family sat, under the chairmanship of the late Stephen, and agreed that the remaining assets would be shared out between 3 households. He referred to some minutes that were already on record. He said that the distribution proposed was based on the agreement reached at that meeting. During cross-examination, he stated that he was not opposed to distribution being as per the surveyor's report dated November 25, 2016. He stated that he was opposed only to the distribution of South Wanga/Lureko/42, to the extent that it proposed to give a share to the children of the late Stephen, yet he had already gotten his share inter vivos. He said that the share of Harrison was in North Wanga/Koyonzo/920, and that was where he was settled. He said that the share for Raphael Amukoya was in South Wanga/Lureko/42, where he was born, and which land he was using. He said Faristo Opatia and Arnold Obatia were also in South Wanga/Lureko/42, and that he found them on the land when he came of age. He said that the sons of the late Stephen were also on the land, but added that they had grabbed the same. He said that the mother of the late Stephen was buried on South Wanga/Lureko/42. On South Wanga/Lureko/218, he said that he had documents to prove that the deceased was the original owner, but then added that he had no documents to show that it ever was in the name of the deceased. He said that he was born in 1968, and South Wanga/Lureko/218 was registered in the name of the deceased in 1967. Regarding North Wanga/Koyonzo/1199, he testified that the will of the deceased indicated that the same was given to the late Stephen by the deceased. He also stated that there was a document signed by the late Stephen indicating that he had been given North Wanga/Koyonzo/1199. He said that he wanted to be given 1 acre in South Wanga/Lureko/42, but added that he would have no objection if he was not given anything out of it. He said that the will had given him a share in the shop.
18. After Njagi J was transferred, the matter was placed before F Amin J, and was referred to mediation. The mediation process did not take off. On December 6, 2021, F Amin J deemed the case closed, and directed the parties to file written submissions. Subsequently, the matter was placed before me, on February 24, 2022, by which date none of the parties had filed written submissions, and I allocated the matter a date for ruling. In the course preparing the judgment herein I have established that the protestor filed written submissions, dated March 9, 2022. The one-page document is a mere summary of the proposals made by the protestor, and it cites not statutory provisions, nor case law.
19. The application before me is for confirmation of grant. The deceased died in 1990, long after the *Law of Succession Act*, Cap 160, Laws of Kenya, had come into force in 1981. The estate falls for distribution, in the circumstances, in accordance with the provisions of the *Law of Succession Act*, by dint of section 2(1) of the Act. Section 2(1) states as follows:

“Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application



to, all cases of intestate or testamentary succession to the estate of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.”

20. Representation herein was sought in intestacy, and the general presumption is that the deceased died intestate. In the course of the proceedings, documents were filed alleging that the deceased died intestate, and at the oral hearing the applicant, in the confirmation application, stated that the deceased had made a will. He placed a document, in Luhya language, on record, with an English translation, albeit not certified as required by law. I have perused that document, and, to my mind, it does not meet the requirements of a written will, as set out in section 11 of the *Law of Succession Act*, for it was not signed by its alleged maker, nor is it attested by the two witnesses required by that provision. It is, therefore not a valid written will of the deceased, and it cannot be the basis for distribution of the estate herein.

21. For avoidance of doubt, section 11 of the *Law of Succession Act* states as follows:

“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. ...
- 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 ... and each of the witnesses must sign the will in the presence of the testator...”

22. The courts have held that a document that does not meet the requirements of a valid written will, may be deemed to be the oral of the deceased, so long as its writing meets the requirements of section 9(1) of the *Law of Succession Act*. That is to say that the document was written contemporaneously with the making of utterances by the deceased on how he wished his estate to be distributed after his death, made in the presence of two or more competent witnesses. See *Re Rufus Ngethe Munyua (Deceased) Public Trustee v Wambui* [1977] KLR 137 (Harris J), *Wambui and another v Gikonyo and others* [1988] KLR (Gachuhi, Apaloo JJA & Masime Ag JA) and *In re Estate of Wilfred Koinange Gathiomi* (Deceased) [2020] eKLR (Meoli J).

23. Section 9(1) of the *Law of Succession Act* provides as follows:

“No oral will shall be valid unless –

- a. it is made before two or more competent witnesses; and
- b. the testator dies within a period of three months from the date of making the will.”

24. The document put in evidence is dated December 30, 1980, and I would suppose that that is the purported date of its making. The party relying on it did not lead any evidence on the circumstances of its making. It was not disclosed whether it was in the hand of the deceased or that of another with the directions and in the presence of the deceased. It was also not disclosed whether the document was written, by whoever wrote it, contemporaneously with the oral utterances by the deceased on how he intended his assets to be distributed after his death, and that the writing was made in the presence of two or more competent witnesses. The document was made in 1980 and the deceased died in 1990, ten years thereafter. Clearly, the document cannot pass as the oral will of the deceased, for it does not meet



the test in *Re Rufus Ngethe Munyua (Deceased) Public Trustee v Wambui* [1977] KLR 137 (Harris J) and *Wambui and another v Gikonyo and others* [1988] KLR (Gachuhi, Apaloo JJA & Masime Ag JA).

25. Having established that the deceased had not made a valid will, whether oral or written, the conclusion to draw is that he died intestate, and his estate shall be distributed strictly in accordance with the intestacy provisions in Part V of the *Law of Succession Act*, which provide for distribution upon intestacy.
26. The law that governs or regulates confirmation of grants is section 71 of the *Law of Succession Act*, which provides as follows:

“71. Confirmation of grants

- (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.
- (2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may —
  - (a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or
  - (b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 of this Act, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be unadministered; or
  - (c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or
  - (d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case: Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares. (2A) Where a continuing trust arises and there is only one surviving administrator, if the court confirms the grant, it shall, subject to section 66, appoint as administrators jointly



with the surviving administrator not less than one or more than three persons as proposed by the surviving administrator which failing as chosen by the court of its own motion.

- (3) The court may, on the application of the holder of a grant of representation, direct that such grant be confirmed before the expiration of six months from the date of the grant if it is satisfied —
- (a) that there is no dependant, as defined by section 29, of the deceased or that the only dependants are of full age and consent to the application;
  - (b) that it would be expedient in all circumstances of the case so to direct.
- (4) Notwithstanding the provisions of this section and sections 72 and 73, where an applicant files, at the same time as the petition, summons for the immediate issue of a confirmed grant of representation the court may, if it is satisfied that—
- (a) there is no dependant, as defined by section 29, of the deceased other than the petitioner; [Rev. 2017] Law of Succession CAP. 160 29
  - (b) no estate duty is payable in respect of the estate; and (c) it is just and equitable in all circumstances of the case, immediately issue a confirmed grant of representation. ...”

27. Section 71 essentially enables confirmation of grant to facilitate distribution of the capital assets of the estate. Confirmation of the grant entails 2 principal things. One, it is about confirmation of the administrators. There are 3 elements to this, according to section 71(2)(a)(b). The court will confirm the administrators to complete administration of the estate, upon being satisfied that the administrators were properly appointed, that upon being appointed administered the estate in accordance with the law, and that upon being confirmed they will continue to administer the estate in accordance with the law. If the court is satisfied that the appointment of the administrators was proper, and that they had administered the estate, up to the point of confirmation, in accordance with the law, and would, upon being confirmed, continue to administer the estate in accordance with the law, it would confirm the grant. If not so satisfied, it would deal with the matter in terms of section 71(2)(b)(c) and (d), by way of revoking the grant and appointing another administrator to take over conduct of the administration, or by postponing the confirmation and requiring the administrators to take corrective measures. Two, the confirmation application is about the court approving the proposals placed before it on the distribution of the estate. The court may confirm the proposals and the administrators at the same time, or it may confirm the proposals, but not the administrators. Where proposals are approved but not the administrators, the court revokes the grant and appoints another administrator to distribute the estate as per the confirmed proposals.

28. However, before the court considers the proposals, and whether or not to confirm the administrators, where the deceased died intestate, it has to be satisfied, in accordance with the proviso to section 71(2) of the Act and Rule 40(4) of the *Probate and Administration Rules*, that the administrator had



ascertained the persons beneficially entitled to a share in the estate and has ascertained the shares due to each of the beneficiaries ascertained. These provisions are in mandatory terms, and the courts have interpreted them to mean that the court ought not proceed to confirm a grant before they are satisfied of the matters set out in those provisions. It was said in *In the Matter of the Estate of Ephraim Brian Kawai* (Deceased) Kakamega HCSC No 249 of 1992 (Waweru J) (unreported), that it would even be illegal to confirm a grant before being satisfied of those matters. See also *In re Estate of Robert Mungai Gichinji* (Deceased) [2016] eKLR (Musyoka J) and *In re Estate of Benjamin Ng'ono Mbatia* (Deceased) [2019] eKLR (Musyoka J).

29. The proviso to section 71(2) and Rule 40(4) provides as follows:

“71(2) ... Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.”

“40(4). Where the deceased has died wholly or partially intestate the applicant shall satisfy the court that the identification and shares of all persons beneficially entitled to the estate have been ascertained and determined.”

30. Before I can consider the confirmation application on its merits, I will have to consider whether the parties hereto have complied with the proviso to section 71(2) of the Act and Rule 40(4) of the *Probate and Administration Rules*, for where there is no satisfaction then I should not proceed to confirm the grant. What I should be satisfied with is whether the parties ascertained all the persons beneficially entitled to a share in the estate, and have allocated the persons ascertained their respective shares. The shares to be allocated are in the assets of the estate, and that would mean that I will need to be satisfied that the parties have properly ascertained the extent of the estate that they are proposing for distribution.

31. I will start with the persons beneficially entitled to a share in the estate. These are generally referred to as beneficiaries, that is to say the persons who ought to benefit from the assets of the estate. Beneficiaries are in several categories. The first would be the creditors of the estate, that is the persons or entities to which the estate or the deceased owed money, or who had transacted with the deceased prior to his death and he had either not paid them or their transactions were not completed, or something of that nature. It could also be persons who were buying land from the deceased and he had not transferred the land to them before he died. The second would be the survivors of the deceased within the meaning of sections 35, 36, 38 and 39 of the *Law of Succession Act*. That is to say the immediate relatives of the deceased who survived him, his spouse or spouses, children, parents, siblings and other relatives up to the sixth degree. The other category would be of individuals who fit the definition of “dependant,” within the meaning of section 29 of the *Law of Succession Act*, who have successfully moved the court under section 26, and the court has found them to be dependants, and has ordered that they be provided for from the estate of the deceased. Creditors have priority at confirmation or distribution, for what should be available for distribution should be the net intestate estate of the deceased, that is to say the assets of the estate that remain after settlement of debts and liabilities., according to sections 35(1)(b)(5), 36(1), 38, 39(1) and 83(d)(f) of the *Law of Succession Act*.

32. Sections 35(1)(b)(5), 36, 38, 39(1) and 83(d)(f) of the *Law of Succession Act* provide as follows:

“35. Where intestate has left one surviving spouse and child or children



- (1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to —
  - (a) the personal and household effects of the deceased absolutely; and
  - (b) a life interest in the whole residue of the net intestate estate: Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.
- (2) A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.
- (4) Where an application is made under subsection (3), the court shall have power to award the applicant a share of the capital of the net intestate estate with or without variation of any appointment already made, and in determining whether an order shall be made, and if so, what order, shall have regard to—
  - (a) the nature and amount of the deceased's property;
  - (b) any past, present or future capital or income from any source of the applicant and of the surviving spouse;
  - (c) the existing and future means and needs of the applicant and the surviving spouse;
  - (d) whether the deceased had made any advancement or other gift to the applicant during his lifetime or by will;
  - (e) the conduct of the applicant in relation to the deceased and to the surviving spouse;
  - (f) the situation and circumstances of any other person who has any vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under his will (if any); and
  - (g) the general circumstances of the case including the surviving spouse's reasons for withholding or exercising the power in the manner in which he or she did, and any other application made under this section.



- (5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

“36(1) Where the intestate has left one surviving spouse but no child or children, the surviving spouse shall be entitled out of the net intestate estate to—

- (a) the personal and household effects of the deceased absolutely; and
- (b) the first ten thousand shillings out of the residue of the net intestate estate, or twenty per centum thereof, whichever is the greater; and
- (c) a life interest in the whole of the remainder: Provided that if the surviving spouse is a widow, such life interest shall be determined upon her re-marriage to any person”

“38 Where intestate has left a surviving child or children but no spouse

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

“39. Where intestate has left no surviving spouse or children

(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—

- (a) father; or if dead
- (b) mother; or if dead
- (c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none



- (d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
  - (e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.
- (2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.

83 to ascertain and pay,  
(d) out of the estate of the deceased, all his debts;

- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the



respective  
beneficial  
interests  
therein  
under the  
will or on  
intestacy,  
as the case  
may be.”

33. Sections 26 and 29 of the *Law of Succession Act* state as follows:

“26. Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of the dependant, the court may, if it is of the opinion that the disposition of the deceased’s estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased’s net estate.

27 ...

28 ...

29 Meaning of dependant for the purposes of this Part, “dependant” means—

- (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; and CAP. 160 Law of Succession [Rev. 2017] 16
- (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”

34. The administrators have not listed any creditors in their petitions and the confirmation application, and the protests. I shall presume that there are not creditors, and the estate has no debts. On the matter of survivors, I am told that the deceased died a polygamist, having married 5 wives during his lifetime. Out of the 5 wives he had children, both sons and daughters. Yet, the administrators only disclosed the sons, and not the daughters. At the oral hearing, it transpired that the deceased had 8 sons and 9 daughters. The effect of that is that the daughters were concealed from the court. Indeed, when representation was sought in both causes, the administrators only disclosed the sons, and not the daughters, and an impression was created that the deceased did not have daughters. Yet, section 51(2)(g) of the *Law of Succession Act* requires disclosure of all the children of the deceased at the point of petitioning for administration of the estate. Sections 35(1)(b)(5) and 38 of the Act provide for the sharing of the estate amongst the children of the deceased. The Act does not discriminate between



the male and female children of the deceased. Indeed, the definition of “child” and “children” in the interpretation section, section 3, does not classify or categorize children into male or female, or sons or daughters. It merely talks of children, and not their gender. That would mean that the Act treats the children of the deceased equally. Sons and daughters are to be treated equally, for that is what the *Law of Succession Act* envisages. That position is bolstered by Article 27 of *the Constitution*, which decrees that men and women are to be treated equally in all spheres of life, and enjoins the State, inclusive of the courts, not to discriminate against them in any way, and to take measures to eliminate all forms of gender discrimination. The statutory provisions in the Act and the constitutional provisions are further supported by the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Kenya is a signatory. Article 2(5)(6) of *the Constitution* makes international law part of Kenyan law. That would mean that Kenya is obliged to adhere to international standards in the way it handles or treats women. Discrimination of women in distribution of estates of their father is against these universal standards, and the court ought not condone it, for doing so would violate the provisions of *the Constitution*, CEDAW and the *Law of Succession Act*.

35. Section 51(2)(g) of the *Law of Succession Act* states as follows:

“An application shall include information as to – in cases of total or partial intestacy, the names and addresses of all surviving spouse, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased.”

36. Articles 2(5)(6) and 27 of *the Constitution* state as follows:

“2(5) The general rules of international law shall form part of the law of Kenya.

(6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”

“Equality and freedom from discrimination

27

- (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms;
- (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
- (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.



(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

(6) To give full effect to the realization of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

(7) ...

(8) ...”

37. The disclosure of all the children of the deceased, at the point of seeking appointment as administrators and at the point of seeking confirmation of grant, is a mandatory requirement of the *Law of Succession Act* and *the Constitution*, and of international law. The fact that the administrators concealed the daughters would mean that they have not complied with what is required of them by the proviso to section 71(20 and Rule 40(4), and they have not fully ascertained the persons beneficially entitled to a share in the estate of the deceased. Going by *In the Matter of the Estate of Ephrahim Brian Kawai* (Deceased) Kakamega HCSC No 249 of 1992 (Waweru J) (unreported), it would be illegal for me to go on to confirm the grant before there is full compliance.

38. Hellen Ayemba, a daughter, addressed the court on October 3, 2012. She indicated that she lived in the estate and that she had children. She implied that she was not married, and that there were other daughters who were similarly not married. The administrators did not disclose her in any of their filings. The danger with distributing the estate amongst the sons only, to the exclusion of daughters, who are in occupation, is that they would be rendered destitute and homeless, which would be grossly unjust, and it would be the more the reason that all the children of the deceased ought to be disclosed and involved in the matter, so that the court can have a full picture of what is actually happening in the estate, in order to do justice to all.

39. Related to that is the fact that the deceased died a polygamist. The estate of a polygamist is to be handled in terms of section 40 of the *Law of Succession Act*. The assets are shared out according to the houses of the deceased, considering the number of children in each house, and treating any surviving spouse as an additional unit. According to section 40(1), the assets are shared out amongst the houses, according to the number of children in each house, after which section 40(2) becomes applicable, according to which the assets allocated to each house are shared in terms of sections 35, 36 and 38, depending on the composition of each house. To ensure distribution in accordance with section 40, the administrators ought to make a full disclosure of all the survivors of the deceased, by disclosing all the surviving spouses, their children and grandchildren, in case some of the children have died and have been survived by children, all grouped in or categorized in the houses to which they belong. That would assist the court in distributing the estate strictly in accordance with the requirements of section.

40. Section 40 provides as follows:

“ 40. 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.”

41. The fact that the deceased died a polygamist was not disclosed in the petitions for representation, nor in the application for confirmation of grant. The disclosure was only made in the various applications that were filed back and forth by the parties, but they made no disclosures of the members of each of the houses of the deceased. The full disclosure was only made at the oral hearing. The distribution of the estate proposed both in the application for confirmation of grant and in the protests was not in conformity with section 40 of the Act, as it was not in accordance with the houses as envisaged in section 40 of the Act.
42. The proviso to section 71(2) and Rule 40(4) requires that the administrators ascertain the shares of the persons beneficially entitled. As the persons beneficially entitled have not been properly ascertained, it would follow that the shares due to them have also not been ascertained. That would mean that they have also not complied with that aspect of those two provisions.
43. As stated above, the ascertainment of beneficiaries and their shares presuppose that the assets that make up the estate have been ascertained. The certificates of official search on record are a pointer as to the assets that make up the estate. The two dated March 17, 1995 and August 22, 2005 are in respect of North Wanga/Koyonzo/920, and indicate that the deceased was the registered proprietor of that property as from April 28, 1984. The certificate of official search for South Wanga/Lureko/64 is dated August 22, 2005, and it reflects that the deceased was registered as proprietor as from August 28, 1984. That for South Wanga/Lureko/42 is also dated August 22, 2005 and it reflects that the deceased was registered as proprietor thereof on August 28, 1984. That for South Wanga/Lureko/55, dated August 22, 2005, reflects that the deceased was registered as proprietor thereof on August 28, 1984. All these have been undoubtedly ascertained as assets in the estate of the deceased.
44. The other asset said to belong to the deceased is variously described as Buhuyi Plot No 15, Butayi Plot No 15, North Wanga/Indangalasia/Plot No 15, Buhuyu Plot No 5, Bukuyi/15, among others. Although both sides refer to this property, none of them has exhibited documents to show that the said property exists, and that it is registered in the name of the deceased, making it an asset in the estate, and, therefore, available for distribution. The duty on the part of the administrators is to ascertain or establish the assets that make up the estate, and once ascertainment is done, to place the said assets before the court for distribution. Ascertainment of assets is about establishing what belongs to the estate, and it entails getting documents of title relating to those assets, as proof that they exist and form part of the estate. A court ought not approve distribution of assets whose ownership is unknown or uncertain, for ultimately the persons to whom they are assigned, at confirmation, would have difficulty in getting them transmitted to their names, should it turn out that such assets do not exist or do not belong to the deceased.
45. The applicant presents a case that some of the sons of the deceased had benefited from inter vivos distribution, that is to say that the deceased had already given them their share of his wealth before he



died. Section 42 of the *Law of Succession Act* requires that where such lifetime gifts were made to any of the persons beneficially entitled to shares in the estate, such gifts ought to be disclosed, so that the distribution is seen to be fair and equitable. It is called bringing property to the hotchpotch. Assets cannot be brought into the hotchpotch unless there is disclosure of who benefitted from such gifts. There is no way of the court knowing that such gifts were made unless there is disclosure. Secondly, the law does not require that those who benefitted from lifetime gifts should be omitted from the schedule of the survivors of the deceased. I should refer once again to section 51(2)(g) of the Act. It requires disclosure of every surviving immediate member of the family of the deceased, whether or not such family member is going to get a share in the estate or not. The issue as to whether they get a share should be dealt with at the confirmation of the grant, and the administrator ought to disclose them, and indicate that they should not get a share out of the estate, and give reasons why that should be so. If the reason given is that they benefitted from lifetime gifts or gifts inter vivos, then proof ought to be provided of such gifts, to assist the court in the manner indicated above.

46. In this case, the late Stephen is said to have benefitted inter vivos from South Wanga/Lureko/218 and North Wanga/Koyonzo/1199. It is alleged that these assets previously belonged to the deceased. If they were in fact inter vivos gifts, then they ought to be brought into the hotchpotch. Yet, the applicant, the person alleging that they were such gifts, has not placed any document to demonstrate that such assets exist in the first place, and that they are or were registered in the name of the late Stephen, and that they previously belonged to the deceased. The court will only be persuaded that South Wanga/Lureko/218 and North Wanga/Koyonzo/1199 belonged to the late Stephen if a certificate of official search is placed on record a proof of that fact. It will be persuaded that the said assets belonged to the deceased prior to their registration in the name of the deceased upon green cards or other evidence being provided.

47. Section 42 of the *Law of Succession Act* provides as follows:

“Where (a) an intestate has during his lifetime or by Will, paid, given or for the benefit of a child, grandchild or house or (b) Property has been appointed or awarded to any child or grandchild under the provisions of Section 26 or Section 35, That property shall be taken into account in determining the share of the net intestate finally accruing to the child, grandchild or house”

48. Some of the children of the deceased are said to be themselves dead, but are survived by children. The law, at section 41 of the Act, states that the share due to the dead children of the deceased is not lost or extinguished, where they are themselves survived by children of their own, instead their children step into their shoes, in what is known as substitution or representation. They take the share that should have gone to their own parents. If they are more than one, the said children share the property equally. The point is that where any of the children of the deceased have died, but are survived by children of their own, then the administrators ought to disclose such children, who are the grandchildren of the deceased. All must be disclosed, both male and female, whether married or single.

49. Section 41 of the *Law of Succession* states:

“...for or any of the issue of any child of the intestate predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.”

50. Where any of the persons listed and disclosed as beneficially entitled do not wish to take up their share, then the way out is that such persons file documents to show that they are not interested in taking up their share. The law does not force beneficiaries to take up shares in an estate if they are not interested or keen on taking them up. However, that decision cannot be made for them by the



administrators. The beneficiaries must make those decisions themselves, either by way of renouncing those shares or waiving their rights to them or varying them. Variation would take the form of the beneficiaries indicating that they are surrendering their share to some other beneficiary. If any of the married daughters are not interested in taking up their shares, the answer would not lie in not disclosing such daughters, but in disclosing them, and then getting them to file documents as proof that they have renounced or waived or varied their rights, or getting them to attend court on an appointed date where they can state to the court their position. It should be understood, by dint of *Christine Wangari Gichigi v Elizabeth Wanjira Evans & 11 others* [2014] eKLR (Nambuye, Ouko & Mohammed JJA) and *In re Estate of Joyce Kanjiru Njiru (Deceased)* [2017] eKLR (Gitari J), that the mere fact that beneficiaries or survivors have not been active in succession litigation does not mean that they have forfeited their shares, the court should go ahead and provide for them, their inactive role in the proceedings notwithstanding. That is the position, given that the law has granted them a right or entitlement to those shares, and it is only them who can expressly forgo those rights or entitlements. The fact of their non-participation is not a disentitling factor.

51. It appears that both sides are on all fours on one aspect, that is with respect to one of the assets, South Wanga/Lureko/42, that the same was ancestral land, that the deceased had inherited from his father, and that part of it was held by him in trust for his late stepbrother, Opayia Wangwe, whose children were in occupation of the portion due to his estate. It was quite proper to disclose them and involve them, and that shall be considered at distribution.
52. The other issue is that one of the administrators obtained orders for survey works to be done, to ascertain who was in occupation of the estate and the acreage occupied. That was done and reports were lodged in court. He proposes that the estate be distributed as per the contents of those reports, in terms of how the land is physically occupied on the ground. The position in law is that estates are not distributed in accordance with how the land is occupied on the ground. See *In Re Arusei [2003] KLR 76* (Nambuye J) and *Leah Chepkemei Kipyego v Mary Chesenge Kipyego* [2007] eKLR (F. Ochieng J). Distribution should follow the law, in this case Part V of the *Law of Succession Act*. The alternative should be to go by what or how the parties have agreed. In this case there is no agreement on distribution. Where there is no agreement, the court distributes the estate strictly in accordance with the provisions of the *Law of Succession Act*. See *Justus Thiora Kiugu & 4 others v Joyce Nkatha Kiugu & another* [2015] eKLR (Visram, Koome & Otieno-Odek JA) and *In re Estate of Juma Shiro (Deceased)* [2016] eKLR (Mwita J).
53. I believe I have said enough to demonstrate that the summons for confirmation of grant is not ripe for determination, for the reasons that I have discussed above, especially that there has been no compliance with the proviso to section 71(2) of the *Law of Succession Act* and Rule 40(4) of the *Probate and Administration Rules*. Consequently, I shall make the following orders:
  - a. That I hereby postpone determination of the summons for confirmation herein dated August 13, 2010, in terms of section 71(2)(d) of the *Law of Succession Act*, to enable the administrators comply with the directions that follow here below;
  - b. That I direct the administrators, either jointly or severally, to file further affidavits, to disclose all the children of the deceased, including all his daughters, grouping them according to the 5 houses of the deceased;
  - c. That where any of the children of the deceased, whether male or female, are dead, and had children of their own, let those children, being grandchildren of the deceased, be disclosed;



- d. That should any of the children of the deceased, whether male or female, be not interested in taking up their shares or entitlement in the estate, let them file documents to that effect or otherwise attend court, on a date to be appointed, to state their position in the matter;
- e. That the administrators shall provide documentary proof that South Wanga/Lureko/218 and North Wanga/Koyonzo/1199 belong to the late Stephen Wanga Omaruta;
- f. That the administrators shall provide proof that the deceased was the previous owner of South Wanga/Lureko/218 and North Wanga/Koyonzo/1199;
- g. That the administrators shall provide documentary proof that Buhuyi Plot No 15 or Butayi Plot No 5 or Butayi Plot No15 or North Wanga/Indangalasia/Plot No 15 or Buhuyu Plot No 5 or Bukuyi/15 belong to the estate or are registered in the name of the deceased;
- h. That the administrators have forty-five (45) days to comply;
- i. That the matter shall be mentioned on a date to be allocated at the delivery of this judgment for compliance;
- j. That each party shall bear their won costs; and
- k. That any party aggrieved has twenty-eight (28) days leave to file appeal at the Court of Appeal.

54. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2022**

**W M MUSYOKA**

**JUDGE**

Erick Zalo, Court Assistant

Dennis Wetta Maruta, the applicant, in person.

Mr. Matete, instructed by Matete Mwelese & Company, Advocates for the protestor.

