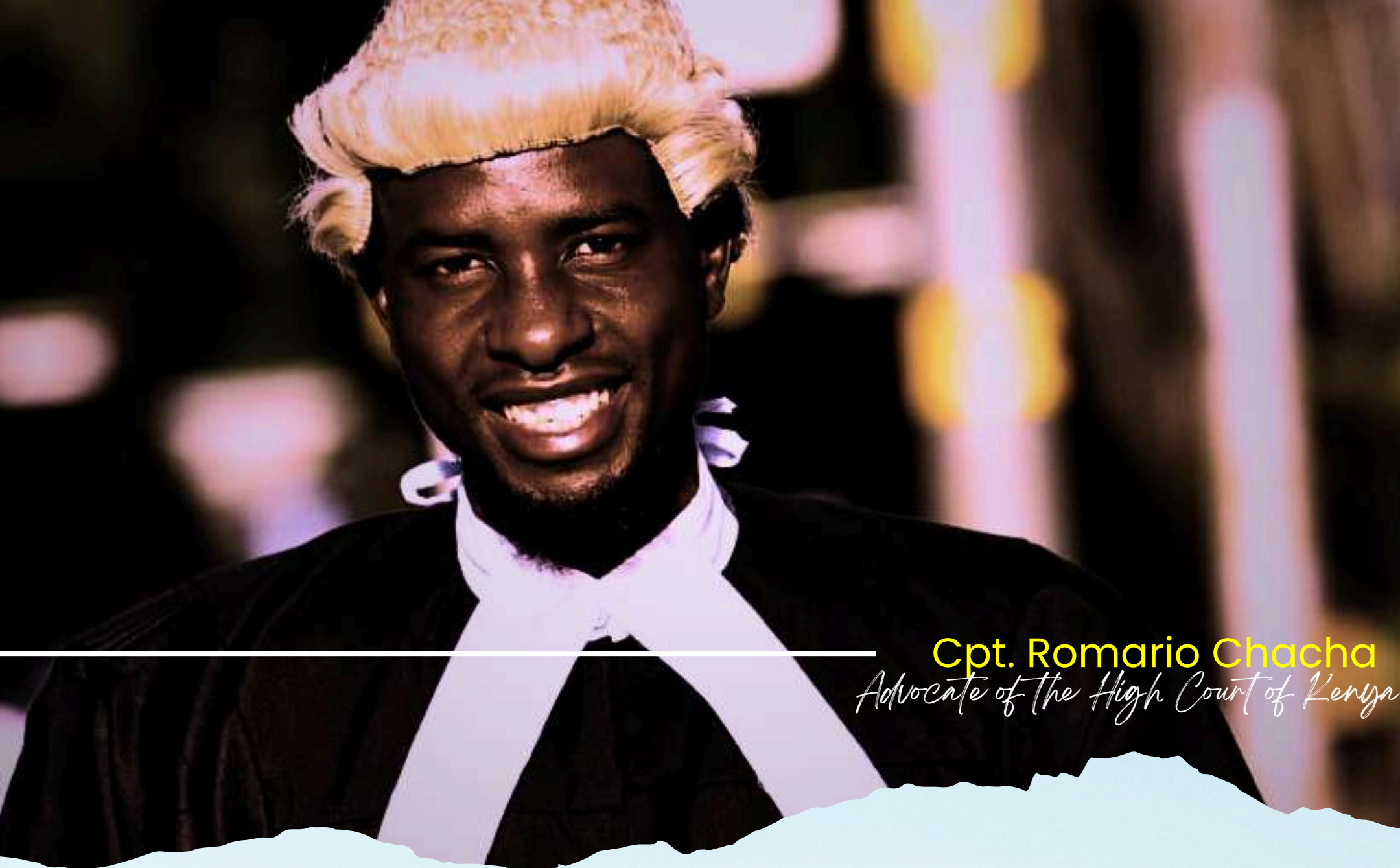




*Advocate of the High Court of
Kenya*

Welcome to the Bar

Sir Rio



Cpt. Romario Chacha
Advocate of the High Court of Kenya

The journey to the Bar is no small feat—it demands long nights of study, unrelenting discipline, and an enduring commitment to justice and ethical conduct. Romario has demonstrated all these qualities and more, and today, he stands tall among Kenya's legal practitioners as a beacon of promise and potential.

Therefore, it is with immense pride and heartfelt joy that we extend our warmest congratulations to Romario Mzee Chacha on his admission to the Bar as an Advocate of the High Court of Kenya on the 23rd of May, 2025.

As a firm, we are especially proud to have Romario as one of our own—not only as a brilliant legal mind but also as a leader and team player.

As our Football Captain, his stellar performance led the firm to its first-ever trophy at the 2024 Law Society of Kenya (LSK) Nairobi Branch Games.

Romario, as you now don the robes of an Advocate, we must tell you that the legal profession is not just a career; it is a calling to be a custodian of justice, a defender of the rule of law, and a voice for the voiceless.

May your path ahead be filled with purpose and impact. We are confident that your name will continue to shine—both in the courts of law and on the fields of honour. Here's to the victories ahead, in law and in life!

Welcome to the Bar, Advocate Chacha. The future is yours.

What happens after death?

Explaining the probate process

The probate process is the legal procedure through which a deceased person's estate is administered and distributed to beneficiaries, either under a valid will or according to the laws of intestacy. In Kenya, this process is governed primarily by the Law of Succession Act (Cap. 160) and the Probate and Administration Rules. Below is a comprehensive, step-by-step explanation of the probate process, from initiating the grant application to final accounting.

N/B- The forms mentioned herein are the forms annexed to the Probate and Administration Rules.

Step 1: Initiation of the Probate Process: Application for the relevant grant

Section 53 of the Law of Succession Act provides for the various grants that can be applied upon the death of a person.

- Application for Grant of Probate with a written will (in case the will appoints an executor).
- Application for Grant of Letters of Administration intestate (if there is no will).
- Application for Grant of Letters of Administration with will annexed (if there is a will but no executor named).

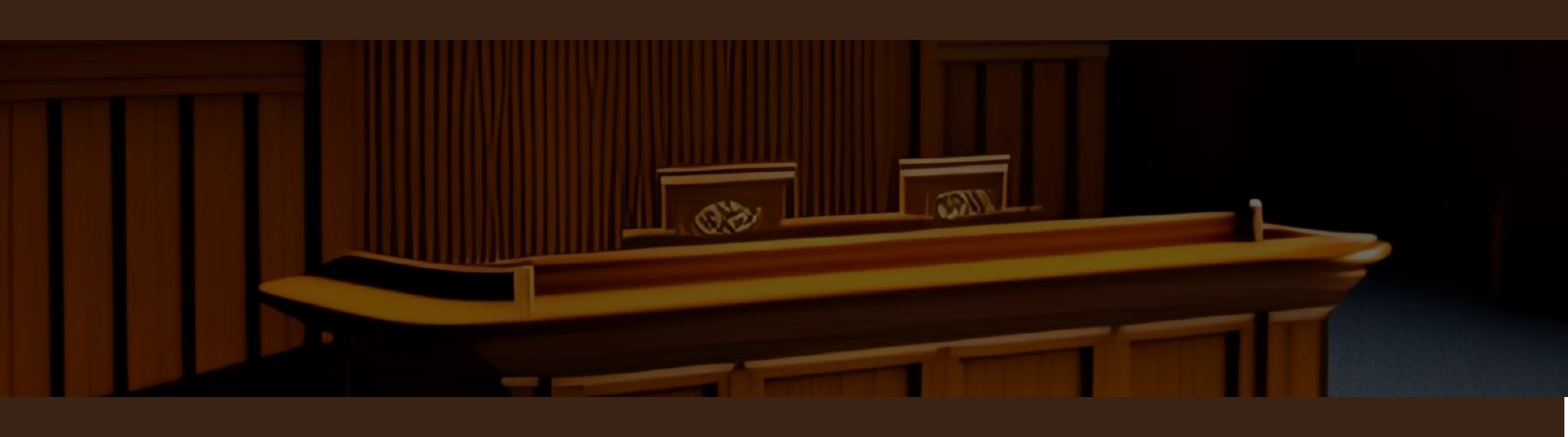
• Who can apply for a grant of representation?

Under Section 53(a) of the Law of Succession Act, if the deceased is proved to have left a valid will, the court may grant:

- Probate of the will to the executor(s) named therein ; or
- if there is no proving executor, then letters of administration with the will annexed may be granted .

In cases of intestacy, Section 66 of the Law of Succession Act sets out the order of preference for persons who may apply for letters of administration. The order is as follows:

1. The surviving spouse;
2. The children of the deceased;
3. The parents of the deceased;
4. The siblings of the deceased;
5. Other relatives according to the degree of consanguinity;
6. The Public Trustee;
7. Creditors (in exceptional cases).



If a person who is not in the order of preference under Section 66 seeks a grant of letters of administration, Rule 7(7) of the Probate and Administration Rules provides specific safeguards to ensure that those with a higher legal right are not unjustly bypassed.

Rule 7(7) states that such a person:

- Must provide the court with sufficient information to enable it to exercise its discretion under Section 66; and
- Must satisfy the court that every person with prior entitlement has either:
 - Renounced their right to apply for a grant, or
 - Consented in writing to the applicant taking the grant, or
 - Been served with a citation requiring them to either renounce their right or apply for the grant themselves.

This ensures procedural fairness and transparency in the administration of estates.

Rule 7(8) adds that a grant can only be sought by **up to four people jointly** and only one of them needs to swear the affidavit.

• Contents of documents to be filed

When applying for a grant of representation—whether grant of probate, letters of administration with the will annexed, or letters of administration intestate—the law sets out both the substantive information that must be disclosed and the formal documents that must be filed. This is governed by Rule 7 of the Probate and Administration Rules

✓ **Petition for the Grant (Form P&A 78 or 80)**

This is the foundational document initiating the process:

- It must contain full particulars of the deceased person: name, date of death, last place of residence, and marital status.
- It must disclose the relationship of the applicant to the deceased and name all known survivors, beneficiaries, and dependants.
- The type of grant sought (probate or administration) and the nature of the estate (testate or intestate) must be stated.
- ◆ Form P&A 78 is used when applying with a will (grant of probate or with will annexed).
- ◆ Form P&A 80 is used for intestate succession.

✓ **Original Will (or copy with explanation)**

For testate succession:

- The original will must be lodged with the petition.
- If the will is alleged to have been lost or destroyed otherwise than by way of revocation or for any other reason cannot be produced, then a copy authenticated by a competent court or otherwise to the satisfaction of the court under Rule 7(5).

✓ **Oath of Executor or Administrator (Form P&A 3 or 5)**

The applicant must swear an oath promising to faithfully administer the estate:

- Form P&A 3 is used for an executor applying for probate.
- Form P&A 5 is used for an administrator applying for letters of administration.



✓ **Affidavit of Justification of Proposed Sureties (Form P&A 11) and Affidavit of Means (Form P&A 12)**

Rule 29 of the Probate and Administration Rules requires that, before appointing a person as an administrator of a deceased's estate, the court must be satisfied that the proposed administrator is financially solvent and capable of managing the estate responsibly. To this end, the court may demand that the applicant files an affidavit of means in Form 12, disclosing their income, assets, and liabilities. This allows the court to assess whether the individual is likely to properly administer the estate and complete the process without jeopardizing the interests of the beneficiaries.

Additionally, the court may require the administrator to provide sureties, who must sign a guarantee promising to cover any loss caused by a breach of duty by the administrator. The sureties, unless they are corporations, must also justify their own financial soundness by completing Form 11.

These guarantees are enforceable as if they were contracts under seal and serve to protect the estate from mismanagement. However, certain categories of administrators—such as **widows, the Public Trustee, and licensed advocates**—are generally exempt from this requirement unless special circumstances exist.

Step 2: Registry Review

Once a petition for a grant of representation is filed in the appropriate registry (High Court or magistrate's court depending on the estate's value and residence of the deceased), the court registry conducts a preliminary check. This includes verifying that:

- All necessary documents have been filed (petition, affidavits, consents, etc.).
- The forms are correctly completed and properly supported.

Step 3: Court Review

After the registry is satisfied, the file is forwarded to a judge or magistrate (depending on the court level). The judicial officer examines the petition to ensure:

- Compliance with the Law of Succession Act and Probate Rules;
- No legal or procedural defects are apparent on the face of the documents.

Step 4: Gazettement

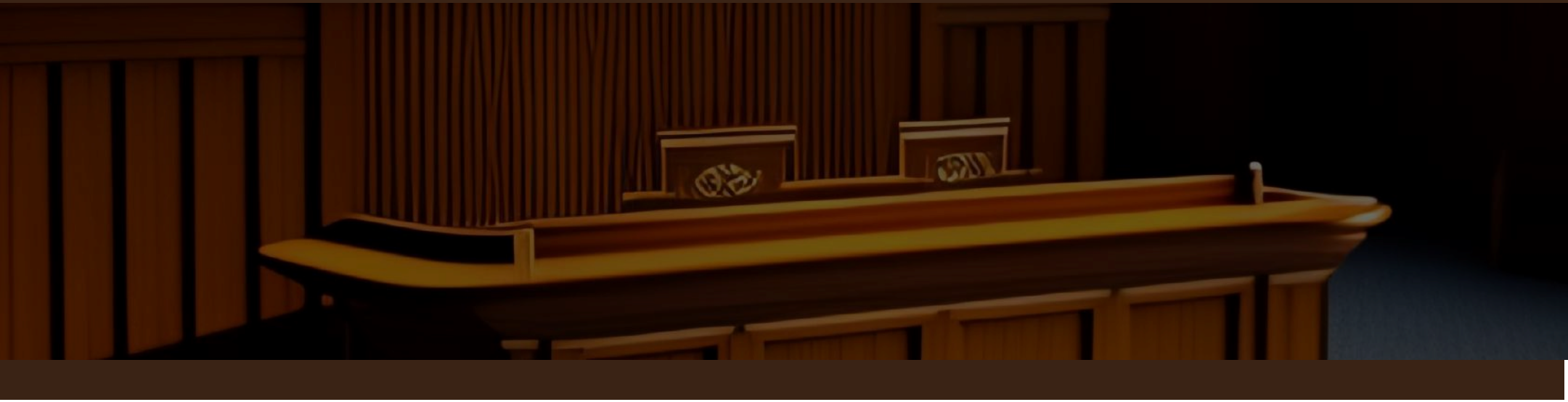
Once the court approves the application for gazettement:

- The Registrar causes a notice of the application to be published in the Kenya Gazette (Form P&A 60), and possibly a daily newspaper.
- The notice is also displayed at the court registry.
- This officially opens the statutory notice period required before a grant can be issued.

Step 5: Objections, answers and cross-applications

This is under Rule 17 of the Probate and Administration Rules.

Objections serve to stop or delay the issuance of a grant of representation (either probate or letters of administration) where there is a dispute or concern about the legitimacy or fairness of the application.



An objection triggers a contentious cause and the court cannot proceed to issue the grant until the objection is heard and determined.

An objection may be raised against any material aspect of the petition, including:

- ***The Validity of the Will***

Alleging that the will is forged, invalid, or was made under undue influence or lack of capacity.

- ***The Identity or Qualification of the Applicant***

Claiming the person applying is not entitled to apply (e.g., skipped over priority of Applicants as per Section 66 of the Law of Succession Act).

It could also work in asserting that the applicant is unfit (due to fraud, conflict of interest, etc.).

- ***The Existence of Other Beneficiaries or Heirs***

Where the applicant fails to disclose or excludes rightful heirs or dependants.

- ***Jurisdiction or Procedure***

Challenging the jurisdiction of the court or the form and content of the application (e.g., improper documents or non-compliance with Rules).

- ***The presence of a valid will***

One may prove that there was a valid will left by the deceased if the Application was for grant of letters of administration.

Application for Reasonable Provision

Under Rule 26 of the Probate and Administration Rules, a person who qualifies as a dependant under Section 29 of the Law of Succession Act may apply to court for reasonable provision from the estate of a deceased person.

This application is made where the dependant feels that the deceased's will or the proposed distribution does not make adequate provision for their maintenance and support. If a grant has already been applied for or issued (but not confirmed), the application is made by **summons in chambers in Form 106 and if no grant has been applied for, it is made by petition in Form 96.**

The application must be supported by an affidavit in Form 15 or 16, which sets out relevant information, including the applicant's relationship to the deceased, their needs and means, details of the estate, and the status of other dependants or beneficiaries.

The application is filed in the registry and served on the personal representative, or—if no grant has been issued—on those entitled to apply for the grant. Once filed, it is set down for hearing, and the court considers the merits of the application with reference to the criteria set out in Section 28 of the Act.

Resolution of Objection - Contentious Proceedings Begin

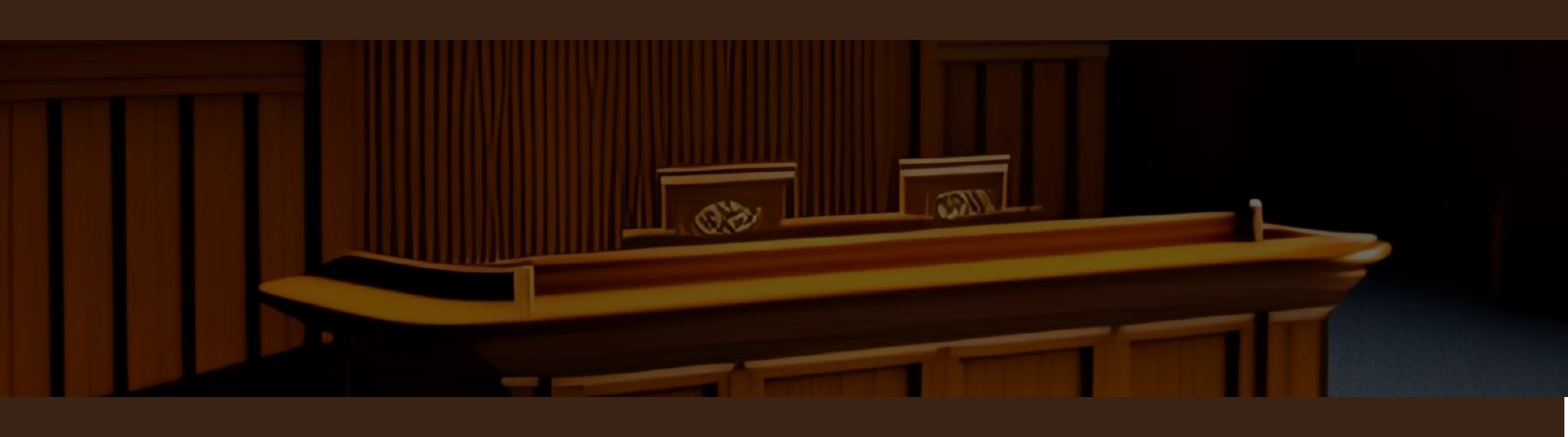
Once an objection is filed:

The objector must file an answer to the petition and a petition by way of cross-application (Rule 17(6)).

The matter becomes a civil dispute (contentious cause), and the court sets it down for hearing.

Parties will present evidence (including affidavits and oral testimony), and the court will determine:

- Whether the objection is valid;
- Who is best suited to be appointed as administrator or executor;



- Whether a will is valid or not, if challenged.
- Whether the Applicant indeed qualifies for Reasonable Provision.

Step 6: Issuance of temporary Grant of Representation

After the 30-day gazette notice period and if there are no objections or if the objections have already been heard and determined, The Court gives the legal authority to the administrator or executor to manage the deceased's estate.

Step 7: Administration of the Estate

The person(s) granted authority:

- Collect assets (bank accounts, land, shares, etc.).
- Pay debts and taxes (e.g., land rates, income tax).
- Maintain proper records of all transactions.
- Prepares a schedule of distribution of the Estate in the event of simple administration.

This phase is governed by Section 83 of the Law of Succession Act, which lists the duties of personal representatives.

Step 8: Application for Confirmation of Grant (After 6 Months)

Under Section 71, the administrator must apply for confirmation of the grant after 6 months from the date it was issued.

They must attach a schedule of distribution proposing how the estate will be divided among beneficiaries.

They must confirm that:

All liabilities have been settled. and All beneficiaries are known and listed.

Step 9: Court Confirms the Grant

The court reviews the confirmation application. If it's satisfied:

- It confirms the grant and endorses the mode of distribution.

Step 10: Distribution of the Estate

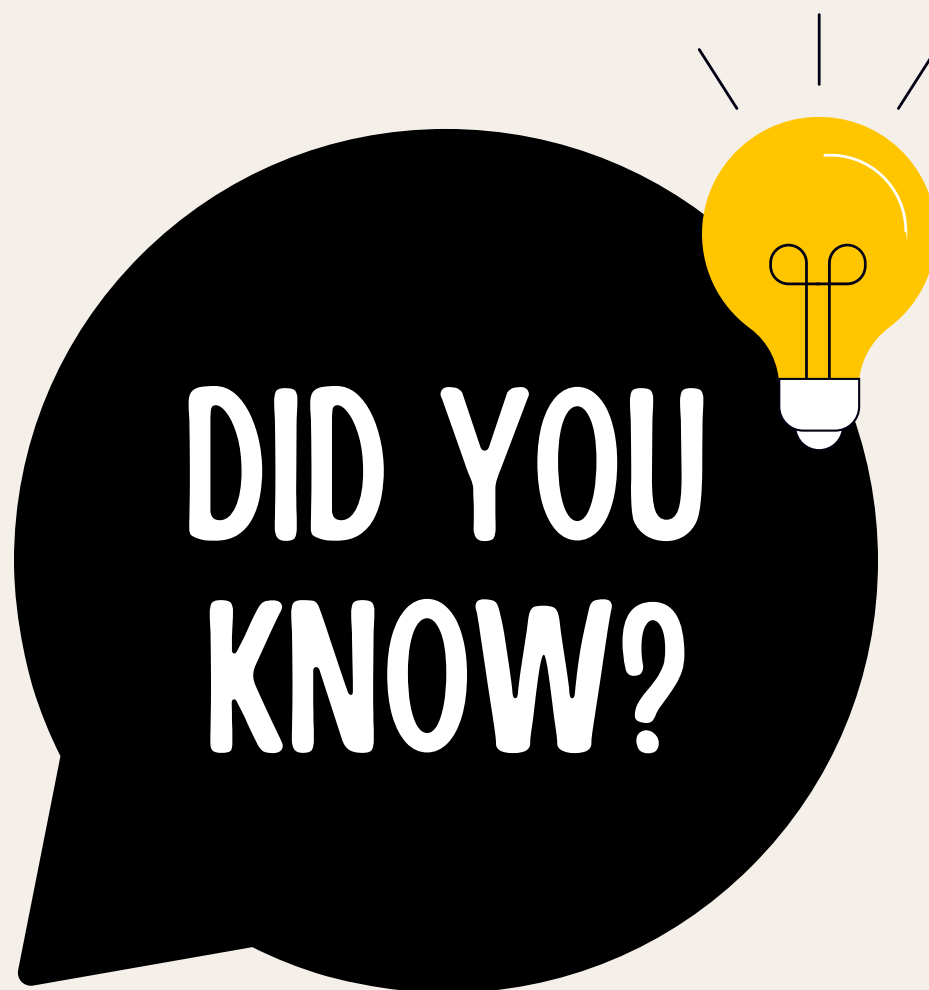
Upon confirmation the administrator proceeds to distribute the estate according to the confirmed schedule.

This includes transferring land, bank accounts, shares, etc., to beneficiaries.

Step 11: Final Accounts

Sometimes, especially if disputes arose, the court may require the administrator to file final accounts under Section 76 of the Law of Succession Act.

Failure to do this may be a ground for revocation of the grant in the wording of section 76 (d) which states 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 that the person to whom the grant was made has failed, after due notice and without reasonable cause to produce to the court, within the time prescribed, any such inventory or account of administration has produced any such inventory or account which is false in any material particular.



You Can't Just Write Off Your Wife and Kids in Your Will!

According to Section 29(a) of the Law of Succession Act, when it comes to making a claim for reasonable provision from a deceased person's estate, a wife and children don't need to prove that they were being maintained by the deceased before his death. Their status as spouse and children is enough. So, if a man writes a will and completely excludes his wife and children, and there's no property left to reasonably accommodate them, the court won't just sit back. In fact, as the Court of Appeal held in **Marete v Marete**, the court can set aside the entire will and declare the estate to be administered under intestacy, as if the will never existed. Wives and children cannot be left with nothing.

But here's the kicker: if the roles are reversed—say the wife dies and the surviving husband claims provision from her estate—then the law applies differently. Under Section 29(c) of the Act, the widower must prove that he was being maintained by the deceased wife in order to qualify as a dependant. Without that proof, he has no automatic claim.



Fresh from the bench

Moi Teaching and Referral Hospital & 3 others v Gikenyi B &
152 others (Civil Appeal E107 & E116 of 2024 (Consolidated))
[2025]

Brief Facts

On 12th December 2023, Moi Teaching & Referral Hospital and Athi Water Works Development Agency publicly advertised vacancies for the positions of Chief Executive Officer. Following the close of applications, both institutions shortlisted eight candidates each and scheduled interviews for 4th March 2024 in Eldoret.

On 17th May 2024, the Government Spokesperson, Mr. Isaac Mwaura, issued a press release announcing the appointment of various individuals to head several state corporations. Among those appointed were Dr. Philip Kirwa as CEO of Moi Teaching & Referral Hospital and Eng. Joseph Kamau as CEO of Athi Water Works Development Agency.

In response, on 21st May 2024, Dr. Magare Gikenyi and others filed a constitutional petition at the High Court in Nakuru, challenging the recruitment and appointment process. The petitioners alleged that the appointments were marred by ethnic bias and violated constitutional provisions, particularly the principles of inclusivity and fair competition.

On the same day, the High Court (Mohochi J) granted ex parte conservatory orders suspending the appointments pending the hearing and determination of the petition.

Subsequently, the affected institutions and appointees filed appeals contesting the High Court's jurisdiction, the legality and scope of the ex parte conservatory orders, and the appropriateness of the Nakuru forum for the petition.

Issues raised

1. Jurisdiction of the High Court

The main issue here was whether the High Court (Constitutional and Human Rights Division) had subject-matter jurisdiction to hear a petition arising from recruitment and appointment processes in public institutions.

Appellants position was that the matter fell exclusively under the Employment and Labour Relations Court (ELRC), as it pertained to employment or labour relations.

The Respondents on the other hand argued that he case raised constitutional issues, including alleged ethnic discrimination and violations of Article 10 and Chapter 6 of the Constitution, which fall within the High Court's jurisdiction under Article 165.

2. Territorial Jurisdiction

The main issue herein was whether the High Court in Nakuru was the proper venue for instituting the petition.

The Appellants argued that the events material to the case occurred in Eldoret (Moi Hospital), Nairobi (Athi Water), and the Office of the Government Spokesperson and not Nakuru where the matter was filed.

The Respondents on the other hand argued that Constitutional petitions are not constrained by rigid territorial limitations, particularly where violations are national in scope.

3. Legality and Scope of the Ex Parte Conservatory Orders

The main issue herein was whether the conservatory orders issued by the High Court on 21st May 2024 complied with constitutional and procedural requirements.

- Contention Points:
 - Orders were granted ex parte without giving the appellants a hearing.
 - The orders allegedly exceeded the 14-day limitation imposed under the Constitution or procedural rules.
 - The orders were too broad, affecting multiple state entities and individuals who were not parties to the proceedings.

4. Proper Forum for Employment-Related Constitutional Challenges

The main issue here was whether disputes touching on constitutional dimensions of recruitment, including ethnic equity and public participation, can be determined by the High Court, or must be addressed within the ELRC regardless of the constitutional claims.

Disposition of the Court

- **Disposition on Jurisdiction of the High Court**

The Court of Appeal affirmed that the High Court had jurisdiction to hear and determine the constitutional petition filed by Dr. Magare Gikenyi and others.

Key Reasoning:

Nature of the Claim: The petition raised constitutional issues, including alleged violations of Articles 10, 27, 73, and Chapter 6 of the Constitution—such as ethnic discrimination, lack of transparency, and breach of national values.

No Employment Relationship Yet: The Court emphasized that no employer–employee relationship had been created at the time the petition was filed. The appointments had merely been announced by press release, not formalized.

Mandate of the High Court: Under Article 165(3)(b) & (d) of the Constitution, the High Court has the power to determine questions of constitutional interpretation and violations of fundamental rights and freedoms.

Inapplicability of the ELRC’s Jurisdiction: The Employment and Labour Relations Court (ELRC) is competent where there is a labour dispute, typically involving an existing or imminent contractual relationship. Since the petition challenged the process and legality of the appointments, not employment terms, the ELRC was not the appropriate forum.

Conclusion:

The Court concluded by stating thus:

“We are persuaded that the High Court had the requisite jurisdiction under Article 165 to entertain the petition as it raised constitutional grievances unrelated to an existing employment relationship.”

The Court dismissed the appellants’ objection to the High Court’s jurisdiction.

- **Disposition on Territorial Jurisdiction**

The Court of Appeal rejected the argument that the High Court in Nakuru lacked territorial jurisdiction and held that the petition was properly filed in Nakuru.

Key Reasoning:

No Strict Local Limits in Constitutional Petitions:

The Court emphasized that constitutional petitions are not bound by rigid territorial boundaries like ordinary civil or criminal claims. The enforcement of constitutional rights is a matter of public law and national importance, which can be raised anywhere in the Republic.

National Character of the Dispute: The petitioners were challenging a nationwide process—specifically, the integrity, fairness, and inclusiveness of public appointments to state corporations. These issues transcend regional confines, particularly as the appointing authority (the Presidency) operates nationally.

The issue of forum shopping: The appellants had argued that the petitioners were forum shopping by filing in Nakuru. The Court dismissed this claim, noting that unless there is demonstrable prejudice or bad faith, litigants may choose any constitutional court within Kenya to file such matters.

No Prejudice Shown: The appellants did not demonstrate how filing in Nakuru caused them procedural or substantive disadvantage, especially given that the hearings—including appeals—were being conducted virtually.

📌 **Conclusion:**

The court concluded thus:

“The petitioners were entitled to file the constitutional petition in Nakuru. There is no territorial limitation to enforcement of constitutional rights before the High Court under Article 165.”

The Court dismissed the objection on territorial jurisdiction.

• **Disposition on the Legality and Scope of the Ex Parte Conservatory Orders**

The Court of Appeal upheld the legality and propriety of the ex parte conservatory orders issued by the High Court (Mohochi J) on 21 May 2024.

📄 **Key Reasoning:**

Judicial Discretion Permitted: The Court noted that the High Court has discretion to issue ex parte conservatory orders under the Constitution and procedural rules—especially in cases where immediate intervention is necessary to prevent constitutional violations or irreparable harm.

Compliance with Principles in *Giella* and *Mumo Matemu*: The judge had applied the correct principles guiding the grant of conservatory relief, particularly those set out in *Giella v Cassman Brown and Mumo Matemu v Trusted Society of Human Rights Alliance*.

He considered:

- A prima facie case with a likelihood of success,
- Potential for irreparable harm, and
- The public interest in ensuring constitutionally compliant appointments.

Status on Time Limitation: The appellants argued the orders exceeded a 14-day ex parte limit, but the Court clarified that:

- The orders were interim and intended to preserve the status quo pending inter partes hearing.
- No express rule was violated since the parties were invited to appear within a few days.

📌 **Conclusion:**

The Court concluded thus:

“The High Court acted well within its constitutional and equitable powers. The orders were neither procedurally flawed nor substantively unjustified.”

The Court dismissed the objections to the ex parte conservatory orders and declined to set them aside.

Final Disposition

The Court dismissed both appeals brought by Moi Teaching & Referral Hospital and Athi Water Works Development Agency, along with their respective appointees, Dr. Philip Kirwa and Eng. Joseph Kamau. It found that the High Court in Nakuru had properly assumed jurisdiction to hear the constitutional petition filed by Dr. Magare Gikenyi and others.

The appellate court affirmed that the High Court was the correct forum to address the issues raised, which concerned the constitutional validity of public appointments, not contractual employment disputes. The Court emphasized that, since no employment relationships had been formalized at the time the petition was filed, the matter fell squarely within the jurisdiction of the High Court under Article 165 of the Constitution.

Furthermore, the Court upheld the ex parte conservatory orders issued by the High Court, finding them to be lawful, proportionate, and necessary to preserve the constitutional questions raised. The Court rejected the appellants' arguments that the orders were overbroad, improperly issued, or time-barred.

In conclusion, the Court of Appeal found no merit in the appeals and directed that the petition before the High Court proceed to full hearing on its merits. The ex parte conservatory orders issued on 21st May 2024 remained valid and in force, pending the High Court's final determination.



KARANJA
NJENGA
ADVOCATES

