



REPUBLIC OF KENYA



**In re Estate of MMJ (Deceased) (Succession Cause 729 of 2019)
[2023] KEHC 24913 (KLR) (Family) (27 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24913 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 729 OF 2019
PM NYAUNDI, J
OCTOBER 27, 2023
IN THE MATTER OF THE ESTATE OF MARGARET MWIKALI JOHN (DECEASED)**

JUDGMENT

Introduction

1. MMJ (the Deceased) died intestate on 14th December 2018. BOO and IO in their capacity as widower and son of the Deceased petitioned for letters of Administration on 12th June 2019. Grant of Letters of Administration was issued to them on 7th October 2019. The grant is yet to be confirmed.
2. In the Affidavit in support of Petition for Grant of Letters of Administration Intestate, the following were listed as survivors of the estate;
 - a. BOO'- husband.
 - b. IO- son.
 - c. DRO- daughter.
 - d. PA- daughter.
3. The Deceased's estate was said to comprise of the following;
 1. Pension Scheme Benefit-Pension Scheme No. 00XX3.
 2. Employer Benefits- Payroll No. 16XX2.
 3. Sacco Benefits- Membership No. 90XX.
 4. Motor Vehicle Registration Number KBR 6X1 X.
 5. KCB Bank Ltd Account No. 1112XXXX19.



4. On 2nd March 2020, the Applicants/ Objectors, BK and BMK (the Objectors) filed Summons for Revocation or Annulment of the Grant. The application sought the following orders;
 1. The Grant of Letters of Administration issued in this case on the 7th October 2019 to the Petitioner be and is hereby revoked and or annulled.
 2. The Objector BK (the Deceased's mother) and BMK (the Deceased's niece) be and are hereby appointed administrators of the Deceased's estate.
 3. The costs of this application and of the suit be awarded to the 3rd defendant/ applicant(sic).
5. The Summons was based on the following grounds;
 - a. The proceedings to obtain the grant were defective in substance as they were obtained through a false petition that the 1st Petitioner was the deceased's widow (sic) and the 2nd petitioner the deceased's son which are untrue (the deceased wasn't married in her life and had no children at all)
 - b. The grant was obtained fraudulently by the making of a false statement regarding the 1st petitioner's marital status to the deceased (which is non-existent) and by concealment from the court that even though the 1st petitioner and the deceased were friends, there was no marriage between them.
 - c. The petitioners are strangers to the Deceased's estate and have no right to administer her estate.
 - d. The objectors are the deceased's next of kin and the right persons to administer her estate.
 - e. In the circumstances it is fair and just to grant this application to meet the end of justice.
 - f. The estate is going to waste and needs an administrator. The Petitioners have no control over the estate as they are not recognised by anybody as administrators.
6. The summons was supported by the supporting affidavit sworn by BK of even date. She denied the existence of any marriage between the Deceased and BOO.
7. She acknowledged that B was a friend of the Deceased and cohabited for a period of 5 months prior to the Deceased being taken ill. She told the court that a period of 5 months does not raise the presumption of marriage.
8. She therefore argued that B lacks locus standi to file this case because he is not the deceased's husband. She deposed that B was recognised as a friend of the Deceased during her burial.
9. In response to the Summons for revocation, BOO filed a Replying Affidavit sworn on 2nd July 2020. He stated that the summons was filed albeit late as the grant was issued on 7th October 2019. He reiterated the fact that he and the deceased lived as husband and wife from 2014 until her demise.
10. It was his contention that their relationship was known to family and relatives as well as the Objectors. He attached a letter from the Chief, South Nyakach Location confirming the same.
11. He stated that he accompanied the Deceased to India for treatment as a spouse and not a friend. He facilitated medical bills and hotel bills of EM who assisted in taking care of the Deceased in India.
12. He attached a medical form showing that he was cited as the deceased's husband, photographs of the deceased and the children, telephone correspondences between DR and the Deceased, a Funeral Programme and bills and receipts for accommodation at K.V Cottage in New Delhi, India.



Summary Of The Objectors'/ Applicants' Case Ow 1 Bk.

13. Her testimony is that she is the mother of the deceased. She denies that the 1st Administrator is the husband of the deceased and specifically that the visit in 2014 was to formalise the marriage. On the occasions he visited her home, he was introduced as co-worker to the deceased. At the time the deceased was critically ill and admitted at MP Shah, the Administrator inserted his name as next of kin on the admission forms notwithstanding her protestations.
14. The deceased was buried in Kitui because she was not married. B wanted to bury her but she declined. She did not know Mr. OJ who was present in court.
15. In cross examination she reasserted that no Kamba rites to formalise a marriage were conducted at the 2014 visit. She acknowledged that the 1st Administrator was very supportive of the deceased, including accompanying her to India. She admitted that Hon. Ngilu supported the fundraiser by sending a contribution of Kshs 100, 000 through the 1st Administrator. She denied that the deceased indicated to her she had plans to marry the 1st Administrator.
16. The treatment of the deceased in India through the fundraiser and not solely by the 1st Administrator. The Deceased moved in to stay with the 1st Administrator in Loresho in November 2017 when she returned from treatment in India and not in 2014 as alleged by the 1st Administrator. Prior to moving to the house of the 1st Administrator she had stayed at KSTC with a niece, BMK (OW3).
17. She had an altercation on the place of burial for the deceased and eventually she prevailed and the deceased was buried in Kitui. The 1st Administrator gave his tribute as a friend at the funeral.
18. In re-examination, she stated that she visited the Deceased in B's house. She reiterated that the individual referred to as fiancé in the funeral programme was not the 1st Administrator. She confirmed that on her return from India, the Deceased went to the house of the 1st Administrator. While there she visited the Deceased. She was commuting from the house of OW3.
19. Soon thereafter she fell ill, was admitted at MP Shah and died.
20. She stated that the Deceased moved out of KSTC house in 2017 as evidenced by rent payment record of House at KSTC from January 2010 to September 2017.

OW 2 Rogers Munywoki Kilungya

21. He stated that he works at the National Assembly as an audio officer. He relied on an affidavit sworn on 30th June 2021 as his evidence in chief. He stated that he was the Deceased's uncle. He denied there was a visit in 2014 and that the 1st Administrator came to the home to discuss dowry and that any rites were conducted under Kamba customary law so as to formalise the marriage. He was categorical that being an Uncle to the Deceased he would have been present.
22. He confirmed that in 2017 he was asked by the mother to the deceased to inquire from the Deceased the nature of her relationship with the 1st Deceased and the Deceased intimated to him that they were not married and that he was a good friend to her.
23. In cross examination he stated that the Deceased lived with her niece (OW3) before she moved in to stay with the 1st Administrator. He expounded on the Kamba cultural rites that are performed to formalise a marriage and stated these were not performed during the visit of the 1st Administrator to the home of the 1st Objector/ Applicant.



24. He stated that he was not present at the alleged visit of 2014. Being the Deceased's uncle, he would have been present if there was a marriage. In November 2017, B and 3 other men in the company of the Deceased visited the home of OW1. There was no marriage negotiations and B was introduced as a friend of the Deceased.
25. When he visited the Deceased in October 2017 he did not meet with the 1st Administrator. OW1 (the 1st Objector) asked him to visit the deceased later in October 2017 to inquire about her whereabouts and the type of the relationship she had with B. The Deceased indicated that B was a good friend of hers.
26. He stated that while in India, the deceased was accompanied by H, he did not know Esther who it is said also accompanied the deceased to India while she was undergoing treatment.
27. In Re-examination he reiterated that as a family they do not recognise the 1st Administrator as husband to the deceased.

OW 3 BMK

28. She adopted her sworn affidavit dated 2nd March 2022 as her evidence in chief. She is a niece of the deceased. She stayed with the deceased from 2009 to 2015 when she left to get married. They moved into the house at KSTC in February 2008. It was her evidence that the deceased was not married at the time they lived together.
29. Further she referred to legend of rent payments from January 2010 to September 2017 along with Internal Memo from Estate Manager addressed to the Deceased showing that the Deceased intended to move out of the house in September 2017. Finally, communication titled 'Housing Movement Advice' dated October 10, 2017 showing the Deceased moved out of the house on 30th September 2017.
30. She denied that the deceased and the 1st Administrator lived together from 2014 to 2018. She denied there was a visit to the home of the deceased in 2014 and that she was present at the event.
31. She acknowledged that the 1st Administrator accompanied the deceased when she travelled to India in March of 2018. The family accepted this as the action of a good Samaritan. It was the deceased who elected to go with the 1st Administrator to India. When the 1st Administrator returned, two nieces H and M travelled to take care of the Deceased.
32. The plans for the nieces to travel were coordinated by the entire family and not solely by the 1st Administrator. She managed the pay bill number that was used to receive contributions and she transferred the money to those in India.
33. The 1st Administrator visited the house at KSTC when she was staying there with the deceased. She was not aware of the visit to the home of the 1st Objector in 2014 to announce the wedding. She was also not present at the meeting in 2017. She confirmed that the 1st Administrator contributed towards her treatment.
34. When the deceased returned from India she went to stay at the house of the 1st Administrator. It was the 1st Administrator who took the deceased to MP Shah hospital when she fell ill. The medical form was not filled by the Deceased because she was critically ill. B signed the form so that the Deceased could get treatment. He later gave his consent for the Deceased's body to be released for burial.
35. She attended the burial of the deceased. The deceased had a relationship with KK but this had ended by the time she died.



Summary of Administrators'/Respondents' Case

RW1 EM

36. She adopted her sworn affidavit dated 29th September 2021 as her evidence in chief. She had known the 1st Administrator for a long time. And recognised the deceased and the 1st Administrator as husband and wife. The 1st Administrator facilitated her travel to India.
37. In cross- examination she reiterated that the deceased facilitated her travel to India and that she recognised the couple as husband and wife. She stayed at the house of the 1st Administrator while arrangements were made for her to travel to India.
38. In Re-examination she reiterated that it was the 1st Administrator who processed the issuance of her passport and escorted her to the airport when she travelled to India.

RW2 DOO

39. He adopted his sworn affidavit Sworn on 29th September 2021 as his evidence in chief. He stated that he was the chief of South Nyakach Location, Kisumu County. He is also a cousin to the 1st Petitioner. He stated that B was from his location and was also related to him as a cousin.
40. He met the Deceased in 2014 when she and B visited their home. They often visited the village with the children. Together with Davis Onyango, Samuel Onyango and Terence Ongolo, they visited the deceased's home in Kitui for introduction purposes. He stated that he wrote the chief's letter dated 2nd February 2019.
41. During cross examination, he stated that B introduced the Deceased as his wife. He stated that the purpose of a letter from the chief is to confirm that the person is known to him and to list dependants or beneficiaries. B was previously married but the wife died.
42. In re-examination, he explained that the contents of the letter are based on information given him by the 1st Administrator and that the contents as presented were true.

RW3 JOO

43. He stated that he works at the University of Nairobi as an assistant halls officer. He adopted his witness statement and affidavit sworn on 29th September 2020 as his evidence in Chief.
44. He stated that both the Deceased and B (the Petitioner) were his co- workers. They invited him to accompany them to the Deceased's home in 2014 to formalise their union. A goat was slaughtered and they ate a roasted liver which signified that the union between the two had been recognized. They explained the purpose of their visit and the Deceased introduced B as her fiancé. According to him, the Deceased and B started living together as husband and wife between 2013-2014.
45. He visited the couple several times in Loresho. Later, they visited B's relatives in Nyakach accompanied by Terence Ongolo, Samuel Onyango, Davis Onyango and BMK.
46. During cross examination, he stated that the deceased's mother was present when they visited the deceased's home in Kitui in 2014. The Deceased still maintained her house in KSTC as at 2017. A letter from the Estate manager, UON shows that the Deceased vacated the house in September 2017.
47. He stated that the 1st Administrator had another wife who stayed in Loresho, she was deceased. He could not recall when she died



RW 4 BOO

48. He stated that he is an Administrator at U.O.N. He adopted his replying affidavit sworn on 2nd July 2020, a further replying affidavit sworn on 28th July 2020 as his evidence in chief. His evidence was that he met the Deceased in 1997 at U.O.N. They started living together in 2014 in Loresho. The Deceased lived in KSTC with her niece, B before. B continued staying in the house after the Deceased left until 2017 when the house was surrendered back to the University.
49. He stated that the Deceased used to accompany him to Nyakach every Christmas. The Deceased had a good relationship with the children; she paid admission fees for the second petitioner and at one point, she and DR, his daughter, were planning a birthday for him while she was in India; she was also known as the mother of the youngest child in school as she signed her diary and picked her report card often.
50. He stated that he was the deceased's husband and was recognised as such during a fundraiser for the treatment of the deceased, during the funeral and when forms needed to be signed at the hospital. He spoke during the funeral as a fiancé of the deceased. He accompanied the deceased to India as a husband. When the deceased died, the objectors wanted her body to be released to them but the hospital declined since it had been indicated that he was the next of kin. He later gave consent for the body to be released and buried in Kitui.
51. In 2013, he took the deceased to his home in Nyakach. Together with his cousins and JO, they visited the deceased's home in Kitui in 2014 to formalise their marriage. They were received by the deceased's relatives and some elders.
52. During cross examination, he stated that their marriage was crystallised through the period of cohabitation. It was not necessary that the customs were to be followed to formalise their union. The visits to both homes was sufficient to prove their intentions of marriage.
53. The Deceased's mother and the second objector visited the deceased in their Loresho home. He produced several photos where the deceased posed with several members of his family to prove that the deceased was part of his family. He consented to release the deceased's body to her mother for burial to avoid delaying the funeral.
54. After the deceased's death, he released her personal effects to her mother. The deceased played a role as a surrogate mother for his children. He stated that he and the 2nd Petitioner rank in priority to petition for letters of administration.
55. At the close of their respective cases the Court directed that the parties file written submissions. The Objectors' submissions are dated 28th June 2023, while those of the Respondents' / Administrators' are dated 8th December 2020 (sic).

Summary of the Objectors' /Applicants' Submissions

56. The Objector identifies the following as the issues for determination
 - a. Is the 1st Petitioner the deceased's widower? In other words, were the 1st Petitioner and the deceased husband and wife so as to give the 1st Petitioner and the 2nd Petitioner *locus standi* to apply for letters of administration to the deceased's estate
 - b. Should the Court revoke and or annul the grant of letters of administration issued on 7th October 2019 and having revoked it, appoint the objectors the administrators to the deceased's estate in terms of the Petition filed by the Objectors on 19th November 2020?



- c. Who will bear the costs of these proceedings?
57. On the first issue as to whether the deceased and the 1st Petitioner can be presumed to have been married, the Objectors cite the Supreme Court decision in *MNK V POM Petition* No. 9 of 2021 and the decision in *Mary Njeri v John Kinyanjui Muthuru & 3 Others* [1985] eKLR which was cited with approval by the Supreme Court. The Objectors urge that the Petitioners have failed to prove the existence of a marriage.
58. The Objectors submitted that since the deceased was not married at the time of her death and had no children, the 1st Objector by virtue of Section 39 of the *Law of Succession Act* has priority to apply for letters of Administration.
59. Finally, the Objectors urge that the Administrators should pay the costs

Summary of the Administrators' Written Submissions

60. The Administrators identify the following as the issues for determination
- a. Whether the Late MMJ cohabited with the 1st Administrator, BOO from 2014 up to her demise on the 14th December 2018.
 - b. Whether during the period of cohabitation the Late MMJ and the 1st Administrator gained repute as a married couple in a common law marriage by Presumption under Section 119 of the *Evidence Act* [Chapter 80 Laws of Kenya]
 - c. Whether the late MMJ accepted the 1st Administrator's children IO, DRO and PA as her dependants within the meaning of Dependants as stipulated under Section 29 of the *Law of Succession Act* [Chapter 160 Laws of Kenya]
 - d. Whether the 1st Administrator is entitled to a surviving spouse under Section 35 [1] of the *Law of Succession Act* to administer the estate of the late MMJ.
 - e. Whether in the alternative and without prejudice to issue number 4 above the 1st Administrator is entitled to the estate of the Late MMJ pursuant to the provisions of Section 36 of the *Law of Succession Act*.
 - f. Whether each party should bear his or her own costs of these proceedings
61. On whether or not the Court should presume the existence of a marriage the Petitioners rely on Section 119 of the *Evidence Act* and the locus classicus case *Hortensiah Wanjiru Yawe versus Public Trustee* Nairobi Civil Appeal No. 13 of 1976 and the decisions in Nairobi Court of Appeal Civil Appeal Case No. 313 of 2001 between *Phyllis Njoki Karanja and 2 Others (Administrators of the Estate of the Late Margaret Wambui Karanja Versus Rosemary M Karanja and Another)*; *BCC Versus JMG Kisii* HCCA 10 of 2018; *Peter Nderi Gathamba Versus Samuel Muthui Munene* Nairobi HCCC 1372 of 2001.
62. The Petitioners urge that the evidence that the Deceased and 1st Administrator cohabited from 2014 to 2018 was uncontroverted. That the deceased and the 1st Administrator conducted themselves as man and wife, taking loans for joint projects and engaging with family as such. Havinn Medical cards that recognised each other as the spouse.
63. In addition, it is urged that the medical cards substantiate the averment that the two were husband and wife. The paper trail for her treatment consistently reflects the 1st Petitioner as the spouse. The



Petitioner concludes by submitting that the Objectors did not succeed in rebutting the presumption and therefore urges that the summons for revocation lacks merit and should be dismissed with costs.

Analysis and Determination

64. Having considered the pleadings, evidence tendered, submissions filed, authorities cited and the applicable law I discern the following as the issues for determination

- a. Whether the grant issued herein should be revoked?
- b. If a) is in the affirmative Whether the Grant herein should issue to the Applicants/ Objectors
- c. Who should pay the costs

65. On the 1st issue Whether the grant should be revoked?

Under Section 76 of the *Law of Succession Act* this Court can revoke a grant under the following circumstances

- 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 has ordered or allowed; 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
 - iv. The grant has become useless and inoperative through subsequent circumstances.

64. The power to revoke or uphold a grant is a discretionary one. This principle was enunciated in the persuasive decision in *Albert Imbuga Kisigwa vs Recho Kavai Kisigwa* Succession Cause No. 158 of 2000 where Mwita J stated: -

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

65. In the instant case the objector seeks revocation on the basis that the Petitioners are not husband and son of the deceased as was stated in paragraph 5 of Joint Affidavit in support of Petition for grant of letters of administration intestate sworn on 17th May 2019.



66. In the totality of his evidence and submissions, the 1st Petitioner urges the Court to find that he is the lawful husband of the Deceased by virtue of the period of cohabitation and other actions and circumstances obtaining that lead to the conclusion that the Couple considered themselves man and wife.
67. The objectors challenge this assertion first by limiting the period of cohabitation from November 2017 to when the deceased died in 2018 and further denying that any steps were taken to formalise the marriage under Kamba Customary law.
68. I find therefore that whether or not the deceased and the 1st Petitioner had a marriage is the central issue for determination and will be the basis upon which I will either revoke or maintain the grant.
69. Section 3 of the [Law of Succession Act](#) was amended *vide* Act No. 4 of 2014 to include a definition of Spouse as
Means a husband or a wife or wives recognised under the [Marriage Act](#).
65. Section 6 of the [Marriage Act](#), recognises the following kinds of marriages
1. A marriage may be registered under this Act if it is celebrated-
 - a. In accordance with the rites of a Christian denomination
 - b. As a civil marriage
 - c. In accordance with the customary rites relating to any of the communities in Kenya
 - d. In accordance with the Hindu Rites and ceremonies; and
 - e. In accordance with Islamic law.
65. The kinds of marriages as recognised under Section 6 is a closed list. Any other union outside of that prescribed is not a marriage under the [Marriage Act](#).
66. Section 2 defines “cohabit” as means to live in an arrangement in which an unmarried couple lives together in a long -term relationship that resembles a marriage
67. From the foregoing it is evident that the Act distinguishes Marriage and Cohabitation. The Petitioner herein urges the Court to presume marriage on account of the period of cohabitation. The [Marriage Act](#) is silent on presumption of marriage. The date for the commencement of the cohabitation as provided by the Petitioner is 2014. This brings the relationship squarely under the ambit of the [Marriage Act](#).
68. The principles that are the basis of a Presumption of Marriage were set out by the Court of Appeal for East Africa decision (Wambuzi P, Mustafa VP and Musoke JA) were outlined in [Mary Njoki v John Kinyanjui Mutheru & 3 Others](#), (mary Njoki) [1985] EKLR by Kneller JA as follows:
- a. The onus of proving customary law marriage is generally on the party who claims it;
 - b. The standard of proof is the usual one for a civil action, namely, ‘on the balance of probabilities;
 - c. Evidence as to the formalities required for a customary law marriage must be proved to that standard; (*Mwagiru v Mumbi*, [1967] EA 639, 642)
 - d. Long cohabitation as a man and a wife gives rise to a presumption of marriage in favour of the party asserting it;



- e. Only cogent evidence to the contrary can rebut the presumption (*Toplin Watson v Tate* [1937] 3 All ER 105)
 - f. If specific ceremonies and rituals are not fully accomplished this does not invalidate such a marriage. (*Sastry Veliader Aronegary v Sembecutty Vaigalie* (1880-1) 6 AC 364; *Shepherd George v Thye*, [1904] 1 Ch 456)
69. The Supreme Court in its decision in the case of [*MNK v POM; Initiative for Strategic Litigation in Africa \(ISLA\) \(Amicus Curiae\)*](#) (Petition 9 of 2021) [2023] KESC 2 (KLR) (Family) (27 January 2023) (Judgment) has pronounced itself on the doctrine of presumption of marriage post the enactment of the [*Marriage Act*, 2014](#) as follows;
- (65) The above notwithstanding, we are of the view, that the doctrine of presumption of marriage is on its deathbed of which reasoning is reinforced by the changes to the matrimonial laws in Kenya. As such, this presumption should only be used sparingly where there is cogent evidence to buttress it.
76. It is evident that the Petitioner and the Deceased were in an intimate relationship and that they were in cohabitation. The 1st Petitioner provided both financial and emotional support to the deceased when she most needed it. The Couple shared a house with the 3 children of the Petitioner. The pertinent question is whether the 1st Petitioner is a spouse as prescribed under the [*Law of Succession Act*](#).
77. The Objectors/ Applicants vehemently denied that there was a marriage and they were categorical that they did not recognise him as the husband. During the trial it emerged he was recognised as a good friend, good Samaritan, fiancé but never husband.
78. In our Kenyan Context, marriage normally extends beyond just the 2 individuals that come together in the union to their respective families. I am swayed by the fact that whereas the deceased family denied the existence of the marriage. The immediate family of the Petitioner were not on hand to confirm that they recognised her as a wife.
79. Indeed the Petitioner produced photographs, school diaries, sms transcripts, a chief's letter but I find that all these were not sufficient to get him past the finish line as the question for determination is how we would move this union from a cohabitation to a marriage given that it does not qualify to be described as a long cohabitation.
80. I am persuaded by the evidence tendered that the Deceased did not leave her KSTC house until September 2017 as evidenced by the communication from the Estate Manager University of Nairobi.
81. The Supreme Court provides that in light of the [*Marriage Act*, 2014](#) the presumption should only be used sparingly where there is cogent evidence to buttress it.
82. In his evidence the Petitioner stated that the plans to formalise the marriage were stalled by the illness of the deceased. The two therefore did not proceed to formalise as originally intended. I am therefore unable to make the leap to presume a marriage as it is evident that the two settled down to cohabit, which is a recognised relationship under the [*Marriage Act*](#).
83. Ngaah J sums it up well when he states in [*CWN v DK*](#) [2021] eKLR

I am of the humble view that the marriages enumerated in this section are the only marriages recognized in law in this country; and, when this provision of the law is read alongside section 2 of the Act and Article 45 of the [*Constitution*](#), the concept of presumption of marriage is rendered otiose and of historical importance only.



I certainly cannot think of a situation where a presumption, whether of law or fact, would be applied to effectively oust clear and express provisions of the law.

84. The fact is that when the rubber hits the road, a cohabitee does not have the same standing as a spouse, they for instance are not envisioned in the category of persons a Court will consider when granting letters of Administration under Section 66 of the *Law of Succession Act*.
85. For the foregoing reasons I find that the assertion by the 1st Petitioner that he was the spouse of the Deceased was false and evidently the 2nd Petitioner was not a son. At best he would be a step son. The locus of the 2nd Petitioner is inextricably linked to that of the 1st Petitioner and when that collapses so does his.
86. Accordingly, I will revoke the grant of letters of Administration intestate issued to the 1st and 2nd Petitioner on 7th October 2019.
87. As indicated earlier by virtue of Section 66 of *the Act*, the deceased not having been survived by a spouse or a child, the 1st Objector, as her mother, ranks in priority to administer her estate. Accordingly, the 1st Objector is at liberty to apply for fresh grant of letters of Administration.
88. Having regard to the history of the matter, each party will bear their own costs

It is so ordered

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 27TH DAY OF OCTOBER, 2023.

P. NYAUNDI

JUDGE

In the presence of:

Mr. Jaoko, Advocate for the 1st and 2nd Administrator

Mr. Mwangi, Advocate for 1st and 2nd Objector/ Applicants

Sylvia Court Assistance

