



REPUBLIC OF KENYA



**In re Estate of Peter Karanja Kariuki (Deceased) (Succession Cause
182 of 2011) [2022] KEHC 10726 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 10726 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 182 OF 2011
RB NGETICH, J
MAY 26, 2022**

BETWEEN

DOREEN WANGARI KARANJA 1ST PETITIONER

BONIFACE KARIUKI KARANJA 2ND PETITIONER

AND

ALICE WAMBUI KINUTHIA OBJECTOR

JUDGMENT

1. This matter relates to the estate of Peter Karanja Kariuki who died on 12th February 2010. The petitioners herein Doreen Wangari and Boniface Kariuki filed petition on 27th April 2011 for grant of letters of administration in their the capacity as widow and son respectively.
2. The petitioners listed 6 beneficiaries namely: -
 1. Doreen Wangari-wife
 2. Boniface Kariuki
 3. Samwell Mugo
 4. Joseph Kiratu
 5. John Njoroge and
 6. Edward Wainaina
3. The following were listed as the assets comprising the deceased estate: -
 1. Kihingo/Likia block 2/28 Pwani (Mukutano)
 2. Residential Plot No. 23 "A" Ngecha



3. Residential plot No. 65 Ngecha
4. Equity Bank Account no. xxxxxxxxx
4. The gazettelement was done on 9th December 2011, and the grant of representation was issued on 18th January 2012 and subsequently confirmed on 9th November 2012. Property to be held by Dorine Wangari Karanja in trust for herself and in trust for the minor children of the deceased.
5. On 2nd May 2013, the objector herein Alice Wambui Kinuthia applied for the revocation of the grant and a restraining order to the petitioners from alienating, selling, disposing off and /or interfering with the deceased estates. She averred that she is the second wife to the deceased and that grant was issued fraudulently through concealment of material facts. She further averred that the petitioners are intermeddling with the estate of the deceased and are in the process of disposing the deceased property.
6. The summons for revocation is supported by her affidavit sworn on 30th April 2013 reiterating the grounds of the application. She annexed evidence as proof she is a wife to the deceased and averred that she was served with a notice to vacate the Plot No. 23 Ngecha (known as Sobea) shopping centre where she lived during the lifetime of the deceased.
7. In response to the summons for revocation, Dorine Wangari filed affidavit sworn on 12th August 2013. She denied knowing the objector and stated that the objector is not a wife to the deceased but was only a caretaker employed to help in the business, and after the death of the deceased she was entitled to pay rent to the premises which she failed to and was served with a vacation notice.
8. The 1st petitioner further stated that the objector is married. She also denied having any meetings with the objector on the issue of distribution of the estate of the deceased. She said the objector is not a beneficiary and is not entitled to the estate of the deceased.
9. The 1st petitioner averred that that the objector failed to prosecute the summons for revocation Justice A.K. Ndungu on 28th June 2017 dismissed the application with costs. The matter was later reinstated and referred for mediation.
10. Mediation report filed on 24th June 2019 by Advocate Samson Matoke Nyagaka indicated that the parties failed to reach a settlement on the distribution of the estate.

Objectors Case

11. The objector PW1 Alice Wambui testified that she is a wife to the deceased married under the Kikuyu Customary Law in 1996 and they were blessed with one child Rose Wanjiku. She said she lived with the deceased in Sobea. She produced photographs of the burial of the deceased and the eulogy that recognized as a prove that she was his wife.
12. The objector stated that she was not involved in the succession process and only found out about it when she was served with a vacation notice. She said 4 cattle and 155 sheep that were reared by her and the deceased were shared between herself and the petitioner Dorine at the chief's office in the presence of the village elders. She said she was given 35 sheep and 1 cow while the petitioner took 3 cows and 120 sheep. She produced a copy of the village elders' letter marked as Exhibit an and b and said other properties were divided amongst the beneficiaries.
13. She stated she wants to be included as an administrator and have the 2 plots and money in Equity Bank be divided between her and Dorine.



14. On cross-examination, she stated that she was married under the Kikuyu Customary Law as her husband's relatives visited her home in 1999 and paid a total of kshs 40,000/=. She said funeral service was done in Sobea and stated that the eulogy by Dorine is not genuine.
15. PW2 David Mungai Waigi testified that he has known the deceased since 1994 as the husband of Alice Wambui. He confirmed PW1's evidence on how the cattle and sheep were divided and stated that the 2nd wife Alice/objector was given the Sobea plot while Dorine was given the 50 by 100 plot that consisted of 12 residential houses. He said he recognized the two wives in the burial photos adduced as evidence.

Petitioner's Case

16. The petitioner Dorine Wangare Karanja testified as DW1. She stated that she is a wife to the deceased married in 1990 and was blessed with 5 children. She said she lived with the deceased in Pwani before the deceased purchased the property in Sobea and developed the same. She said the objector was never married to the deceased but was employed as a caretaker in the business to help run the business, and after the demise of the deceased, she was compensated with sheep for taking care of the deceased and the business.
17. The 1st petitioner said the objector was not involved in the burial arrangements of the deceased and preparations were conducted in the deceased's mother's house; that the objector was not listed as a wife in the program used during the burial; and the program she produced contain falsehoods of the school the deceased attended, also her name was misspelt as Dorcas.
18. She denied that alleged meeting of 8th June 2010 took place and she is not aware of the people named in the minutes.
19. DW1 further stated that the child named Rose born in 1993 is not a child of the deceased if the marriage was consummated in 1996.
20. On cross-examination, she said the objector is married to Peter Nagger Kamau and they are currently living together, she said they do not live in the deceased's plot.
21. DW2 Albert Kinyanjui Kariuki corroborated the evidence of DW1 and further stated that the deceased was his elder brother. He said the deceased had only one wife Dorine. He said he lived with the deceased in Sobea since 1996 taking care of the sheep.
22. DW2 said the objector was employed as a caretaker of the deceased's plot in Sobea. In one photograph he identified Dorine and Alice but said it was not taken by them. He also said the objector was given sheep because she had not been paid a salary for some time.

Objector's Submissions

23. Counsel for the objector filed submissions dated 7th February 2022 on 11 February 2022. Counsel submitted that the objector was married to the deceased under the Kikuyu Customary law and under Section 3(5) of the [Law of Succession Act](#) being a wife of the deceased is entitled as a beneficiary to the estate under Section 29 of the [Law of Succession Act](#); that she is entitled to a share of the deceased estates as per Section 40 of the Law of Succession.
24. She further submitted that the petitioner failed to prove the objector was a caretaker of the estate of the deceased and on what basis the objector was given 35 sheep and 1 cow belonging to the deceased.



25. She submitted that the petitioners ought to give an account on the money withdrawn from the Equity Bank Account No. xxxxxx and argued that the petitioner is intermeddling with the property of the estate. She urged the Court to find that the grant of letters of administration issued to the petitioner was obtained through concealment of material fact and proceed to revoke the same.

Petitioners' Submissions

26. Counsel for the petitioner filed submission dated 15th March 2022 filed on the even date. Counsel submitted that the objector is not a wife of the deceased as she has failed to adduce evidence as per section 107 of the *Evidence act* to prove the existence of a marriage; that she has failed to prove the essentials of a valid Kikuyu marriage allegedly conducted as no witness has been called and also has failed to prove her daughter was sired by the deceased.
27. The petitioner further submitted that the objector has failed to prove fraud, or concealment of material facts by the petitioner and has failed to prove she was a dependent of the deceased; that she failed to call witnesses to adduce evidence of the alleged meeting held at the chief's office aimed at distributing the estate of the deceased.
28. The petitioner's counsel also submitted that the eulogy produced by the objector is faced with discrepancies having missed the important life history as to when the deceased was born, when he fell ill, and when he married the objector.
29. Counsel further submitted that the eulogy was doctored for the purposes of deceiving the court; that she failed to prove she is a wife to the deceased and is not therefore a beneficiary under Section 29 of the *Law of Succession Act* and not entitled to a share of the deceased's property; and urged third court to dismiss the application and proceed to distribute the estate to the petitioner.

Analysis And Determination

30. I have considered the evidence adduced and submissions filed. I consider the following as issues for determination: -
1. Whether the objector is a wife of the deceased
 2. Mode of distribution of the deceased's estate (I) Whether the objector is a wife of the deceased
31. The objector stated that she was married as a 2nd wife by the deceased in the year 1996 under the Kikuyu customary law. Section 107 of the *Evidence Act* provide as follows: -
- “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”
32. The objector however failed to call a witness to adduce evidence that indeed the Kikuyu Ceremony was conducted. She said she attended the burial of the deceased in the capacity of wife to the deceased; she adduced a photograph of her and the petitioner with other people posing for a photograph. In my view, taking photographs in a funeral either with the coffin or family members of the deceased is not in itself sufficient prove of marriage.
33. The objector having stated that marriage was conducted, she should have gone further to prove that it indeed took place. On the child she named Rose, she never stated whether the child was fathered by or



was maintained by the deceased. No birth document nor any other document was produced in Court to connect the objector's daughter to the deceased.

34. The two sets of eulogy did not help to shed light as to whether the objector was recognized as a wife in the burial in view of discrepancies which casts doubt as to whether the copy produced by the objector was prepared by the deceased's family.
35. I have perused the chief's letter dated 19th April 2013 annexed to the protestor's bundle of documents, it indicates the deceased had two wives but does not list other beneficiaries of the deceased. This document does not shed light to the Court on the exact position on the ground. It is done by the chief Ngata Location. I believe Sobea fall under Ngata Location. If the chief Ngata knew the deceased's family, he should have listed the wives and children of each wife. Scanty information casts raise casts doubt on information in the said letter.
36. Further, DW2 the brother to the deceased testified that the objector is not a wife to the deceased and he only knew her as a caretaker of the deceased plot in Sobea, he said the objector was married to one Peter and were across the deceased's estate. I find the testimony of DW2 to be credible.
37. From the foregoing, I find that the protestor failed to discharge the evidential burden of proving that she was a wife to the deceased. I therefore proceed to find that the protestor was not deceased's wife and there is no prove that her daughter was the deceased's child/dependent of the deceased.
38. Having found the protestor is not a wife to the deceased, she is not entitled as a beneficiary under Section 29 of the *law of Succession Act* and will not proceed to consider the second issue.
39. From the foregoing, I find no reason to revoke the grant and proceed to dismiss the application dated 2nd May 2013.

Final Order

Application dated 2nd May 2013 is hereby dismissed.

40. Costs to the petitioners

JUDGMENT DATED, SIGNED AND DELIVERED VIA ZOOM AT KAMBA THIS 26TH DAY OF MAY, 2022

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RACHEL NGETICH

JUDGE

In the presence of:

Kemboi - Court Assistant

Ms. Mwaniki holding brief for Njeri Njagua for Petitioners/Respondent

Ms. Ndungu for Objector

