



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**  
**Succession Cause 349 of 2005**

**IN THE MATTER OF THE ESTATE OF KENNETH GICHERU GACHUGU....(DSD)**

**AND**

**MILLICENT MUTHONI GACHUGU.....PETITIONER**

**VERSUS**

**JANE NYAWIRA MWANGI.....OBJECTOR**

**JUDGMENT**

This suit arises out of succession dispute. The Petitioner is the mother of the deceased and Objector is claiming to be wife of deceased. There is no doubt that the Petitioner is the mother but the objector is called upon to prove that she was the lawful wife of deceased. In this country, a marriage can either be under customary law or under statute. In this case the marriage is claimed to be under customary law. Therefore all customs relating to a valid marriage must be complied with. The objector says deceased was her husband since 1997 and that they have 2 children. She exhibited both certificate for Sophia Wangui showing born on 24/8/2003 but this certificate was issued on 3/11/2005 and that of Synthia Muthoni also issued on the same date. It is to be noted that the deceased expired on 3/8/2005 and therefore these documents were obtained after his death and after this dispute had arisen in SPMCC No.154/2005 where the burial was ordered by the court. The objector also produced some documents of NHIF where the spouse is named as Jane Nyawira. These documents are not evidence of marriage. The act of marriage is a public affair. The ceremony is made in public in daylight with members of family participating. There is no such evidence here. The crucial requirement in Kikuyu customary marriage is the payment dowry (bride wealth). There is no such evidence to prove such a ceremony or payment of dowry. The father of the objector says he received Shs.7000/- from the deceased. This evidence is contradictory and unreliable.

Upon considering the submissions made and the evidence offered by both parties and the authorities cited by counsel, it is my finding that the objector has not proved lawful marriage to the deceased. I dismiss her objection. The Petitioner is entitled to a grant of Letters of administration of the estate of her son and I order that a grant be issued to her in accordance with her petition. The objector shall pay costs of this objection.

It is so ordered.

Dated this 14<sup>th</sup> February, 2008.

**J. N. KHAMINWA**

**JUDGE**

**14/2/2008**

**Khaminwa – Judge**

**Njue- Clerk**

**Mr. Utuku**

**Mrs Fatuma**

**Parties Present**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**