



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**H.C. MISC. CIVIL SUIT NO. 1402 OF 1998**  
**IN THE MATTER OF THE ESTATE OF RICHARD KENYATTA**  
**ORENGO – DECEASED**

**JOSEPH B. ORENGO &**  
**TERESA NYANGWESO KENG’OTORE.....APPLICANTS**  
**V E R S U S**  
**THE PUBLIC TRUSTEE ..... RESPONDENT**  
**AND**  
**JOYCE NYABOKE MANOTI ..... INTERESTED PARTY**

**R U L I N G**

This application to revoke the grant of letters of administration issued to a brother and the mother of the deceased is made by the Applicant (*referred to as ‘JOYCE’*) who claims that she was married to the deceased as per Kisii Customary Law. The estate consists of Kshs.838,165/05 in respect of terminal benefits due to the deceased by his employer ICIPE. The money is presently deposited with the Public Trustee due to this dispute.

The applicant’s evidence along with that of her witnesses can be summarized as follows:

She married the deceased on 19th December, 1995 and she went to the homes of their respective parents. She produced an affidavit sworn by the deceased on 16th February, 1996 averring that their marriage was ceremonised as per Kisii Customary Law. As it transpired from her further evidence, the dowry was negotiated a day before the funeral of her husband amongst deceased’s brother Joseph, his maternal uncle and her elder brother. A part of the dowry was paid by way of a bull which was left at the house of the deceased’s sister and payment of Kshs.3,000/= was made. She participated fully in funeral as the wife of the deceased by placing sand in the grave, shaving her head, smearing of milk on her face and she entering the deceased’s house through the window from where his coffin was taken out. She produced many photographs taken with Joseph, his wife and deceased’s mother. A photo of her almost collapsing at the graveside was also produced. She also stated that the deceased placed her name as his spouse in the record of his employer and that he nominated her and his daughter of his previous marriage as her dependants. She produced all the relevant documents of the deceased like log book, Bank Card, Birth Certificate, Kenya Certificate of Secondary Education Certificate, N.S.S.F.

Card, Driving Licence, Baptism Card and Employment Card. She also produced her Medical Card showing her as a spouse of the deceased. The two witnesses from the company named ICIPE corroborated her evidence fully and also in her averment that she accompanied the body in the airplane as a widow. Her brother confirmed her evidence as to the part payment of dowry as well as their participation at the funeral. However he said that the deceased and Joyce visited him in his house at Kisumu. No mention of their visit at parents' home is made by him.

According to him the father was very sick to attend the funeral or get involved in this dispute and that is why he did so.

Her evidence is controverted in all its particulars. Joseph who is brother to the deceased and a co-administrator denied ever negotiating dowry or making part-payment thereof. A paternal uncle of the deceased gave evidence and stated that he was in charge of funeral arrangement from the beginning to the end. If there was a negotiation of dowry he ought and would have been involved as the father was also deceased. I tend to agree with his evidence and cannot accept the deposition that in spite of his presence and that of his other brothers, the alleged negotiation could have taken place involving a maternal uncle. I shall reject the averments that the dowry was negotiated and that part payment was made as averred by Joyce and her brother.

With the above finding I shall have difficulties to find that Joyce and deceased were married as per Kisii Customary Law in absence of proof of payment of dowry. It is the most essential factor in the rites of customary marriage. I therefore cannot agree with Joyce that she was married to the deceased as per customary law.

That is so far as the customary marriage is concerned.

There is on the other hand an indisputable evidence produced before me to show that the deceased unequivocally acknowledged and accepted Joyce as his wife. He went on to include her name as his spouse with his employers. As at 4th January, 1996, the deceased in his own hand declared Joyce as his spouse. He gave information to the Personnel Officer of his employer company and gave all his personal information which included the name of his Daughter Marcella Marema born on 1st October, 1991 and Joseph has been named as next of Kin by him. That letter was produced from the record of his employer (PEX 8c) As a result of these details, Joyce was included in Company's Medical Scheme and on Expersonnel/ Administrative Officer attached to Mombasa Branch of I C I P E told this court that he took Joyce to the Medical Officer on her first visit as required by company regulation. He also stated that the company paid for her air ticket to accompany the body. I also cannot find creditworthy the evasive response by Joseph and Teresia (deceased's mother ) when they were confronted with the photographs taken at the funeral showing participation of Joyce and her brother at the funeral. They were more than 25 photographs and show Joyce involving in all aspects of the funeral ceremony and being with the other relatives including Joseph, his wife and Teresia. Their explanation that anybody can come to funeral, participate therein and be photographed as well as give speech is not reasonable and acceptable. Joyce definitely partook in the funeral ceremony as a relative to the deceased and that relative can be named as a wife looking to the clear and specific declaration made by the deceased during his life time.

Unfortunately deceased did not live long with Joyce due to his untimely death. That fact and short span of their marital life cannot be taken against the claim of Joyce. I am aware that the presumption of marriage under the common law can be made looking to the long cohabitation. The deceased died before that and here I am left to presume from other clear circumstances wherein the deceased has declared her as his wife in writing and has publicly accepted her as such by providing facility and name which a wife is expected to be given.

It is submitted that the employer accepted Joyce as his wife based on the affidavit of the deceased which is not true. That may be so, but I am not relying on the affidavit at all. I am placing my sole reliance on his own letter which declared her as such wife.

The long and short of all the above is that I do declare Joyce as a wife of the deceased in common law.

There is a minor child of deceased from the first marriage which according to both parties is dissolved and whose interest needs to be protected by this court.

I therefore direct that the grant of letters of administration given to the names of Joseph Basweti Orengo and Teresia Nyangweso Kong'otore be annulled. A fresh petition be filed by the above two along with Joyce Nyaboke Manoti for the letters of administration.

I shall not make an award of costs due to the circumstances of the case.

**Dated and delivered at Nairobi this 25th day of February, 2002.**

**K. H. RAWAL**

**J U D G E**