



REPUBLIC OF KENYA



**In re Estate of Jackson Wachira Miano (Deceased) (Succession Cause  
2208 of 2008) [2025] KEHC 235 (KLR) (Family) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 235 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
FAMILY  
SUCCESSION CAUSE 2208 OF 2008  
HK CHEMITEI, J  
JANUARY 23, 2025  
IN THE MATTER OF THE ESTATE OF THE LATE  
JACKSON WACHIRA MIANO (DECEASED)**

**BETWEEN**

**ALICE WAKINI WACHIRA ..... 1<sup>ST</sup> APPLICANT  
FRANCIS MAINA WACHIRA ..... 2<sup>ND</sup> APPLICANT  
ESTHER WAMBUI WACHIRA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**AGNESS KATTO NJOROGE ..... RESPONDENT**

**JUDGMENT**

1. In their application dated 26<sup>th</sup> April 2019 the Applicants have prayed that the grant dated 3<sup>rd</sup> October 2017 be confirmed in their favour.
2. The objector filed objection proceedings through her affidavit of protest dated 28<sup>th</sup> May 2019.
3. The court directed that the objection proceedings be heard by way of oral evidence.

**Objector's Case**

4. The objector testified relying on her sworn affidavit and called three witnesses.
5. She testified that she was married to the deceased under the tenets of Kikuyu customary law and they were blessed with one daughter. That she stayed with him as husband and wife in the property at Kayole.



6. She further testified that she did not know that the deceased had any other family until his funeral day which she attended though chased away by the Applicants.
7. She further said that she later discovered that the deceased had left a written Will.
8. When cross examined, she said that she lived with the deceased between 1998 and 2008 and bore a child by the name Dorcas Wanjiru.
9. She said that she did not transfer the deceased property into her name at Solai, namely Solai/Ndungiri Block 3/865 despite being registered in her name.
10. PW 2 Hilary Cheruiyot Chumo the senior principal chief Nairobi produced a letter dated 27<sup>th</sup> October 2021 which he had written in favour of the Applicant.
11. In the said letter he said that he knew the deceased and the Applicant as husband and wife and that there were other two Ugandan ladies who had stayed with the deceased.
12. That he used to resolve issues between the deceased and his tenants and she would see the Applicant/ Objector.
13. PW3 Nancy Wanjiru Kariuki testified that he signed the deceased Will dated 15<sup>th</sup> December 2006. She said that the deceased were friends with her deceased husband.
14. On cross examination she said that she was not aware whether the deceased had other children. She later learned that the deceased had another family at Ngarua where he was buried.
15. She however said that she signed the Will without examining it.

### **Applicants' Case**

16. DW1 Francis Maina Wachira testified that he was the deceased son and as far as he was concerned the deceased had only one family and that she only saw the objector during the funeral.
17. He learned that the objector had married one Gabriel a Maasai and not her father.
18. On cross examination he said that he saw the objector during the funeral but did not understand under what capacity she was there as there were many other mourners.
19. In regard to the Kayole property he said that they used to visit their father there and that Purity Wanjiru their sister stayed there for a long time when the deceased was alive.
20. He said that the objector had been married by one Gabriel who was staying in Kajiado.
21. DW2 Alice Wachira testified that she was the deceased wife after marrying him in a church wedding ceremony as per the certificate of marriage she produced. She denied that she had a co wife and that she was staying in the rural home while the deceased was staying in Kayole.
22. She said that she saw the objector for the first time when the deceased died.
23. About the Kayole property she said that she has been collecting rent from the time the deceased died. That she stays in Laikipia and the property at Solai belonged to the deceased.
24. She denied that she knew Kayole chief and that she used to come and see the deceased when he was unwell.
25. She said further that he met Gabriel, a Masai who told her that he had married the objector.



26. DW3 Esther Wamboi is the daughter to the deceased. She said that the deceased died at Jamiii hospital in Karatina. She said that she did not know the objector and she only saw her at the funeral.
27. The parties closed their case and they were directed to file written submissions which they complied.

### **Objectors Submissions**

28. The objector raised four main issues namely the legitimacy of the parties, revocation of the grant, accountability and distribution of the estate.
29. As far as the objector was concerned, she was the legitimate wife of the deceased by virtue of the evidence she presented which included photos as well as the stay with the deceased at Kayole for about ten years.
30. She was therefore entitled to inherit from the said estate.
31. On revocation it was her case that based on the fact that she had established a relationship with the deceased the Applicants cannot be allowed to ran the estate hence the grant ought to be revoked. In other words, her interest must be taken into account.
32. On accountability it was her submission that the Applicants had failed to account for the management of the Kayole property more so after the directives from Gacheche J who had ordered the accounts to be provided.
33. Consequently, and on the issue of distribution her rights as a wife ought to be taken into account and whatever rent the Applicants had collected must be accounted for as directed in the above order.

### **Applicants' Submissions**

34. The Applicants objected vehemently to the assertion that the objector was the legitimate wife of the deceased by virtue of the fact that there was no evidence presented of any ceremony conducted between the two.
35. That the area chief who testified on behalf of the objector clearly indicated that there were two other Ugandan women who stake claim against the deceased as their husband and therefore the objector fell into the same category.

### **Analysis And Determination**

36. Having gone through the evidence presented before this court, both oral and documentary, it is clear that the first issue to determine is whether the objector is the legitimate legal wife of the deceased. There is no doubt that the Applicants are the wife and children of the deceased respectively. Nothing was presented challenging their position.
37. It was the objector's case that she married the deceased under the tenets of Kikuyu customary law. According to her affidavit the deceased visited her parents and paid Kshs 20,000 being a deposit towards dowry.
38. There was some set of photos which she said were those of her mother and the deceased.
39. She further said that she had stayed with the deceased at Kayole as husband and wife and she even called the local chief to testify on her behalf. The chief said that he would occasionally resolve issues between the deceased, the objector and tenants.
40. Finally, she said that they had a daughter by the name Dorcas Wanjiru with the deceased.



41. I have pondered about this issue and I do not find any evidence of a marriage ceremony under the Kikuyu customary law that one can clearly point out that a ceremony was indeed conducted. The payment of Kshs 20,000 without any evidence even if it is secondary in my view cannot suffice.
42. Eugene Cotran in his book “Law Of Marriage And Divorce “which is widely cited in our judicial decisions is worth considering here.
43. The consideration for marriage he states is called Ruracio, which is paid by way of sheep or goats or the monetary equivalent. A marriage cannot be valid without the payment of dowry and the slaughter of a ram.
44. He goes on to state that:-

“Ruracio is the payment of cattle, other livestock or other property rendered by or on behalf of the bridegroom to the father or the other guardian of the bride which is necessary for the validity of the marriage and to establish an affiliate or the legal control of the issue of the union and which may be repayable in whole or in part on the dissolution of the marriage. Ruracio must be distinguished from collateral payments and other gifts made at the time of the marriage which are not returnable on dissolution of the marriage.”
45. I don’t think the objection comes nearer the above expectations. The photos produced unless backed by cogent evidence remains simply photos taken in whatever function. The court is also alive to the current digital error where computer manipulation can be done.
46. The upshot of this is that I don’t find any material evidence to suggest that there was any marriage ceremony between the deceased and the objector.
47. As to whether they stayed as husband and wife at Kayole, that position is defeated by the testimony of PW2, the area chief, who clearly said that apart from the objector the deceased stayed with some other two Ugandan women who claimed to be his wives. The chief in his letter dated 24<sup>th</sup> September 2008 was clear that he had received complaints from four women each claiming to be deceased wives.
48. That the 2<sup>nd</sup> and 3<sup>rd</sup> who were Ugandans had left for Uganda after the burial and his ruling. The 4<sup>th</sup> Agnes Katto Njoroge who lived with the deceased was to stay in Kayole until the matter was determined. The first wife Alice was to go back to Ngarua.
49. It is therefore true for one to assume that the deceased in his life had affairs with the four women. In matters succession therefore it becomes incumbent if there was any dispute like the case at hand for each one of them to prove her relationship with the deceased.
50. The Ugandans left leaving the two Kenyan ladies. The two must therefore prove their positions and that is why in the absence of any contrary evidence Alice is the legitimate and undisputed wife to the deceased.
51. On the other hand, the Objector ought to establish her position. As per the evidence on record her relationship with the deceased was mere friendship and not husband and wife. She fell into the category of the other two Ugandan ladies.
52. What baffles me is the fact that up to and until the deceased death, the objector claimed that she did not know that he had another family. That is curious taking into account the changes she had done to the deceased rural properties including changing them to her name.



53. On the issue of the Will, I think it was for her to prove that indeed the same was done by the deceased. The suspicion however is raised by the fact that when she applied unilaterally for letters of administration which were later revoked she applied intestate instead of testate. If indeed there was a valid Will, then she would have proceeded with the filing in a proper way and not to wait years later to produce the alleged Will and more so when the estate is contested.
54. I therefore do not find the said Will valid but it was produced merely to derail the cause of the proceedings. The court will therefore disregard the same and proceed with this matter under the intestacy rules.
55. In view of the above findings therefore I do not agree with the objectors' submissions that she is a legitimate wife and or beneficiary of the deceased as provided under Section 29 of the [Law of Succession Act](#). She has not established that she was married to the deceased or in any other manner dependant of the deceased. They were merely friends just as the deceased was a friend to the two Ugandan women.
56. Consequently, the objection is hereby dismissed and the grant issued to Alice Wakini Wachira, Francis Maina Wachira and Esther Wambui Wachira dated October 3, 2017 is hereby confirmed and the distribution be as per paragraph 6 of the supporting affidavit thereof.
57. Costs in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 23<sup>RD</sup> DAY OF JANUARY 2025.**

**H K CHEMITEI**

**JUDGE**

