



**In re Estate of the Late GMM (Deceased) (Succession Cause 1418 of 2018) [2025] KEHC 3299 (KLR) (Civ) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3299 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
SUCCESSION CAUSE 1418 OF 2018  
HK CHEMITEI, J  
MARCH 20, 2025**

**BETWEEN**

- NWM ..... 1<sup>ST</sup> APPLICANT
- SNM ..... 2<sup>ND</sup> APPLICANT
- ANM ..... 3<sup>RD</sup> APPLICANT
- DWM ..... 4<sup>TH</sup> APPLICANT
- BMM ..... 5<sup>TH</sup> APPLICANT

**AND**

- VMM ..... RESPONDENT

**RULING**

1. In her applications dated 12<sup>th</sup> June 2024 the Applicant is seek orders that:-
  - a. The court be pleased to reopen the 1<sup>st</sup> Objectors’ case and allow her to produce the decree nisi.
  - b. The court be pleased top issue an order to allow the Objector reopen her case and allow the 3<sup>rd</sup> and 4<sup>th</sup> Applicants/Objectors to file witness statements and testify.
2. The application is based on the sworn affidavit of the 1<sup>st</sup> Applicant dated the same date as well as the grounds thereof.
3. The gist of her application is that there was a marriage between the deceased and the Respondent which was dissolved and a decree nisi issued and that the said document ought to have been produced as part of the evidence herein.



4. She is also seeking that the 3<sup>rd</sup> and 4<sup>th</sup> Applicants be allowed to file fresh witness statements and be permitted to testify.
5. The Applicant has also filed another application dated 11<sup>th</sup> July 2024 in which she seeks that “an order be issued directing that the original file number High Court Divorce Cause No 178 of 2011 be availed”.
6. That application is premised on the grounds thereof and the affidavit sworn on the same date.
7. It is her case that the divorce proceedings between the deceased and the Respondent ought to be brought to fore for the simple reason that the Respondent had denied this fact during trial.
8. The annexures to the affidavit of 11<sup>th</sup> July 2024 speak as much.
9. The Respondent vide her replying affidavit sworn on 28<sup>th</sup> June 2024 has opposed the applications vehemently arguing inter alia that the divorce proceedings was never conclusive and that the marriage between her and the deceased was still existing.
10. In respect to the two applicants, she argued that the time for filing the witness statements and documents was way spent and the applicant had all the time to do so.

### **Analysis And Determination**

11. The court has perused the application and the submissions on board by the parties as well as the cite authorities. As expected, both pull on two diverse directions as contained in the rival affidavits.
12. The case of *Susan Wavinya Mutavi v. Isaac Njoroge & Another* (2020) eKLR among others clearly spells out the grounds for considering such applications at hand. The same states;
 

“Over the years, Kenya’s superior courts and courts in the Commonwealth have developed principles which guide the exercise of jurisdiction to re-open a case and receive additional evidence in a civil trial court. First, the jurisdiction is a discretionary one and is to be exercised judiciously. In exercising that discretion, the court is duty-bound to ensure that the proposed re-opening of a part’s case does not embarrass or prejudice the opposite party. Second, where the proposed re-opening is intended to fill gaps in the evidence of the applicant, the court will not grant the plea. Third, the plea for re-opening of a case will be rejected if there is inordinate and unexplained delay on part of the applicant. Fourth, the applicant is required to demonstrate that the evidence he seeks to introduce could not have been obtained with reasonable diligence at the time of hearing of his case. Fifth, the evidence must be such that, if admitted, it would probably have an important influence on the result of the case, though it need not be decisive. Lastly, the evidence must be apparently credible, though it need not be incontrovertible.”
13. Being a discretionary remedy, I think the issue of the marriage between the deceased and the Respondent is very germane to this cause. There seems to be two conflicting evidences, namely, whether the marriage was dissolved or not. It is true that there was a faint decree which was produced as evidence but to be fair to the court and the parties it is necessary that the original decree be produced.
14. The trajectory the matter will take once this marriage issue is settled is so critical that it will have some influence on the outcome of the case.
15. In any event both parties shall have occasion to interrogate the documents or evidence and seek clarifications where necessary vide cross examination.



16. As to the 3<sup>rd</sup> and 4<sup>th</sup> Applicants desire to file their statements out of time and testify I think this is meant to fill the gaps left during the hearing. Both were present all through and they had sufficient time to file any responses before the directions were taken. I thus decline such an invitation.
17. In the premises and taking the totality of the matter and how far it had reached I direct that:-
  - a. The matter is hereby reopened for purposes Only of taking evidence in respect to file Number Divorce Cause 178 of 2011 between the deceased and the Respondent and that the said original file be availed.
  - b. Costs shall await the outcome of the suit.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 20<sup>TH</sup> DAY OF MARCH 2025.**

**H K CHEMITEI**

**JUDGE**

