



REPUBLIC OF KENYA



**In re Estate of Agnes Wanjiru Karanja (Deceased) (Succession Cause E1794 of 2021) [2025] KEHC 8738 (KLR) (Family) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8738 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E1794 OF 2021  
PM NYAUNDI, J  
JUNE 20, 2025**

**BETWEEN**

**CAROLINE NYAMBURA GITHINJI ..... 1<sup>ST</sup> APPLICANT  
ROSEMARY WANJIKU ..... 2<sup>ND</sup> APPLICANT  
MARGARET WAMBUI ..... 3<sup>RD</sup> APPLICANT**

**AND**

**VICTORIA JUDITH MUTHONI KARANJA ..... RESPONDENT**

**JUDGMENT**

1. Before this Court is for summons dated 10<sup>th</sup> December 2023 in which the Applicants sought the following orders:
  - a. Spent.
  - b. Spent.
  - c. Spent.
  - d. THAT this Honourable Court be pleased to revoke letters of administration dated 21st November 2022 and Certificate of Confirmation of Grant issued on 17th January 2023.
  - e. THAT the Executrix herein be compelled to produce full and accurate inventory of the assets and liabilities of the deceased from 5th June 2021 to date.
  - f. THAT a reasonable provision is made to the Applicants as dependents of the deceased's estate.
  - g. Costs of this application be provided for.



2. The summons is presented under Sections 26, 47, 76, 83 of the Law of Succession Act, Rule 44, 49 and 73 of the Probate & Administration Rules; Sections 1A, 1B and 3A of the Civil Procedure Act and Order 40 Rule 1 & 2 of the Civil Procedure Rules and was supported by the Affidavit of even date sworn by the Applicants.
3. The Respondent opposed the summons through her Replying Affidavit sworn on 22<sup>nd</sup> April 2024.
4. The summons was canvassed by way of viva voce evidence.

### **Background.**

5. This succession cause relates to the Estate of Agnes Wanjiru Karanja (hereinafter the deceased) who died testate on 5<sup>th</sup> June 2021. The Deceased is said to have left a will dated 27<sup>th</sup> November 2018 where she appointed Victoria Judith Muthoni Karanja as the Executor of her will.
6. Victoria Judith Muthoni Karanja petitioned for grant of probate with written will which was issued to her on 16<sup>th</sup> May 2022. Subsequently, the grant was confirmed on 17<sup>th</sup> January 2023.
7. The Applicants then filed an application for revocation. The 1<sup>st</sup> applicant argues that she is the daughter in law of the deceased while the 2<sup>nd</sup> and 3<sup>rd</sup> applicants are the grand daughters of the deceased. She argued that the will did not provide for them. That the properties in question are ancestral properties which the deceased acquired from her husband through succession and that the same should be passed to all the beneficiaries.
8. The Respondent avers that she is the daughter of the deceased. She argues that the 1<sup>st</sup> applicant is not a beneficiary of the estate of the deceased. She was married to her brother and were blessed with one child. However, they parted ways and she got married to someone else before her brother passed on. She challenges the paternity of the 2<sup>nd</sup> and 3<sup>rd</sup> applicants who are the daughters of the 1<sup>st</sup> applicant. That the only surviving beneficiary in her brother's estate is Agnes Wanjiru Karechu.

### **Evidence.**

9. RW1, Caroline Nyambura testified on 16/9/2024. She adopted her witness statement dated 4<sup>th</sup> June 2024 as her evidence in chief. She stated that she is the daughter in law of the deceased. The 2<sup>nd</sup> and 3<sup>rd</sup> applicants are her daughters. She stated that she is not aware that the deceased left a will. She and her children were not provided for in the will. She asked the court to be provided for and be given a farm.
10. During cross-examination, she stated that her late husband pre-deceased the deceased. She lived with her late husband in Plot No. 13X8/Dagoretti/Uthiru/3X8 which is registered in the name of Kenneth Kerechu Kamanja. She is not aware that succession proceedings were taken out of his estate. Her husband's estate was bequeathed to her second born daughter, Agnes Wanjiru Kerechu. She is entitled to the estate of the deceased as a dependant. The 2<sup>nd</sup> and 3<sup>rd</sup> applicants are 27 years old and 20 years old respectively. The deceased supported her by paying school fees for her children. She did not remarry after the death of her husband. The deceased's name was not indicated in the birth certificates of the 2<sup>nd</sup> and 3<sup>rd</sup> applicant because they were registered after his death.
11. She has not developed Plot No. 13X8/Dagoretti/Uthiru/3X8. She has a rental house on Plot 1XX9. The summons for revocation is in regards to the estate of her mother in law; the deceased did not provide for her late son. Caroline who is provided for in the will is a granddaughter of the deceased. Her late husband was allocated Plot No. 13X8/Dagoretti/Uthiru/3X8 by his parents. She wishes to be given her husband's share.



12. In re-examination, she stated that plot no. 13X8 and 1XX9 are neighboring plots. Plot no. 1XX9 is registered in the name of her late father in law.
13. RW2 Michael Karichu Mbugua told the court that the deceased was the wife to her uncle, therefore, she was her aunt. He adopted his witness statement dated 4<sup>th</sup> June 2024 as his evidence in chief. The 1<sup>st</sup> applicant is the wife of his late cousin, Kenneth Kerichu. The 2<sup>nd</sup> and 3<sup>rd</sup> applicants are the children of the 1<sup>st</sup> applicant and her late husband. The 1<sup>st</sup> applicant approached him and informed him that her in laws have refused to recognize her after her husband's death. He told the court that he attended the dowry payment of the 1<sup>st</sup> applicant.
14. During cross-examination he stated that he is well conversant with Kikuyu Cultural Practices. He attended two sessions of dowry negotiation between the 1<sup>st</sup> applicant and Kenneth Kerichu. One of the sessions took place during the lifetime of her late husband. A document dated 20<sup>th</sup> August 2006 does not show his name or that of the bride and groom as being present at the dowry negotiations but he contends he was present. It also does not show the amount of dowry agreed upon. There is a document dated 26<sup>th</sup> November 2006 which states that the parents of Kenneth Kerichu gave Kshs. 45,000 as dowry to David Ndungu. The final ngurario or church wedding was not performed. The 1<sup>st</sup> applicant's husband died before the 2<sup>nd</sup> negotiation and ngurario was performed. The deceased's husband distributed his assets before he died. He provided for all his children.
15. PW1 was Victoria Judith Muthoni Karanja, the Respondent. She stated that she is the executrix of the deceased's will. She is the daughter of the deceased. She adopted her witness statement dated 22<sup>nd</sup> April 2024 and her Replied affidavit also dated 22<sup>nd</sup> April 2024 as her evidence in chief.
16. During cross examination, she stated that there are two surviving children of the deceased; two are deceased. The 1<sup>st</sup> applicant is the ex -wife of her late brother. They were not living together when her late brother died. Her late brother lived alone on the property allocated to him by their late father. Her late father allocated properties to all his children. She was allocated plot 1316, Margaret was allocated plot 1317, Winnie was allocated Plot 1XX9; their late mother was allocated part of Plot 1XX9. The 1<sup>st</sup> applicant does not have houses on Plot No. 1XX9. The will does not provide for her and does not give reasons why. The will provided for Winnie's daughter, Caroline Kanyi, Margaret Wambui and Agnes Wanjiru Karichu.
17. During re-examination, she stated that Plot 1XX9 was issued in the deceased's name. They did not have a claim on that property. The applicants are not dependants of the deceased.
18. PW2, Agnes Wanjiru Karichu adopted her witness statement dated 23<sup>rd</sup> May 2024 as her evidence in chief. She told the court that the deceased was her grandmother. The 1<sup>st</sup> applicant is her mother. Her evidence was that she lived with the deceased all her life. She does not have any connection with the 1<sup>st</sup> applicant. She went to school with the 3<sup>rd</sup> applicant. She doesn't know how the 3<sup>rd</sup> applicant attained her father's name. She has never lived with the applicants. The deceased was not providing for the applicants. Her father was not living with the 1<sup>st</sup> applicant when he died. The 1<sup>st</sup> applicant moved back to the home in 2015 after her father's death. The 1<sup>st</sup> applicant introduced a man by the name Njoroge in 2014 on her birthday as her partner. She has had other men after Njoroge. She is aware of her grandmother's will. The 1<sup>st</sup> applicant placed a container on Plot No. 1XX9 and built a house on Plot No. 13X8.
19. During cross-examination, she stated that, she knew her mother in 2015. She met her step sister, the 2<sup>nd</sup> applicant in 2015. She only recognizes her father, the 1<sup>st</sup> applicant and her grandparents; she does not recognize the 2<sup>nd</sup> and 3<sup>rd</sup> Applicant as her siblings. Her grandmother was arrested because of the 1<sup>st</sup>



applicant. She did not attend the 1<sup>st</sup> applicant's dowry ceremony but she is aware there was a ceremony in 2015 for dowry payment. Plot No. 13X8 had been leased to someone who built rental houses. The 1<sup>st</sup> applicant was also living on Plot No. 13X8. The deceased gave her two rooms where she lived with one of her men, Cush. The applicants did not attend her father's funeral. The 1<sup>st</sup> applicant used to collect rent from Plot No. 1XX9 and give it to her late grandmother. She is not aware if she still collects rent. Caroline Kanyi and Margaret Wambui live in Germany. She was a minor when she was informed that she is the sole beneficiary of Plot No. 13X8. She has no intentions of evicting the 1<sup>st</sup> applicant from that portion because she was given the same by the deceased. the 2<sup>nd</sup> and 3<sup>rd</sup> applicants were included as grandchildren of the deceased in her eulogy.

20. PW 3, Esther Wambui Kamau told the court that she has known the deceased for a very long time as her friend. She adopted her witness statement dated 23<sup>rd</sup> May 2024 as her evidence in chief. Her evidence was that, the 1<sup>st</sup> applicant was married to the deceased's son, Kenneth Kerichu. The 1<sup>st</sup> applicant and her late husband, Michael Karichu did not have a good relationship. They were not living together by the time Kenneth died, she was living with another man in Uthiru shopping Centre. The 1<sup>st</sup> applicant attended Kenneth's burial but she did not participate in the burial arrangements. At one point, the 1<sup>st</sup> applicant had the deceased arrested. She did not care for the deceased when she was still alive. Wanjiru and Njoki took care of the deceased. Before the deceased died, she informed her that her home belongs to Wambui, Wanjiru, Judy and her daughter who lives abroad.
21. During cross examination, she stated that, the deceased had three daughters and one son. The 1<sup>st</sup> applicant and the deceased's son had three children. Wanjiru is Kerichu's daughter. The 1<sup>st</sup> applicant left the matrimonial home and came back with Wambui. She doesn't know if she is Kerichu's daughter. The 1<sup>st</sup> applicant came with Rosemary from a previous relationship. Wambui was born after Kenneth's death. She has left severally but has always come back. The deceased showed the 1<sup>st</sup> applicant where to build her house. She lives in a plot which belongs to PW2 with her two daughters, a grand child and a man. The deceased went to the 1<sup>st</sup> applicant's home once according to Kikuyu traditions. They supported the deceased to raise dowry for the 1<sup>st</sup> applicant. The deceased recognized the 1<sup>st</sup> applicant as her daughter in law. The Respondent used to collect rent from the deceased's rentals. Winnie is deceased and is survived by a child who lives in Germany. Minutes were taken during the 2<sup>nd</sup> dowry negotiation meeting. She does not know the witnesses indicated in the document before court. The 2<sup>nd</sup> and 3<sup>rd</sup> applicants were recognized as the grand daughters of the deceased.
22. In re-examination, she stated that the will is in alignment with the deceased's wishes on how she wanted her properties to be distributed.
23. PW4, Agnes Ngoiri Kamau, the deceased's sister adopted her witness statement dated 31<sup>st</sup> May 2024 as her evidence in chief. Her evidence was that when the deceased was ailing, she was taken care of by her daughter Njoki and a househelp. The deceased did not have a good relationship with the 1<sup>st</sup> applicant because she had brought a man to live with her on the deceased's property. She had also reported the deceased to Kabete Police Station and was arrested. The deceased contributed towards the payment of the 1<sup>st</sup> applicant's dowry only because she had a daughter who had been named after her; she was living with another man.
24. During cross examination, she stated that the 1<sup>st</sup> applicant visited the deceased when she was sick but she did not help with house chores or taking care of her. The deceased had four children. The 1<sup>st</sup> applicant had a child from a previous marriage called Wanjiku(2<sup>nd</sup> applicant). The 3<sup>rd</sup> applicant is not the deceased's child; she was born during the separation. The 1<sup>st</sup> applicant left the home and came back after Kenneth had died. The deceased gave the 1<sup>st</sup> applicant a house to live in. Her late sister did not



pay dowry for the 1<sup>st</sup> applicant. The 1<sup>st</sup> applicant stays on the property given to her by the deceased. In her will, the deceased did not provide for the applicants. She did not recognize the 1<sup>st</sup> applicant as a wife to her late son.

### **Applicant's Submissions**

25. They framed the following as issues for determination;
- i. Whether reasonable provision should be made to the Applicants as dependents of the deceased's estate?
  - ii. Whether the Executrix should be compelled to produce full and accurate inventory of the assets and liabilities of the deceased from 5th June 2021 to date?
26. On the first issue, the applicants counsel submitted that testamentary freedom can be interfered with if the testator does not exercise reasonableness in distribution of the estate as provided under Section 26 of the *Law of Succession Act*. It was argued that the 1<sup>st</sup> applicant had proved that she was the wife of the son of the deceased. Although the 2<sup>nd</sup> applicant was born from a previous relationship, the deceased had accepted her as his own child. The 3<sup>rd</sup> applicant bears the surname of her late husband and no evidence was provided to prove that she was not the deceased's child. She stepped into the shoes of her late husband and she is entitled to his share as the daughter in law of the deceased. She sought to rely on the decision of *In re Estate of the Late M'thigai Muchangi (Deceased) [2020] KEHC 904 (KLR)* where the Court held:
- A daughter-in-law is a beneficiary of the estate of the deceased father-in-law in a situation where she has survived her deceased husband who is a child of the deceased (father-in-law) to whose estate the matter relates.
27. It was their submission that the family of Kenneth Karechu was discriminated upon. It was argued that they were disinherited from Dagoretti/Uthiru/13X8 through Kikuyu Succession 64 of 2015 where the property was distributed to Agnes Wanjiru Karechu, DW2. She used to collect rent from Plot No. 1XX9 where she used to get a pay. She argued that the applicants and DW2 ought to be given one share as the family of Kenneth Karechu. Caroline Kanyi should get 50\*100 of Dagoretti/Uthiru/1XX9. The remaining share should be shared between Margaret, Kenneth and Judith. The Endarasha property should be divided into four equal shares.
28. On the second issue, it was their submission that the personal representatives have a duty under Section 83 of the *Law of Succession Act* to produce to the court full and accurate account of the Estate.

### **Respondent's Submissions**

29. The Respondent identified the following as issues for determination;
- a. Whether the Applicant qualify as dependents;
  - b. Whether an application for dependency under section 26 can be sustained;
  - c. Whether the grant of probate issued herein should be revoked; and
  - d. Whether the Summons before court have merit.
30. On the first issue, the Respondent submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> applicants' paternity were in dispute and the evidence tendered in court show that they were the step children of her late brother. Although their birth certificates show that Kenneth was their father, this is not sufficient proof of paternity as was established in the case of *Re Estate of Philis Wairuri (Deceased) [2021] eKLR*. In this case, it was



argued that DNA was required to prove paternity of as was held in the case of *Re Estate of Fredrick Marangu Ragwa (Deceased)* [2021] eKLR. The Respondent further submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> applicant are adults. They have not proved that they were being maintained by the deceased. The 1<sup>st</sup> applicant on the other hand did not prove that she was a wife of the late Kenneth Karechu. According to her, the prerequisites for a Kikuyu Customary marriage were not met as stated in *re Estate of Mbuti Mungushi Igiria (Deceased) (Succession Cause E875 of 2022)* [2024] KEHC 5216 (KLR). The only evidence brought by the 1<sup>st</sup> applicant was a contradictory book and that she paid dowry for herself.

31. On the second issue, relying on Section 30 of the *Law of Succession Act* and the decision In *re matter of the Estate of the Late Samuel Mburu Njoroge (Deceased)* [2006] KEHC 3272 KLR, it was her submission that the prayer of dependency should have been filed before the grant was confirmed.
32. On the third issue, she submitted that the grounds for revocation provided under Section 76 of the *Law of Succession Act* have not been met. The 1<sup>st</sup> applicant having failed to prove that she was the wife of Kenneth Karechi has no claim or interest in the deceased's estate. She urged the court to dismiss the applicants summons with costs.

### **Analysis And Determination.**

33. I have carefully considered the oral evidence and submissions by both parties.
34. The following are issues for determination;
  - i. Whether the applicants have demonstrated sufficient grounds for court to revoke the grant.
  - ii. Whether the executrix should be compelled to produce full and accurate inventory of the assets and liabilities.
  - iii. Whether reasonable provision should be provided for the applicants.
35. Section 76 of the *Law of Succession Act* gives the court the powers to revoke a grant provided the conditions stipulated therein have been met. It states that: -

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion: -

  - a) That the proceedings to obtain the grant were defective in substance;
  - b) That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
  - c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
  - d) That the person to whom the grant was made has failed, after due notice and without reasonable cause either: -
    - i. To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or
    - ii. To proceed diligently with the administration of the estate; or
    - iii. To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
    - iv. The grant has become useless and inoperative through subsequent circumstances.



36. The circumstances in which a grant can be revoked were discussed in the case of *In the Matter of the Estate of L.A.K. (Deceased)* [2014] eKLR :-

“Revocation of grants is governed by Section 76 of the *Law of Succession Act*. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.”

37. Notably, the power to revoke or uphold a grant is a discretionary one. This principle was enunciated in the persuasive decision in *Albert Imbuga Kisigwa vs Recho Kawai Kisigwa Succession Cause No. 158 of 2000* where Mwita J stated: -

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

38. The applicants argued that the grant should be revoked on the ground that they were excluded in the will.

39. The court in *Curryian Okumu vs. Perez Okumu & 2 others* (2016) eKLR held that; -

The legal position is clear however that failure to provide for a beneficiary in a Will does not invalidate a Will. Section 5(1) of the Act gives a testator testamentary freedom as follows:

Subject to the provisions of this Part and Part III, every person who is of sound mind and not a minor may dispose of all or any of his free property by will, and may thereby make any disposition by reference to any secular or religious law that he chooses ...

This freedom of a testator to dispose of his free property by will is however is not absolute. The Court can after the death of the testator alter the terms of a will following an application under Section 26 of the Act.

40. This court notes that failure by the deceased to provide for the Applicants cannot be a ground to invalidate the will. However, the Court under Section 26 of the *Law of Succession Act* can order for a reasonable provision out of the estate.

Section 26 of the Law of the Succession provides that; -

Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased’s estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased’s net estate.

41. In the instant case, the 1<sup>st</sup> Applicant avers that she was married to the deceased’s son under the Kikuyu customary law and that the deceased used to maintain her together with the children before her demise.



42. Section 29(a) of the *Law of Succession Act* defines a 'dependant' to mean;-  
For purposes of this Part, "dependant' means---
- a. the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
  - b. such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
  - c. where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.
43. The Executrix, Victoria Judith Muthoni Karanja and another sister to the deceased, Agnes Ngoiri Kamau both alluded to the 1<sup>st</sup> applicant being the wife to the son of the deceased. As a daughter in law she does not qualify as a dependant under Section 29 below. Her children' whose paternity is denied had to demonstrate that the deceased supported them prior to her death. There is no proof showing the 2<sup>nd</sup> and 3<sup>rd</sup> Applicant depended on the deceased. The applicants have conflated the estate of the deceased and that of her son.
44. Refer to the case of Beatrice Ciamutua Rugamba v Fredrick Nkari Mutegi & 5 others (2016) eKLR, where the court observed that:  
A dependent under section 29 (b) and (c) must prove that he or she was being maintained by the deceased immediately prior to his demise. It is not the mere relationship that matters, but proof of dependency that counts.
45. The application however was dead on arrival as Section 30 of the *Law of Succession Act* provides-  
No application under this Part shall be brought after a grant of representation in respect of the estate to which the application refers has been confirmed as provided by section 71.
46. In the end, the application dated December 10, 2023 is dismissed with no order as to costs. Interim orders earlier issued are vacated.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 20<sup>TH</sup> DAY OF JUNE, 2025.**

**P. M. NYAUNDI**

**HIGH COURT JUDGE**

**In the presence of:**

Kinyanjui for Respondent

Ms. Guna for Applicant

Fardosa Court Assistant

