



**In re Estate of the Late Jurg Hans Wirz (Deceased) (Probate & Administration  
131 of 2023) [2025] KEHC 8179 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8179 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
PROBATE & ADMINISTRATION 131 OF 2023  
RN NYAKUNDI, J  
JUNE 12, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE JURG HANS WIRZ (DECEASED)**

**IN THE MATTER OF**

**MORREEN NAMBI ..... PETITIONER**

**AND**

**AA (FOR THE INTEREST OF THE MINOR- WW ..... APPLICANT**

**RULING**

1. What is pending before me for determination are Summons for Confirmation of Grant dated 26<sup>th</sup> May 2025 brought pursuant to section 71 of the *Law of Succession Act* Cap 160 Laws of Kenya and Rule 40 (1) of the *Probate and Administration Rules* in which the Applicant is seeking the following orders:
  - a. That the grant of Letters of Administration Intestate of jurg hans wirz (deceased) made the Applicants/Petitioners herein Moreen Nambi and AA on 15<sup>th</sup> February 2024 be confirmed.
  - b. The costs of this application be provided for and in any event be in the cause.
2. The application is based on the grounds on the face of it among others;
  - a. That the grant was rightly made to the petitioners who are now administering and shall continue to administer the estate according to the law.
  - b. That the requisite statutory period of six (6) months has lapsed since the grant was made and no known objection has been raised thereto.
  - c. That the said grant of letters of administration is now ripe for confirmation to enable the petitioners/Administrators to finally distribute the subject estate.



- d. The identification of all persons beneficially entitled to the said estate and their respective entitlements have been ascertained and determined and all the beneficiaries have consensually agreed on the mode of distribution.
  - e. That there is nothing that may present this Honourable Court from confirming the Grant and it is in the best interest of justice that the confirmation be done.
3. The Application is supported by the Annexed Affidavit dated 26<sup>th</sup> May 2025 sworn by AA in which she avers as follows;
- a. That we are the Petitioners and the Administrators of the deceased's estate herein hence competent and authorized to swear this affidavit.
  - b. That we ordinarily reside in Uasin Gishu County in the Republic of Kenya
  - c. That the Grant of Letters of Administration Intestate was made to us on the 15<sup>th</sup> February 2024.
  - d. That the deceased died on 26<sup>th</sup> Marc 2021 at Eldoret Hospital Intestate and was survived by the following dependents: -
    - Moreen Nambi 1<sup>st</sup> House
    - Paul Christian Wirz Son
    - Mary Jane Daughter
    - AA 2<sup>nd</sup> House
    - WW Son
  - e. That there are no other dependents of the deceased.
  - f. That the identification of shares of all persons beneficially entitled to the said estate have been ascertained and determined as follows: -
    - a. Pioneer/Ngeria Block 1 (EATEC)/5643 Measuring approximately 0.17 Ha
    - b. Pioneer/Ngeria Block 1 (EATEC)/5644 Measuring Approximately 0.08 Ha
    - c. Motor Vehicle Registration No KBU 844X
    - d. Monies Held at ABSA Bank A/C No 0031xxxxxx
- Proposed Mode of Distribution



NO	Name	Property	Share
1.	AA on behalf of WW	Pioneer/Ngeria Block 1 (EATEC)/5643. Measuring Approximately 0.17 Ha	Whole
2.	AA on behalf of WW	Monies Held at ABSA Bank A/C No 0031xxxxxx	Whole
3.	Moreen Nambi for and on behalf of Christian Wirz And Mary Jane	Pioneer/Ngeria Block 1 (EATEC)/5644 Measuring Approximately 0.08 Ha	Whole
4.	Moreen Nambi for and on behalf of Christian Wirz And Mary Jane	Motor Vehicle Registration No KBU 844 X	Whole

- g. That some of the beneficiaries are not willing to consent to the mode of distribution indicated herein above.
- h. That there are no liabilities to the estate.
- i. That no estate duty remains payable in respect of the said estate.
- j. That the deceased died intestate with no written or oral will.
- k. That I make this Affidavit in support of our application for confirmation of grant now before this court.
5. The Application was opposed by the 1<sup>st</sup> Petitioner vide an Affidavit of protest dated 29<sup>th</sup> May 2025 in which she avers as follows;
- a. That Grant of Letters of Administration Intestate was issued by this Honourable Court to me and AA (for the interest of the minor WM) on 15<sup>th</sup> February 2024.
- b. That I am not opposed to the said Grant being confirmed by this Court but I am not in agreement with the mode of distribution proposed by Ms. AA for reasons set out thereunder.
- c. That I am the legal wife of the late Jurg Hans Wirz having been married on 30<sup>th</sup> September, 2003 at the Registrar's Office-Nairobi.
- d. That the union was blessed with a daughter namely Mary Jane Wirz born on 19<sup>th</sup> December, 2000 and a son Paul Christian Wirz born 27<sup>th</sup> February, 2005 and who are now adults.



- e. That sometimes in the year 2008, the deceased and Mrs. AA got a child namely WW.
- f. That the deceased provided for all the three (3) children during his lifetime and in fact had opened bank accounts at Absa Bank Kenya PLC, Eldoret in the names of the three (3) children which amounts the children should be allowed to access. The account details are;

Account No	Account Name	Amount
2026xxxxxx	Paul C. Wirz	Kshs 131,344.75
2026xxxxxx	WW	Kshs 112,108.15
2026xxxxxx	Mary Jane	Kshs 21,267.50

- g. That sometime in 2023, the cheques for the above amounts being cheque numbers; 405861, 405862 and 405863 respectively were issued by Absa Bank Kenya PLC, Eldoret and were forwarded to the public Trustee, Eldoret for onward transmission to the children but the same were not released on account of the objection lodged by AA. The said cheques are now stake and need to be re-issued to the children.
- h. That the deceased also held a personal bank account at the said bank being account number 0031xxxxxx and at the time of his death had Kshs 278,483.80
- i. That the deceased also owned land parcels Pioneer/Ngeria Block 1 (EATEC) 5643 measuring approximately 0.17 Ha and Pioneer/Ngeria Block 1(EATEC) 5644 measuring approximately 0.08 Ha and a motor vehicle registration number KBU 844X.
- j. That Mrs. AA was not a wife to the deceased but she is in the matter purely for the interest of the minor WW which position is clear from the Grant issued on 15<sup>th</sup> February 2024.
- k. Given the fact that the deceased cared for all the children during his lifetime, I have decided as the legal wife to have the deceased estate shared as follows;



Description of Property	Name of the Beneficiary	Shares
Pioneer/Ngeria Block 1 (EATEC) 5643 and Pioneer/Ngeria Block 1 (EATEC) 5644	Moreen Nambi	¼
	Mary Jane Wirz	¼
	Paul Christian Wirz	¼
	WW (minor whose interest until he attains the age of majority shall be held in trust by AA)	¼
Sum of Kshs 278,483.80 held at Absa Bank Kenya PLC, Eldoret Branch Account No 0031xxxxxx	Moreen Nambi	Kshs 69,260.95
	Mary Jane Wirz	Kshs 69,260.95
	Paul Christian Wirz	Kshs 69,260.95
	AA (on behalf of the minor WW)	Kshs 69,260.95
Motor Vehicle Registration Number KBU 844 X	Maureen Nambi	Whole

1. That the above mode of distribution takes into account all the beneficiaries as the estate is distributed equally.

### Analysis and Determination

6. I have read and considered the chamber summons application, the affidavit in support and also the affidavit in protest of the same. The issues which arise for determination is whether the Applicant is a widow of the deceased and thus a beneficiary of the deceased.
7. It is not contested by the Petitioners that the deceased died on 26<sup>th</sup> March 2021 at Eldoret Hospital intestate. I take note from the Affidavit evidence of the 1<sup>st</sup> Petitioner she was the legal wife of the late Jurg Hans Wirz having been married on 30<sup>th</sup> September, 2003 at the Registrar's Office-Nairobi and that the union was blessed with a daughter namely Mary Jane Wirz born on 19<sup>th</sup> December, 2000 and a son Paul Christian Wirz born 27<sup>th</sup> February, 2005 and who are now adults. The 1<sup>st</sup> Petitioner herein Morreen Nambi also averred that sometimes in the year 2008, the deceased and Mrs. AA got a child namely WW.
8. However, the contest is focused on whether the 2<sup>nd</sup> Petitioner/Applicant, AA, should be a beneficiary in the estate. The *Marriage Act* under section 6 recognizes five types of marriages: Christian marriage, Civil marriage, Customary marriage, Islamic marriage, and Hindu marriage. They are monogamous, while Customary and Islamic marriages are polygamous.
9. Section 29 provides the meaning of dependant. In this regard, the new amendment provides that dependant means –
  - a. The spouse and children of the deceased which are or not maintained by the deceased immediately before his death; and



- b. Such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, as were being maintained by the deceased immediately before his death.
10. In Kenya, marriage is governed by the Marriage Act of 2014 and is defined as the voluntary union of a man and a woman, whether in a monogamous or polygamous union, and registered by the act. A marriage may be registered under the Marriage Act if the rites of a Christian denomination celebrate it as a Civil marriage, by the customary rites relating to any of the communities in Kenya, with the Hindu rites and ceremonies, and with Islamic law. A Christian, Hindu, or Civil Marriage is monogamous as per clause 9 (a) of the Marriage Act 2014.
11. In Succession Cause No 164 of 2010, In the matter of the Estate of BMK – deceased, the court ruled that having children together is not proof of marriage. The court ruled in an objection application thus, “One cannot be a former wife of a presumed marriage. A former wife must be a wife in a marriage contracted in one of the established systems for contracting marriage....” The court then concluded that the objector was not a wife of the deceased for purposes of the Law of Succession Act and could not be a beneficiary to the deceased's estate. This court agrees with the same view and holds that AA, the 2<sup>nd</sup> Petitioner/Applicant herein is not a widow of the dead
12. The Marriage Act in section 11 guides as follows, “Union is not a marriage if at the time of the making of the unions. Either party is incompetent to marry by reason of a subsisting marriage”. The union of AA and the deceased could not attain the marriage status as the deceased was in a monogamous marriage and, therefore, incompetent to marry because of that subsisting marriage. Thus, AA not qualifying as a widow of the deceased and thus not a beneficiary, will be excluded from the distribution of the deceased estate.
13. I take note that the 2<sup>nd</sup> Petitioner/Applicant in her Affidavit provided for the mode of distribution of the estate of the deceased and averred as follows;

That the deceased died on 26<sup>th</sup> March 2021 at Eldoret Hospital Intestate and was survived by the following dependents: -

Moreen Nambi 1<sup>ST</sup> House

Paul Christian Wirz Son

Mary Jane Daughter

AA 2<sup>nd</sup> House

WW Son

That there are no other dependents of the deceased.

That the identification of shares of all persons beneficially entitled to the said estate have been ascertained and determined as follows: -

- a. Pioneer/Ngeria Block 1 (EATEC)/5643 Measuring approximately 0.17 Ha
- b. Pioneer/Ngeria Block 1 (EATEC)/5644 Measuring Approximately 0.08 Ha
- c. Motor Vehicle Registration No KBU 844X
- d. Monies Held at ABSA Bank A/C No 0031xxxxxx

Proposed Mode of Distribution



No	Name	Property	Share
1.	AA on behalf of WW	Pioneer/ Ngeria Block 1 (EATEC)/5643. Measuring Approximately 0.17 Ha	Whole
2.	AA on behalf of WW	Monies Held AT ABSA Bank A/ C No 0031xxxxxx	Whole
3.	Moreen Nambi for and on behalf of Christian Wirz And Mary Jane	Pioneer/ ngeria Block 1 (EATEC)/5644 Measuring Approximately 0.08 Ha	Whole
4.	Moreen Nambi for and on behalf of Christian Wirz And Mary Jane	Motor Vehicle Registration No KBU 844 X	Whole

14. In Contrast, the 1<sup>st</sup> Petitioner herein, Morreen Nambi in her Affidavit provided for the mode of distribution and averred as follows;

That the deceased provided for all the three (3) children during his lifetime and in fact had opened bank accounts at Absa Bank Kenya PLC, Eldoret in the names of the three (3) children which amounts the children should be allowed to access. The account details are;

Account No Account Name Amount

2026xxxxxx Paul C. Wirz Kshs 131,344.75

2026xxxxxx WW Kshs 112,108.15

2026xxxxxx Mary Jane Kshs 21,267.50

That the deceased also held a personal bank account at the said bank being account number 0031xxxxxx and at the time of his death had Kshs 278,483.80



That the deceased also owned land parcels Pioneer/Ngeria Block 1 (EATEC) 5643 measuring approximately 0.17 Ha and Pioneer/Ngeria Block 1(EATEC) 5644 measuring approximately 0.08 Ha and a motor vehicle registration number KBU 844X.

- a. Given the fact that the deceased cared for all the children during his lifetime, I have decided as the legal wife to have the deceased estate shared as follows;

Description of Property	Name of the Beneficiary	Shares
Pioneer/ Ngeria Block 1 (EATEC) 5643 and Pioneer/ Ngeria Block 1 (EATEC) 5644	Moreen Nambi Mary Jane Wirz Paul Christian WWW (minor whose interest until he attains the age of majority shall be held in trust by AA	$\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$
Sum of Kshs 278,483.80 held at Absa Bank Kenya PLC, Eldoret Branch Account No 0031xxxxxx	Moreen Nambi Mary Jane Wirz Paul Christian Wirz AA (on behalf of the minor WW)	Kshs 69,260.95 Kshs 69,260.95 Kshs 69,260.95 Kshs 69,260.95
Motor Vehicle Registration Number KBU 844 X	Maureen Nambi	Whole

That the above mode of distribution takes into account all the beneficiaries as the estate is distributed equally.

15. I take cognizant note that AA not qualifying as a widow of the deceased and thus not a beneficiary, will be excluded from the distribution of the deceased estate as discussed elsewhere in this ruling. Moreover.



I take note that Mrs. AA is in the matter purely for the interest of the minor WW which position is clear from the Grant issued on 15<sup>th</sup> February 2024.

Section 3(1) of the Marriage Act defines marriage as the voluntary union of a man and a woman whether in a monogamous or polygamous union and registered in accordance with the Act. This issue of parties cohabiting with another woman while there is a valid contracted marriage is a matter which is frowned at by Christian foundations and statute law. The court of Appeal and other comparative jurisprudence as herein articulated has delved into this jurisprudential question as demonstrated in *OKN v MPN* (2017) eKLR holding that “...the parties’ marriage was annulled because the appellant had no capacity to contract one as he had a subsisting marriage. The law in force at the time was firm. First, section 14 of the repealed Matrimonial Causes Act declared that, among the grounds for decree of nullity included a situation where the former husband or wife of either party was living at the time of the marriage, and the marriage with such previous husband or wife was then in force. The appellant and the respondent purported to enter into a union (at least the respondent) believing it was a marriage when in fact and in law the appellant was incompetent to marry by reason of a subsisting marriage

A felony of bigamy is committed under section 171 of the Penal Code if;

“Any person who, having a husband or a wife living, goes through a ceremony of marriage which is void by reasons of it taking place during the life of the husband or wife, is guilty of a felony and is liable to imprisonment for five years; provided that this section shall not extend to any person whose marriage with the husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife if the husband or wife, at the time of the subsequent marriage, has been continually absent from such person for the space of seven years, and had not been heard of by such person as being alive within that time”.

The exception in the proviso is not applicable to the parties herein.

Section 42 of the repealed Marriage Act, similarly outlawed, by imposing an imprisonment term of not more than five years for a marriage between a person previously married and whose marriage had not been dissolved with another.

It follows therefore that the benefits granted to a lawful marriage are not available to cohabitants who are deemed never to have been married at all. As they would say in Latin in the days of old, nihil fit ex nihilo (out of nothing, nothing comes). As Lord Denning also famously said in Macfoy v United Africa Co. Ltd [1961] 3 All E.R. 1169:

“...if an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

Not even the presumption of marriage as understood in law could save the situation because the union was in limine nonexistent, contracted without capacity. Such unions present many challenges to those involved and are fraught with legal uncertainties. There being no marriage between the parties, the two properties cannot be shared in accordance with family law.”

16. Most marriages in Kenya are monogamous as prescribed in the marriage Act or polygamous taking the queue within the scope of customary law or in any event recognition of polygamy in Islamic Law. When it comes to monogamous marriage parties covenant to realize a romantic commitment to only one spouse. It is also acknowledged in law that marriage is the union for life between a man and a woman



designed for many purposes key of which include procreation, companionship, and redemption. These purposes are traceable to Act of creation by God in the garden of Eden but fortunately they are still relevant today and essential for a healthy society. Every Kenyan possess the fundamental Human Right to enter a marriage contract based on their free and full consent. The need for mutual consent is also recognized in our constitution and other International and Regional instruments as entrenched in Article 2(5) &(6) of the Constitution.

17. It is also trite under the marriage Act that the existing lawful marriage is as per the law established where either of the parties to a marriage is at the time of the marriage lawfully had the capacity to enter into such a relationship without any encumbrances, like a prior or previous recognized valid marriage. It goes without saying that no marriage in Kenya shall be valid where either of the parties there to at the time of celebration of marriage is married by custom, religion, civil, to any other person other than the person with whom such a marriage is contemplated to be one while in the real sense it is voidable. It is noteworthy in this case that Morreen Nambi had solemnized her marriage with the deceased on the 20.5. 2005 duly officiated by the Registrar General at Nairobi. That union survived until the demise of the deceased. As a consequence, AA entered into a concubine relationship with the deceased in which they were blessed with one issue but that so called contractual family engagement cannot in law qualify as a marriage in compliance with formalities prescribed by the marriage Act. There was no valid marriage ever contracted between Aflyne and the Deceased. A marriage which does not satisfy certain legal requirements can be rendered void or voidable on certain stated grounds in the marriage Act. The court in Reneville v De Reneville (1948) 100 at 111 (1948) 1 ALL ER 56 at 60 pronounced itself as follows: “ A void marriage is one that will be regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be so treated by both parties to it without the necessity of any decree annulling it, a voidable marriage is one that will be regarded by every court as a valid subsisting marriage until a decree annulling it has been pronounced by a court of competent jurisdiction. With a void marriage, as Lord Greene Mr Says, it is not necessary to have a decree as there is no marriage to annul, so that a person can enter into a valid second marriage without obtaining a decree.
18. These principles are applicable to the facts of this case and I further take cognizance that the question under consideration is one on distribution of the intestate estate of the deceased. As alluded to earlier there is no dispute on the provisions of Section 29 of the Law of Succession Act. This court has had the advantage of appreciating the two models of distribution submitted by both Morreen Nambi the spouse to the deceased and AA who also happened to have had a short stint of cohabitation with the deceased and in the course of it they were blessed with one issue and legally recognized by the administrator as a beneficiary to the Estate. The distribution of this estate shall be governed by the provisions of Section 35, 36, 37, & 38 of the Law of Succession Act.
19. Consequently, from the above legal principles, this Court adopts the mode of distribution presented by the 1<sup>st</sup> Petitioner herein, Morreen Nambi and the deceased estate will be shared as follows;
  - a.



Description of Property	Name of the Beneficiary	Shares
Pioneer/Ngeria Block 1 (EATEC) 5643 and Pioneer/Ngeria Block 1 (EATEC) 5644	Moreen Nambi Mary Jane Wirz Paul Christian Wirz WW (minor whose interest until he attains the age of majority shall be held in trust by AA	$\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$
Sum of Kshs 278,483.80 held at Absa Bank Kenya PLC, Eldoret Branch Account No 0031292735	Moreen Nambi Mary Jane Wirz Paul Christian Wirz AA (on behalf of the minor WW)	Kshs 69,260.95 Kshs 69,260.95 Kshs 69,260.95
Motor Vehicle Registration Number KBU 844 X	Maureen Nambi	Whole

- b. The cheques for the amounts in the accounts 2026xxxxxx; 2026xxxxxx and 2026xxxxxx being cheque numbers; 405861, 405862 and 405863 respectively be re-issued issued by Absa Bank Kenya PLC, Eldoret and be forwarded to the public Trustee, Eldoret for onward transmission to the children, who are the beneficiaries of the deceased's estate.
- c. For those reasons the summons for confirmation of grant dated 26.5.2025 be and is hereby allowed with a subsequent decree in the form of certificate of confirmation of grant to be duly issued in favour of the administrator. This court further makes a declaration that the administrator has six 6 months time which to transmit the estate and file a probate account.
- d. Parties to bear their own costs.
- e. It is so ordered

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 12<sup>TH</sup> JUNE 2025**

.....

**R. NYAKUNDI**  
**JUDGE**

