



REPUBLIC OF KENYA



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**In re Estate of Raphael Maganjo (Deceased) (Miscellaneous Succession  
Application E008 of 2024) [2025] KEHC 10900 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10900 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
MISCELLANEOUS SUCCESSION APPLICATION E008 OF 2024**

**EM MURIITHI, J**

**JULY 24, 2025**

**IN THE MATTER OF ESTATE OF RAPHAEL MAGANJO (DECEASED)**

**BETWEEN**

**HALIMA NAMUTOSI MAGANJO ..... APPLICANT**

**AND**

**ELIZABETH MAGANJO ..... RESPONDENT**

**RULING**

**The Application**

1. Before the Court is a Chamber Summons dated 15th May 2024 brought by the Applicant, Halima Namutosi Maganjo. She seeks an order for the release of Kshs. 541,476 from Account No. 1005140486 held at Faulu Bank to cater for school fees and related expenses for two minors, Damaris Wanjiru Maganjo and Dinah Waruguru Maganjo.
2. She avers that the funds are urgently required to cater for school fees and related educational expenses for two minors—Damaris Wanjiru Maganjo, a student at Kenyatta University, and Dinah Waruguru Maganjo, a student at Kiine Girls' High School. The application is grounded on her claim that she is the widow of the deceased and the proposed administrator of his estate. She further contends that although the two minors are not biologically related to the deceased, he had assumed full parental responsibility over them, supported their education, and gave them his surname. In support of the application, she annexed birth certificates, school fee structures, and demand letters from the respective institutions, arguing that the deceased had consistently met their educational needs during his lifetime and that failure to release the funds would jeopardize the children's education.



## Response

3. The application is opposed by Elizabeth Maganjo, who describes herself as a biological daughter of the deceased. She denies that the Applicant was ever married to the deceased and asserts that the Applicant, a Ugandan national with an expired alien card, lacks the legal capacity to institute succession proceedings. The Respondent further contends that the Applicant's children were neither biologically related to the deceased nor maintained by him during his lifetime, and that the deceased never assumed any parental responsibility over them. She accuses the Applicant of relying on forged documents, including falsified birth certificates, identity cards, and even a questionable death certificate, the authenticity of which has been challenged and reported to the police for investigation. The Respondent maintains that the deceased was lawfully married to her mother, Agatha Karuana, under the African Christian Marriage and Divorce Act and had three children within that union. She avers that before the deceased's demise, she and her brother were appointed his legal guardians by order of the Court in Constitutional Petition No. E004 of 2023, and that the question of whether the Applicant was the deceased's wife is already pending for determination therein.

## Hearing viva voce

4. The Court directed that oral evidence be taken on the matter in dispute. During the hearing, the Applicant, Halima Namutosi Maganjo (PW1), testified on 2nd August 2024 and adopted her supporting affidavit and written statement. She stated that she is a Ugandan citizen, the deceased's wife under Bugisu customary law, and that while none of her children were biologically fathered by the deceased, he had supported their education and allowed two of them to bear his name. She admitted, however, that the deceased had never executed any formal document adopting the children, nor did he fill in any school forms identifying himself as their father. She further testified that they lived together in Thiba in a house she claims they jointly acquired.
5. PW2, Damaris Wanjiru Maganjo, testified that she is a third-year student at Kenyatta University and acknowledged that her biological father is Ugandan. She stated that she obtained her Kenyan identification documents with the assistance of the deceased, who also gave her his surname and supported her education.
6. PW3, Moses Njiraine Muruaigiri, a long-time acquaintance of the Applicant, testified that he knew the Applicant as a Ugandan and was aware that the Applicant and the deceased cohabited. He recalled a visit from the Applicant's relatives in 2010. Still, he admitted that he was not introduced and he could not speak to the details of that meeting.
7. The Respondent, Elizabeth Maganjo (DW1), testified that she lived with her father until he relocated to Mwea upon retirement in 2010, where he continued to live with his lawful wife, Agatha, until her death in 2021. She denied any knowledge of the Applicant being part of their family and stated that she lacked access to the investigative report regarding the allegedly forged documents but maintained her complaint had been lodged with the police.

## Submissions

8. Pursuant to directions issued on 26th March 2025, the Court directed that the application be canvassed by way of written submissions.
9. The Applicant filed her written submissions dated 8<sup>th</sup> April 2025. She reiterated that she was the deceased's second wife by virtue of long-term cohabitation and mutual recognition, both in Nairobi and in Mwea. She submitted that although their intended church wedding did not materialize due



to the deceased's illness, the nature of their relationship, including shared residence and public acknowledgment, was sufficient to support a presumption of marriage. She further argued that during the deceased's funeral, she and her children were recognized as dependents and beneficiaries, and that her children bore the deceased's surname as a reflection of his acceptance of them into his family. The Applicant submitted that her children, though not biologically related to the deceased, were under his care and support, and therefore qualify as dependents under the law. She contended that her lack of formal marital registration or adoption documents should not disentitle her or the children to relief, especially where the evidence demonstrates a de facto family relationship. In support of her case, the Applicant cited several authorities, including *W.M v Murigi* (1 KLR G&F) 348, *MNK v POM*; Initiative for Strategic Litigation in Africa (Petition No. 9 of 2021), *In re Estate of Mary Syokwia Kyalili* (2015) eKLR, and *Mary Waithera v Ann Ndegwa & Another* (2014) eKLR, emphasizing that the court has the power to recognize relationships that fall outside formal legal categories where justice and the best interests of children so require.

10. The respondents submissions on the twin questions as to the validity of the applicant's marriage to the deceased and her children as beneficiaries of the deceased were principally as follows:

“ 10. The issue before this court is to determine whether the applicant and the deceased solemnized their marriage under customary law. The onus of proving the alleged marriage was on the Applicant, and according to the evidence adduced in court, the Applicant has failed to prove that she was married to the deceased under the Bugisu Customary law or Kikuyu Customary law. The production of birth certificates and National Identity cards is not proof of marriage and/or adoption of the Applicant's children....

In a nutshell, the attached documents do not prove that the deceased had adopted the Applicant's children and that they were depending on him prior to his death. There is no proof of school fees payment as alleged by the Applicant, the attached Finance Fee Structure does not indicate PW2's name as the student. These documents were not an acknowledgment from the deceased but rather drafted by a third party, allegedly informing the concerned members of the public that the father of the children was Raphael Maganjo”

### **Issues for determination**

11. From the pleadings, oral and documentary evidence, and the written submissions, the following issues arise for determination:
1. Whether the Applicant was married to the deceased—either formally or under the presumption of marriage.
  2. Whether the deceased assumed parental responsibility over the two minors such that the estate may lawfully be used to meet their educational expenses.
  3. Whether the Applicant is entitled to the orders sought under a limited grant for withdrawal of funds.



## Determination

### Whether the Applicant was married to the deceased

12. The Applicant asserts that she married the deceased in 2006 under Bugisu customary law. However, she admits that key customary rites were never performed and that the deceased did not travel to Uganda as required by her culture. No evidence was presented to show any formal registration of a marriage or compliance with either Kenyan or Ugandan customary protocols.
13. Under Section 3 of the *Marriage Act*, 2014, only five types of marriages are recognized in Kenya: Christian, Civil, Customary, Islamic, and Hindu. The Act mandates registration, even of customary unions. The Applicant presented no marriage certificate nor any letter or affidavit from family or clan elders affirming a customary union.
14. She instead relies on the presumption of marriage, a doctrine recognized by common law but whose application has been narrowed by modern legislation. In *Hortensiah Wanjiku Yawe v Public Trustee* [1976] KLR 318, the Court of Appeal held that long cohabitation and public repute could give rise to a presumption of marriage. The Court stated as follows:

‘The presumption does not depend on the law or a system of marriage. The presumption is just an assumption based on a very long cohabitation and repute that the parties are husband and wife.’
15. In the case of *Joseph Gitau Githongo v. Victoria Mwihaki* (2014) eKLR of 3rd day of October, 2014, the court (Githinji, Musinga and M’Inoti, JJA) stated as follows:

‘It (presumption of marriage) is a concept born from an appreciation of the needs of the realities of life when a man and woman cohabit for a long period without solemnizing that union by going through a recognized form of marriage, then a presumption of marriage arises. If the woman is left stranded either by cast away by the ‘husband’, or otherwise he dies, occurrence which do happen, the law subject to the requisite proof, bestows the status of ‘wife’ upon the woman to enable her to qualify for maintenance or a share in the estate of her deceased ‘husband’.’
16. However, the enactment of the *Marriage Act*, 2014 which commenced on 20th May, 2014, has given statutory delimitations of situations where the doctrine may be invoked.
17. The Supreme Court, in *MNK v POM; Initiative for Strategic Litigation in Africa* [Petition No. 9 of 2021], set out the principles to sustain a claim based on presumption of marriage post-2014 following the enactment of the *Marriage Act*, as follows:

“ 64. We find it prudent at this juncture to lay out the strict parameters within which a presumption of marriage can be made:

  1. The parties must have lived together for a long period of time.
  2. The parties must have the legal right or capacity to marry.
  3. The parties must have intended to marry.
  4. There must be consent by both parties.



5. The parties must have held themselves out to the outside world as being a married couple.
  6. The onus of proving the presumption is on the party who alleges it.
  7. The evidence to rebut the presumption has to be strong, distinct, satisfactory and conclusive.
  8. The standard of proof is on a balance of probabilities.
65. The above notwithstanding, we are of the view, that the doctrine of presumption of marriage is on its deathbed of which reasoning is reinforced by the changes to the matrimonial laws in Kenya. As such, this presumption should only be used sparingly where there is cogent evidence to buttress it.
66. In the same breath, we would be remiss if we did not point out that marriage is an institution that has traditional, religious, economic, social and cultural meaning for many Kenyans. However, it is becoming increasingly common for two consenting adults to live together for long durations where these two adults have neither the desire, wish nor intention to be within the confines of matrimony. This court recognizes that there exists relationships where couples cohabit with no intention whatsoever of contracting a marriage. In such contexts, such couples may choose to have an interdependent relationship outside marriage. While some may find this amoral or incredible, it is a reality of the times we live in today.
67. For instance, a person may have been in a marriage before and the marriage is no more due to death of a spouse or divorce. Due to their prior experiences, such persons may choose to have an interdependent relationship outside of marriage. For others, it may just be their desire never to marry but have a partner without the confines of marriage. Where such situation is evident and there is no intention whatsoever of contracting a marriage, the presumption of marriage must never be made where this intention does not exist. It must always be remembered that marriage is a voluntary union. As such, courts should shy away from imposing ‘marriage’ on unwilling persons.
68. In addition, in our ever-changing society, current statistics reveal that a man and a woman can choose to cohabit with the express intention that their cohabitation does not constitute a marriage. The pervasiveness of having interdependent relationships outside marriage over the past few decades means that no inferences about marital status can be drawn from living under the same roof. ‘Interdependent relationships outside marriage’ is not a new concept.”
18. In the present case, the Applicant failed to satisfy these parameters. Her testimony was inconsistent, and no independent evidence was presented to show public recognition of the relationship. Further, the Respondent produced a valid marriage certificate showing that the deceased was lawfully married to Agatha Karuana under the African Christian Marriage and Divorce Act. The Applicant never addressed whether or when this marriage ended. If still subsisting in 2006, then the deceased lacked legal



capacity to contract another marriage, even one capable of giving rise to a presumption. Cohabitation, however prolonged, does not in itself establish a marriage.

19. In the instant case, the Applicant was neither formally married to the deceased nor entitled to a presumption of marriage in law. She therefore lacks standing to claim a spousal interest in the estate or to bring this application in that capacity.

### **Whether the deceased assumed parental responsibility over the children**

20. The Applicant admits that the two children in question—Damaris Wanjiru Maganjo and Dinah Waruguru Maganjo—are her biological children from previous relationships. She contends that the deceased took them in as his own, supported their education, and allowed them to bear his surname.

21. Under Article 53(1)(e) of *the Constitution* and Section 23 of the *Children Act* (2022), both biological and non-biological parents may assume parental responsibility either expressly or implicitly. However, assumption must be proven by conduct or legal documentation.

22. Article 53 (1) (e) of *the Constitution* provides that:

Every child has the right

- (e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not.

23. The provisions of Section 94(1) of the Children’s Act provide guidelines in obtaining the rights & protection of the interests of children. The Sections state:

- a) The income or earning capacity, property, and other financial resources which the parties or any other person in whose favor the court proposes to amend an order, have, or are likely to have in the foreseeable future.
- b) The financial needs, obligations, responsibilities which each party has or is likely to have in the foreseeable future.
- c) The financial needs of the child and the child’s current circumstances;
- d) The financial needs of the child and the child’s current circumstances;
- e) The income or earning capacity, if any, property and other financial resources of the child;
- f) Any physical or mental disabilities, illness, or medical condition of the child;
- g) How the child is being or was expected to be educated or trained;
- h) The circumstances of any of the child’s siblings;
- i) The customs, practices, and religion of the parties and the child.
- j) Whether the Respondent has assumed responsibility for the maintenance of the child and if so, the extent to which and the basis on which he has assumed that responsibility and the length of the period which he has met that responsibility;
- k) Whether the Respondent assumed responsibility for the maintenance of the child knowing the child was not his child, or knowing that he was not legally married to the mother of the child;
- l) The liability of any other person to maintain the child.
- m) The liability of that person to maintain other children.



24. The court in *J.O. v S.A.O.* [2016] eKLR held that occasional financial support or co-residence with a child’s mother does not, on its own, prove assumption of parental responsibility. The Act requires more: either formal adoption, legal guardianship, or consistent, deliberate acts of support and acknowledgment.
25. The Applicant did not produce any:
1. Receipts, bank transfers, or M-Pesa statements showing the deceased paid fees;
  2. Letters from the institutions addressed to the deceased;
  3. School records listing the deceased as a parent or guardian;
  4. Statements from school authorities confirming the deceased’s role.
26. Further, no independent verification of the deceased’s involvement in the children’s education exists on the record. While the Respondent alleged fraud in the documents presented—such as identity cards and birth certificates—no investigative report or forensic analysis was presented. Nevertheless, the burden of proof remained with the Applicant under Sections 107–109 of the *Evidence Act*, and she failed to discharge it.
27. I find that the Applicant did not prove, on a balance of probabilities, that the deceased assumed legal or factual parental responsibility over the minors such that the estate may lawfully be obligated to meet their school expenses.

#### **Whether the Applicant is entitled to the orders sought**

28. The Applicant seeks release of funds under a limited grant—essentially an *ad colligenda bona* grant—meant to collect and preserve the estate for eventual distribution. Such a grant does not entitle the holder to deal with or distribute estate property unless urgent, exceptional needs are demonstrated and directly linked to the estate’s legal beneficiaries or dependents.
29. In *In re Estate of Wahome Mutahi (Deceased)* [2015] eKLR, the Court observed that limited grants may only be used to safeguard estate assets or satisfy urgent legal obligations of undisputed beneficiaries. A party whose status as a spouse or dependant is actively contested must establish that status before any estate funds can be lawfully released to or for them.
30. Here, the Applicant’s position is tenuous because:
1. She has not been granted letters of administration.
  2. Neither her nor her children have been recognized as a dependants under Section 29 of the *Law of Succession Act*; and
  3. The authenticity of the very documents on which her claim is based is contentious.
31. The Court cannot grant the reliefs sought as to do so would amount to a premature distribution of the estate in favour of a person who has not established her right of inheritance by her relationship to the deceased or her children’s entitlement as dependants.

#### **Orders**

32. Accordingly, for the reasons set out above, and not without sympathy for the children in the matter, the Court finds that the Applicant has not demonstrated any legal or factual basis for the estate to bear the financial obligations she claims.



33. Consequently, the Court finds that the application dated 15th May 2024 is without merit and is declined.

34. Each party shall bear their own costs.

35. File closed.

Order accordingly.

**DATED AND DELIVERED THIS 24<sup>TH</sup> DAY OF JULY 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances

Mr. Mwaura for the Applicant.

Mr. Magee for the Respondent.

