



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of Leshan Nick Ole Letoluo (Deceased) (Succession Cause E024 of 2021) [2025] KEHC 10570 (KLR) (18 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10570 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
SUCCESSION CAUSE E024 OF 2021**

**CM KARIUKI, J**

**JULY 18, 2025**

**IN THE MATTER OF THE ESTATE OF LESHAN NICK OLE LETOLUO  
(DECEASED)**

**BETWEEN**

**SALOME NAANYU LESHAN LETOLLUO ..... 1<sup>ST</sup> ADMINISTRATOR**

**JOY NAMUNYAK LESHAN ..... 2<sup>ND</sup> ADMINISTRATOR**

**LESHAN KUNTAI ..... 3<sup>RD</sup> ADMINISTRATOR**

**AND**

**PURITY SOMOINE MEITAMEI ..... OBJECTOR**

**JUDGMENT**

**INTRODUCTION.**

1. The dispute at issue stems from a petition for letters of administration intestate filed on November 29, 2021, by Salome Naanyu Leshan Letoluo, Joy Namunyak Leshan, and Leshan Kuntai (hereinafter referred to as "the Administrators"). The Administrators also filed an application dated December 15, 2021, for a Special Limited Grant to access KShs. Five million held in a client account at the law firm of Gikera & Vadgama Advocates.
2. The Protestor, Purity Somoine Meitamei, contends that she was the second wife of the deceased, the late Lt. Gen. Leshan Nick Ole Letoluo, at the time of his death. Her grievance was that she was neither consulted nor involved in the succession proceedings, despite her alleged status and relationship with the deceased.
3. On that basis, the Protestor filed an application dated April 20, 2022, seeking revocation of the Special Limited Grant on the grounds of material non-disclosure and misrepresentation. The Administrators opposed the application through a replying affidavit dated June 22, 2022, denying the allegations of



- concealment. The parties subsequently filed written submissions, and the matter was listed for ruling on October 27, 2022.
4. On the date of the ruling, Hon. Justice Gikonyo allowed the Special Limited Grant to remain in effect. For the sake of good order, he directed that the Administrators file a Summons for Confirmation of Grant, taking into account the issues raised by the Protestor. The Court further guided that should the Protestor be dissatisfied with the proposed mode of distribution, she was at liberty to file a formal protest.
  5. Under the Court's directions, the Administrators filed the Summons for Confirmation of Grant dated December 28, 2022. In their application, they acknowledged the presence of the Protestor in the deceased's life but downplayed her role, referring to her merely as an acquaintance. They proposed to allocate her a sum of KShs. 750,000 out of the deceased's substantial Estate—an offer the Protestor considered unjust and unacceptable.
  6. In response, the Protester filed an Affidavit of Protest dated February 2, 2023. She challenged her exclusion from the proposed distribution and asserted her right to recognition as a wife. She also sought recognition of her two daughters, claiming the deceased had assumed parental responsibility for them during his lifetime.
  7. In addition to recognition, the Protestor sought a specific allocation of the house situated on LRLR No. CIS-MARA/ILMASHIARANI-MORIJO/2X0 (subdivided and assigned parcel No. 7XX4), arguing that the deceased had established the house as their matrimonial home during their cohabitation.
  8. In reply, Salome Naanyu Leshan Letoluo filed a further affidavit denying that the Protestor was ever married to the deceased. She, however, conceded that the Protestor had resided with the deceased in one of the houses for a time.
  9. The Court directed the parties to file their respective submissions. The matter was initially listed for judgment on October 11, 2023, before Hon. Justice Gikonyo. However, on that date, the Court issued a ruling directing that, in the interest of justice, the matter proceed by way of viva voce evidence.
  10. Thereafter, the Administrators filed an application dated January 25, 2024, seeking to cite the Protestor for intermeddling with the Estate. They alleged that she had transferred motor vehicle registration number KAU 9X8J into her name without a grant of representation. They sought an order for her imprisonment for one year without the option of a fine.
  11. In response, the Protestor filed a replying affidavit dated March 7, 2024, explaining the circumstances under which the vehicle was transferred and expressing her willingness to reinstate the logbook in the name of the deceased.
  12. When the parties appeared before the Court on March 11, 2024, Hon. Justice Gikonyo directed that the issue of intermeddling would be addressed after the determination of the parties' respective rights to the Estate. The Court further advised the Protestor to acquaint herself with the law governing succession and cautioned all parties from dealing with the free property of the Estate. The Court also urged the Protestor to rectify any wrongful acts of intermeddling, if established, as the parties awaited the outcome of the primary dispute.
  13. Before this Court for determination are the summons for Confirmation of Grant dated December 28, 2022, the Application for Intermeddling dated January 25, 2024, and the Affidavit of Protest dated February 2, 2023.



#### **14 Background.**

15. The late Lt. Gen. Leshan Nick Ole Letoluo passed away on March 9, 2021.
16. Salome Naanyu Leshan Letoluo (the widow) was married to the late Nick Leshan Ole Letoluo (the deceased) on December 13, 1969, under Maasai customary law. Their union was later solemnized on January 23, 1977, at the Kenya Air Force base in Eastleigh, Nairobi, under the provisions of the African Christian Marriage and Divorce Act, Cap 151.
17. The deceased and his wife were blessed with four children: Sheila Pereruan Leshan Griffin, Joy Namunyak Leshan Wanje, Kuntai Leshan, and Purko Leshan. Throughout their marriage, the family resided in various locations, including Narok and Nairobi. The deceased served the country with distinction in the Kenya Air Force, rising to the rank of Lieutenant General before retiring from active service in 2011.
18. He was survived by his wife, Salome Naanyu Leshan Letoluo, and their four children: Sheila Pereruan Leshan Griffin, Joy Namunyak Leshan, Kuntai Leshan, and Purko Leshan.
19. Following the demise of the deceased, his widow, Salome Naanyu Leshan Letoluo, together with their daughter, Joy Namunyak Leshan, and son, Kuntai Leshan, jointly applied for a Grant of Letters of Administration Intestate in respect of his Estate. The remaining two children, Sheila Pereruan, Leshan Griffin, and Purko Leshan, duly consented to the Petition.
20. In addition, the Administrators applied for and were granted a Special Limited Grant to enable them to administer the Estate. The said Grant was issued on December 20, 2021.
21. The Petition for the Full Grant of Letters of Administration was subsequently gazetted on February 25, 2022. While awaiting the expiry of the statutory six-month period before applying for confirmation of the Grant, Purity Somoine Meitamei (the Protester) filed an application seeking revocation of the Special Limited Grant. The basis of her Protest was that she and her two daughters had not been recognized as dependents of the deceased.
22. The Administrators opposed the Protester's application, and by a ruling delivered on October 27, 2022, the Court dismissed the application as premature, noting that such an application could only be brought adequately after the filing of an application for confirmation of the Grant.
23. As the statutory six-month period since the gazettment of the Petition had already lapsed, the Court proceeded to issue a Grant of Letters of Administration Intestate to the Administrators (Salome Naanyu Leshan Letoluo, Joy Namunyak Leshan, and Leshan Kuntai) on November 3, 2022. It directed them to apply for confirmation of the Grant.
24. Under the Court's directive, the Administrators applied for confirmation of the Grant dated December 28, 2022, accompanied by an Affidavit and Schedule of Distribution outlining the proposed mode of distribution of the Estate among the beneficiaries. In that schedule, and purely out of goodwill, the Administrators allocated the sum of Kshs. 750,000.00 to the Protester, in recognition of the help that the deceased extended to her. However, it is essential to note that, under the law, she is not entitled to a share of the deceased's Estate.
25. Dissatisfied with the proposed allocation, the Protester filed an Affidavit of Protest dated February 2, 2023, seeking revocation of the Grant issued on November 3, 2022. Her claim was premised on the assertion that she was the deceased's second wife and had not been adequately provided for, and that the deceased's children, whom she claimed the deceased had recognised, were improperly excluded from the proposed distribution.



26. The Administrators opposed the Protest through a Reply to Affidavit of Protest sworn by Salome Naanyu Leshan Letoluo on March 22, 2023. In support of the response, an additional affidavit was sworn on March 28, 2023, by Josephat Tongei Letoluo, a brother of the deceased.
27. On March 29, 2023, the application for confirmation of the Grant and the Protest were placed before the Court for directions. On that date, the Court directed that both the application and the Protest be canvassed through written submissions.
28. Both parties complied with the Court's directions by filing their respective submissions, and the matter was thereafter reserved for judgment, scheduled for delivery on October 11, 2023. However, on the scheduled date, the Court did not deliver judgment. Instead, the Court observed that, in light of the Protester's contention that she was the wife of the deceased, it was necessary to hear the parties orally before rendering a final decision.
29. In the meantime, the Administrators filed an application dated January 25, 2024, seeking orders that the Protester be found guilty of interfering with the Estate of the deceased, specifically Motor Vehicle Registration Number KAU 9X8J, and be imprisoned for one year without the option of a fine. The motor vehicle will be reinstated in the name of the deceased.
30. Consequently, the hearing proceeded on April 8, 2024, January 22, 2025, and February 25, 2025.
31. Directions of the Court.
32. This Court considered the Petition for a special limited Grant dated December 15, 2021, and issued the following orders:
33. The Petition was certified as urgent.
34. A special limited grant was issued to Salome Naanyu Leshan Letoluo, Joy Namunyak Leshan, and Leshan Kuntai, strictly on the following terms:
35. The Grant was limited to the collection and preservation of Kshs. 5,000,000 held in a client's account by the firm Gikera & Vadgama Advocates.
36. The said firm was directed to pay the amount into an estate account designated in the names of the three petitioners within 21 days of the date of the order.
37. For a sum not exceeding Kshs. 200,000 was to be allocated toward the widow's immediate needs, and no other funds were to be withdrawn from the estate account without prior court approval.
38. The petitioners were required to file in the Court an estimate of the widow's personal and household expenses, as well as operational costs for the farm, within 21 days for the Court's consideration and further orders.
39. The Grant was to be drawn up in strict accordance with the terms above.
40. The Grant did not confer any power of distribution of the Estate.
41. The petitioners were required to file a substantive petition for the Grant of letters of administration within 30 days.
42. On May 26, 2022, this Court certified the application dated April 20, 2022, as urgent.
43. The Court considered the summons for revocation of the limited Grant dated April 20, 2022, and, in its ruling delivered on October 27, 2022, found no basis for revoking the limited Grant. The applicant was directed to file her application in the leading succession cause.



44. On November 3, 2022, the Court issued the following directions:
45. A temporary grant of letters of administration was issued to the petitioners.
46. The petitioners were to file and serve summons for confirmation of the Grant within 30 days.
47. Any person wishing to oppose confirmation was to file protests within 21 days of service.
- 48.
- iv. In the meantime, the petitioners were directed to fulfil all obligations under the earlier limited Grant.
49. On March 29, 2023, the Court directed that the Protest to the confirmation of Grant be canvassed by way of written submissions and that parties should also address the issue of distribution.
50. In its ruling delivered on October 11, 2023, the Court reviewed the above order and directed that the Protest be heard by way of oral evidence.
51. On February 13, 2024, the Court certified as urgent the application dated January 25, 2024.
52. On April 8, 2024, the Court directed that the evidence of Salome Leshan be taken de bene esse. It stated that other jurisdictional issues would be addressed in the Court's determination of the estate property.
53. On May 6, 2024, the Court certified as urgent the application dated May 6, 2024.
54. On May 15, 2024, the Court issued interim directions as follows:
55. Ms. Opondo was directed to liaise with counsel in the ELC matter (Environmental and Land Court) to secure the Estate's interest. The administrators were to cooperate to avoid any prejudice to the Estate.
56. The firm of Gikera & Vadgama Advocates was instructed to file and serve a detailed response to Mr. Kimathi's application, including accurate accounts of the proceeds from the sale of the Runda property.
57. On July 10, 2024, the Court reviewed its earlier orders of April 8, 2024, and held as follows:
58. The share of Salome Leshan in the proceeds from the sale of the Runda property did not form part of the Estate.
59. Her share was to be released forthwith, subject to lawful deductions and costs.
60. On November 8, 2024, by the parties' consent, the Court ordered that KCB Bank, Narok Branch, allow the administrators to withdraw Kshs 650,000 from Account No. 129xxxxx96 to pay legal fees to Muigai Kemei Advocates.
61. On November 27, 2024, the Court adopted as an order the consent letter dated November 19, 2024.
62. On November 14, 2024, the Court certified as urgent the application dated October 22, 2024.
63. Evidence

#### **A. Administrators' Case.**

64. The Administrators called two witnesses in support of their case: Salome Naanyu Leshan Letoluo (AW-1), the widow and one of the administrators of the Estate; and Josephat Tongei Letoluo (AW-2), a brother of the deceased.



65. Evidence of AW-1: Salome Naanyu Leshan Letoluo (Taken de bene esse)
66. AW-1 testified that she was lawfully married to the deceased, Leshan Nick Ole Letoluo, under Maasai customary law on December 13, 1969. The marriage was later formalized through a certificate of marriage dated January 23, 1977, which was necessary for the deceased's employment.
67. She stated that their matrimonial home is located at Nangiri Farm, situated on Title No. LRLR. Cis Mara/Ilmashariani/Morijo/2X0. She has lived on the said property since the late 1970s. The land, initially part of a group ranch, was distributed to members and is now registered in the name of the deceased. The couple also resided at Eastleigh Air Force Barracks during his military service.
68. Together, they had four children, namely: Shila Perughan Joy Namunyak Kuntai Leshan Purko Leshan
69. She emphasized that the deceased had no other children.
70. AW-1 described a cordial relationship with the deceased and his family, noting he had thirteen siblings.
- i. She listed additional properties acquired during their marriage, including:
  - ii. LRLR No. 7XX5/8X4 (Original No. 7XX5/10/5X3) in Runda, registered jointly in their names and later sold to Abdulahi Mohammed Ahmed for Kshs. 65,000,000.
  - iii. A property in Elementaita was later sold.
  - iv. A property in Kongoni, Naivasha, was also sold, and the proceeds were used to develop their home in Narok.
  - v. Two additional parcels (2 acres and 3 acres) near their home, which were not yet transferred to the deceased at the time of his death.
  - vi. LRLR No. Cis Mara/Ilmashariani/Morijo/1XX9 at Nanapisho, measuring approximately 19–20 acres, also untransferred.
  - vii. LRLR No. Cis Mara/Ilmashariani/Morijo/1XX0, measuring 5 acres, allegedly purchased from one Sankale Oturi.
71. She testified that LRLR No. 2X0 had been extensively developed with poultry, orchards, livestock (including beef and dairy cattle, goats, sheep, and fish), and a modern homestead. The property was also the site of a house built for the eldest son. However, she stated that he does not reside there due to the presence of one Purity Somoine Meitamei, who moved into the house in 2017 when Salome had traveled to the UK for her granddaughter's wedding.
72. She denied knowledge of any customary marriage between the deceased and Purity and stated that despite confronting the deceased, she was never given any explanation. She identified Purity as a fellow church member, previously married to one Henry Kuya, with whom she had four children. She noted that Purity's family and hers belonged to the same Maasai clan, and thus could not lawfully marry, as such a union was deemed taboo. She stated that Purity's divorce was finalized on August 16, 2027, and she had no knowledge of the deceased supporting Purity's children.
73. She disputed Purity's allegations that LRLR No. 2X0 had been subdivided, and a portion allocated to her.
74. She testified that during the deceased's illness, Purity would allegedly sneak in to visit him. She was informed that Purity attended the deceased's funeral but was not part of the official program.
75. She proposed the following mode of distribution:



76. She stated that she wishes the property to be shared as follows.
- i. 30 acres of LRLR No. 2X0 to the sons.
  - ii. The balance of LRLR No. 2X0 to herself and her daughters.
  - iii. Her sons pursue titles to the properties yet to be transferred.
  - iv. The house occupied by Purity is to be allocated to the firstborn son.
  - v. Proceeds of the Runda property to be divided equally, half to herself and the other half to be shared among the children.
  - vi. She expressed a willingness to give something to Purity "just as was given to Hagar in the Bible."
77. On cross-examination, she admitted that the deceased would occasionally go to the house where Purity lived with the firstborn son but could not confirm how long Purity had resided there, given the distance.
78. She stated that the deceased did not distribute his property during his lifetime.
79. On re-examination, she clarified that Purity's house was approximately 1½ km from her residence. It was built around 2014–2015, and she discovered Purity living there in 2016–2017. Initially, they were on good terms, and Purity used to visit with her children.
80. Evidence of AW-2: Josephat Tongei Letoluo
81. AW-2 adopted his Affidavit, sworn on March 28, 2023, as his evidence-in-chief. He stated that he is a biological brother to the deceased, born of the same mother, and that he helped raise him. He confirmed that he had known Salome since her marriage to the deceased, as per Maasai customary law, in 1969.
82. He acknowledged knowing Purity Somoine Meitamei and the children she had with her previous husband. He testified that Purity was present at the burial of the deceased but emphasized that the deceased had never allocated any property to her. He denied knowledge of any customary marriage between Purity and the deceased, stating that she was previously married in church to one Henry in 2001. He noted that while Joel Lemishen (another brother) had made allegations, he was problematic and not a reliable source.
83. During cross-examination, he admitted that the deceased had moved from the first home and begun residing in another house, implying a possible change in domestic arrangements.
84. On re-examination, he stated that he never witnessed any marriage negotiations or meetings between the deceased and Purity's family. He reiterated that Purity moved into the deceased's house with children from her prior marriage, which he described as a curse since they belong to the same clan.

#### **85. Protester's Case**

86. The Protester, Purity Somoine Meitamei, called four witnesses in support of her claim to be a surviving spouse of the deceased and thus a rightful beneficiary of his Estate. The witnesses were:
87. Herself – PW1, Her father – PW4, Bensale Meitamei, Chief Ntete Ole Letelou – PW3 Reverend Lemishen Joel Ole Letoluo – PW2
88. Evidence of PW1 – Purity Somoine Meitamei



89. PW1 adopted her Affidavit, sworn on February 2, 2023, as her evidence-in-chief. She testified that she was married to the deceased in 2015 under Maasai customary law, and they lived together as husband and wife. She stated that they built a house together on the deceased's land and cohabited until his death.
90. She alleged that the deceased had a strained relationship with his first wife, Salome, and that he took her two sons as his own, paid their school fees, and provided for the family. She claimed to have divorced her previous husband, Henry Kakuyia, in 2016, and a decree absolute was issued in 2017. During the deceased's illness, she cared for him in the hospital.
91. She claimed that the deceased subdivided his land into four portions—for Salome, herself, a borehole, and a factory—and left her with a tractor, motor vehicle, and livestock. She further stated that she was excluded from the deceased's burial, which was conducted "secretly" by members of the first house.
92. On cross-examination, she confirmed that she was 47 years old while the deceased was 73 at the time of death. She acknowledged that PW2, Reverend Lemishen, was her Sunday school teacher. Although she claimed to have produced school fee receipts as evidence of the deceased's support for her sons, she admitted that most support had been through M-Pesa, yet no records were made.
93. She admitted that the motor vehicle allegedly left to her was transferred to her name after confirmation of the Grant. She maintained she was married under customary law and referred to a family photo with the deceased and her four children as proof of cohabitation.
94. On re-examination, she reiterated that her divorce was finalized in 2017, and that the deceased took responsibility for her sons while she raised the daughters.
95. Evidence of PW2 – Reverend Lemishen Joel Ole Letoluo
96. PW2 adopted his Affidavit sworn on February 2, 2023. He stated that he was the deceased's younger brother. He alleged that the deceased had a problematic relationship with Salome and that she did not accompany him to the hospital during a heart attack. He claimed that family elders decided the deceased should take a second wife, leading to his marriage with Purity.
97. On cross-examination, he maintained that Purity became the deceased's wife in 2016. He stated that dowry was not paid, as none is traditionally required where the woman was previously married. He supported the assertion that the deceased took care of Purity's children.
98. Evidence of PW3 – Chief Ntete Ole Letelou (Retired Senior Chief)
99. PW3 relied on his Affidavit sworn on February 2, 2023. He described himself as a cousin of the deceased and supported the Protester's claim of marriage, noting that the deceased built her a house where she currently lives with her children.
100. On cross-examination, he stated that the deceased often complained about marital issues with Salome and had asked for Purity's hand in marriage. He claimed to be one of the elders sent to negotiate the marriage, and that the dowry was paid. However, no documentation or details of the dowry ceremony were provided.
101. Evidence of PW4 – Bensale Meitamei (Father of the Protester)
102. PW4 adopted his Affidavit as part of his evidence. He testified that the deceased personally approached him seeking Purity's hand in marriage. A delegation of elders was allegedly sent to his home, and dowry was paid in instalments up to 2021.



103. During cross-examination, Bensale revealed that he and the deceased belonged to the same clan and attended school together. He acknowledged that Salome was also his age-mate and confirmed her lawful marriage to the deceased, though he could not remember the date.
104. Crucially, he admitted that under Maasai customary norms, members of the same clan do not intermarry, and thus, Purity would traditionally be regarded as a "daughter" to the deceased. This testimony aligned with that of AW-2 (Tongei) and PW3, raising significant questions about the validity of the alleged marriage.
105. He also conceded that Purity had previously been married to Henry Kakuyia, a union solemnized in church. While initially claiming no dowry had been paid, he later admitted under further questioning that Kakuyia had fathered the children.
106. When pressed on details of the dowry negotiations, Bensale claimed that minutes were taken by the Protester's brother, but was unable to produce any records. His account contradicted earlier statements by Reverend Lemishen (who said no minutes existed) and Chief Ntete (who claimed to have written them).
107. He claimed that part of the dowry was paid via M-Pesa but failed to produce any transaction records to support this claim. He was also unable to identify any specific attendees at the alleged dowry negotiation meetings.
108. On further questioning, Bensale acknowledged that, under customary law, a woman cannot be married to two men simultaneously. When shown a decree absolute, he conceded that Purity was still legally married to Kakuyia as of 2016. His oral testimony materially contradicted his Affidavit, casting doubt on the credibility of both his evidence and that of the Protester.

#### **109. Directions of the Court.**

110. Under the directions of the Court, both the Administrators and the Objector filed written submissions in support of their respective positions.

#### **111. The Administrators' Submissions.**

112. The Administrators submitted that the Protestor had failed to prove the existence of a valid customary marriage between herself and the deceased. They argued that both the deceased and the Protestor lacked the legal capacity to contract a customary marriage during the subsistence of their respective civil marriages. Consequently, the Protestor cannot qualify as a second wife or widow of the deceased. In support of this position, the Administrators relied on several legal authorities including *Black's Law Dictionary*, *Halsbury's Laws of England*, 4th Edition, Volume 17, Sections 107(1), 107(2), 108 and 109 of the *Evidence Act* (Cap 80), and Section 43 of the *Marriage Act* No. 4 of 2016. They also cited numerous judicial precedents including: *In Re Estate of Daniel Olala Nyawawa (Deceased)* [2019] eKLR, *Elizabeth Wamala v Jolly Kasend & 2 Others*, Civil Appeal No. 70 of 2014, *Ndele Ole Kimiti v Montesia Ole Kores*, Civil Appeal No. 75 of 1973, *In Re Estate of Fredrick Clavence Kittany* [2002] eKLR, *Sakina Sote Kaittany & Another v Mary Wamaita* [1995] eKLR, *Milena Bora v Liana Tamburelli* [2016] eKLR, *In Re Estate of Giovanni Gremmo (Deceased)* [2019] eKLR, *Machani v Vernoor* [1985] eKLR, *MWK v AMW* [2017] eKLR, *In Re Estate of Anyika David Lengou (Deceased)* [2019] eKLR, *Hortensia Wanjiku Yawe v The Public Trustee*, Civil Appeal No. 13 of 1976, and *In Re Estate of Ruiru Muchobi Gikonyo* [2022] eKLR.
113. The Administrators further submitted that all properties comprising the deceased's Estate were acquired through the joint efforts of the deceased and his surviving widow, Salome Naanyu Leshan.



The Protestor, not being recognized as a wife or a dependent, is therefore not entitled to a share of the Estate.

114. The Administrators contended that the Protestor's children are neither biological children of the deceased nor his dependents. As such, they have no claim to his Estate. The Administrators relied on Sections 3(2) and 29 of the *Law of Succession Act*, and the following authorities *Estate of the Late M'Thigai Muchangi (Deceased)* [2020] eKLR, *In Re Estate of Jackson Nicholas Kyengo Mulwa (Deceased)* [2021] eKLR, *E.M.M v I.G.M & Another*, Civil Appeal No. 114 of 2012, *In Re Estate of Michael Ngigi Kamami (Deceased)* [2024] eKLR, *Beatrice Ciamutua Rugamba v Fredrick Nkari Mutege & 5 Others* [2016] eKLR, *In Re Estate of ECC (Deceased)* [2025] eKLR, and *Sarah Kanini Thigunku v Elizaphan Njuki Thigunku* [2016] eKLR.
115. The Administrators submitted that, since the Protestor and her daughters are not dependents of the deceased, it was not necessary to seek their consent during the filing of the Petition for letters of administration or the summons for confirmation of Grant. They relied on Section 76(a)-(e) of the *Law of Succession Act*, *Re Estate of Jacob Njiru Mbarire (Deceased)* [2022] eKLR, and *Matheka & Another v Matheka* [2005] 2 KLR 455.
116. Finally, the Administrators submitted that the Protestor's actions amounted to unlawful intermeddling with the Estate. In particular, her Act of taking possession of, transferring, and utilizing the deceased's motor vehicle without legal authority or a grant of representation is in contravention of Section 45 of the *Law of Succession Act*. In support of this position, they relied on the following authorities: *In the Matter of the Estate of Veronica Njoki Wakagoto (Deceased)* [2013] KEHC 1930 (KLR), *In Re Estate of Lawrence Nginyo Kariuki (Deceased)* [2021] eKLR, *Benson Mutuma Muriungi v C.E.O. Kenya Police Sacco & Another*, *Re Estate of Kimutai Tiony (Deceased)* [2019] eKLR, and *Gladys Nkirote M'Itunga v Julius Majau M'Ituga* [2016] eKLR.

#### **117. Protestor's submissions.**

118. The Protestor submitted that she was lawfully married to the deceased under Maa customary law and therefore qualified as a wife within the meaning of Section 3(5) of the *Law of Succession Act*. She averred that following the irretrievable breakdown of her previous marriage to one Henry Kukuyia in 2014, she and her former husband began living separately, each establishing their own homes. Mr. Kukuyia thereafter moved in with another woman and sired a child, further demonstrating an apparent abandonment of their union. In 2016, the Protestor filed for divorce, which was pending at the time she commenced cohabitation with the deceased.
119. It was her case that in 2016, the deceased formally sought her hand in marriage, and Maasai traditions conducted a customary ceremony. Dowry was paid and, following this, the deceased constructed a permanent house for her and her daughters on a parcel of land he had explicitly subdivided for that purpose—LRLR No. CIS-MARA/ILMASHIARANI-MORIJ0/7XX4. The deceased moved in with the Protestor and lived with her and her daughters as a family until he died in 2021.
120. The Protestor contended that although a formal decree absolute had not been granted to dissolve her earlier marriage, the law must recognize the factual circumstances that led to the establishment of a new marital union. In support of this position, the Protestor relied on the case of *Re Estate of Jecinter Njoki Okoth (Deceased)* [2020] eKLR, where the High Court held that the irretrievable breakdown of a previous marriage and long-term cohabitation with a new partner can give rise to a presumption of divorce. The Court in that case recognized that it would be contrary to justice and common sense to insist on the formality of a divorce decree where the former spouses had clearly moved on with their lives.



121. The Protestor further cited *Tukero ole Kina v Attorney General* [2019] eKLR, in which the High Court declared unconstitutional the three-year waiting period imposed by Section 66 of the *Marriage Act* before one could file for divorce. The Court held that such a restriction unjustifiably limited a person's freedom to associate and to marry a person of their choice, protected under Article 36 and Article 45(2) of the *Constitution*. The Protestor argued that insisting on a formal divorce in her case would amount to an unconstitutional fetter on her right to remarry freely, particularly given the longstanding separation from her former husband and the social recognition of her subsequent union.
122. Lastly, she invoked Section 119 of the *Evidence Act*, urging the Court to draw a presumption of divorce from the conduct of the parties. According to her, the facts spoke for themselves; she and Mr. Kukuyia had permanently separated, lived separate lives, and each had formed new relationships. The Protestor maintained that under both the law and the facts, she was validly married to the deceased, and any suggestion to the contrary would amount to a denial of her rights in both law and equity.
123. The Protestor submitted that the deceased had the requisite capacity to marry her under Maasai customary law, which permits polygamy. It was her case that although the deceased was married to the 1st Administrator, Salome Naanyu Leshan Letoluo, with whom he had four children, this did not bar him from entering into a subsequent valid customary marriage with her. She relied on Section 3(5) of the *Law of Succession Act*, which affirms that a woman married under a system that allows polygamy is deemed a wife for succession purposes, even where the husband had contracted a prior or subsequent monogamous marriage.
124. The Protestor asserted that in September 2016, the deceased, through his clan elders, approached the Meitamei family for dowry negotiations by Maasai customs. Upon successful negotiations, dowry (isayieta) was paid, and her family consented to the union, thereby concluding a valid customary marriage. The Protestor cited the case of *In re Estate of Oloikampai Sarapae Sanguti (Deceased)* [2018] eKLR, in which Justice Nyakundi observed that key elements of a valid Maasai marriage include negotiations between families and the payment of dowry, followed by the handing over of the bride.
125. The Protestor maintained that after the dowry ceremony, she and the deceased cohabited as husband and wife from 2016 until his demise in 2021. She challenged the Administrators' argument that the deceased was required under Maasai custom to seek consent from his first wife and children before taking a second wife, terming such a requirement as inconsistent with patriarchal customary practices of the Maasai, which do not obligate such consultation.
126. The Administrators had relied on *Ndele Ole Kimiti v Montesia Ole Kores* (Civil Appeal No. 75 of 1973), a decision cited in Eugene Cotran's Casebook on Kenya Customary Law, to argue that the formalities of a valid Maasai marriage had not been met. The Protestor, however, distinguished this case by submitting that her marriage was an informal or casual Maasai marriage, known as Errotianarroto, which does not require full ceremonial adherence. She relied on Naomi Kipury's scholarly article, 'Engagement and Marriage Among the Maasai' (Kenya Past and Present, 1978), which explains that Maasai marriages can be either formal (Erikoroto too nkishu) or informal (Errotianarroto), and that both types are recognized under Maasai customs.
127. According to Kipury, while formal marriages involve elaborate rituals, informal marriages require only basic ceremonies, including dowry payment and cohabitation. The Protestor submitted that although her marriage followed the informal route, it still qualified as a valid Maasai marriage. She further noted that traditional practices have evolved, with modern Maasai families accepting cash dowries, an element not accounted for in the older legal texts relied upon by the Administrators.



128. In support of her claim, the Protestor cited the Court of Appeal decision in *Irene Njeri Macharia v Margaret Wairimu Njomo & another* [1996] eKLR, where the Court upheld the status of a woman married under customary law—even where the deceased had a pre-existing statutory marriage—for purposes of inheritance under Section 3(5) of the *Law of Succession Act*. The Court there recognized that Parliament intended to protect customary spouses in polygamous systems for succession.
129. The Protestor distinguished her case from authorities cited by the Administrators, such as *Milena Bora v Liana Tamburell* [2016] eKLR, *Re Estate of Giovanni Gremmo (Deceased)* [2019] eKLR, and *Machani v Vernoor* [1985] eKLR, on the ground that in those cases, there was no evidence of a valid customary marriage. In contrast, she had presented evidence of dowry negotiations, payment, and subsequent cohabitation with the deceased.
130. Accordingly, the Protestor urged the Court to find that she was validly married to the deceased under Maasai customary law and thus entitled to recognition as a wife for purposes of succession under Section 3(5) of the *Law of Succession Act*.
131. Upon establishing that the Protestor was a wife to the deceased under Maasai customary law, she submitted that both she and her two daughters—Joy Nashipae and Ruth Saiyaton—were dependents of the deceased within the meaning of Section 29 of the *Law of Succession Act*.
132. The Protestor acknowledged that the two girls were biologically fathered by her former husband, Mr. Kukuiya, during their prior union. However, she informed the Court that upon her separation from Mr. Kukuiya in 2014, she assumed full custody of the minors, who then lived with her continuously. When the deceased approached her for marriage in 2016, he was fully aware of the girls' existence and voluntarily took them in as his children.
133. It was submitted that the deceased provided for the girls' education, upkeep, and general welfare throughout their cohabitation, which lasted from 2016 until the deceased's demise in 2021. Relying on Section 3(2) of the *Law of Succession Act*, the Protestor argued that the deceased had expressly recognized the girls as his children and had assumed permanent parental responsibility over them. This, she asserted, qualified them as the deceased's children for purposes of the Act.
134. Furthermore, under Section 29(b) of the *Law of Succession Act*, a dependent includes any child whom the deceased had taken into their family and was maintaining at the time of death. The Protestor contended that the deceased had embraced the girls as part of his family and undertook their support in every respect. She testified and produced receipts to demonstrate that it was the deceased who consistently paid for the children's school fees. They resided together in the matrimonial home on parcel LRLR No. CIS-MARA/ILMASHIARANI-MORIJO/2X0(7XX4) and lived under the same roof until the deceased's death.
135. In response to the Administrators' challenge that the receipts bore only the children's names and not the deceased's, the Protestor explained that the deceased made payments through bank deposits and would issue the deposit slips to the girls to present to their schools. The schools, in turn, issued receipts in the children's names, which was standard practice. She asserted that the deceased, being the sole breadwinner at the time, was the only one capable of making these payments, as she had no formal employment.
136. The Protestor dismissed as speculative the claim that the girls' biological father might have paid the fees. She emphasized that Mr. Kukuiya had not been in contact with the girls since 2014 and had never shown concern for their welfare. She added that in keeping with Maasai customs, it would have been unthinkable for another man to cater for the needs of children who were being raised under the deceased's household and treated as his own.



137. The Administrators had relied on the case of *Re Estate of Jackson Nicholas Kyengo Mulwa (Deceased)* [2021] eKLR to dispute dependency. However, the Protestor distinguished that case by pointing out that it involved a testate estate, and the applicant in that matter neither resided with the deceased nor had a relationship of sufficient proximity to be considered a dependant. By contrast, the Protestor's daughters had lived with the deceased as part of his household, with evidence of emotional and financial dependency.
138. She further relied on photographs annexed to her Affidavit (marked "PSM-4"), showing the deceased's presence in the lives of the two girls, which, together with the testimony of key witnesses such as Rev. Joel Ole Letoluo and Senior Retired Chief Ntete Ole Letoluo, confirmed that the deceased treated the girls as his own.
139. The Protestor invoked the principle of *res ipsa loquitur*, arguing that the facts spoke for themselves and confirmed a relationship of dependency. Given that she and the girls were fully supported by the deceased—without her having independent income—she urged the Court to find that they all qualified as dependents under the *Law of Succession Act* and were accordingly entitled to a beneficial interest in the deceased's Estate.
140. The Protestor submits that, being the wife of the deceased for purposes of succession, she is a dependent under Sections 29 and 40 of the *Law of Succession Act* and therefore entitled to benefit from his Estate. She further contends that her two daughters, Joy Nashipae and Ruth Saiyaton, are also dependents within the meaning of Sections 3(2) and 29(a) or (b) of the *Act*, the deceased having taken them in, assumed full parental responsibility, and provided for them during his lifetime.
141. The Protestor explains that although she is entitled under Section 40 to share in the deceased's intestate Estate as a surviving spouse, it is not her desire to cause conflict or division between the two families. Instead, she seeks to inherit only the portion of land and developments the deceased had himself set aside for her and their daughters during his lifetime. She avers that following their customary marriage in 2016, the deceased constructed and furnished a separate matrimonial home for her on land parcel LRLR No. CIS-MARA/ILMASHIARIANI MORIJO/2X0. Evidence was adduced showing that the property had been subdivided by the deceased into four portions: one for each spouse, one for his son, and one for a shared borehole. The portion identified as 7XX4, where the Protestor resides, was allocated to her as her matrimonial home. She continues to live there with her daughters, and she prays that this specific portion be hived off from the larger parcel and allocated to them.
142. In addition to the home, the Protestor seeks modest financial support in the sum of KShs. 2,500,000 to support her and the children's future needs. She emphasizes that she was a housewife and homemaker while the deceased was the sole breadwinner, meeting all household and educational expenses for the children.
143. In support of her prayers, the Protestor relies on Section 76 of the *Law of Succession Act*, which allows for revocation of a grant on grounds such as fraud, concealment of material facts, and defects in the process. She submits that the 1st Administrator, while petitioning for the Grant of letters of administration, omitted to disclose the existence of the Protestor and her daughters, thereby excluding them from the process in violation of Rule 26 of the *Probate and Administration Rules*. This omission, she argues, amounted to fraudulent concealment of material facts, warranting revocation of the Grant.
144. The Protestor relies on the holding in *In the Matter of the Estate of L.A.K. (Deceased)* [2014] eKLR, where the Court emphasized that concealment of the existence of dependents justified the revocation of a grant. She also cites *the Estate of Moses Wachira Kimotho (Deceased)* [2009] eKLR, where the Court annulled a grant for failure to notify and include known interested parties. Further reliance is placed on



- the Estate of Julias Ndubi Javan (Deceased)* [2018] eKLR, where the Court underlined the obligation of full and candid disclosure in all succession matters, noting that non-disclosure undermines justice and fairness in the administration of estates.
145. Accordingly, the Protestor prays that the Court revoke the current Grant, include her as a co-administrator, and grant her the specific portion of land and modest financial provision as outlined.
  146. The Protestor responded to the Administrator's application dated January 25, 2024, which sought to cite her for intermeddling with the Estate by transferring motor vehicle registration number KAU 9X8J into her name without authority. The Administrators urged the Court to commit her to prison for one year without the option of a fine.
  147. In her Replying Affidavit dated March 7, 2024, the Protestor explained that she had no intention of defrauding or disenfranchising the Estate. She asserted that she believed in good faith that the subject vehicle, which had been in her custody both during the deceased's lifetime and after his death, had devolved to her as part of her share in the Estate. Her mistaken belief was exacerbated by the fact that the said motor vehicle was not expressly listed in the Administrators' Petition for Letters of Administration nor in the Schedule of Distribution contained in the 1st Administrator's Affidavit in support of confirmation of Grant. The vehicle was only generically referred to as "the 4WD vehicle," leading to confusion on her part.
  148. She further submitted that she had only used the vehicle to secure a loan from My Credit Limited out of desperation to cater for her daughter's educational and living expenses. Upon learning from her advocates of the intermeddling concerns, she promptly acted to correct the situation. She cleared the loan, had the vehicle discharged, and began the process of reverting ownership to the deceased's name through the NTSA. She therefore submitted that her actions, although mistaken, were not malicious.
  149. The Protestor decried the Administrators' call for harsh punishment as vindictive and disproportionate to the circumstances. She contended that this approach demonstrated malice and a personal vendetta rather than a genuine pursuit of justice.
  150. In support of her submissions, she relied on the Court of Appeal decision in *Thomas Mwambu Wenyi v Republic* (2017) eKLR, which in turn cited the Supreme Court of India's decision in *Alistar Anthony Pereira v State of Maharashtra*. These decisions emphasized the principle of proportionality in sentencing, advocating for punishments that are just and commensurate with the nature of the offense and all attendant circumstances.
  151. She urged the Court to reject the Administrators' prayer for a custodial sentence, proposing instead that she be directed to account to the Administrators for the subject vehicle. She stated that punitive action would only be warranted if she subsequently failed or refused to comply with such directions.
  152. Finally, she reiterated that her conduct throughout the proceedings had been in good faith and that she had actively participated in efforts to negotiate a settlement, as previously advised by the Court. She lamented that these efforts had been frustrated by the rigid stance of the Administrators, who allegedly objected even to the admission of new evidence that emerged after the proceedings commenced.
  153. In light of the above, the Protestor implored the Court to exercise discretion judiciously and proportionately, bearing in mind the totality of the circumstances and the overriding interest of justice.



### Submissions in reply on behalf of Leshan Kuntai.

154. In his submissions in reply to the Protestor's written submissions dated June 2, 2025, Leshan Kuntai challenges both the factual basis and the legal arguments raised by the Protestor, urging the Court to dismiss the objection for lack of merit.
155. He begins by objecting to the introduction of new evidence in the Protestor's submissions, arguing that it was neither pleaded nor presented during the trial. He highlights several paragraphs in the Protestor's submissions that contain fresh allegations—such as claims about the Protestor's estranged relationship with her former husband, Mr. Kukuiya, his alleged new relationship, and their supposed permanent separation—which were never substantiated by evidence at trial and should be disregarded.
156. Kuntai also argues that the Protestor's assertions about dowry, land subdivision, and her presumption of divorce from Mr. Kukuiya are unsupported by credible evidence. He emphasizes that the issue of land subdivision had previously been struck out for being filed out of time and cannot be reintroduced through submissions.
157. On the question of marital capacity, Kuntai asserts that the Protestor was still legally married to Mr. Kukuiya under a civil marriage at the time she claims to have married the Deceased under customary law. He argues that, under the *Marriage Act* and binding precedents, including the Supreme Court decision in *NK v POM, the Initiative for Strategic Litigation in Africa (ISLA)*, civil marriage can only be dissolved by a formal court decree. Therefore, the Protestor lacked the legal capacity to contract another marriage, rendering the alleged customary marriage null and void.
158. Kuntai also criticizes the Protestor's reliance on certain authorities, notably *the Estate of Jecinter Njoki Okoth (Deceased)* and *Tukero Ole Kina v Attorney General*, distinguishing them from the current case. He maintains that those decisions do not support the notion of a presumption of divorce or validate a customary marriage in the face of an existing civil one.
159. He further challenges the credibility of the protesters' expert evidence, including an excerpt from a book by Naomi Kipuri, arguing that the excerpt lacks context, authentication, and established expertise in Maasai customary law. Additionally, he contends that the Protestor's testimony contradicts the cited excerpt, further weakening her case.
160. On the issue of dependency, Kuntai argues that the Protestor's two daughters are adults who never filed claims and that no sufficient evidence was presented to show the Deceased assumed parental responsibility for them. He notes the absence of documents linking the Deceased to their maintenance or education, leaving the Court with mere speculation.
161. Finally, Kuntai points out that the Protestor's unauthorized transfer of the Deceased's motor vehicle, KAU 9X8J, constitutes interference with the Estate in contravention of the *Law of Succession Act*. This, he argues, further undermines her credibility.
162. In conclusion, he submits that the Protestor's objection is baseless both in fact and law, and he prays that the Court dismiss it with costs.
163. Supplementary submissions on behalf of Salome Naanyu Leshan, Letoluo, and Joy Namunyak Leshan
164. In their supplementary submissions, the Administrators, Salome Naanyu Leshan Letoluo and Joy Namunyak Leshan, advance a detailed response opposing the claims by the Protester, Purity Somoine Meitamei, who alleges to be a wife of the deceased, Lt. Gen. Leshan Nick Ole Letoluo, and seeks recognition for herself and her two daughters as dependents of the deceased's Estate.



165. The Administrators argue that the Protester's claim to being the deceased's wife is legally untenable. They submit that at the time the alleged customary marriage occurred in 2016, the Protester was still in a subsisting statutory marriage with one Henry Kakuyia, which was only formally dissolved on February 16, 2018. Likewise, the deceased remained legally married to the 1st Administrator, Salome Naanyu Leshan Letoluo, under a statutory marriage. According to Sections 9, 11(c), and 16(d) of the *Marriage Act*, 2014, parties in a subsisting statutory marriage cannot lawfully contract another marriage, whether civil, religious, or customary. Any purported customary marriage between the Protester and the deceased while both remained legally married to other persons would thus be null and void ab initio.
166. Further, the Administrators contend that a customary marriage was culturally impossible under Maasai traditions due to the parties' shared lineage and clan membership. Under Section 10(1)(d) of the *Marriage Act*, cultural prohibitions, such as marrying within the same clan, are a bar to a valid customary union. No dowry was paid, no elders testified, and no corroborative evidence was provided to show that the customary prerequisites were satisfied.
167. The Protester's reliance on the doctrine of presumption of marriage or presumption of divorce was also strongly opposed. The Administrators emphasize that the doctrine of presumption of divorce is inapplicable where parties are in a statutory marriage that has not been legally dissolved. They cite the decision in *In re Estate of Jecinter Njoki Okoth (Deceased)* [2020] eKLR, where the Court held that a presumption of divorce could not be sustained when there was no formal dissolution of a statutory marriage. Similarly, the Court in *In re Estate of Njeru Njagi (Deceased)* [2019] KEHC 6987 (KLR) declined to uphold a claim of customary marriage where the claimant's statutory marriage had not been dissolved. The decision in *Tukero Ole Kina v Attorney General* [2019] eKLR, cited by the Protester, is distinguished by the Administrators on the basis that in that case, the presumption of divorce was made after a long period of separation and cohabitation with another partner, which is not the case here.
168. The Administrators further assert that even if there had been cohabitation, the Protester had no legal capacity to marry due to her still-binding statutory marriage, and thus no presumption of marriage can arise. They cite Section 3(1) of the *Law of Succession Act*, which defines a "wife" to include a woman married under customary law, provided the marriage is valid and recognized under the law. Since the Protester's alleged marriage was invalid, she does not qualify as a spouse under the Act.
169. Regarding the Protester's claim that her two daughters are dependents of the deceased, the Administrators argue that the deceased neither sired the children nor assumed any legal or factual responsibility over them during his lifetime. Henry Kakuyia is the father of the daughters. There is no evidence of adoption or parental acknowledgment by the deceased. The legal test under Section 29(b) of the *Law of Succession Act* requires a claimant to prove that the deceased had taken the child into his family as his own and had maintained the child immediately before death. These criteria, the Administrators argue, have not been met. They refer to the decision in *In re Estate of M'muthamia Mwendwa (Deceased)* [2016] KEHC 2599, where the Court emphasized that dependency under the Act must be actual and demonstrable.
170. They also cite *Beatrice Rugamba v Fredrick Nkari*, where it was held that casual association is insufficient to establish dependency under succession law. The Protester's failure to present any school records, medical insurance documents, or financial statements linking the deceased to the daughters undermines the claim. Furthermore, the daughters themselves did not testify in support of their dependency claims. The Administrators contend that the Protester's gainful employment as an ECDE teacher undercuts her claim that the children were dependent on the deceased.



171. On the issue of property claims, the Administrators dismiss the Protester's alleged entitlement to LRLR No. CIS-Mara/Ilmashariani-Morijo/2X0, noting that no valid gift inter vivos or inter vivos agreement was shown. The Protester did not obtain the consent of the deceased's legal wife for the alleged transfer, and the land remains registered in the deceased's name. No licensed surveyor testified regarding the alleged subdivision, and the documentation submitted was not authenticated. The Administrators argue that this claim is both factually and legally unfounded.
172. Regarding the protesters' call for the revocation of the Grant issued to the Administrators, the submissions assert that there was no concealment of material facts. The Protester was neither a lawful wife nor a dependent, and as such, her exclusion from the list of beneficiaries was not wrongful. The Court is referred to *In re Estate of George Francis Waita (Deceased)* [2022] KEHC 15966, where the Court declined to revoke a grant on similar grounds. They also cite *Albert Imbuga Kisigwa v Recho Kisigwa*, where it was emphasized that revocation under Section 76 of the *Law of Succession Act* is a discretionary remedy and should not be granted in the absence of fraud, bad faith, or material non-disclosure.
173. Finally, the Administrators accuse the Protester of unlawful intermeddling with estate property contrary to Section 45 of the *Law of Succession Act*. They allege that she unlawfully transferred motor vehicle KAU 9X8J to herself and used it to secure a loan without any authority or letters of administration. The Administrators cite *In re Estate of Joseph Matumbai Wanyonyi (Deceased)* [2024] KEHC 3857, where the Court held that any dealing with estate property without a grant amounts to criminal intermeddling and vitiates any beneficial claim to the Estate.
174. In conclusion, the Administrators submit that the Protester and her daughters have failed to prove their legal entitlement under the *Law of Succession Act*, and that the Protester's conduct—including the production of unauthenticated documents and dealing with estate property without authority—demonstrates a lack of good faith. They urge the Court to: Dismiss the Protest with costs; Confirm that the Protester is not a wife and her daughters are not dependents; Declare the Protester's actions unlawful intermeddling; Decline to revoke the Grant; Grant the orders sought in the Applications dated December 28, 2022, and January 25, 2024.

### **175. Analysis And Determination.**

176. Having carefully considered the pleadings, oral and documentary evidence, as well as the written submissions of the parties, the following issues emerge for determination:
- i. Who is the ascertained wife of the deceased?
  - ii. Is the Protester entitled to a share of the deceased's Estate?
  - iii. Did the deceased recognize the Protester's children as his children, and are they beneficiaries of his Estate?
  - iv. Should the Grant issued on November 3, 2022, be revoked?
  - v. Did the petitioner intermeddle with the deceased's Estate?
  - vi. Who is the ascertained wife of the deceased?
177. It is not in dispute that Salome Naanyu Leshan Letoluo is the legal wife of the deceased, as exhibited by the Certificate of Marriage.
178. It is also not in dispute that Salome Naanyu Leshan Letoluo had four children with the deceased, as listed in the Petition and as evidenced by the Birth Certificates.



179. The Protester alleges that she was married to the deceased as a second wife under Maasai customary law. Bensale Meitamei, and one Senior. Rtd. Chief Ntete Ole Letoluo (the Chief) claimed that the marriage took place in 2016. The Protester herself failed to establish the date of the alleged marriage.
180. The administrators contest that the Protester was never married to the deceased and that Salome Leshan is the deceased's only surviving spouse, as the marriage had not been dissolved at the time of the deceased's death.
181. The legal and evidential burden of proof is on the Protester to prove the existence of a customary marriage between her and the deceased. See Section 107 (1) and (2), 108 of the [Evidence Act](#)
182. The Law governing marriages as of 2016 is the [Marriage Act](#) No. 4 of 2014. A customary marriage is recognized under Part V of the [Marriage Act](#). Section 43 of the [Marriage Act](#) provides that: -
183. "A marriage under this Part shall be celebrated by the customs of the communities of one or both of the parties to the intended marriage."
184. The most important fact to be proved is the evidence of payment of dowry in fulfilment of the requirement of customary law marriage.
185. The most considerable contention in this case revolves around the issue of whether the ceremony for the payment of dowry took place. In considering the probability of the occurrence of the said ceremony, this Court will consider the evidence tendered. The standard of proof in civil cases was discussed in the Court of Appeal decision in Civil Appeal 15 of 2016, [Samuel Ndegwa Waitihaka v Agnes Wangui Mathenge & 2 others](#) [2017] eKLR. The Court, while referring to Lord Nicholls, observed as follows.

In Civil cases such as this case, the standard of proof is on the balance of probabilities. This standard means that a court is satisfied with an event occurring if it considers, based on the evidence, that the occurrence of the event was more likely than not to have happened. *In H (Minors)* [1966] AC 563 at pg 586, Lord Nicholls explained that the test on the balance of probabilities was flexible. Said he,

“When assessing the probabilities the Court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation, the less likely it is that the event occurred and, hence, the stronger should be the evidence before the Court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury.....

Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue, the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before; on the balance of probability, its occurrence will be established.”



186. The Court of Appeal established proof of customary marriage in the case of *Kimani v Gikanga* [1965] EA 735. It was observed that.

“To summarize the position, this is a case between Africans, and African customary law forms a part of the law of the land applicable to this case. As a matter of necessity, customary law must be accurately established. The Court has a wide discretion as to how this should be done, but the onus to do so must be on the party who puts forward customary law. This might be done by referencing a book or document and would include a judicial decision. Still, in view, especially of the present apparent lack in Kenya of authoritative textbooks on the subject, or any relevant case law, this would in practice usually mean that the party propounding customary law would have to call evidence to prove that customary law, as would prove the relevant facts of his case.”

187. Neither the Protester's father nor the Chief provided a detailed or consistent account of the steps involved in such a marriage to the standard required by law. Any documentary evidence, such as minutes of the alleged meetings or photographs of the events, did not support their claims that dowry negotiations took place. This is particularly notable, considering that a Maasai dowry negotiation or marriage ceremony is typically a significant cultural event, attended by family members, elders, and community members, and often well-documented. The absence of such evidence casts serious doubt on the occurrence of a valid customary marriage between the deceased and the Protester.

188. Bensale Meitamei provided a list of dowry items; however, the Protester failed to demonstrate before this Honourable Court the essential components and customary steps required to establish that a valid dowry was paid, thereby qualifying her as the wife of the deceased. The Chief, who was present during the dowry negotiations, did not, in his testimony, furnish a list of the items that were paid as dowry.

189. The requirements of a Maasai customary marriage, as described by the Protester's father and the Chief in their testimonies, fell short of the essential elements recognized under established Maasai tradition. None of the deceased's siblings, who are the closest family members, attended the alleged negotiations and ceremonies. Their names do not appear on the list of attendees.

190. Additionally, Rev. Lemishen Joel Ole Letoluo, (the Reverend) a brother to the deceased, did not attend the said ceremonies despite alleging that the family allowed the deceased to take in a Protestant as a second wife.

191. The Protester in 2016 was in a monogamous marriage with one Henry Kukuyia, while the deceased was still married to Salome Leshan. Even though the Decree absolute issued on August 15, 2017, freed the Protester to marry, the same cannot be said of the deceased, who remained in a monogamous marriage until his demise. Therefore, neither the Protester nor the deceased was free to contract other marriages while their monogamous marriages were still in existence.

192. The Protester was not recognized or included in the funeral programme.

193. This Court finds that there was no marriage between the Protester and the deceased, and therefore, the Protester is not a second wife/widow of the deceased.

#### **194. Is the Protester entitled to a share of the Deceased's Estate?**

195. The Protester has alleged that the sum of Kshs. 750,000.00 allocated to her is inadequate and unsatisfactory considering the size and value of the Estate. She has alleged that she cared for the deceased until his demise. She claims that upon her marriage, the deceased constructed a house for



- her on the property known as No. CIS-MARA/ILMASHIARIANI MORIJO/2X0, which was their matrimonial property.
196. Rev. Lemishen Joel Ole Letoluo, who claims that the property was subdivided into four portions and that the deceased gave the Protester one portion known as parcel 7XX4.
  197. The Administrators assert that the Protester is not entitled to the property known as No. CIS-MARA/ILMASHIARIANI MORIJO/2X0, or to any other property, as it constitutes matrimonial property acquired by the deceased and his wife, Salome, during their marriage in 1995, well before the Protester's alleged marriage to the deceased in 2016.
  198. According to the Administrators, this property was communally owned and was allocated to the deceased upon his marriage to the widow, Salome Leshan. It is on this property that they established their matrimonial home.
  199. Both Salome and brother Josephat Tongei Letoluo confirmed in their testimony that the property was once community land and was allocated to the deceased and Salome Leshan when they got married in 1969. The witnesses also testified that the house the Protester claimed to have constructed in 2015, and which the deceased gave to his eldest son, Kuntai Leshan, was built according to Maasai Customs.
  200. The Protester did not provide any document to show that the house on the suit property was constructed for her benefit, nor has she produced any document to show that the deceased bequeathed the alleged portion to her.
  201. According to the Administrators, the property known as No. CISMARA/ILMASHIARIANI MORIJO/2X0 has never been subdivided, and the same is still intact as evidenced by the Certificate of Official Search.
  202. The Administrators further contend that all the properties forming the deceased's Estate were acquired by the joint efforts of the deceased and the widow, Salome Leshan.
  203. This Court finds that all the properties forming the deceased's Estate were acquired by the joint efforts of the deceased and the widow, Salome Leshan, and the Protester, not being a wife or a beneficiary, is therefore not entitled to the deceased's Estate.
  204. Did the deceased recognize the Protester's children as his children, and are they beneficiaries of his Estate?
  205. The Protestor alleges that, by her marriage to the deceased, the deceased assumed parental responsibility for her two children; therefore, they are his children and beneficiaries of his Estate.
  206. The Administrators assert that the Protester's children are neither the deceased's children nor his dependents or beneficiaries. The said children are strangers to the deceased's Estate.
  207. According to the administrators, the Protester's children are the biological offspring of the Protester and one Henry Kakuyia. They were not born to the deceased, and there is no evidence that the deceased expressly acknowledged, accepted, or voluntarily assumed parental responsibility for them, nor is there any indication that they were dependent on him.
  208. The Administrators contend that although the Protester has produced photographs of the deceased with the alleged children, as well as receipts purportedly showing payment of school fees, such evidence is insufficient to establish dependency. The receipts in question do not indicate who made the payments, and there is no evidence directly linking them to the deceased. It remains entirely plausible that the payments were made either by the Protester, who acknowledged in her testimony that she



was employed as an ECDE teacher, or by her spouse, Henry Kakuyia, the biological father of the said children.

209. Section 3(2) of the *Law of Succession Act* defines a child as:

“...a child conceived but not yet born (as long as that child is subsequently born alive) and, about a female person, any child born to her out of wedlock, and, about a male person, any child whom he has expressly recognized or accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility.”

210. Section 29 of the *Law of Succession Act* defines a dependent as: -

“(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately before his death; (b) such of the deceased's parents, stepparents, grand-parents, grandchildren, stepchildren, 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 before his death; and (c) Where the deceased was a woman, her husband if he was being maintained by her immediately before the date of her death.”

211. This Court finds that the Protester's children are not the deceased's dependents and therefore they are not entitled to his Estate either as children or dependents.

## **212. Should the Grant issued on November 3, 2022, be revoked?**

213. Section 76 (a) to (e) of the *Law of Succession Act* stipulates the circumstances under which a grant of representation may be revoked: -

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 motion—

that the proceedings to obtain the Grant were defective in substance.

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.

that the Grant was obtained using 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.

that the person to whom the Grant was made has failed, after due notice and without reasonable cause, either—

to apply for confirmation of the Grant within one year from the date thereof, or such more extended period as the court orders or allows; 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 (e) that the Grant has become useless and inoperative through subsequent circumstances.



214. The Protester alleges that the Administrators obtained the Grant fraudulently and through the concealment of material facts from the Court, namely that the deceased had a second wife and two daughters.
215. The administrators, on the other hand, contend that they fully disclosed the deceased's beneficiaries at paragraph 4 of the Affidavit in support of the Petition for Grant of Letters of Administration dated November 29, 2021, and at paragraphs 3 and 4 of the Affidavit in support of the summons for confirmation of Grant dated December 28, 2022.
216. According to the administrators, the Chief's letter, dated November 4, 2021, lists the names of the beneficiaries of the deceased, and these are the ones identified in the deceased's funeral programme. It was not possible to list the Protester and her two children as beneficiaries or to allocate a share to them in the deceased's Estate, as no relationship existed between them and the deceased.
217. The administrators contend that, as an act of good faith, they duly disclosed the Protester as an acquaintance of the deceased and allocated her Kshs. 750,000.00, though legally the Protester is not entitled to a share of the deceased's Estate.
218. This Court finds that the Protester and her two daughters are not dependents of the deceased, and therefore it was not necessary to seek their consent when making the Petition for Grant and the summons for confirmation of the Grant.

**219. Did the Protestor intermeddle with the deceased's Estate?**

220. The Administrators contend that the Protester has, without any legal authority or Grant of representation, unlawfully intermeddled with the deceased's Estate, specifically with Motor Vehicle Registration Number KAU 9X8J.
221. The said motor vehicle was registered solely in the name of the deceased, Nick Leshan Ole Letoluo, and constitutes part of his freehold property. The logbook and supporting ownership records confirm that, as of the date of his death, September 3, 2021, the vehicle was registered exclusively in his name.
222. Following the deceased's demise, the Protester unlawfully took possession of the said motor vehicle without any lawful authority or a Grant of representation. She has continued to exercise exclusive control over the vehicle and, without the authority of this Honourable Court, proceeded to transfer its ownership into her name. Thereafter, she used the vehicle as collateral to secure a loan from My Credit Limited, causing it to be jointly registered in her name and that of the said financial institution.
223. The legal framework governing intermeddling with the Estate of a deceased person is set out under Section 45 of the *Law of Succession Act* Cap. 160, Laws of Kenya. This provision not only defines the offence of intermeddling but also prescribes the attendant penalties.
224. Section 45(1) prohibits any unauthorized person from taking possession of, disposing of, or otherwise interfering with the free property of a deceased person, unless expressly authorized by the Act, any other written law, or by a grant of representation. It states:

“Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”



225. Section 45(2) provides for the consequences of contravening this provision:

“Any person who contravenes the provisions of this section shall— (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled, after deducting any payments made in the due course of administration.”

226. This Court finds that the Protester's actions are in apparent contravention of the law and constitute unlawful intermeddling with the Estate of the deceased. Her conduct of taking possession of, transferring ownership of, and using the deceased's motor vehicle without a grant of representation or court authority falls squarely within the offence of intermeddling as prohibited under Section 45 of the *Law of Succession Act*. However, the deceased left the same in her possession on his demise, which she used when she would take care of him before his demise.

227. As the grace of her role in taking care of the deceased is recognized by the extension of the gift of Ksh 750,000, so too is the car, though irregularly transferred, to herself the court finds it just and equitable it be part of that beneficence. It is not denied she took care of the deceased for a number of years before his demise.

**Conclusion and orders.**

228. This Court directs and orders as follows:

- i. The court declares that the deceased was survived by one widow, Salome Naanyu Leshan Letoluo, to whom he got married under statute and their four own children named in petition.
- ii. The Protester's Affidavit of Protest, dated February 2, 2023, lacks merit and is hereby dismissed with no orders as to costs, except that the Protester will retain the Motor Vehicle Registration Number KAY 9X8J, in addition to the proposed allocation of ksh 750,000 from the Estate.
- iii. This Court allows the summons for confirmation of the Grant and the deceased's Estate to be distributed as per the Schedule of Distribution dated December 28, 2022, subject to the order (ii) above being taken care of. (ie the Protester will retain the Motor Vehicle Registration Number KAY 9X8J, in addition to the proposed allocation of ksh 750,000 from the Estate).
- iv. Parties to bear their costs.
- v. Orders accordingly.

**DATED AND DELIVERED, THIS 18<sup>TH</sup> DAY OF JULY 2025**

.....

**CHARLES KARIUKI**

**JUDGE**

