



REPUBLIC OF KENYA



**In re Estate of Kiptogom Kiboen (Succession Cause 64 of 2001)
[2025] KEHC 12814 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12814 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 64 OF 2001
JRA WANANDA, J
SEPTEMBER 19, 2025
IN THE MATTER OF THE ESTATE OF KIPTOGOM KIBOEN**

BETWEEN

SAMUEL KIPROTICH SINGOEI PETITIONER

AND

MARGARET JERUTO OBJECTOR

JUDGMENT

1. The main determination that I am called upon to make in this matter is on whether the Objector is a “wife” and/or widow of the deceased, and whether therefore, she, together with her children, are entitled to inherit the estate of the deceased. The answer to all other issues arising herein would then flow from the conclusion made on this one main issue.
2. The background of the matter is that the deceased, Kiptogom Kiboen, died on 17/12/1992 at the age of 83 years. On 12/03/2001, the Petitioner, describing himself as an uncle of the deceased, petitioned for Grant of Letters of Administration over the estate of the deceased. The Petitioner listed himself and one other uncle, Kibiwott Chesilim Kosgei, as the only 2 survivors of the deceased, and listed the parcel of land described as Moiben Segero/Block/2704 (hereinafter referred to as the suit land”) as the sole property comprising the estate. The Petition was then processed and the Grant of Letters of Administration dated 2/07/2008 issued as prayed. Pursuant thereto, the Petitioner, on 8/03/2011, filed the Summons for Confirmation of Grant dated 4/03/2011.
3. However, before the Summons for Confirmation of Grant could be heard, the Objector, by her own Summons dated 30/10/2014, filed through Messrs J.K. Kiplagat & Co. Advocates, applied for Revocation of the Grant. The grounds alleged were that the Objector is the widow of the deceased yet the Petitioner failed to disclose the fact of her existence and of her children to the Court, and that the Petition was filed without her involvement, nor was her consent obtained in filing it. According to her therefore, the Grant was obtained fraudulently. She then attached a letter from the local Chief



supporting her said allegations. In the Chief's letter, it is also stated that the deceased was also married to one Taprandich Sirma and who, under Nandi customs, in turn, married a fellow woman, one Eusila Jerono, who also got children. The Objector also denied that the Petitioner is an uncle to the deceased, and termed him a stranger.

4. The Summons for Revocation of Grant was opposed by the Petitioner by way of the Replying Affidavit which he swore on 22/10/2024, and filed through his newly appointed Advocates, Messrs Kiproop Luseria & Co. The Petitioner agreed that the deceased was married to the said Sirma Taprandich but averred that the two did not get any children, and so Sirma Taprandich brought in the said Eusila Jerono as a caretaker whom they thought would give them children but who however, also did not give birth. He then stated that on 6/09/1996, family members of Kapkiren clan to which the deceased belonged deliberated on the fate of the estate of the deceased and concluded that the said Kibiwott Chesilim Kosgei, an uncle of the deceased, would take care of the property until when the same is shared out, and that he will also take care of the said Eusila Jerono. He stated further that on 13/01/2001, the family agreed to sell the land, and it was agreed further that the said Kibiwott Chesilim, Eusila Jerono, and one Pasilisa Jesang being the overseer, that on 21/11/2001, Kibiwott Chesilim transferred and gave Eusila Jerono 2 acres from his portion of land, Ngeria/Kesses Block 3 Kabongwa/7 in exchange for her inheritance in the suit land, Moiben/Moiben Block 2 (Segero) 704, and paid the entire purchase price. He deponed further that subsequently, the Petitioner purchased the entire 5 acres comprising the suit land, Moiben/Moiben Block 2 (Segero) 704, and paid the entire consideration to Kibiwott Chesilim, who is the uncle to the deceased, and who, on 4/03/2011, consented to the Petitioner filing this Cause. He exhibited copies of the respective Agreements to support his allegations. He submitted further that the Objector was married way back in 1982 and the purported children alleged are not biological children of the deceased, and who, thus, do not qualify as beneficiaries. He exhibited a copy of the Objector's Certificate of Marriage indicating that she got married to another man in the year 1982 as alleged. He thus denied that the Objector was ever married to the deceased.
5. The matter was then directed to be canvassed by way of viva voce trial upon which the parties filed Witness Statements and documents.
6. The Objector, in her Statement dated 17/04/2023, reiterated the matters already stated above and insisted that she is the widow of the deceased, whom she got married to in 1980 when a cultural wedding and engagement were conducted at the home of her sister whom she was living with, and that the deceased paid her dowry by way of 4 sheep and 4 cows. She deponed that at the time of her engagement, the deceased had a 1st wife, the said Sirma Taprandich, who had no children and who also went for the engagement and welcomed the Objector. She deponed that she (Objector) got 6 children with the deceased, and that she lived with the deceased and the said 1st wife in the suit land where she raised the children. She then stated that sometime in November 1992, she had a disagreement with the deceased and went back to her parent's home with her last born child but left the rest behind, although they later joined her a month later in December 1992, and from whom she learnt that the deceased had died. She contended that she then returned to the matrimonial home in 2013 only to find that their houses had been demolished, and that the 1st wife had also died. She added that she later learnt from the Chief that the suit land had since been sold to the Petitioner by one Kibiwott Chesilim Kosgei whom she had never met but had heard the deceased speak of as being his sister's son. Regarding the Petitioner, she reiterated that she has known him for a long time as a neighbour but he is not related to the deceased, and whom she later discovered had taken out the Letters of Administration herein without her (Objector's) knowledge.
7. William Kosgei, in his Statement also dated 17/04/2023 in support of the Objection, insisted that the Objector is the widow of the deceased, and stated that both the Objector and the Respondent



are his neighbours. He then stated that the deceased married the Objector sometime in 1980, and who was staying with her sister, Esther, in the neighbourhood, that he was present during the dowry negotiations, engagement, and dowry payment ceremonies and in which the deceased paid 4 sheep and 4 cows. He added that at that time, the deceased had a 1st wife, the said Sirma Taprandich, but with whom he was not blessed with any children, that the 1st wife was present all through the dowry negotiations, engagement and dowry payment ceremonies, and that it is the 1st wife who welcomed the Objector to the home after the ceremonies. He, too, stated that the deceased, the 1st wife and the Objector settled on the suit land, and that the Objector bore the deceased 6 children. He, too, stated that in the year 1992, a disagreement occurred between the deceased and the Objector upon which the Objector left the matrimonial home but returned in 2013, and is the current occupant of the suit land.

8. Musa Kimaru Rugut, in his Statement also dated 17/05/2023 in support of the Objection, similarly insisted that the Objector is the widow of the deceased, and stated that both the Objector and the Respondent are his neighbours. The rest of his averments are a word-for-word replica of the Statement by the said William Kosgei.
9. The Petitioner, Samwel Kiprotich Singoei, in his Statement dated 27/05/2023, basically reiterated the matters he deponed to in his Replying Affidavit already recounted above.
10. There was another Statement made by one Daniel Malakwen but which I will not consider or recite since he never testified and thus his Statement was never adopted in evidence.
11. There was also another Statement made by one Philemon Kipchirchir who stated that his father, the said Kibiwott Chesilim Kosgei sold the suit land to the Petitioner, which transaction his father informed them about around 1992, and that their father later died in 2014 but after transferring the same to the Petitioner. He, too, contended that the suit land initially belonged to the deceased herein whose family, after his death, agreed that the same would be under the custody of the said said Kibiwott Chesilim Kosgei to take care of Eusila.
12. The matter then proceeded to viva voce trial. The Objectors called the 3 witnesses whose Statements I have recited above, and the Petitioner, too, called the 2 witnesses whose Statemets I have similarly recited. All the Objector's witnesses testified before me on 3/10/2023 while the Petitioner's witnesses both testified on 22/11/2023.

Objectors' witnesses' testimony

13. PW1 was the Objector, Magret Jeruto. Led by her Counsel, Ms. Cherop, she adopted her said Statement and produced 4 out of the 5 documents contained in her bundle. The 5th document, a letter dated 11/09/1997 from a Chief, was marked for identification to be produced by the maker after an objection was raised by Ms. Luseria, Counsel for the Petitioner, against the Objector producing it.
14. Under cross-examination by Ms. Luseria, the Objector reiterated that she got married to the deceased in 1980 and they lived together until 1992. When shown the Marriage Certificate indicating that she got married to one Sila Kimaiyo Boit in 1992, she denied any knowledge thereof, and also denied knowing the said Sila Kimaiyo Boit. Regarding her alleged children with the deceased, she conceded that she did not produce their Certificates of Birth and stated she did not have them. She then basically reiterated the matters contained in her Statement, and denied Counsel's allegation that she started living with the deceased in 1989. In re-examination, she reiterated that her last born child was born in 1991 when she was still with the deceased.
15. PW2 was the the said William Kipruto Kosgey, who, too, adopted his Statement. In cross-examination, he supported and reiterated the testimony given by the Objector and also reiterated matters stated in



his own Statement, including that he was a neighbour to both the deceased and the Objector's sister, asserting the conducting of the marriage of the Objector to the deceased around 1980 after the deceased met the Objector when she came to visit her sister, payment of dowry, and birth of their 6 children in the course of the marriage. He, too, denied the allegation that the deceased met the Objector in 1989. He then stated that the Objector came to the marriage with one child but got the rest in the course of the marriage. In re-examination, he reiterated that the Objector currently lives in the suit land, and. He also stated that the one child whom the Objector came with into the marriage was accepted by the deceased as his own. He supported the Objector's averment that she (Objector) left the matrimonial home in 1991 after a disagreement with the deceased, and left with one young child who was born in 1991.

16. PW3 was the said Musa Kimaru Rugut, who, too, adopted his Statement. In cross-examination, he reiterated that he is a neighbour of the deceased, and that he attended the ceremonies conducted for the marriage between the Objector and the deceased. He however contradicted PW2 when he stated that the Objector did not come into the marriage with any child, and that all were born during the marriage. He however stated that he could not recall the years when the children were born. He also stated that the deceased and the Objector later had a disagreement because the Objector used to brew and sell alcohol, and had disagreed with a customer, and that thereafter, the Objector left with one child but left the rest behind, but who later joined the Objector. He also contended that the Objector and the children however returned about 1 year after the deceased died. He stated further that the family of the deceased did not want the Objector to attend the burial of the deceased because they claimed that the Objector had beaten up the deceased. He however denied that the death of the deceased was as a result of beatings inflicted by the Objector.
17. At this point, upon Application by Ms. Cherop, I adjourned the hearing to give the Objector time to call the Chief to come and produce the said letter marked for identification. Accordingly, I issued Witness Summons to the Chief. However, on 22/11/202, Ms. Cherop informed the Court that they were unable to procure attendance by the Chief's and thus closed the Objector's case.

Petitioner's witnesses' testimony

18. The Petitioner testified as DW1. He adopted his Statement and produced 6 of the 7 documents contained in her bundle of documents. The 7th document, an alleged Marriage Certificate Book Register from a Church was marked for identification. He then reiterated the matters stated in his Statement, including that the deceased was his neighbour and had 2 wives, Sirma Taprandich and Eusila Jerono, but never had children. He testified stated that he does not know the Objector, and reiterated that he purchased the suit land from the said Kibiwott Chesilim, an uncle to the deceased, and to whom the family of the deceased (his 2 wives) had given the suit land. Under cross-examination by Ms. Luseria, he reiterated that Eusila was married to the deceased although he he did not know whether dowry was paid for her. He testified that by the time he purchased the suit land, both the deceased and the 1st wife, Sirma Taprandich, were already deceased, and reiterated that it is the said Kibiwott Chesilim, an uncle of the deceased, who sold him the land. He however conceded that he did not know whether Kibiwott Chesilim held any Letters of Administration. He also conceded that he is not related to the deceased, and that it is the Objector who currently lives in the suit land and who moved there after the death of the deceased. He also stated that Eusila is now deceased and was not buried in the suit land because he (Petitioner) had already purchased the land by then.
19. DW2 was the said Philemon Kipchirchir Cheptile who had, in his Statement, stated that he is a son of the said Kibiwott Chesilim Kosgei. He, too, adopted his Statement and stated that the deceased was a paternal uncle to his father. He, too, denied knowing the Objector as a wife of the deceased, and he,



too, reiterated that the deceased had 2 wives, Sirma Taprandich and Eusila Jerono, but did not have any children. In cross-examination, he agreed that while he lives in Burnt Forest and was brought up in Ngeria, the suit land is in Ziwa-Moiben. About the Objector not being a wife of the deceased, he stated that it is his (DW2) father who told him so. Regarding Eusila, he stated that he knew her well as she even stayed with them briefly after the deceased died, before she was relocated to another parcel of land. He reiterated that it is his father who sold the suit land to the Petitioner around 2012, although he never saw any Letters of Administration held by his father. In re-examination, he stated that their home is in Ngeria and that is where Eusila was given 2 acres by their father after his father had purchased the suit land.

20. At this point, upon Application by Ms. Luseria, I adjourned the hearing to give the Petitioner time to call an official from a Church to come and produce the alleged Marriage Certificates Book Register earlier marked for identification. Accordingly, I issued Witness Summons to the Church. On 31/10/2024, the Church sent an Advocate to Court, Ms. Tanui, to appear on its behalf. To enable her bring a witness and to file copies of the documents intended to be produced, I again adjourned the matter. However, on 31/10/2024, Ms. Luseria informed the Court that after perusing the documents filed by the Church, she no longer wished to have the same produced and instead, applied for Summons to issue to the Registrar of Marriages. I obliged and allowed the Application, and issued the Witness Summons. However, when the matter came up on 18/02/2025, Ms. Luseria opted to close the Petitioner's case without calling the intended witness.

Written Submissions

21. Pursuant to the foregoing, the trial was closed and the parties filed submissions. The Objector filed the Submissions dated 1/04/2025, while the Petitioner's filed is dated 24/04/2025.

Objector's Submissions

22. Counsel for the Objector submitted that the evidence on record confirms that the Objector was married by the deceased as a 2nd wife. As regards the Petitioner's failure to call its intended 3rd witness despite filing a Statement, she submitted that it must have been because that the witness' testimony would have been damaging to his case. She submitted further that witnesses had confirmed that the Objector had children and that it is the Objector who currently resides in the suit land together with her children. Regarding the alleged Marriage Certificate showing that the Objector was purportedly married by someone else, she pointed out that the Certificate was only marked for identification and was never produced in evidence, and that the Petitioner also did not call the Registrar of Marriages as his Counsel had indicated. On revocation of the grant, he cited Section 76 of the [Law of Succession Act](#) and submitted that it was not denied that the Petitioner is not a beneficiary of the estate of the deceased, that he purchased the suit land from the said Kibiwott Chesilim Kosgei after the death of the deceased, and yet the Kibiwott Chesilim Kosgey was only a nephew to the deceased thus ranking very low in the order of consanguinity, and also did not hold any Grant of Letters of Administration authorizing him to sell the property of the deceased. She termed the purported sale as an act of intermeddling with the estate of the deceased as defined in Section 45 of the [Law of Succession Act](#), and submitted that the Court cannot sanction an illegality. She cited the case of Board of Trustees National Society Security Fund vs Michael Mwaloi [2015] eKLR, and the Ugandan case of Makula International Ltd vs His Eminence Cardinal Nsubuga Another (1982) H.C.B. II. Counsel submitted further that the Petitioner's claim, if any, lies with the estate of Kibiwott Chesilim who sold the land illegally and without capacity, and that the claim cannot be ventilated in the present probate Court case as the Petitioner does not have any legitimate claim against the estate of the deceased herein. She cited the case of In re Estate of Boniface Njeru Ngemi (Deceased) [2020] eKLR.



Petitioners' Submissions

23. Perusing the Submissions made by the Petitioner's Counsel, it is clear that the folly in the Submissions is that most of the factual arguments advanced by Counsel are not conclusions borne out of the trial or witness testimonies but are, instead, a reiteration or repetition of what was initially alleged in the Petitioner's witnesses' Statements or his Replying Affidavit, not what was canvassed or established at the trial. This is evidently misplaced since the purpose of final Submissions is basically for Counsel to give an analysis of the testimonies given by witnesses at the trial, and the evidence on record, and apply the law to such testimony and evidence, not to advance matters not uttered by witnesses, even if initially pleaded. I will not therefore recite the portions of Counsel's submissions made on the basis of factual allegations picked from the Petitioner's pleadings but which, as aforesaid, were never uttered by any witness at the trial.
24. Be that as it may, regarding factual matters canvassed or touched on at the trial, in respect to whether the Objector and her children were dependents of the deceased, Counsel for the Petitioner referred to the definition contained in Section 29(a) of the Law of Succession Act, and submitted that the Objector's claim that she was a "wife" of the deceased was disowned by the Petitioner's witnesses who are relatives of the deceased. According to her, the evidence confirmed that the deceased and his wife had no children and the wife thus brought in a caretaker, Eusila Jerono, whom they believed would give them children but also did not do so, and the Objector was therefore only brought in as another caretaker in accordance with Nandi customs, and not as a wife, and that she also came with one child. Further, according to her, the evidence established that the deceased and the Objector had a disagreement in 1991 and, they separated and the Objector never returned to the matrimonial home until 2014 (23 years later) when she re-appeared and challenged the Grant herein. According to Counsel, the Objector did not also prove her marriage to the deceased, and she cannot therefore also seek refuge under Section 3(5) of the Law of Succession Act. She also submitted that the Objector's children are not biological children of the deceased because, according to her, the Objector was only a caretaker for 1 year and that this was confirmed by the Objector's testimony that her last born child was born in 1991. Further, she submitted that the Objector did not produce any DNA results or Certificates of Birth for the children, and that they were not taken care of by the deceased prior to his death. Regarding the prayer for revocation of the grant, she urged that the Objector did not prove any fraud on the part of the Petitioner in obtaining the same. She averred that the sale of the land was not illegal since the deceased having not left behind a wife or children, his clan discussed the fate of his estate and initially resolved to hand over the suit land to the said Kibiwott Chesilim, an uncle of the deceased, to take care of it, and to also take care of the said Eusila Jerono, the caretaker, and the subsequent exchange of a portion with Eusila Jerono, as well as the sale to the Petitioner were thus not unlawful having been consented to by the family of the deceased. In the end, she prayed that the Objection be dismissed with costs, and submitted that under Section 107(2) of the Evidence Act, it was the the Objector's burden to prove her case on a balance of probabilities, which she had failed to do.

Determination

25. The issue arising for determination in this matter can be summarised as follows:
- i. Whether the Objector was a "wife" of the deceased, thus entitled to inherit his estate, together with her children, and therefore, whether the Petitioner concealed this fact when he applied for and obtained the Grant of Letters of Administration herein.
 - ii. Whether therefore, the Grant should be revoked for having been obtained fraudulently, and if so, who should, instead, be appointed the Administrator of the estate.



- iii. How then should the estate be distributed?
26. In respect to the 3rd issue above, distribution of the estate, although the parties did not expressly raise it, the nature of the trial and the parties' Submissions persuades me that they would also be contented with the Court determining it as well. The matter is also quite old, the deceased having died in 1992, 33 years ago, and this Cause having itself been commenced in 2001, 24 years ago. There would therefore be no benefit in only partially determining some issues when all material necessary to conclude it once and for all is all on record.
27. Be that as it may, what the Objector prays for in the instant Application is that the Grant issued herein be revoked and/or annulled. The reason she has given for making that prayer is that the Grant was obtained by concealment of the material fact that she is a surviving widow of the deceased herein, with whom they were blessed with 6 children. She therefore claims to be the one entitled to inherit the estate of the deceased by virtue of her marriage.
28. In respect to revocation of Grants, Section 76 of the [Law of Succession Act](#) provides as follows:

“76. Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any Interested Party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; 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.”



29. Clearly, the Objector has approached the Court under sub-section (b) and/or (c) above.
30. It is also settled that the grounds set out in Section 76 above need to be proved with sufficient evidence as the mandate to revoke a Grant is a discretionary power that must be exercised judiciously and only on sound grounds, not whimsically or capriciously.
31. Regarding the order of preference or priority to be applied in determining Petitions for Grant of representation, and/or the person or persons to be appointed to administer the estate, Section 66 of the [Law of Succession Act](#) provides as follows:
- “When a deceased has died intestate, the court shall save as otherwise expressly provided, have a final discretion, as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference:
- a) Surviving spouse or spouses with or without association of other beneficiaries.
 - b) Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
 - c) The public trustee; and
 - d) Creditors;
32. Under Section 66 therefore, the Court has the final discretion as to whom a Grant shall, in the best interests of all concerned, be made. As is also apparent, the order of preference set out above is only a guide and the Court retains a discretion thereon.
33. On the issue of “dependency”, Section 26 of the [Law of Succession Act](#) provides that:
- “Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased’s estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased’s net estate.”
34. On this definition of a “dependent”, the relevant provisions of Section 29 of the [Law of Succession Act](#) are then premised as follows:
- “(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased’s parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- (c)”
35. It is therefore clear that a person claiming under Section 29(a) of the [Law of Succession Act](#), does not need to also prove that he/she was being maintained by the deceased prior to his death. However, unlike



Section 29(a), proof of “dependency” is a condition precedent to the exercise of the Court’s powers under Section 29(b).

36. In respect to the above,, Mabeya J, in the case of Beatrice Ciamutua Rugamba. vs. Fredrick Nkari Mutegei & 5 Others, 2016 eKLR, held as follows:

“From the foregoing, a dependent under section 29 (b) and (c) must prove that he/she was being maintained by the deceased immediately prior to his demise. It is not the mere relationship that matters, but proof of dependency.”

37. Regarding the definition of a “child” or “children” of a deceased person eligible to inherit from his estate, the Law of Succession Act in Section 3(2), contains the following explanations in its interpretation provision:

“(2) References in this Act to “child” or “children” shall include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, any child born to her out of wedlock, and, in relation to a male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility.

(3) A child born to a female person out of wedlock, and a child as defined by subsection (2) as the child of a male person, shall have relationship to other persons through her or him as though the child had been born to her or him in wedlock.

38. Regarding the provisions of the Law of Succession Act guiding the handling of a claim of paternity of a child for purposes of inheritance from the estate of a deceased person, the Court of Appeal, in the case of E.M.M v I.G.M & Another [2014] eKLR, stated as follows:

“The real issue before us on this appeal is whether the appellant proved before the High Court on a balance of probabilities that he is a child of the deceased. Under section 29(a) of the Law of Succession Act, if the appellant is able to prove that he is a biological child of the deceased, he would be a dependant of the deceased without having to prove that he was maintained by the deceased immediately prior to his death.

Independent of being a biological child of the deceased, and therefore an automatic dependant, the appellant would also qualify as a dependant of the deceased if he can prove that he is a child whom the deceased had taken into his family as his own, and who was being maintained by the deceased immediately prior to his death. Unlike the dependant under section 29(a), the dependant under section 29(b) has to establish that the deceased had taken him or her into his family as his own child and that he or she was being maintained by the deceased immediately prior to his death.

39. As aforesaid, the question in this case is whether the Objector was a “wife” to the deceased and whether her children were sired by the deceased, or were accepted and recognized by the deceased as his own, or were dependents of the deceased immediately prior to his death.



40. On the issue of determining the existence of a marriage, the Court of Appeal, in the case of *M.W.G v E.W.K* [2010] eKLR, held as follows:

“The existence or absence of a marriage is a question of fact. Likewise, whether a marriage can be presumed is a question of fact. It is not dependent on any system of law except whereby reason of a written law it is excluded. For instance, a marriage can’t be presumed in favour of any party in a relationship in which one of them is married under a statute. However, in circumstances where parties do not lack capacity to marry, a marriage may be presumed if the facts and circumstances show the parties by a long cohabitation or other circumstances evinced an intention of living together as husband and wife.”

41. In this case, the parties agree that the deceased was married to one Taprandich Sirma, but that the couple was not blessed with any children. According to the Petitioner, since the couple did not have children, they brought in one Eusila Jerono, either as a 2nd wife or a caretaker, to get children with the deceased but however, Eusila Jerono, too, did not get any children. Although the Objector did not say anything about Eusila Jerono, the Chief’s letter dated 22/09/2006 that she exhibited in her Summons for Revocation expressly indicates that Eusila Jerono was married by the deceased as a 2nd wife, and also that she had children with the deceased, although no further mention of such children was made at the trial, or in the witness statements or Affidavits. On the part of the Objector, she alleges that the deceased brought her in (Objector) also as a wife in 1980, when he married her under Nandi customary law, and that she then got 6 children with the deceased. Indeed, the Chief’s letter aforesaid describes the Objector as the surviving wife of the deceased. Further, according to the Objector, she had a disagreement with the deceased sometime in 1991 upon which she left the matrimonial home.
42. The deceased then died in 1992 and the Objector claims that she eventually returned and re-occupied the matrimonial home/suit land which she does to date. The Objector did not however clearly disclose when she returned to the matrimonial home but according to the Petitioner, the Objector emerged in 2014, thus 23 years after the deceased died in 1992. Be that as it may, the parties agree that the 1st wife Taprandich Sirma is deceased with no children, and according to the Petitioner, Eusila Jerono is also deceased, also with no children.
43. On the part of the Petitioner, although in the Petition he described himself as a an “uncle” of the deceased, at the trial, he conceded that such description was not correct. He conceded that he has no direct relationship with the deceased and was not his uncle. He clarified that he was simply a purchaser of the suit land, Moiben/Moiben/Block 2(Segero)704 measuring 2.023 Hectraes as per the Certificate of Search, which is the only property forming the estate of the deceased. He explained that after the deceased and his 1st wife (Taprandich Sirma) both died, leaving no children, there was no direct heir to his estate as Eusila Jerono was only a caretaker. He stated that in the circumstances, the Kaptiren clan which the deceased belonged to discussed the matter and appointed the late Kibiwott Chesilim, an uncle of the deceased, to take over the estate of the deceased, and to also take care of Eusila Jerono. He alleged that subsequently, Kibiwott Chesilim sold to him the entire suit land in 2012, and to “buy-off” Eusila Jerono, the Petitioner gave her 2 acres of land elsewhere, which she accepted and settled on. The Petitioner however conceded that it is the Objector who has been, and is still, occupying the suit land to date.
44. From the above recital of facts, it is clear that the Petitioner moved to apply for Letters of Administration, which he indeed successfully obtained, on the presumption that there was no surviving direct heir to the estate of the deceased as the deceased had no surviving wife or children. If therefore it turns out that there was afterall such heir, then the Petitioner would be relegated in rank as



the person entitled to apply for Letters of Administration of the estate. If therefore the Objector proves that she is indeed a surviving of “wife” of the deceased, and thus a “widow”, under the provisions of Section 66 of the Law of Succession Act aforesaid, she will automatically outrank the Petitioner in priority and will be entitled to replace the Petitioner as the Administrator of the estate of the deceased. Since the 1st wife, Taprandich Sirma and the 2nd wife and/or caretaker, Eusila Jerono are also both dead, with no evidence of leaving behind any surviving child, the Objector and her children will then remain as the only heirs to the estate of the deceased. Has the Objector therefore established that she was a “wife” to the deceased, and thus, a “widow” of the deceased?

45. In answering the above question, I recall that the Petitioner denied any knowledge of the Objector and contended that in any event, the Objector was married to another man in 1982, long before she purports to have married the deceased in 1992. Regarding the alleged Marriage Certificate showing that the Objector was married by someone else however, the alleged Certificate on in the file was only marked for identification and was never produced in evidence. Further, the Petitioner also did not also call the Registrar of Marriges to confirm the authenticity of the Certificate as his Counsel had indicated. In the circumstances, I fiund that the Petitioner failed to prove his allegation that the Objector was married to somewhere else in 1982 before she got married to the deceased.
46. Nonetheless, the obligation of proving that she was a “wife” and thus the surviving “widow” of the deceased lay at all times, with the Objector since she is the one who is asserting that fact. Indeed, it is trite law that “he who alleges must prove”. This is the principle of the “burden of proof” and which is codified in Section 107 of the Evidence Act as follows:
- “ 107 Whoever desires any court to give judgment as to any legal right or liability
(1) dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
47. That the existence of a marriage is a matter of fact which must be proved with evidence was also restated in the Court of Appeal case of Gituanja vs Gituanja (1983) KLR 575, and also in Hortensia Wanjiku Yawe vs The Public Trustees, Civil Appeal 13 of August 6, 1976. It was therefore incumbent upon the Objector to prove, on a balance of probabilities, that she was married to the deceased. The Petitioner’s duty to disprove that allegation would then only arise if the Objector established a prima facie case.
48. In this case, the Objector, apart from herself, called 2 witnesses, PW2 and PW3, who claimed to have been residents of the neighbourhood in which the deceased and the Objector’s sister used to live. They echoed the Objector’s contention that she came to live with the sister and that is where the deceased spotted her, and eventually married her. They also claimed to have attended the marriage ceremonies conducted at the sister’s home. I was however not convinced by the testimony of PW2 and PW3. First, even when given the opportunity, they did not vividly describe the alleged ceremony event, neither were they clear as to who else were in attendance, and even who presided over it, and in what capacity.
49. All PW2 and PW3 did was to support the Objector’s contention that the deceased paid 4 sheep and 4 cows for her as dowry. They did not state which relatives from each side attended the ceremony, and who received the dowry on the side of the Objector. They also, like the Objector, did not explain even why the marriage ceremony was held at the Objector’s sister’s home, and not at the parents’ home as is ordinarily the case. They also contradicted each other since while PW2 testified that the Objector came into the marriage with one child, PW2 was emphatic that all the Objector’s children were born



during the marriage. For these reasons that I am not satisfied with the reliability of PW2 and PW3 as credible witnesses.

50. The Objector also stated that she got married to the deceased in 1980 and the last born of her 6 children with the deceased was born in 1991. Assuming that she gave birth to her 1st child immediately she got married, the 1st born would therefore be about 45 years old and the last born would currently be about 34 years old. These are therefore adult people in their own right most probably with their own established homes and families. There is no explanation why they did not by themselves join the suit to personally agitate their case, or at least, why they were not called as witnesses to support their mother's claims. Could it be that they were not called because their testimony could have damaged the Objector's case? From what I stated earlier, this would not be a far-fetched intuition.
51. The Petitioner did not also present any proof that she got her said children during the marriage with the deceased, if any. She did not produce any Certificates of Birth, or any other evidence of such nature, and as aforesaid, she did not also call the children (now adults aged between 34 and 45 years old) to testify.
52. There was also the allegation by the Petitioner and his witnesses that the Objector came to occupy the suit land in 2014, 23 years after the deceased died in 1992. The Petitioner and his witnesses also stated that the Objector did not even attend the burial of the deceased. The Chief who allegedly authored the letter alleging that the Objector was a wife of the deceased also was never called to testify and no explanation was given as to why he was never so called. If he is no longer there, his successor could still have been called to come and confirm the authenticity of the letter since I would expect that records of matters handled by that office are normally kept safe in custody for a long time in the Chief's office. The Objector did not deny these allegation which I therefore presume to be true. Under these circumstances, I do not think that the Objector conducted herself as a wife of the deceased.
53. An allegation of being a "wife" or "widow" for purposes of inheritance of the estate of a deceased person who is no longer there to confirm the truth of such allegation is serious business and I would expect an Applicant alleging such to do all in her capability to present strong, cogent and satisfactory evidence to support her allegations. It is not a matter to be taken lightly, or to be left to mere conjecture, as done herein.
54. In view of the foregoing, I find too many loose-ends, doubts and contradictions in the Objector's case. In the circumstances, I am not satisfied that she has done enough to discharge, on a balance of probabilities, her burden of proving that she is a wife of the deceased, and thus, his surviving widow.
55. Regarding the alternative limb of "dependency" under Section 26 and 29 of the [Law of Succession Act](#), both in respect to herself and also her children, the Objector also did not produce anything whatsoever to suggest that her "children" were being "maintained by the deceased immediately prior to his demise", or that they were children "whom the deceased had taken into his family as his own". This alternative claim brought under the basis that the Objector and her children were "dependents" of the deceased therefore also remains unproven, and also fails.
56. Before I pen-off, I may remark that this case reminds me of the following statements made by Mativo J (as he then was), in the case of *In re Estate of Patrick Mwangi Wathiga - Deceased* [2015] eKLR:

"In my view, the practice of persons emerging after the demise of a deceased person purely to claim a share of properties of the deceased person should be discouraged unless the alleged claimant can demonstrate that there were attempts to have him or her recognized as a beneficiary/member of the family during the deceased's life time, or the deceased left clear instructions to that effect, or his claim can be reasonably inferred from the express or implied circumstances of the case including the conduct of the deceased or from such reasonable or



probable circumstances that can be proved by way of evidence. Alternatively, such a claim can also be admitted if the claimant demonstrates that he was prevented from associating with the deceased during the deceased's life time by either infirmity of body or mind or both or any other reasonable circumstances. In my view, where someone remains delinked from a family or the person he claims to be a parent for 24 years and only emerges after his/her death, the burden lies on him/her to establish his claim to the deceased's estate and to tender such evidence as may be necessary to establish his claim beyond reasonable doubt.

I am clear in my mind that the burden of proof lies on the objector to prove paternity or his claim to be a beneficiary of the deceased's beyond reasonable doubt. In *Kimani Mathenge Muriuki vs Patricia M. Muriuki & Another*[5] the court of Appeal emphasised on the need for the person alleging paternity to prove it on a balance of probabilities. The case becomes even more difficult where no medical evidence is adduced to prove paternity or to prove that the deceased was step father or lawful guardian. No other evidence was adduced except what the objector states. The position is complicated by the fact that the objector emerged only after the deceased's death and 24 years after the Petitioner had been married to the deceased.

It is trite law that the burden of establishing all the allegations rested on the objector and in law he was under an obligation to discharge the said burden. It's not enough to state that the deceased was his father. He ought to have supported the said allegation by adducing the necessary supporting evidence.”

57. In respect to the Petitioner, as aforesaid, he lied when he alleged, in the Petition, that he is an uncle of the deceased. He is not. He is a purchaser of the suit land, which as it turned out, he did not even purchase directly from the deceased but from an uncle of the deceased appointed by the clan to take over the estate after the deceased passed on. To this extent, the purported purchase by the Petitioner may as well be termed as an act intermeddling with the estate of a deceased person as defined and prohibited under Section 45 of the *Law of Succession Act*, which may even amount to a criminal offence, and it may also be correctly argued that the Court should not sanction an illegality.
58. A purchaser (as a creditor or a liability to the estate) such as the Petitioner may only be appointed an Administrator where there is no other person ranking higher than him under the hierarchy set out in Section 66 of the *Law of Succession Act*, already cited hereinabove. This case however poses a unique situation since there is no surviving family member of the deceased at all. Under these circumstances, the estate may vest to the State (Government of Kenya) and be paid into the Consolidated Fund. This is in accordance with Section 39(1) and (2) of the *Law of Succession Act*, which provide as follows:
- “(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority —
- (a) father; or if dead
 - (b) mother; or if dead
 - (c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
 - (d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
 - (e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.



- (2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.”

59. Should I therefore order for vesting of the estate to the State? Considering the situation of the two claimants, the Petitioner and the Objector, I think not. The Petitioner’s claim that he purchased the entire land and in exchange, gave Eusila Jeruto 2 acres of his land elsewhere has not been disputed. He seems to have, in ignorance, honestly believed that the clan possessed the legal power to distribute the estate as it did, and that his purchase thereof from the person who was allocated the land by the Kaptiren clan elders was therefore legal. He was definitely wrong on in this belief. The fact however remains that he seems to have made the purported purchase in good faith. The person from whom he purchased the land with the blessings of the clan elders is also now dead and the Petitioner cannot now pursue him for a refund. On the part of the Objector, although I have found that she failed to prove her claim of being a “wife” of the deceased, or a “widow”, she too, seems to have honestly believed that there being no heir, she was the only person who still had any kind of connection to the deceased and seems to have had honest intentions when she returned and took over the suit land, which it has not been disputed, she took over around 2014 and still occupies to date. She does not seem to know any other home. Vesting the estate to the State is therefore likely to render her homeless and destitute.
60. There being no surviving heir from the family of the deceased who has come forward to claim the estate, I think the most fair recourse will be to allow the Petitioner and the Objector to share the suit land, which is the only asset forming the estate, with the Petitioner getting 60 per cent thereof, to cover also for the 2 acres he gave to Eusila Jerono, and for the Objector to remain with 40 per cent. In the meantime, to ensure each other’s interests are catered for, the two should be joint Administrators. I so hold.

Final Orders

61. The upshot of my findings is therefore that the Objector’s Notice of Motion dated 30/10/2014 partly succeeds, and I rule and order as follows:
- i. The Grant of Letters of Administration Intestate dated 2/07/2008 and issued in this Cause, is hereby reviewed, rectified and/or amended in terms that the Objector, Magret Jeruto, is added thereto, and appointed a co-Administrator to the Petitioner, Samwel Kiprotich Sin’goei, to make 2 joint Administrators.
 - ii. The parcel of land known as Moiben/Moiben/Block 2(Segero)704 measuring 2.023 Hectares as per the Certificate of Search on record, and being the sole asset comprising the estate of the deceased, is hereby distributed in the following terms:

Samwel Kiprotich Singoei	1.2138 Hectares	60 per cent
Magret Jeruto	0.8092 Hectares	40 per cent
 - iii. Any party aggrieved by the decision hereinabove has forty-five (45) days leave to file an appeal, and which period shall also act as automatic stay against implementation or execution of this Judgment.
 - iv. Subjecto to (iii) above, the parties shall be at liberty to extract the amended or rectified Letters of Grant of Administration Intestate, and also the Certificate of Confirmation of Grant.



v. Each party shall bear its own costs.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 19TH DAY OF SEPTEMBER 2025

.....

WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Ms Cherop h/b for Mr. Kiplagat for the Objector-Applicant

Ms Luseria for for the Petitioner

Court Assistant: Brian Kimathi

