



REPUBLIC OF KENYA



**In re Estate of Len Bomett (Deceased) (Succession Cause E2265 of 2021)
[2025] KEHC 13024 (KLR) (Family) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13024 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

SUCCESSION CAUSE E2265 OF 2021

PM NYAUNDI, J

SEPTEMBER 19, 2025

IN THE MATTER OF THE ESTATE OF LEN BOMETT (DECEASED)

BETWEEN

CHARITY VAATI DUNCAN APPLICANT

AND

TAMIA TUKEI BOMETT 1ST RESPONDENT

ROSEMARY WANGARI NGURE 2ND RESPONDENT

HADIJA IBRAHIM DAHAL 3RD RESPONDENT

RULING

1. Before this Court is for summons for revocation of grant dated 3rd October 2023 in which the Objector/Applicant sought an order that the grant of letters of administration to Tamia Tukei Bomet, Rosemary Wangari Ngure and Hadija Ibrahim Dahal made on the 14th day of April 2022 be revoked.
2. The summons premised upon Section 76 of the *Law of Succession Act* and Rule 44(1) of the Probate & Administration Rules and was supported by the Affidavit of even date sworn by the Applicant/Objector. She filed a supplementary affidavit sworn on 6th September 2024.
3. The 1st and 2nd Respondents opposed the summons through their Replying Affidavit sworn on 15th January 2024 and 1st July 2024.
4. The summons was canvassed by way of viva voce evidence.



Background

5. This succession cause relates to the Estate of Len Bomett (the deceased) who died intestate on 7th May 2021. Tamia Tukei Bomett, Rosemary Wangai Ngure and Hadija Ibrahim Dahal petitioned for letters of administration intestate which was issued to them on 14th April 2022. The grant was confirmed on 27th January 2023.
6. The Objector filed summons for revocation of grant. She averred that the grant was obtained fraudulently by the making of a false statement and concealment from the court of something material to the case and the same was obtained by means of an untrue allegation. She argued that the administrators did not disclose that she was the legal wife of the deceased and was not listed as one of the beneficiaries of the estate of the deceased. Their marriage was solemnized under Kamba Customary Rites. she averred that she lived with the deceased from August 2015 until his death.
7. The deceased is said to be survived by the following beneficiaries;
 - i. TTB Daughter.
 - ii. TTB- son (minor).
 - iii. SID- daughter (minor).
8. The deceased had the following assets;
 - i. Title Number Nakuru Municipality/ Block 15/1030.
 - ii. Motor Vehicle, Mercedes Benz, Registration Number KCB 266A.
 - iii. Absa Bank Account, Moi Avenue Branch, Account Number 075100xxx.
 - iv. Cooperative Bank Account, Eldoret Branch, Account Number 011430703xxxx.
 - v. Pension of the deceased at the Ministry of Defence/Directorate of Pensions.

Summary Of Evidence

9. OW1, Charity Vaal Duncan She contends that as wife of the deceased she is entitled to be appointed as administrator. She was not notified of the proceedings. Her marriage to the deceased was duly formalized under Kamba Customary law. Further she and the deceased swore a joint affidavit confirming their marriage.
10. During cross- examination, she stated that she commenced cohabitation with the deceased in 2015. The deceased had a previous marriage. Their marriage was formalized through a ceremony on 5th December 2020. Those present from the deceased's family were his uncle, Timothy Katenya Kipury, Memsy Kapury, Grace David and Mrs. Giteya Kateinya. The minutes dated 5th December 2020 were not signed by a representative from the deceased's family. The deceased's family presented 5 goats (ntheo) which is a symbol of acceptance. A goat was slaughtered. The deceased fell ill thereafter and the marriage was not registered at the Attorney General's office. The deceased was admitted in hospital on 20th April 2020 and died on 7th May 2021. The coffin and flowers were paid by the deceased's employers. She paid a deficit of Kshs. 600,000 towards the hospital bill.
11. She was not aware that there were succession proceedings in regards to the deceased's estate. She did not see the gazette notice. She was in possession of Motor Vehicle Registration No. KCB 266 A at the time of the deceased's death. She gave the log book to June Moi when the deceased was ill. June Moi



- loaned them Kshs. 1 million. She told her to sell the car to repay the loan. The signature in the letter dated 16th May 2022 to KRA does not belong to her. There are investigations by the DCI on that letter. She also denied signing an affidavit on 7th June 2022. She filed an objection after she was summoned by the police. She did not acquire property with the deceased. The deceased told her he had one child. She did not know that she was not supposed to sell the car. The agreement between the deceased and June Moi was not in writing. She does not have evidence of transferring money to June Moi. She is aware that the deceased's children should benefit from the estate.
12. Rosemary Wangari is the deceased's ex-wife. They are divorced. She is in these proceedings to protect the interests of the minor. She does not know the relationship between the deceased and Hadija. She is not aware that Hadija has a child with the deceased. She was listed as a witness in the memorandum of understanding providing the deceased's burial place. She signed the memorandum of understanding on behalf of the estate. She did not commence succession proceedings.
 13. In re-examination, she stated that she was not charged in court. Rosemary Wangari Ngure knew her as the deceased's wife. She met her at the burial and in hospital when the deceased died.
 14. OW2, Timothy Katenya Kipury he is a maternal uncle of the deceased. He recognised the Objector as the spouse of the deceased. They formalized their marriage on 2nd December 2015. He was part of the delegation that took dowry to the objector's home. He met her two years before he visited her home. They were informed that the function at the objector's place is called ntheo. They carried gifts. The deceased sent him to the objector's home on 9th March 2015. He told the court that the objector is the legitimate wife of the deceased.
 15. During cross examination, he stated that he visited the objector's home with his wife and his cousins. The paternal relatives of the deceased were not present. They have not taken some of the things they were asked to take to the objector's home. Minutes were not taken in the first meeting. The minutes dated 5th December 2020 do not indicate who was present during the meeting. He did not sign the document. They took photos on that day. The deceased had two children. He was previously married. He did not see the notice in the Kenya Gazette. He is aware that the objector was arrested by the police in 2024 in regards to the car that was sold.
 16. In re-examination, he stated that the 2nd respondent is the ex-wife of the deceased.
 17. OW3, Duncan Bosco Kaleve stated that he is the father of the Objector. He produced notes he took of the visit to his home on 5th December 2020 as exhibits. His evidence is that his daughter informed him of the intention of getting married to the deceased in 2015. The deceased and OW1 visited his home in 2016. She introduced her as the man she wished to get married to. In 2018, the deceased sent OW2 to visit his home. He informed them that the deceased wanted to marry OW1. He gave him the requirements of a Kamba marriage and agreed that they were to visit on 5th December 2020. On that day, OW2 led a delegation to his home. He had invited elders from his side. They explained the requirement of a Kamba Custom. They brought 5 goats; one was slaughtered to demonstrate acceptance. They gave OW1 the special part to give the deceased. There were additional presents given on that day. He recognized the deceased as his son in law from that day. Photos were taken on that day.
 18. During cross-examination, he stated that the notes of 5th December 2020 were not signed by the relatives of the deceased. The list does not indicate or list those that attended the ceremony. He is not aware if the marriage was registered. After ntheo, dowry is paid as agreed. In Kamba, there is no specific ceremony to formalize the marriage. He is not aware that his daughter was arrested.
 19. Tamia Tukei Bomett testified as PW1. She is a daughter of the deceased. She has two siblings, a younger brother and a step sister.



20. During cross-examination, she stated that according to her, the marriage ceremony being referred to is fabricated. The marriage affidavit was sworn when the deceased was in hospital. OW1 blocked access to the deceased. she heard from her relatives that the deceased married a wife in a ceremony
21. In re-examination, she stated that the ceremony was not attended by her relatives.
22. PW2 was Rosemary Wangari Ngure. Her evidence is that she is participating in these proceedings to represent the interests of her son who was a minor at the time the Petition was filed. She is not aware that the deceased was married. The deceased had a relationship with Hadija Ibrahim Dahal and had a daughter together. She is also representing the interests of her daughter. The marriage between the deceased and the objector was not registered. The deceased was critically ill one week before his death. A fundraiser was held to offset the hospital bills. She used her NHIF card to pay some bills. OW2 is the only one who talks about a ceremony. The ownership of the vehicle after the death of the deceased. OW1 was investigated by Kilimani Police. She filed an objection during this time.
23. During cross-examination, she stated that OW1 was present in the fundraising. She learnt about her when he was in hospital. She heard that she was living with the deceased. OW1 was registered as the next of kin at the hospital. She had an agreement with the deceased's paternal uncles on where the deceased was to be buried. The deceased did not remarry after their divorce. He had a series of relationships thereafter. The deceased did not inform her that he had remarried.
24. In re-examination, she stated that at the hospital, OW1 did not state that she was married to the deceased. The issue of marriage came up later.

APPLICANT/ OBJECTOR'S SUBMISSIONS.

25. The objector contended that she was married to the deceased under Kamba Customary Law. While relying on the case of *In re Estate of Benedict Mbuthu Nguta (Deceased)* [2019] eKLR and *In re Estate of Kamui Mavuti (Deceased)* [2017] eKLR it was submitted that all the essentials of a valid marriage in Kamba customary which included capacity to wed, consent, slaughter of a goat, dowry payment and cohabitation had been proved by the evidence of the objector and her two witnesses.
26. Secondly, that the objector and the deceased signed an affidavit of marriage and that their behavior was that of a married couple. Further, that the deceased's uncle entered into an agreement with the objector to lease out where the deceased would be buried. That the Respondents in cross examination confirmed that they heard of the alleged marriage between the objector and the deceased.
27. Thirdly, it was submitted it was submitted that the grant issued should be revoked for reasons that the objector's name was omitted in the petition for grant of letters administration. Also, that they did not seek her consent when petitioning for letters of administration intestate.

RESPONDENTS SUBMISSIONS.

28. The Respondents submitted that the alleged marriage between the Objector and the deceased was not registered according to Section 44 and Section 55 of the *Marriage Act* and therefore, it is invalid. They added that no expert witness was called to give evidence. They argued that the photos produced in court were blurred and there is no photo showing that a goat was slaughtered according to Kamba traditions. They discredited the minutes produced by the Objector's father which were only signed and produced by him. Reliance was placed in the decisions of *Rebecca Muthoni Kamau v Tabitha Muthoni Kamau Family Appeal No. 16 of 2019* and *Sugut v Jemutai & 3 others (Civil Appeal 110 of 2018)* [2023] KECA 202 KLR.



29. They challenged the marriage affidavit produced by the objector. They argue that the deceased was admitted in hospital in March 2021. The deceased was critically ill on 30th April 2021 when the marriage affidavit was sworn; he passed away 7 days later. They argued that the deceased was prone to coercion, manipulation and he lacked the capacity to comprehend the purport and meaning of the affidavit when signing it.
30. The respondents submitted that the brief cohabitation alleged by the objector does not raise the presumption of marriage. They sought to rely on the decisions of Phyllis Njoki Karanja & 2 others v Rosemary Mueni Karanja & another [2009] eKLR, in re Estate of Change Njuki (Deceased) (Succession Cause 207 of 201) KEHC 3939 (KLR) and MNK v POM Petition 9 of 2021 [2023] KESC 2 (KLR).
31. The Respondents further submitted that the objector had failed to provide sufficient evidence or proof for grounds for revocation of a grant as stated in the case of In re Estate of Prisca Ongayo Nande (Deceased) 2020 KEHC 6553 (KLR).
32. It was their submission that the objector intermeddled with the deceased's estate by selling a motor vehicle belonging to the deceased. That she filed a statement stating that the deceased had sold her the vehicle and travelled out of the country. She also withdrew funds from the deceased's bank accounts after his death. The objector was arrested for illegally transferring the vehicle which prompted her to file an objection to shield her from being prosecuted as an administrator of the estate of the deceased.

Analysis And Determination

33. I have carefully considered the oral evidence and submissions by both parties. The main issues framed for determination are;
 - i. Whether the applicant was a wife to the deceased.
 - ii. Whether the grant should be revoked.

Whether the applicant was a wife to the deceased.

34. The various steps taken to form a Kamba customary law are set out in; Restatement of African Law: The Law of Marriage & Divorce by Eugene Cotran which prescribes a Kamba Customary Marriage entails;
 - ‘Capacity- The Parties must have capacity to marry and capacity to marry each other.
 - Consent- The parties to the marriage and their respective families must consent to the Union.
 - Slaughter of Ram-No marriage is valid unless the nthenge ya kwitia mbui nthamake nthi is slaughtered.
 - Marriage Consideration- There can be no valid marriage unless a part of the marriage consideration has been paid.
 - Commencement of Cohabitation- The time at which a man and woman become husband and wife legally, is when they begin cohabitation, when the bride comes to the bridegroom's home.’
35. The all-important ‘Ntheo’ ceremony involving the slaughtering of a goat by the groom and other goats for the feast and other gifts as outlined by OW3, who is the objector's father. He produced notes dated 5th December 2020. It shows the minutes for the dowry negotiation, the people present and what was presented by the deceased and his people. OW1 and OW3 told the court that a goat was slaughtered according to the Kamba traditions and OW1 fed the deceased according to their customs. OW2 who is the maternal uncle of the deceased also told the court that the deceased and the objector were husband



and wife. He also told the court that he attended the first introduction which was in 2015. There are also photos showing that the customary marriage did really occur.

36. OW1 told the court that she cohabited with the deceased since 2015 until his demise. Although PW1 and PW2 denied that the deceased and the objector were husband and wife and had conducted a Kamba customary marriage, they stated that they heard that the deceased was married to the objector. OW1 told the court that she was recognized as the wife of the deceased and was a witness in memorandum of understanding between the deceased's uncle and the deceased's estate on where the deceased was to be buried. At the hospital, she was indicated as the next of kin of the deceased.
37. The Court has considered the evidence on record, I do find that the objector was a wife of the deceased having been married under Kamba Customary Marriage.

SUBDIVISION - Whether the grant should be revoked.

38. Section 76 of the *Law of Succession Act* gives the court the powers to revoke a grant provided the conditions stipulated therein have been met. It states that:-

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

- a) That the proceedings to obtain the grant were defective in substance;
 - b) That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
 - c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
 - d) That the person to whom the grant was made has failed, after due notice and without reasonable cause either: -
 - i. To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or
 - ii. To proceed diligently with the administration of the estate; or
 - iii. To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
 - iv. The grant has become useless and inoperative through subsequent circumstances.
39. The circumstances in which a grant can be revoked were discussed in the case of *In the Matter of the Estate of L.A.K. (Deceased)* [2014] eKLR :-

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



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

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

41. The objector argued that the grant should be revoked on the ground that the respondents did not inform the court that the deceased was survived by a wife.

42. A grant may be revoked if the same was obtained fraudulently by the making of a false statement and concealment from the Court of something material to the case. In the instant case, the Respondents did make a false statement on oath in their petition for the Grant. They stated that the Deceased was survived only by three children.

43. I am persuaded that the exclusion was wilful and intended to deceive the Court. Having found that the Objector is a wife to the deceased, under Section 66 of the *Law of Succession Act* she ranks in priority to the respondents in preference to appointment of Administrator.

44. Section 66 of the Act provides that the Court shall 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. In exercise of that discretion and in the best interests of all concerned, I make the following orders:

- i. The Grant of Letters of Administration issued to Tamia Tukei Bomett, Rosemary Wangai Ngure and Hadija Ibrahim Dahal on 14th April 2022 and confirmed on 27th January 2023 be and is hereby revoked.
- ii. A fresh grant will issue to Charity Vaati Duncan and Tamia Tukei Bomett, Rosemary Wangai Ngure and Hadija Ibrahim Dahal
- iii. Tamia Tukei Bomett, Rosemary Wangai Ngure and Hadija Ibrahim Dahal to produce to the Court on or before 29th October 2025 full and accurate inventory of the assets and liabilities of the Deceased and a full and accurate account of all dealings therewith up to the date of the account.
- iv. The joint administrators shall file a fresh summons for confirmation of grant within 60 days
- v. Mention for compliance on 5th November, 2025.
- vi. There shall be no order as to costs.
- vii. Parties granted leave to exercise right of appeal within 30 days.

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 19th DAY OF SEPTEMBER, 2025.

P. M NYAUNDI

JUDGE



In the presence of:

Fardosa Court Assistant

Kitheka for Objector

Nderitu for Administrator/Respondents

