



**In re Estate of the Late GIW (Deceased) (Succession Cause E526 of 2020)
[2025] KEHC 12716 (KLR) (Family) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12716 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E526 OF 2020
HK CHEMITEI, J
SEPTEMBER 18, 2025
IN THE MATTER OF THE ESTATE OF THE LATE GIW (DECEASED)**

BETWEEN

RAOW PETITIONER

AND

EAM RESPONDENT

JUDGMENT

1. The Objector filed her objection proceedings herein dated 14th November 2021 seeking that the grant of letters of administration made on 19th March 2021 and granted to the Petitioner be revoked and set aside.
2. The court directed that the same be heard by way of viva voce evidence.
3. The Objector testified and called one other witness and closed her case.
4. The Respondent beside her testimony called four other witnesses.
5. Their evidence can be summarized as hereunder.
6. The Objector testified that the deceased married her under the tenets of Luyha customary law where she produced a hand written agreement indicating the discussion between the two parties.
7. She also said that she stayed with the deceased from 2012 until his demise. The deceased stayed with her in Kiminini and their Nzoia farm and the house belonged to the deceased.
8. She further testified that the deceased prior to marrying her was staying with another woman called C who had since passed on.



9. She also produced an affidavit of marriage between her and the deceased.
10. She said that the deceased went to her home with one PWW and took dowry to her parents. These were 2 cows 2 goats and cash. That it was her brother who went and purchased the said animals.
11. The Objector also produced an agreement which was allegedly written during the negotiations.
12. Pw2 PWW testified on her behalf where during cross examination he said that he attended the dowry negotiations having been invited by the deceased. The ceremony or the discussion took place at Butere - Mumias. That he knew the deceased from the year 2008 when he took his father to Cherangany nursing home.
13. The Petitioner RW testified that she was the sole wife to the deceased having married under the tenets of the Marriage Act which was monogamous.
14. She said that the deceased did not have any other wife and that the Objector and her child were not in any way connected to the deceased.
15. That there were forgery cases against the Objector at Butali and Kakamega courts which had found her guilty of forgery.
16. Dw 2 GW testified on behalf of the Applicant stating that the deceased was his younger brother and he relied on his affidavit sworn on 25th July 2022. He denied that the deceased had married the Objector.
17. Dw3 Protus Wekesa from Bungoma county referral hospital records department produced the hospital records indicating that between 13th March 2005 and 31st March 2005 no child by the name of baby BA was born in that hospital.
18. That they could not trace the name of the Objector anywhere in their records which he produced on behalf of the said hospital.
19. Dw4 C I James Mutuma a document examiner produced his report concerning an affidavit of marriage between the deceased and the Objector as well as a document titled “Mapatano ya mahari” dated 24th October 2015 which he had been requested to compare the signatures with those of the known signature of the deceased.
20. His conclusion was that the said documents were signed by a different person other than the deceased. His report which he produced as exhibit is dated 6th May 2022.
21. Dw5 P.C. (W.) Esther Omburu from Kakamega police station testified concerning criminal case number E844 of 2024 in which the Objector has been accused of forgery in relation to a document titled “Mapatano ya mahari”. She said that the Objector had claimed that the same was an agreement between her and the deceased. She further testified that the complainant in that matter was the applicant herein.
22. In the cause of hearing the matter the court directed through the consent of the parties to subject the minor to a DNA analysis so as to establish whether he was deceased child with the Objector.
23. The order was complied with and the report from the Government Analyst dated 30th December 2024 and which was copied to all the parties clearly found that BA was not the biological child of the deceased.
24. The court directed the parties to file written submissions which they have complied.



25. The Objector submitted that the grant under the provisions of Section 76 of the Act ought to be cancelled or revoked as the same was obtained fraudulently by the applicant without notifying the court that the Objector was existing yet she knew very well that the deceased had married her.
26. The Objector among others relied on the case of *Jamleck Maina Njoroge v Mary Wanjiru Mwangi* (2015) eKLR in advancing this argument.
27. On this score therefore the Objector and her son were deceased dependants, namely, as wife and a son and they ought to be considered. They relied on Section 29 of the *Law of Succession Act*.
28. The Applicant on the other hand submitted that the Objector was never a wife and therefore not a dependant or a widow of the deceased. That she was not able to establish the same based on the fact that the two primary documents she relied on had been found to be forgeries.
29. The Applicant submitted that there was no marriage between the deceased and the Objector based on the fact that the same was never proved and what was produced as documentary evidence was later found to be forged documents.

Analysis and Determination

30. I have perused the evidence on record and the issues for determination were well captured by the parties in their submissions.
31. Basically, the main issue is whether the deceased was married to the Objector. The closer evidence adduced was that of Pw2 who claimed that the deceased went with him to dowry negotiations at the Objector's home. There was however no other witness including the Objector's brother or closer relatives who allegedly purchased the cows and goats from the local trading center and took them to their home.
32. Of most importance are the two exhibits which the Objector produced. The first one was the affidavit of marriage dated 24th October 2015. When subjected to examination by the document examiner the signature therein was found not to belong to the deceased. There was not much rebuttal by the Objector.
33. The same goes with the document titled "Mapatano ya mahari" dated 24th January 2015. When subjected to cross examination the signature therein did not belong to the deceased. It was a forgery.
34. Of significance as well was the fact that the deceased father who had long passed on in 1974 was included as those who participated in the dowry negotiations.
35. Further the Objector did not dispute that fact that she was convicted and found guilty of forgery offence at Butali Law courts and there was another pending matter at Kakamega court yet to be determined and she was also accused of the same forgery offence.
36. Even in the absence of these forgeries I find and hold that there was no sufficient evidence to demonstrate that she was married to the deceased and indeed stayed with him.
37. The burial advertisement on record does not mention her as the deceased widow neither is there any evidence that she participated in the whole burial or funeral exercise as a wife.
38. As regards the minor I find that the DNA analysis was conclusive enough. Beside this there was no evidence pointing to the fact that the deceased ever in any way supported the minor to warrant him qualify as a dependant under Section 29 of the Act.



39. There is no evidence advanced by the Objector to counter that of the Applicant which established that there was no birth of a child by the name of BA during that period or a mother by her name at Bungoma County Referral Hospital.
40. In summary therefore I do not find the objection meritorious in the circumstances. The Applicant could not be faulted for not including the Objector and her son in this cause for the reasons advanced above, namely, that there was no marriage whether customary or otherwise between the Objector and the deceased. Neither was her son deceased son or a dependant for that matter.
41. The objection proceedings are otherwise dismissed with costs to the Applicant.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 18TH DAY OF SEPTEMBER 2025.

H K CHEMITEI

JUDGE

